



Australian Government
National Water Commission



A review of Indigenous involvement in water planning, 2013

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A review of Indigenous involvement in water planning, 2013

April 2014

ISBN 978-1-922136-34-3

An appropriate citation for this publication is:

National Water Commission, 2014, *A review of Indigenous involvement in water planning, 2013*, NWC, Canberra.

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Acknowledgement of Traditional Owners and Country

The National Water Commission acknowledges Australia's Traditional Owners and pays respect to the past and present Elders of the nation's Aboriginal communities. The Commission honours the deep spiritual, cultural and customary connections of Traditional Owners to the Australian landscape.



National Water Commission Symbol of Reconciliation: *United hands* by Mark Beanland

Foreword

The National Water Commission is pleased to release *A review of Indigenous involvement in water planning 2013*. This desktop study updates a previous review undertaken in 2010 and will inform our assessment of Indigenous engagement and access to water in the Commission's forthcoming *National Water Reform Assessment 2014*.

The 2014 assessment will review the progress of the Australian, state and territory governments towards achieving the objectives and outcomes of the National Water Initiative (NWI), Australia's blueprint for water reform. The NWI maps out Australia's water management objectives including objectives for Indigenous access to water resources. It calls for Indigenous representation in water-planning processes, the incorporation of Indigenous social, spiritual and customary objectives in water plans, and the integrated management of environmental water to achieve not only environmental but other public benefit outcomes, including Indigenous and cultural values.

This review finds that, while approaches are variable across Australia, most governments have made significant advances in recognising the need to address Indigenous water issues. Progress is being made on engaging Indigenous people in water planning and management processes.

However, challenges remain and little progress has been observed in the allocation or licensing of water for Indigenous social, economic, spiritual or cultural purposes. The Commission encourages the promotion of allocation or licensing opportunities and continued efforts to build the capacity of Indigenous communities to participate fully in water planning and management.

Leadership on Indigenous issues by bodies such as the Indigenous Water Advisory Committee, the former First People's Water Engagement Council and organisations such as Murray–Lower Darling Rivers Indigenous Nations, Northern Basin Indigenous Nations and the North Australia Indigenous Land and Sea Management Alliance, has been important to facilitate the integration of Indigenous interests into national and state water policy frameworks. Continued support for this representation is important so that Indigenous voices continue to be heard in the national water debate.

Indigenous Australians have managed their lands and waters sustainably for thousands of generations. Through their spiritual, cultural and customary connections to the landscape, they have acquired a deep knowledge and understanding of Australia's water systems. Incorporating this knowledge into Australia's water management approaches represents an opportunity for all governments to recognise Indigenous water issues and improve the sustainable management of our water systems

In its [Position Statement: Indigenous access to water resources](#), released in June 2012, the Commission sets out a number of priorities for improved Indigenous access to water resources, including recommending that the allocation of water entitlements to Indigenous Australians to facilitate economic development should be explicitly considered as a strategy for contributing to the national Closing the Gap agenda.

While not the subject of this review, the Commission considers the public health and quality of life issues associated with water and sanitation services in small and remote Indigenous communities to be matters of high priority, and encourages efforts to improve water security in these communities.

The Commission appreciates input from the review consultant Melanie Durette, members of the Indigenous Water Advisory Council, staff from NWI jurisdictions and the Murray-Darling Basin Authority, and looks forward to continued collaboration in completing our assessment of Indigenous access to water resources for the 2014 assessment of Australian water reform.

Karlene Maywald
Chair, National Water Commission
April 2014

Abbreviations and acronyms

AWI	Aboriginal Water Initiative
AWIS	Aboriginal Water Initiative System
CEWH	Commonwealth Environmental Water Holder
CMA	Catchment Management Authority
COAG	Council of Australian Governments
DoW	Department of Water
DPIPWE	Department of Primary Industries, Parks, Water and Environment
DSEWPaC	Department of Sustainability, Environment, Water, Population and Communities
IWPG	Indigenous Water Policy Group
MDBA	Murray–Darling Basin Authority
MLDRIN	Murray Lower Darling Rivers Indigenous Nations
NAIEP	North Australian Indigenous Expert Panel
NAILSMA	North Australian Indigenous Land and Sea Management Alliance Ltd
NBAN	Northern Basin Aboriginal Nations
NOW	NSW Office of Water
NRM	natural resource management
SIR	strategic Indigenous reserve
TOLMB	Traditional Owner Land Management Board

1 National summary

This report describes the status and progress of arrangements across Australia that facilitate the availability of water for Indigenous cultural, social, environmental and economic needs (including consumptive and non-consumptive uses) in the period from 2010 to 2013. It reviews the engagement and involvement of Indigenous people in water planning and management and provides background on the 2010 review of Indigenous involvement in water planning report. The report findings are current at 1 December 2013.

Through the [National Water Initiative](#) (NWI), Australian governments agreed that water planning frameworks will address Indigenous access to and management of water. This report provides a desktop review of progress in implementing the provisions of the NWI relating to Indigenous requirements for water. In the National Water Commission's 2010 review of Indigenous involvement in water planning, some progress was reported on how governments recognised Indigenous economic, cultural and spiritual interests in water planning, although approaches varied across jurisdictions. That review also found that Indigenous people continued to face significant impediments to access to water for economic, environmental and cultural purposes, and that those impediments varied among jurisdictions and regions.

Since then, some jurisdictions have made significant advances in the recognition of Indigenous water requirements in water planning. Although approaches to implementing the NWI continue to vary, water policymakers, planners and managers increasingly recognise the need to address Indigenous water issues, and this growing awareness is supported by the actions of water planning agencies to reflect Indigenous objectives.

One of the main purposes of this review is to identify the extent to which legislation and policy in the jurisdictions facilitate Indigenous access to water and involvement in water planning and management. As legislation and policy are updated by the states, an opportunity arises to better address Indigenous requirements for water. One notable change in this area has been inclusion in the Murray–Darling Basin Plan of the definition of cultural flows as adopted by the Murray–Lower Darling Rivers Indigenous Nations (MLDRIN). Victoria has also included a chapter on Indigenous involvement in its Waterway Management Strategy to progressively strengthen relationships with Indigenous people. The development of a traditional owner engagement guidance note assists Catchment Management Authorities (CMAs) in the development of regional Waterway Strategies.. The Victorian Department of Environment and Primary Industries is currently preparing a departmental Aboriginal Inclusion Plan 2014-2019 to guide engagement and increase Aboriginal community involvement in land, water and natural resource management, and participation in food and fibre industries.

Among the jurisdictions, New South Wales is the only state to have a legislative requirement that Indigenous representatives be included on water management committees. Queensland's previous legislative requirement for a community reference panel representing cultural, social and economic interests has recently been repealed; consultation is now to be arranged at the discretion of the Minister for Natural Resources and Mines. Queensland representatives advise that this informal process has since proved to be an appropriate and effective way of establishing relationships and gathering stakeholders' views on water planning and management, including those of Indigenous groups. It is unclear whether these changes meet the expectations of Indigenous people.

This report also provides an update of the extent of Indigenous water allocation and access in water plans. One of the main challenges has been that neither water registers nor Indigenous bodies hold specific information on Indigenous water users. Those sections are drafted in collaboration with

jurisdictional contacts wherever possible to provide a thorough update of the main developments since 2010.

Overall, there has been no substantial increase in water allocations for Indigenous purposes—social, economic or cultural. The challenges in Indigenous water allocation and access remain largely the same as in 2010.

Experience in New South Wales reveals some of the main challenges associated with water licences. In this jurisdiction, where competition for water is high, there has been recognition that reliance on native title is not sufficient and that cultural and commercial licences offer other options. Aside from a cultural water access licence granted in 2005 in the Murrumbidgee, no other active licences have been granted. The main challenges associated with the licences include a lack of awareness of licences that can be applied for, and a lack of financial resources to cover licences, approvals processes and infrastructure requirements. The requirement for annual renewal of cultural licences may also prove a barrier which might make it more worthwhile to apply for a domestic and stock licence that allows access to greater volumes of water (Tan & Jackson 2013). This is only applicable in instances where stock and domestic is the intended use.

As discussed in the New South Wales section, the Aboriginal Water Initiative and the NSW Office of Water have recognised these barriers. They have sought and been granted a fee waiver from the NSW Treasury for Aboriginal specific-purpose access licences and approvals and associated water trades, commencing July 2014.

Since publication of the 2010 review, some progress had been made on the development of strategic Indigenous reserves (SIRs) in northern Australia as a possible suitable means to advance Indigenous participation in the water market. As discussed in this review, the outcome desired by Indigenous people in northern Australia generally is for an identified allocation of water for economic purposes in all water plans. Challenges exist in the establishment of SIRs, including the development of a process for deciding appropriate governance arrangements. Most recently, the Northern Territory Government has announced that SIRs will no longer be considered in water allocation plans. Peak Indigenous bodies in the Northern Territory have expressed disappointment in the government's decision and have expressed concern about the impact on Aboriginal economic interests.

The 2010 review noted that several Indigenous-led governance organisations capable of driving Indigenous water interests forward were emerging and strengthening, particularly at the national level. The First Peoples' Water Engagement Council provided advice to the NWC on national Indigenous water issues until its conclusion in 2012. The Indigenous Water Advisory Committee established in 2012, provides advice on Indigenous water issues at the national level, although this Committee will not continue past 30 June 2014. However, other groups and initiatives have continued to advance Indigenous interests in water at the state and national levels.

Other reports since then have noted a low capacity for collaboration in the Indigenous water sector and water planning agencies, and that Indigenous knowledge remains underutilised in water planning (Tan & Jackson 2013).

In general, this review has found that Indigenous participation in water management decision-making continues to vary regionally. Indigenous needs for water in over-allocated catchments are still not accounted for in water planning, and a gap remains in the actual provision of water to Indigenous people to be managed by them. Further work also needs to be undertaken to better incorporate Indigenous knowledge into water planning.

Despite this, it appears that most jurisdictions are taking action to engage Indigenous people more effectively in planning. This report highlights a number of recent case studies, including several project partnerships between Indigenous groups and government agencies in Victoria.

Indigenous Australians suffer economic, social and health disadvantages, including in housing, education, employment and business ownership, and addressing that disadvantage is the aim of the Australian Government's *Closing the Gap* strategy. As the First Peoples' Water Engagement Council advised the National Water Commission (the Commission) in 2012, access to water from the consumptive pool can be an important component of the broader platform to help Indigenous people generate economic development and is therefore a sound strategy for closing the gap.

Opportunity exists for governments to support Aboriginal people to build their understanding about the economic opportunities available through water markets and other water-related commercial enterprises, and steps should be taken to make licensing more accessible. The objectives of the Australian Government's *Indigenous Economic Development Strategy 2011–2018* and of *Closing the Gap* more broadly, cannot be fully achieved unless appropriate strategies are applied to water policy and water-sharing arrangements.

National bodies and developments

In 2010, the First Peoples' Water Engagement Council was formed as an advisory group to the Commission and to speak on behalf of Australian Aboriginal peoples on inland water issues, including those issues specifically covered by the NWI.

The council completed its term in 2012, at which time it convened the First Peoples' National Water Summit, bringing together around 70 Indigenous delegates from across Australia, and provided its final advice to the Commission, including the following recommendations (FPWEC 2012):

1. There must be an Aboriginal water allocation in all water plans.
2. All Australian governments should review existing legislation related to the management of water resources and enshrine in future legislation:
 - Indigenous engagement in decision-making, planning and management
 - Indigenous access to water for cultural and economic purposes
 - the provision of necessary research, support and capacity building to allow Indigenous Australians to participate fully and effectively in water planning and management.
3. The Council of Australian Governments (COAG) should establish and implement a National Aboriginal Water Strategy. An Aboriginal Economic Water Fund or funds should be established in cooperation with the states and territories to facilitate the strategy.¹

The Department of the Environment (formerly the Department of Sustainability, Environment, Water, Population and Communities) established the Indigenous Water Advisory Committee in 2012 including some members of the former council. The role of the committee is to provide advice to the Department on incorporating Indigenous views, beliefs and interests into the development and implementation of national water policies and programs. The committee has advised national water agencies (the National Water Commission, the Murray–Darling Basin Authority and the Commonwealth Environmental Water Office), the Bureau of Meteorology and the Australian Competition and Consumer Commission. The committee will sunset on 30 June 2014.

All NWI parties are contributing to the development of a module on Indigenous engagement in water planning and management to supplement the [NWI Policy guidelines for water planning and management](#), issued in 2012. The Indigenous engagement module is intended to guide jurisdictions on NWI-consistent, inclusive water planning and management processes that support Aboriginal social, spiritual and customary objectives. It is due for completion in 2014.

2 Background

This report reviews, updates and enhances information in the September 2010 Report - [A review of Indigenous involvement in water planning](#). That report was prepared as a submission by the First People's Water Engagement Council to the Commission's [2011 biennial assessment of the National Water Initiative](#). It reported some progress on the Commission's recommendation in its [2009 assessment of Australian water reform](#) that Indigenous economic, cultural and spiritual interests should be more effectively incorporated into water planning. It also found that Indigenous people continued to face significant impediments to accessing water for economic, environmental and cultural purposes, and that those impediments varied across jurisdictions and regions.

The main findings in the 2009 assessment of Australian water reform can be summarised as follows:

- Approaches to implementing the National Water Initiative (NWI) varied considerably from state to state.
- Many water plans were taking Indigenous interests into consideration, as evidenced by consultation and research reports.
- In general, Indigenous participation in decision-making relating to water management varied regionally but could be improved in most cases.
- Limited steps were being taken to allocate water for Indigenous economic purposes and to native title holders.
- Indigenous-led governance organisations capable of driving Indigenous water interests forward were emerging and strengthening.

The 2011 assessment of Australian water reform noted an improvement in consultation but found that most jurisdictions were still not meeting their commitments under the NWI:

'Most jurisdictions have improved consultations with Indigenous communities in water planning and management, but have generally failed to incorporate effective strategies for achieving Indigenous social, spiritual and customary objectives in water plans, as envisaged under the NWI.'

The 2011 assessment also noted that, where assessments of cultural values were made, they usually involved desktop reviews and reviews of government databases. In many cases, the assessments were also coupled with the assumption that 'cultural flow' values and requirements would be identified through consultations on draft water plans.

This report is consistent with the [2010 review](#) and uses a similar approach and format to examine:

- the legislative and policy context of Indigenous access to water and involvement in water planning and management
- the extent of Indigenous water allocations and access in water plans
- Indigenous participation and engagement in water planning and management
- the main changes since the 2010 review and emerging issues.

3 Murray–Darling Basin

Legislative and policy context

The *Water Act 2007* (Cth) established the MDBA, conferring on it the powers of the previous Murray–Darling Basin Commission and additional powers relating mainly to the development and implementation of the Murray–Darling Basin Plan, which came into force on 22 November 2012.

The MDBA is responsible for developing and overseeing a planning framework for the management of the basin’s water resources in the national interest. The Basin Plan takes a coordinated approach to water use across the basin’s four states and the Australian Capital Territory. The plan is being implemented through a range of instruments, such as the Environmental Watering Plan, the Water Quality and Salinity Management Plan, water resource plans, and monitoring and evaluation programs.

Under the Basin Plan, water resource plans must identify Indigenous cultural objectives and outcomes based on Indigenous values and uses in relation to managing water.² Their preparation must have regard to the views of Indigenous people about cultural flows.³ They must also consider the views of relevant Indigenous organisations with respect to matters including native title rights and claims, Indigenous land use agreements, and registered Aboriginal heritage and risks to the protection of Indigenous values and uses, arising from the use and management of water. Indigenous representation in the preparation and implementation of the plans is also required.

On receipt of a draft water resource management plan, the MDBA will consult with relevant Indigenous organisations including where appropriate, the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and Northern Basin Aboriginal Nations (NBAN) on the accurate and appropriate observation of Indigenous interests, as stipulated in the Basin Plan.

Water allocations and access in water plans

During consultations for the draft Basin Plan, the MDBA received 430 submissions from individual Indigenous people and a further 21 from Indigenous organisations. The submissions reflected a broad range of interests, observations, suggestions and concerns about history, spirituality, socioeconomic health and wellbeing, customary uses of water-related natural resources, Indigenous rights and obligations, the state of the environment, and improvements in governance and natural resource management (NRM). They also referred to cultural flows, including of all natural forms of water (artesian, sub-artesian, flood and surface water), requiring Indigenous governance and referred to state, national and international legislation that promotes and protects Indigenous rights. Submissions called for cultural flows to be protected by legislation and expressed as cultural flows in the Basin Plan. A frequent suggestion was for specific cultural-flows entitlements and allocations to be managed by Indigenous people; another was for the establishment of an Indigenous water holder to manage that water.

Schedule 1 of the Basin Plan recognises the definition of cultural flows used by NBAN and MLDRIN, which is:

Cultural flows are water entitlements that are legally and beneficially owned by the Indigenous Nations and are of sufficient and adequate quantity to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.

It is recognised that the provision of cultural flows will benefit Indigenous people in improving socioeconomic health, wellbeing and empowerment to be able to care for their country and undertake

cultural activities. Therefore, as per the Basin Plan, all water resource plans are required to have regard to the views of Indigenous people about cultural flows.⁴

In relation to the participation of Indigenous people in the development of water resource plans, the Basin Plan notes that an example of principles that may be applied are set out in the *MLDRIN and NBAN Principles of Indigenous Engagement in the Murray–Darling Basin* document endorsed by MLDRIN, NBAN and the MDBA in 2011.

Participation and engagement in planning and management

In the development of the Basin Plan, the MDBA carried out a comprehensive Indigenous consultation strategy involving MDBA staff, Indigenous town facilitators and a team of independent consultants, who visited regional towns and Indigenous communities for an average of four days in each location. This approach enabled Indigenous people who did not have internet or computer access to dictate their submissions to consultants and agree the content. Indigenous organisations, some with support from the MDBA, made corporate submissions on their nations' interests and local NRM priorities.

Submissions on the draft plan noted that mainstream approaches to consultation with Indigenous people on water and NRM were not comprehensive enough. While feedback on the MDBA's intensive Indigenous-specific engagement approach reflected a high level of satisfaction and strong support, some submissions pointed out that Indigenous representation on MDBA water management committees was not adequate and asked for an Indigenous role in all decisions related to water management.

To help build the capacity of Indigenous communities to engage with natural resource managers, the MDBA has compiled the Basin Plan Indigenous Submissions Database using an information technology-based qualitative data management system (NVivo). The data has been organised using Indigenous cultural perspectives gained from an initial analysis of the Indigenous submissions to the draft Basin Plan in 2012. During the development of the database, the MDBA also carried out a second round of Indigenous consultation across the basin. With the assistance of Indigenous co-researchers and town facilitators, the original consultation team met submission makers to inform them of the impact of their submissions on the plan, to seek their approval to use their information in the database and to perform further survey work. The MDBA made formal agreements with around 75 per cent of the original submission makers to have their intellectual property rights over their submissions recognised and to agree to the reuse of their material by culturally and legally recognised organisations to progress Indigenous interests in the basin, as defined by Indigenous peoples. This right of access is open to both mainstream and Indigenous interests under these terms for five years.

The MDBA is working with NBAN, MLDRIN and the National Cultural Flows Planning and Research Committee to investigate appropriate scientifically robust tools to help Indigenous people articulate their cultural perspectives on particular sites in a systematic way. To date, the Cultural Health Index for Streams and Waterways developed by New Zealand Maori scientists has been carefully considered. Plans are underway to develop trials for these methodologies in the basin.

The MDBA helped to establish the independent organisations NBAN and MLDRIN and continues to support them financially and in other ways. The two organisations regularly meet and engage with the MDBA on a wide range of topics, including the development and implementation of the Basin Plan. Their contribution significantly influenced the Indigenous content in the final Basin Plan, and their ongoing input to water planning endeavours to bring together the many Indigenous perspectives across the basin at a strategic level.

The Living Murray Indigenous Partnerships Project aims to ensure that Indigenous community knowledge, values and perspectives are considered in each of the basin's Icon site management plans. The project employs Indigenous facilitators and Indigenous cultural heritage monitors who work with

Icon site managers to improve the health of the River Murray system by making the best use of water for the environment. The project plan was developed with and endorsed by MLDRIN.

The Commonwealth Environmental Water Holder (CEWH) is responsible for managing Commonwealth environmental water for the protection and restoration of environmental assets in the Murray–Darling Basin. Consistent with the Basin Plan, the CEWH must have regard to Indigenous values when undertaking environmental watering. The CEWH and staff of the Commonwealth Environmental Water Office engage with local communities, including Indigenous people, through mechanisms such as site visits, face-to-face meetings, catchment-based environmental water advisory groups, and other state government arrangements. Local communities are able to submit watering proposals via email, the CEWH's website or written submissions. The Commonwealth Environmental Water Stakeholder Reference Panel, which provided advice on a range of stakeholder issues, also had an Indigenous representative.

The Commonwealth Environmental Water Office is looking to enhance its engagement with Indigenous communities, including through work with groups such as the Northern Basin Aboriginal Nations and the Murray Lower Darling Rivers Indigenous Nations.

Commonwealth environmental water is limited to watering actions that have environmental outcomes as their primary purpose. Whilst the water requirements to support Indigenous cultural values and environmental outcomes are not the same, the CEWH recognises an overlap between them and that there are opportunities for the use of Commonwealth environmental water to achieve mutual environmental and cultural outcomes.

To assist in identifying these opportunities the CEWH is supporting the National Cultural Flows Research Project. In partnership with MLDRIN and NBAN, the MDBA conceived and initiated this multi-year project, which is developing an evidence base to help secure a future in which Indigenous water allocations are embedded in Australia's water planning and management framework. Managed by the National Native Title Council, the project aims to define Indigenous cultural values and water needs, provide practical examples of meeting those needs through watering trials, and measure the cultural, social and ecological benefits of the trials. The project is in its first year of implementation and so far has received funding of over \$1.7m, primarily from the MDBA with contributions also from the National Water Commission and the Department of Social Services (formerly the Department of Families, Housing, Community Services and Indigenous Affairs). The project team is continuing to seek further investment partners. The first research component—a desktop review of Indigenous cultural values and needs associated with water—is nearing completion and will result in a comprehensive database of literature references to cultural flows. This will provide the basis for the next component, which will pilot methodologies to define the uses, values, volumes and timing of flows needed to sustain cultural outcomes in case study areas.

The National Cultural Flows Research Project is scheduled for completion in 2016, by which time outcomes may include recommendations for policy, legislative and institutional changes, based on rigorous evidence and extensive consultation, that will enable the implementation of cultural flows for the benefit of Indigenous communities. It is also intended that processes will be in place to build the capacity of Indigenous communities to better articulate their water needs and to manage cultural water allocations effectively. The project is run by Indigenous people and aims to result in a strong qualitative and quantitative understanding of Indigenous values relating to water and other natural resources.

In addition to the cultural flows project, the CEWH is continuing to engage directly with interested Indigenous communities to identify potential opportunities for Commonwealth environmental water to support mutual environmental and cultural outcomes. This includes, for example, discussions with the Ngarrindjeri and the Yorta Yorta peoples, among others.

The Australian Government and the basin states support MLDRIN financially. The MDBA, using Australian Government funds, supports NBAN, policy and research development and the National Cultural Flows Research Project.

Summary of main changes since 2010 and emerging issues

Since 2010, the MDBA has worked with Indigenous people on the development of the Basin Plan, which now recognises the definition of cultural flows developed by MLDRIN and NBAN.

The Basin Plan Indigenous Submissions Database, along with work on systematic research tools such as the adaptation of the New Zealand Cultural Health Index for Streams and Waterways, are positive advances in strengthening the voices of Indigenous people in water planning and management.

4 Queensland

Legislative and policy context

The Department of Natural Resources and Mines is responsible for overseeing water planning in Queensland, which is governed by the state's *Water Act 2000*. Queensland has a two-tier process for water planning in which water resource plans set the standards for allocations. Finalised water resource plans are put into effect through resource operations plans. The Act sets out matters that must be considered when developing water resource plans, including cultural, economic and social values.⁵ Previously, Indigenous interests were represented through community reference panels, but the section of the Act providing for the panels has recently been repealed (discussed below). Although the formal requirement for Indigenous engagement no longer applies, Indigenous groups are still engaged at the preparation stage through more informal processes.

Other relevant legislation in Queensland includes the *Wild Rivers Act 2005*, which aims to preserve the natural value of wild rivers and may provide for Indigenous water reserves. The government has indicated that a number of Wild Rivers declarations will be revoked and are likely to be replaced by alternative planning instruments in the near future. Many of Queensland's water resource plan areas are also subject to requirements under the Murray-Darling Basin Plan. In those areas, water resource plans are developed in consultation with Indigenous organisations according to the requirements of the Basin Plan.

The *Cape York Peninsula Heritage Act 2007* recognises the cultural, economic and social needs and aspirations of Aboriginal communities on the Cape York Peninsula and provides for the protection of Indigenous cultural and heritage values in water where areas of international conservation significance are declared. The Act establishes a process for approvals of economic development activities involving the use of water in approved community use areas and establishes a requirement for an Indigenous water reserve or allocation in a Wild Rivers declaration or a water resource plan under the Water Act. The purpose of such an allocation would be to help Indigenous communities in the area achieve their economic and social aspirations.

The *Land, Water and Other Legislation Amendment Act 2013*, which was passed by the Queensland Parliament in May 2013, amended many Acts involving land and water regulation and the petroleum industry. A change to the Water Act that permits Indigenous people to take or 'interfere with' water for traditional activities or cultural purposes as a basic right, came into effect in September 2013 and applies to all waters in Queensland.

Water allocations and access in water plans

In Queensland, an Indigenous reserve provides communities with access to water for economic or social benefit. For example, the recently released draft Water Resource (Wet Tropics) Plan 2013 provides Indigenous reserves to make water available to Indigenous communities in the plan area to achieve their economic and social aspirations.

In addition, Indigenous water reserves to meet economic and social needs are identified in the following water resource plans and wild river declarations:

- *Water Resource (Cooper Creek) Plan 2011* (an Indigenous reserve of 200 ML and a community reserve of 500 ML, with community purpose defined as being for local Indigenous people for non-commercial purposes)
- *Water Resource (Gulf) Plan 2007* (5050 ML/year)

- *Water Resources (Mitchell) Plan 2007* (5000 ML/year)
- *Water Resource (Fitzroy Basin) Plan 2011* (15 000 ML/year)
- *Wenlock Basin Wild River Declaration 2010* (5000 ML/year)
- *Archer Basin Wild River Declaration 2009* (6000 ML/year).

Overall, it appears that the volume of water allocated is small, and it is unclear whether these amounts will be sufficient to meet economic and social needs (Tan & Jackson 2013). To date, no applications or licences have been granted under the Wild Rivers legislation. Where there is a water resource plan, the water earmarked for Wild Rivers processes is reserved under the plan.

Participation and engagement in planning and management

Previously in Queensland, the *Water Act 2000* required the establishment of a community reference panel for each water resource plan to secure the participation of groups and individuals with cultural, economic and environmental interests.⁶ The section with this requirement has recently been repealed, and the panels have been replaced by more informal consultation processes arranged at the discretion of the Minister.

With the preparation of each draft water resource plan, the Department of Natural Resources and Mines must prepare overview reports containing summaries and assessments of issues considered, including the cultural significance of waters within the plan areas. Overview reports have been prepared for the Barron and Georgina and Diamantina water resource plans in western Queensland and the Wet Tropics Water Resource Plan in northern Queensland. The reports supplemented the participation of Indigenous people on the community reference panels in those basins (Jackson 2009). Accordingly, the final Water Resource (Georgina and Diamantina) Plan 2004 contains specific provisions relating to ecological and cultural flows. The Barron Indigenous report attempts to relate Indigenous values to river flow (Jackson 2009). An overview report that accompanied the Cooper Creek Water Resource Plan also outlined the consideration of cultural significance and addressed Indigenous representation on the community reference panel.

In the Condamine Alluvium, researchers have worked with water planners and Indigenous communities to bring a greater depth of information to the planning process than would otherwise be available to water planners (Tan et al. 2012). They used a suite of engagement tools that participants reported as useful in assisting Indigenous groups to participate in water planning. One of the most popular tools was groundwater visualisation.

Co-managed research work by Giringun Aboriginal Corporation and CSIRO on knowledge partnerships and engagement in water planning may provide benchmarks for research to support Indigenous people to articulate their water concerns and values (Maclean & Robinson 2011).

Summary of main changes since 2010 and emerging issues

In Queensland, a key issue is the facilitation of Indigenous communities' access to the reserves created by water resource plans and the Wild Rivers legislation. Indigenous people need to know that the reserves are available and have the expertise, programs and infrastructure to support their use of the allocations.

Most water resource plan areas have included some form of assessment of the cultural/Indigenous significance of water in the development of planning instruments. They also have included consultation with Indigenous groups or representatives through membership of community reference panels or through community consultation.

Recent legislative amendments that took effect in September 2013 recognise the basic right of traditional owners to water for cultural and spiritual purposes and apply to all waters in Queensland.

5 Victoria

Legislative and policy context

Although currently under review, the Victorian *Water Act 1989* provides the framework for water management and use in Victoria, including the issuing of water entitlements, allocations of water to entitlements and the provision of water services by state-owned water corporations and catchment management authorities. The Act also defines the Environmental Water Reserve and sets up two types of statutory water plans—regional water strategies and plans for declared water supply protection areas. At the regional level, each of Victoria's four regions has a sustainable water strategy. In the development of the strategies, Indigenous people are recognised as critical stakeholders in the process.⁷

The Water Act also recognises the right to take water under Victoria's *Traditional Owner Settlement Act 2010*, which states that, where a natural resource agreement has been entered into, traditional owner groups can take and use water from a waterway or bore for traditional purposes.⁸

Victoria also has an integrated catchment management system established under its *Catchment and Land Protection Act 1994*. Under this Act, the state is divided into 10 catchment regions, each with a catchment management authority that has regional waterway, floodplain, drainage and environmental water reserve management powers under the Water Act. The authorities may develop catchment strategies and regional river health strategies. They are also a key link for Indigenous people to become involved in water planning. Some work closely with local Indigenous groups, and some have employed Indigenous coordinators.

Victoria has also released the Victorian Waterway Management Strategy, which aims to provide a single integrated framework for addressing state, national and international obligations for rivers, estuaries and wetlands. The overarching management objective is to provide the level of environmental condition needed to sustain key environmental, social and economic values. The development and implementation of waterway strategies for each of the 10 catchment regions will deliver the management approach outlined in the state wide strategy.

As part of the consultation process on the draft strategy, materials were developed for engagement with Indigenous communities. The chapter on Indigenous involvement notes that there is much work to be done to implement the various state, national and international policies in relation to the rights of Indigenous people. The strategy also notes that Victorian water resource planning (through the regional strategies) includes engagement and consultation with traditional owners on all water plans, but that Victoria is still in the early stages of formally recognising Indigenous relationships with water, including facilitating Aboriginal access to the water allocation framework under the *Water Act 1989*.

The Department of Environment and Primary Industries is preparing a departmental Aboriginal Inclusion Plan to guide its engagement with and inclusion of Indigenous people more generally in its work. The plan builds on the previous *Indigenous Partnership Framework 2007–2010*. The Victorian Aboriginal Fishing Strategy, established in 2012, recognises customary and commercial fishing rights as well as the need for sustainable fisheries.

Water allocations and access in water plans

There are currently no Indigenous water allocations in water plans in Victoria. Water access has been provided primarily through the native title process.

Most recently, the Traditional Owner Settlement Act 2010 provides for out-of-court settlement of native title and the delivery of land justice, and may allow members of a traditional owner group with a natural resource agreement under the Act to take and use water from a waterway or bore for traditional (non-commercial) purposes.⁹ For example, the first comprehensive settlement negotiated under the Act gives the Dja Dja Wurrung the right to take and use water from a waterway or bore where the Dja Dja Wurrung member has access to a waterway or bore according to the private domestic and stock water rights set in the Water Act, or to take and use water for traditional purposes from a waterway or bore for the purposes of providing for any personal, domestic or non-commercial communal needs of members of the Dja Dja Wurrung.

Participation and engagement in planning and management

The Victorian Government is progressively strengthening partnerships with Indigenous people in land and water management through joint management and co-management initiatives.

Joint management describes a formal partnership arrangement established under the Traditional Owner Settlement Act between traditional owners and the state, in which both share their knowledge to manage specific national parks and other protected areas. Traditional Owner Land Management boards (TOLMBs) are established to oversee the management of parks covered by joint management arrangements, prepare management plans and provide advice about the management of specified areas. Joint management boards or committees have been established (or are being established) in certain claim areas. There are currently two TOLMBs set up to jointly manage lands (Gunaikurnai TOLMB and Yorta Yorta TOLMB). One TOLMB is being established (Dhelkunya Dja TOLMB for the Dja Dja Wurrung).

Co-management is an outcome of the recognition of native title. Under this arrangement, title to parks and reserves is not transferred to the traditional owners, but they shape the ongoing management of specific parks by forming councils with representatives from state agencies and catchment management authorities. Three co-management committees are being established: Budj Bim Council, Winyala Council and the Yorta Yorta Joint Body.

The North Central Catchment Management Authority is undertaking a project to identify and map significant cultural sites within the Gunbower Forest. Knowledge gained through this project will be used to develop meaningful cultural flow objectives for the forest. Local outcomes will include training and short-term employment in conducting forest surveys, maintaining and reconnecting with country, sharing knowledge and fostering communication of that knowledge between elders and younger traditional owners.

The restoration of Lake Condah in south-western Victoria is another example of a project partnership, in this case between the Gunditjmarra community and a range of government agencies. The project has included the construction of a weir, the reactivation of ancient eel-trap systems and the improvement of the lake's natural environment. It has combined scientific research and community engagement and led to a broader community understanding of the lake's unique cultural values. Newer and more efficient technologies have contributed to the restoration project's success.

Another way that Indigenous people might participate in water planning and management in Victoria is as registered Aboriginal parties under the *Victorian Aboriginal Heritage Act 2006*, which recognises Indigenous people as the primary guardians, keepers and knowledge holders of cultural heritage. Registered Aboriginal parties have responsibilities relating to the management of cultural heritage under the Act, including evaluating cultural heritage management plans and advising on applications for cultural heritage permits, decisions about cultural heritage agreements and protection declarations.

The most recent development in Victoria has been the formation of the Natural Resources and Cultural Heritage Advisory Group, which will represent the Federation of Victorian Traditional Owner

Corporations (the peak body for traditional owner corporations). The group's focus will be on developing policy and managing representation on a wide range of matters relating to NRM and cultural heritage. Its functions include representing the federation, contributing to policy, advising on key projects and developing strategic relationships with key public and private sector stakeholders and with relevant agencies. One of the Group's roles will be to develop strategic partnerships with stakeholders that are able to provide assistance and funding for delivering the priorities of the Federation of Victorian Traditional Owner Corporations. It may also develop program and funding proposals, particularly as partnerships with other agencies. The chair of the group will be a federation member who will be assisted by up to six additional members appointed by the federation's board. At the time of writing, the group had been formed but not yet launched.

The Dja Dja Wurrung Clans Aboriginal Corporation is the corporate representative body for the Dja Dja Wurrung traditional owners of the Bendigo region. The corporation received funding through the Victorian Aboriginal Economic Development Strategy to establish a commercially viable natural resource and cultural heritage management business. The project was implemented through a co-hosting arrangement with the North Central Catchment Management Authority, as the principal employer and host agency for the project, for two years from January 2011 to December 2012. It was a first of its kind in Victoria between a catchment management authority and an Indigenous corporation.

Ten scholarships have also been provided by the Department of Environment and Primary Industries for Indigenous students to attend various institutions (the Koori Institute, Deakin University and Melbourne University) to study NRM.

Victoria has a well-established Catchment Management Authority Indigenous NRM Network which has been operational since 2008. The primary purpose of the network is to progress the engagement and participation of Indigenous peoples in natural and cultural resource management in Victoria, while ensuring the integration of best practice cultural heritage management into the CMAs.

Summary of main changes since 2010 and emerging issues

The draft Victorian Waterway Management Strategy notes that the Victorian Government has been progressively strengthening relationships with traditional owners in land and water management through joint and co-management initiatives.¹⁰ In the consultations on the strategy, one submission called the chapter on Indigenous involvement a significant step forward in the government's recognition of traditional owner and Indigenous rights and interests in water (DSE 2013).

In 2011, the Victorian Government directed its departments to develop Aboriginal action plans to improve Indigenous Victorians' access to services, improve employment outcomes and provide opportunities for building relationships. As discussed above, the Department of Environment and Primary Industries is preparing a departmental action plan to guide its engagement with Indigenous people and include them in its work. This plan builds on the earlier Indigenous Partnership Framework 2007–2011 with the aim of progressing Indigenous involvement in water management and will be completed by the end of 2013.

Since the 2010 review, the Traditional Owner Settlement Act has come into force, providing the opportunity for traditional owner groups to take and use water from a waterway or bore for traditional purposes where a natural resource agreement has been entered into.

Several project partnerships between Indigenous groups and government agencies are underway in Victoria. Most recently, the Natural Resources and Cultural Heritage Advisory Group has been formed. It will be launched in the near future.

6 South Australia

Legislative and policy context

All formalised, licensed water allocations issued for prescribed water resources in South Australia are managed through planning processes specified in the state's *Natural Resources Management Act 2004*. All prescribed water resources must have a water allocation plan, which is developed by the regional NRM board in consultation with respective communities.

Water allocation plans set the water extraction and management regime for each prescribed water resource. There are eight NRM boards in South Australia, of which six currently have one or more water allocation plans in operation. The boards are responsible for developing and reviewing the plans, and the Department for Environment, Water and Natural Resources is responsible for some aspects of plan implementation, including licence management and scientific investigations.

Water resources outside prescribed areas are managed under the relevant water licensing and other requirements of the Natural Resources Management Act and in accordance with water-related provisions of the statutory regional NRM plans.

Water allocations and access in water plans

Currently, the South Australian water resource management system does not provide specific allocations for Indigenous cultural or economic uses. No water plan in South Australia has an express entitlement for those uses.

Several water allocation plans (including those for the Mallee, Tatiara and Padthaway prescribed wells areas) allow unlicensed access and use for social, cultural and spiritual purposes, provided the flow of water is not diverted or impeded for the purpose of collection. These plans state that current and future Indigenous needs for water have not been identified or quantified at this time, and that the NRM board is working with traditional owners to do so. For example, in the South East region an Aboriginal focus group is working to identify and quantify needs.

There are also many examples of licensed water allocations being issued to Indigenous groups for stock, domestic and/or commercial use. These licences maintain exactly the same status as any other licence to take water in South Australia issued under the Natural Resources Management Act.

Two other legislative provisions are notable. Section 128 of the Natural Resources Management Act allows the Minister for Water and the River Murray, by notice in the *South Australian Government Gazette*, to authorise the taking of water from a prescribed water resource for a particular purpose specified in the notice. In September 2012, a 'Notice of Authorisation to Take Water for Native Title Purposes' was gazetted. This provides for the taking of water that is needed to satisfy personal, domestic, cultural, spiritual or non-commercial communal needs and that occurs in the exercise or enjoyment of native title rights and interests. In effect, the notice is an expression of section 207 of the Natural Resources Management Act, which states that 'Nothing done under this Act will be taken to affect native title in any land or water.'

Section 59 of the South Australian *Pastoral Land Management and Conservation Act 1989* also provides for the right to take water for personal or domestic needs. This provision is recognised in the water allocation plan for the Far North Prescribed Wells Area, which states that 'the principles of the [water allocation plan] shall not derogate from the provisions of the *Pastoral Land Management and Conservation Act 1989* with regard to the taking of water for the traditional activities of the Aboriginal people.'¹¹

Participation and engagement in planning and management

The Natural Resources Management Act sets an objective that consideration should be given to Indigenous interests¹² and, while there is no specific requirement to do so, a key aim of South Australian water allocation plans is to assist in protecting Indigenous values in relation to water. Therefore, the planning framework engages Indigenous communities along with other stakeholders to identify their water values and requirements through consultations. The South Australian Government developed a manual in 2008 to guide Indigenous engagement in NRM, but the document was under review at the time of writing and not publicly available. Some NRM boards have also developed specific protocols for engagement with Indigenous communities in their regions.

The Natural Resources Management Act states that regional NRM board members should have experience and knowledge of Indigenous heritage and interests in land and water.¹³ One NRM board in South Australia (Alinytjara Wilurara) is wholly made up of nine Indigenous members, reflecting the fact that more than half the region is held as dedicated Indigenous lands.

Two recent developments in South Australia are noteworthy, the first of which involved recent amendments to the Alinytjara Wilurara Regional NRM Plan. The Alinytjara Wilurara region covers more than 250 000 square kilometres, which is nearly 26 per cent of the area of South Australia, and is made up of land largely set aside for conservation and traditional Indigenous use and occupation. The region has a population of around 2200 people who rely almost entirely on groundwater for their domestic water supply. The Alinytjara Wilurara NRM Board's inaugural regional NRM plan was adopted in late 2011, following three years of community consultation. The consultation, and all meetings with communities since, found that the management and conservation of water in the region are very high priorities of the Anangu people.

Water-affecting activities were not included in the inaugural plan, and since 2011 the Department of Environment, Water and Natural Resources has worked with the NRM board to decide on the most appropriate form of water management in the region. The initial request for prescription of the groundwater resources of the region, which would have triggered the development of a water allocation plan, was deemed not to be a suitable option at this stage for two main reasons: first, scientific knowledge of the water resources is lacking; second, the separation of land and water in the state's water management licensing system is conceptually at odds with the values and beliefs of the Indigenous communities of the region.

The agreed alternative to the prescription process was to amend the Alinytjara Wilurara NRM Plan to manage the concerns of the board and the community about water management. Following discussions between the board and the department in the 2011–2013 period and community consultations, a set of innovative water management principles was drafted and included in the recent amendments to the NRM plan.

The principles will work together to protect the limited potable water supplies in the region, the culturally significant water bodies and features and the quality of groundwater supplies and landscape features, and provide clarity to industries that are seeking access to water in the region.

The amended Alinytjara Wilurara NRM Plan was approved by the Minister for Sustainability, Environment and Conservation in July 2013. The next step is for the Alinytjara Wilurara NRM Board to engage with the community on the agreed approach, after which the plan will be adopted.

A second example of Indigenous engagement and the way cultural and spiritual values might be incorporated into water planning is the Ngarrindjeri Partnerships Project. The project is a partnership between the Department of Environment, Water and Natural Resources and the Ngarrindjeri Regional Authority, which is the peak representative body of the Ngarrindjeri people. The project supports Ngarrindjeri participation in NRM and cultural resource management in the Coorong, Lower Lakes and Murray Mouth region and is guided by the whole-of-government Kungun Ngarrindjeri Yunnan

Agreement 2009, which translates to 'listening to Ngarrindjeri speaking'. The agreement between the Ngarrindjeri peoples and the South Australian Government acknowledged Ngarrindjeri aspirations for natural and cultural resources management and facilitated a range of actions to support those aspirations, including in water planning and management.

There have been regular meetings between the department and Ngarrindjeri representatives to enable Ngarrindjeri cultural values to become integral to all planning and future management arrangements for land and water. In April 2012, the department and the Ngarrindjeri Regional Authority entered into a long-term service agreement to support the delivery of the Coorong Lower Lakes Murray Mouth Ngarrindjeri Partnerships project, which seeks to support Ngarrindjeri participation in natural and cultural resource management.

A cultural knowledge clause has been included in a range of documents and agreements to ensure the protection of Ngarrindjeri cultural knowledge and the recognition of their sovereignty within the region of their lands and waters. The project and agreement are an example of how cultural and spiritual values can be incorporated into water quality outcomes (DSEWPaC 2012).

The Ngarrindjeri Regional Authority is also a project partner in the Australian and South Australian governments' Riverine Recovery Project, which aims to improve the health of the River Murray through a range of measures focused mainly on floodplains and wetlands. The authority has worked collaboratively on the project, providing advice on ecological targets and management options and delivering cultural advice to help protect, enhance and rehabilitate significant aquatic assets of the River Murray to maintain all native species currently found in the region. A draft funding and service agreement supports Ngarrindjeri involvement and establishes a joint working group and reporting committee. Negotiations for an out-posted departmental wetland specialist to work with the community have also taken place.

The current focus is on consolidating a Ngarrindjeri engagement strategy in water planning that seeks to coordinate South Australian Government, Commonwealth Environmental Water Holder and Murray–Darling Basin Authority engagement on environmental water and water resource planning and understand how Indigenous interests and values can be better accommodated in water planning.¹⁴ This work will be useful to both the Ngarrindjeri and the Department of Environment, Water and Natural Resources in informing Murray–Darling Basin Plan implementation and meeting the requirements set out in the National Water Initiative.

The main sources of state NRM boards' funding are the Australian and South Australian governments and income from state levies. One example of Australian Government funding assistance was a grant from the Caring for our Country scheme that has enabled the Alinytjara Wilurara NRM Board to invest in community engagement projects, although the scope of the projects has covered wider issues than just water.

Funding to assist Indigenous people to participate in water planning in South Australia is variable. For example, the South East NRM Board had previously funded a scheme through Caring for our Country to support the activities of the South East Aboriginal Focus Group in further discussing cultural water needs with the community, particularly to reach a consensus that could inform water policy and future implementation. In its 2013–14 business plan, the board noted that there was uncertainty about future funding from this source and that a portion of the project will be funded from internal sources unless external funds can be accessed.

Summary of main changes since 2010 and emerging issues

Recent developments in Indigenous engagement in water planning in South Australia include the Alinytjara Wilurara NRM Plan and the Ngarrindjeri Partnerships Project.

7 New South Wales

Legislative and policy context

The New South Wales *Water Management Act 2000* covers the development of water sharing plans and the licensing of water extractions in New South Wales. In 2006, the New South Wales Government prepared its NWI Implementation Plan, which contained specific actions for implementing the NWI, including requiring that water plans provide for Indigenous access to water according to the provisions in the NWI relating to Indigenous representation in water planning and the incorporation of social, spiritual and customary objectives. Indigenous representation on water advisory committees is mandatory under the Act.¹⁵ All water sharing plans in New South Wales allow Indigenous communities to apply for a water access licence for drinking, food preparation, washing and watering domestic gardens, as well as for Indigenous specific-purpose cultural uses such as manufacturing traditional artefacts, hunting, fishing, gathering, recreation and ceremonial purposes. Certain water sharing plans provide for Aboriginal specific-purpose community development licences.

Under the *Water Management Act 2000* a native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights.¹⁶ Objects within the Act also provide for benefits to culture and heritage and benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water.¹⁷

Water allocations and access in water plans

New South Wales includes many fully allocated water systems, which often precludes Indigenous access. Most water plans have no allocations for Indigenous people or native title (Tan & Jackson 2013).

Two New South Wales water sharing plans have provided an entitlement for native title (Apsley and Kangaroo River). For those two plans, the approach in water planning was to treat native title use as equal to or less than human domestic and pastoral stock use (Tan & Jackson 2013). The Apsley Water Sharing Plan provides 0.01 ML/day¹⁸ and the Kangaroo River Water Sharing Plan provides 0.073 ML/day¹⁹ for native title requirements.

There are two types of Indigenous specific-purpose licences for Aboriginal people available under the NSW Water Management Act: cultural access licences and community development licences. In NSW cultural access licences while active for the life of the cultural purpose, must be renewed on an annual basis. They are capped at 10 ML/year per application and cannot be traded although they are prioritised above commercial users. There are two cultural access licences in New South Wales, one for the Dorrigo Plateau and one for the Murrumbidgee. Established under special circumstances, the full allocation under the Murrumbidgee licence is 2150 ML and is subject to annual water determinations through jurisdictional water planning processes. An Aboriginal Reference Group, operating under the auspices of the Aboriginal Advisory Group and comprising members from across the catchment, assess applications to access this water for cultural purposes. The licence is currently held by the Murrumbidgee CMA (now NSW Local Land Services) and is conditional upon the ongoing involvement of an Aboriginal reference group. The successful operation of this licence is supported by strong capacity-building mechanisms through NSW Local Land Services who cover the associated licence fees. One of a number of cultural uses of water under this licence is ordered flows for a culturally significant wetland managed by the Nari Nari Tribal Council at Hay.

Community development licences are also available under water sharing plans in order to support commercial enterprises owned by Indigenous people (up to 500 ML/year in coastal unregulated water sources, with no limit for groundwater sources, but not available in inland surface water sources). For example, the Dorrigo Water Sharing Plan provides a commercial licence of up to 500 ML/year for Indigenous individuals or communities. The commercial licences come with restrictions, including being non-tradeable and pumping restrictions depending on flows. A community development licence has been granted to the Stuarts Point community near Kempsey for a native flower business, but is currently inactive.

The Barwon–Darling Unregulated and Alluvial Water Sources Water Sharing Plan also allows supplementary (Aboriginal environmental) water access licences to be granted to Indigenous people or communities in the Barwon–Darling unregulated river water source. These access licences allow Indigenous people and communities to extract water to fill lagoons and billabongs to improve or restore their cultural and environmental value. Supplementary (Aboriginal environmental) access licences can be granted up to a total volume of 500 ML/year across the water source.²⁰ The extraction of this water is to be tagged as licensed environmental water under the *Water Management Act 2000* (NOW 2012, Section 6.2.4). The water sharing plan notes that feedback from recent consultations throughout New South Wales suggests significant interest within the Indigenous community in the notion of cultural flows (leaving water in-stream to maintain or improve cultural value). Supplementary (Aboriginal environmental) access licences cannot currently be used to enhance in-stream cultural values in unregulated rivers.

Participation and engagement in planning and management

The Aboriginal Water Initiative (AWI) was established in June 2012 to improve Indigenous involvement and representation in water planning and management in New South Wales. The main objective of the AWI is to ensure that there is ongoing and effective statewide and regional engagement with Indigenous communities in water planning, and that measurable Indigenous water outcomes for both environmental and commercial use are achieved and reported upon. The program allows the New South Wales Office of Water to begin monitoring the success of water sharing plans in meeting their statutory requirements for Indigenous-specific performance indicators, including providing water for native title rights and recognising spiritual, social, customary and economic values of water to Indigenous people.

The AWI is the only dedicated Indigenous water unit in Australia. Nine people are employed under the initiative, of which eight are designated Indigenous positions. They bring an understanding of cultural issues and a respect for local protocols that will enhance the Office of Water's capability to involve Indigenous people in planning. One of the objectives of the AWI program is the development of skills and capacity by the initiative's Aboriginal water facilitators and Aboriginal water coordinators to sustain ongoing dialogue, negotiation and project development in partnership with Indigenous people and government. The AWI has created its own identity through resources such as its own webpage (NOW 2013), an *Our water our country* manual and DVD, and a branding and promotional material.

The Office of Water conducted a series of workshops for Indigenous community members between April and November 2011 as part of Aboriginal Community Engagement and Consultation in Water Sharing Planning in New South Wales, a project funded by the National Water Commission. More workshops were conducted from August 2012 in northern and southern New South Wales as a part of the AWI program to follow on from community engagement and consultation on water sharing plans in 2011. The focus of the AWI consultations has been on water sharing plans, Indigenous water licences and commercial water opportunities for Indigenous landowners.

AWI staff have developed a model that allows several levels of consultation, depending on each community's cultural requirements and understanding. Recognising that each community is unique, the AWI allows the community to decide how it wishes to be engaged. AWI staff also work closely with the NSW Aboriginal Land Council and local Aboriginal land councils (who hold water licences) to ensure that they understand and can get maximum benefits from the licences.

In consultation with Indigenous elders, communities and the Office of Water's Indigenous staff, the AWI has developed cultural protocols to support the office in engaging Indigenous people in water planning and water management decisions. An Aboriginal Water Initiative System (AWIS) is also being developed to collect, store and protect information on water-dependent cultural values that will inform the development of water sharing plans and reviews relevant to Indigenous issues.

Our water our country was launched in March 2012.²¹ The manual aims to provide information that will increase Indigenous peoples' understanding of the water sharing process and encourage their involvement. It is intended to help build their capacity to participate as water users, protect their rights to water, maintain a healthy environment, and take full advantage of economic opportunities.

The AWI has been funded through the NSW Treasury for four years from 2011, using funds from the Australian Government's Closing the Gap initiative.

An Aboriginal Water Trust was formed in 2002, making \$5 million available in grants for Aboriginal community-owned commercially viable businesses for which water is an essential component of the businesses' operations. Indigenous community projects that conserve water and engage in the water planning process were eligible to apply. However, this fund was not set up so as to cover the cost of water licences. In 2007, 12 applications had been received but no grants had been made and the Trust ceased operation in 2009.

Summary of main changes since 2010 and emerging issues

The 2010 review noted that, although Indigenous representation is a requirement under New South Wales legislation, how well that participation is meeting spiritual, social, customary and economic needs for water is difficult to assess.

The AWI presents an opportunity to improve the engagement of Indigenous people in water planning and to integrate their knowledge and understanding into water management, however the initiative is only funded up to 2015–16. At this point, the focus of workshops in New South Wales has been on building trust and the quality of consultations. Revisits are required in order to identify cultural values, but they have been hampered by a lack of staff resources.

The NSW Aboriginal Land Council raised similar issues in its submission to the Independent Planning Review Panel in November 2011, which advocated for reforms to the New South Wales planning system. The land council cited poor community engagement and participation and the lack of community trust in planning processes as major issues. It also raised concerns about the apparently greater focus on facilitating development and encouraging economic growth, while important elements such as sustainable development and social and cultural considerations were not, in its view, adequately addressed by the planning system. The land council submitted that future engagement and participation of communities and Aboriginal land councils in planning must not replicate the current outdated systems.

In New South Wales, where competition over water is high, there has been recognition that reliance on native title is not sufficient. Measures such as cultural and commercial licences offer other options. However, these measures are limited in scope and, aside from the cultural water access licence granted in 2005 in the Murrumbidgee, no other active licences have been granted.

The main challenges with the licences include a lack of awareness of licences that can be applied for, scarcity of financial resources to cover the cost, approvals processes and infrastructure requirements

(pumps, pipes etc.). In recognition of these barriers, the AWI and the Office of Water have recently sought and been granted a fee waiver from the Treasury for Aboriginal specific-purpose access licences and approvals and associated trades in the next Independent Pricing and Regulatory Tribunal cycle in 2014.

8 Western Australia

Legislative and policy context

Western Australia has released a proposed reform framework that seeks to streamline water management legislation which is currently spread across six water Acts. The state's *Rights in Water and Irrigation Act 1914* does not expressly recognise Indigenous issues or engagement and, except through local water resource management committees, provides no additional measures for Indigenous engagement. Stakeholder engagement varies from water plan to water plan and is guided by *Water allocation planning—a guide to our process*. The Department of Water previously had an Indigenous Support Unit tasked with the roles of providing cultural awareness training, developing and implementing an Indigenous employment strategy and supporting regions to undertake Indigenous engagement, however the unit is no longer in place.

Western Australia's Implementation Plan for the NWI recognises the importance of Indigenous engagement and ecological knowledge in developing water management plans and making water allocations. In the plan, Indigenous access to water is limited to non-consumptive cultural uses.

The Western Australian *Aboriginal Heritage Act 1972* also affects Indigenous access to water, as water users are liable for any action that interferes with or damages an Indigenous heritage site. In May 2012, the government released a discussion paper putting forward proposals to reform the Indigenous heritage protection regime. There was concern among Indigenous groups about lack of consultation and the short time for responses, given the implications of mining for Indigenous communities in the state.

A significant proportion of Western Australia is subject to native title or native title claims that also influence Indigenous access to water for traditional purposes. Under the future acts legislative regime, the *Native Title Act 1993* provides procedural rights for native title holders and claimants to provide comment before a decision is made to grant a water licence or permit.

Water allocations and access in water plans

There are currently no Indigenous water allocations in water plans in Western Australia, nor any statutory mechanisms for allocating water specifically to Indigenous purposes. The current reservation policy relates only to public drinking water. Water plans consider in situ non-consumptive water needs for Indigenous cultural benefit where relevant. This water is that which is not allocated and therefore left in situ to meet cultural needs. No plans provide specifically for economic water, but Indigenous commercial interests may be met through the licensing process or through a native title provision.

Participation and engagement in planning and management

Indigenous engagement in water planning and management varies on a plan-by-plan basis. One example of engagement occurred in the development of the Pilbara Regional Water Plan, which covers water management in the region from 2010 to 2030. Engagement included open forums, committees, discussions with the Pilbara Native Title Service, and the formation of a consultative committee to develop the content of the plan. The committee comprised mining and other water users, environmental agencies, Indigenous groups, water service providers, local government and regional development groups. The Department of Water considers its Indigenous engagement in relation to plan development in the Pilbara as preliminary and acknowledges the need for a long-term engagement process undertaken in a manner that best suits Aboriginal people (DoW 2010).

In Lake Argyle, an agreement between traditional owners and the Water and Rivers Commission has been made for the joint management of a water reserve along the southern end of the lake to protect water resources and wetland values and maintain and enhance traditional culture (Hoverman et al. 2012). A negotiated participation agreement (registered as an Indigenous land use agreement in 2005) recognises traditional owners as the landlords of the Argyle mining lease as well as recognising Argyle's right to continue mining. It also formally establishes a long-term relationship between the two parties.

An agreement between the Kurama and Marthudunera native title group and Iron Ore Holdings Ltd is also noteworthy. This agreement is the Pilbara's first native title agreement to provide payments for the use of water and for the clearing of native vegetation, giving an incentive for the company to minimise its impact on the environment. Iron Ore Holdings also showed flexibility in planning in order to avoid any impact on culturally sensitive sites near the area. In a media release, the Yamatji Marlpa Aboriginal Corporation acknowledged that this unique agreement was due to the genuine goodwill and flexibility shown by both parties and recognised the cultural and environmental significance of the area for the traditional owners. The agreement goes beyond the requirements of the Aboriginal Heritage Act by recognising that water and habitat are inextricably linked to cultural values (YMAC 2012).

Australian government funding was provided to assist the jurisdiction efforts towards statutory water planning for four of the highest priority water systems in Western Australia (the Pilbara, the Gnangara Mound, the South West and the Collie catchment). The projects address Indigenous matters and include studies on social and cultural values. For example, one of the milestones under the Collie catchment project was the involvement of the local community and Indigenous people, including identifying cultural sites of significance and identifying water requirements to meet cultural needs. Four studies were completed as part of the milestone, including social values surveys, a Nyungar values survey and a water use survey. This work included the identification and mapping of groundwater-dependent ecosystems.

At present, there are no funding mechanisms directly related to Indigenous water access or participation in water planning in Western Australia.

Summary of main changes since 2010 and emerging issues

The 2010 report noted that there was still considerable scope to improve engagement and allocation mechanisms in Western Australia. In 2010, the State Water Plan 2007 outlined Western Australia's water planning and water policy framework and identified priorities for water management. It required that Indigenous values be taken into account in water management and made community and industry engagement an objective for each regional water plan. However, the plan is no longer actively used and has not been replaced with an equivalent document.

In Western Australia, water for non-consumptive Aboriginal cultural purposes is considered to be met through water for the environment and remains in situ, limiting its management by Indigenous communities. There is currently no specific mechanism to reserve water for Aboriginal economic purposes.

9 Northern Territory

Legislative and policy context

In the Northern Territory, the Department of Land Resource Management administers the *Water Act 1992*, which governs the development and implementation of water allocation plans for declared water control districts. The plans ensure that water is allocated within the estimated sustainable yield to various beneficial uses as detailed in the plan. Water advisory committees—statutory bodies that may be formed under the Act—advise the Controller of Water Resources on the effectiveness of the water allocation plan in maximising economic and social benefits within ecological constraints. The composition of the committees is as the Minister sees fit, but they generally include representatives from various groups, including Indigenous groups.

Mining and petroleum activities are exempt from certain parts of the Water Act, including those that provide the framework for the regulation of groundwater and surface water use. This affects the operation of a water allocation plan where mining and petroleum activities occur. In those cases, water use is managed under the relevant mining legislation, and a memorandum of understanding between the Department of Land Resource Management and the Department of Mines and Energy aims to protect existing users of the water resource, including the environment, in a manner consistent with regulatory instruments under the Water Act.

At the time of writing, the Minister had announced a review of the Water Act and that the Department of Land Resource Management would begin drafting an overarching Northern Territory Water Policy.

Water allocations and access in water plans

The Water Allocation Plan for the Tindall Limestone Aquifer in Katherine currently includes an Indigenous reserve of consumptive water for economic development purposes. The plan states that if native title is recognised within five years of the plan, the Controller of Water Resources must amend it to account for a volume of water for Indigenous commercial development. Other than the Tindall Plan, water is not 'reserved' in the Northern Territory (Tan & Jackson 2013).

The outcome desired by many Indigenous people in northern Australia is for an identified allocation of water to a strategic Indigenous reserve (SIR) for economic purposes in all water plans, defined as a perpetual, exclusive and inalienable right to a share of water available for consumption in surface water and groundwater systems (IWPG 2013). These water rights would be specifically set aside for activities that contribute to Indigenous prosperity and be held and managed by traditional owners across northern Australia.

The North Australian Indigenous Land and Sea Management Alliance (NAILSMA) and the Northern Land Council have most recently been working with Mataranka traditional owners to discuss the potential for an Indigenous allocation of water for commercial purposes in the Mataranka Water Allocation Plan. The Mataranka traditional owners' water allocation plan reference group had hoped to secure a guaranteed proportion of local water for future economic development. Traditional owners have also been involved in lobbying for a percentage of the water allocation for the Ooloo Aquifer to be used for water trading and future economic development.

At the time of writing, the Northern Territory Government had announced that SIRs will no longer be considered in water allocation plans because of the territory's relatively low level of use of water resources and the right that all territorians, including Indigenous territorians, have to seek water licences. In a recent statement to Parliament, the Minister stated that Indigenous territorians enjoy rights to non-consumptive uses of water for traditional, cultural, ceremonial and sacred purposes under the

Native Title Act. While native title rights do not extend to the extraction of water resources for commercial uses, Indigenous people may apply for water extraction licences to support commercial development.

Participation and engagement in planning and management

In addition to water advisory committees, in some areas Indigenous reference groups have also formed, including the Daly River Aboriginal Reference Group and the Mataranka Traditional Owner Water Allocation Reference Group. These groups have engaged with NAILSMA, the Northern Land Council, water advisory committees and Northern Territory Government water planners about Indigenous interests in water planning and the development of water allocation plans.

The Indigenous Water Policy Group, coordinated by NAILSMA from 2007 to 2012, was involved in research on Indigenous water policy issues, the promotion of best-practice Indigenous engagement in water planning and management, communication and awareness raising about water policy issues among Indigenous communities, and advising various bodies. The group adopted principles for Indigenous participation in water planning and management from *The Mary River Statement* and released an *Indigenous Water Policy Statement* in 2009 (NAILSMA 2009a, 2009b).

The Indigenous Community Water Facilitator Network, a capacity-building project funded by the National Water Commission and facilitated by NAILSMA, operated from 2007 to 2011 to promote linkages among Indigenous communities and between communities and policymakers. It also acted to ensure that Indigenous interests were articulated and incorporated into water policy decisions, management plans and water allocations. A review of the project concluded that it led to increases in skills, knowledge, confidence and participation in water planning by key traditional owners, land councils and selected Indigenous community groups (NAILSMA 2011).

Summary of main changes since 2010 and emerging issues

A review of water resource management legislation and policy has been announced in the Northern Territory. While progress had been made since 2010 in the development of SIRs as a possible suitable means to advance Indigenous participation in the water market, most recently the Northern Territory Government has announced that SIRs will not be considered in water allocation plans in the immediate future. Peak Indigenous bodies in the Northern Territory have expressed disappointment in the government's decision and are concerned about the impact on Aboriginal economic interests. At the time of writing, the government had received a number of applications from Indigenous organisations for grants of groundwater extraction licences for commercial purposes.

10 Australian Capital Territory

Legislative and policy context

Australian Capital Territory (ACT) water resources are largely shared with New South Wales, but within the ACT, water allocations, licencing and environmental flows fall under the territory's *Water Resources Act 2007*. Subordinate legislation sets out a water sharing plan, which must meet the *Environmental Flow Guidelines 2006* (which are a statutory instrument under the Act). The Environment and Sustainable Development Directorate is responsible for implementing these instruments and for developing water policy.

In 2013, a draft strategy to replace the previous *Think water, act water* strategy was released. The new strategy, *Water for the future—striking the balance*, will guide the development of management plans prepared by water service providers and agencies, as well as planning and development agencies operating in the ACT. At the time of writing, community consultations were underway in the form of workshops throughout Canberra. The draft strategy makes no specific mention of Indigenous people.

Water allocations and access in water plans

The ACT has no mechanism to allocate water specifically to Indigenous purposes.

Participation and engagement in planning and management

There are no specific projects underway relating to Indigenous participation in water planning, however the ACT government indicates that an Indigenous engagement strategy is being developed as it prepares its water resources plan for Basin Plan implementation.

Summary of main changes since 2010 and emerging issues

The ACT's preparation of its water resources plan for Basin Plan implementation may see some developments in Indigenous involvement in water planning.

11 Tasmania

Legislative and policy context

The Tasmanian *Water Management Act 1999* provides the statutory basis for the management of water resources in the state. It provides for the development of water management plans by the Department of Primary Industries, Parks, Water and Environment in consultation with stakeholders. Water management plans are developed in accordance with the objectives and Part 4 of the Act and must be consistent with the objectives of the state's Resource Management and Planning System. Water management plans must also be prepared with regard to the State Policy on Water Quality Management 1997.

Water licences are required to take water from a water resource, unless the water is taken in accordance with Part 5 of the Act (generally for stock and domestic purposes) or is groundwater or overland flow. Water is allocated under eight levels of 'surety'. The most secure is Surety 1 (water for stock and domestic use and urban water supply); environmental water is Surety 2 water.

The Act makes no direct reference to Indigenous people, but Tasmania's National Water Initiative Plan states that Indigenous rights are covered in Part 5 of the Act in the provisions relating to persons in their casual use of land. It also notes that the water planning process provides the opportunity for stakeholders and communities to have a direct say in how a catchment's water resources are best managed.

A regulatory impact statement has recently been prepared for the proposed Aboriginal Heritage Protection Regulations 2013 in Tasmania. The regulations are intended to provide some essential regulatory detail to support the *Aboriginal Heritage Protection Bill 2013*, which at the time of publishing was under review by the Tasmanian Parliament.

Water allocations and access in water plans

There are no mechanisms to allocate water specifically to Aboriginal purposes. None of the current water management plans, nor any of the draft plans yet to be finalised, makes any mention of Indigenous people or their interests.

Participation and engagement in planning and management

Tasmania's National Water Initiative Plan states that water management plans provide the opportunity for catchment communities and other stakeholders to have a direct say in how a catchment's water resources are best allocated and managed to achieve the community's economic, social and environmental objectives.

Under the Water Management Act, the Secretary of the Department of Primary Industries, Parks, Water and Environment is required to prepare a draft water management plan for public exhibition and comment, but there is no specific requirement relating to Indigenous people. The department's preferred means of consultation is through the establishment of a consultative group representing the various interest groups in the area. The groups advise the department on local water management issues; seek advice from their representative organisations and represent their economic, social and environmental interests; and facilitate dialogue with stakeholder groups and their education on water issues.

To assist stakeholders to better understand the water management planning process and their involvement in the development of water plans, the department developed the *Generic principles for water management planning* (DPIPWE 2009). The principles set out processes that would take into

account economic, cultural and environmental interests, including the consultative groups. They also state that, depending on the nature of the plan, consultation with peak stakeholder bodies, including Indigenous bodies, may be required.

Summary of main changes since 2010 and emerging issues

This review found no change in the identification or recognition of Indigenous needs and interests in water in Tasmania since 2010.

References

- Australian Government. 2011. *Indigenous Economic Development Strategy 2011–2018*. Australian Government, Canberra.
- DoW (Department of Water). 2010. *Pilbara regional water plan 2010–2030: supporting detail*, Western Australian Government, Perth. Accessed 15 June 2013, www.water.wa.gov.au/PublicationStore/first/93030.pdf
- DPIPWE (Department of Primary Industries, Parks, Water and Environment). 2009. *Generic principles for water management planning*, DPIPWE, Hobart. Accessed 29 July 2013, <http://www.dpiw.tas.gov.au/internnsf/WebPages/JMUJY-67X5AH>
- DSE (Department of Sustainability and Environment). 2013. *Community feedback: Draft Victorian Waterway Management Strategy*, DSE, Melbourne. Accessed 30 July 2013, www.depi.vic.gov.au/water/rivers-estuaries-and-wetlands/strategy-and-planning.
- DSEWPaC (Department of Sustainability, Environment, Water, Population and Communities). 2012. *Indigenous cultural and spiritual values in water quality planning*, DSEWPaC, Canberra. Accessed 24 July 2013, www.environment.gov.au/water/publications/quality/water-quality-planning-indigenous.html.
- First Peoples' Water Engagement Council 2010. *A review of Indigenous involvement in water planning, Submission to the 2011 biennial assessment of the National Water Initiative (NWI)* Prepared for the First Peoples' Water Engagement Council September 2010 by Nicholas Duff, Karen Delfau and Melanie Durette http://archive.nwc.gov.au/_data/assets/pdf_file/0019/22564/A-review-of-Indigenous-involvement-in-water-planning-Sept-2010.pdf
- First Peoples' Water Engagement Council 2012, *Advice to the National Water Commission, May 2012* <http://www.nwc.gov.au/organisation/partners/fpwec>
- Hoverman S, Delfau K & Tan Poh-Ling. 2012. *Developing alternative management models for Indigenous water plans and strategies in Australia's north: final report, TRaCK NAWFA Social and Cultural Values Project, Sub-project 3*, Griffith University.
- IWPG (Indigenous Water Policy Group). 2013. *Indigenous people's right to the commercial use and management of water on their traditional territories: an Indigenous water policy position—the strategic Indigenous reserve*, policy paper, Knowledge Series issue no. 017/2013, North Australian Indigenous Land and Sea Management Alliance Ltd.
- Jackson S. 2009. *Background paper on Indigenous participation in water planning and access to water*, report prepared for the National Water Commission, CSIRO Sustainable Ecosystems, Canberra.
- Maclean, K. & Robinson, C. 2011. *Aboriginal knowledge partnerships for water planning and assessment in the Wet Tropics region*, CSIRO, Canberra.
- National Water Commission, 2011. *The National Water Initiative - securing Australia's water future: 2011 assessment, September 2011* http://www.nwc.gov.au/_data/assets/pdf_file/0018/8244/2011-BiennialAssessment-full_report.pdf

National Water Commission 2012. Position Statement - Indigenous access to water resources June 2012

http://www.nwc.gov.au/data/assets/pdf_file/0009/22869/Indigenous-Position-Statement-June-2012.pdf

NAIEP (North Australian Indigenous Experts Panel). 2013. *Indigenous futures and sustainable development in north Australia: towards a framework for full Indigenous participation in economic development*, discussion paper, Knowledge Series issue no. 018/2013. North Australian Indigenous Land and Sea Management Alliance Ltd.

NAILSMA. 2009a. *The Mary River Statement*, NAILSMA, Darwin. Accessed 5 December 2013, www.nailsma.org.au/sites/default/files/publications/NAILSMA_Mary-River-Statement_Web.pdf.

NAILSMA. 2009b. *A policy statement on North Australian Indigenous water rights*, NAILSMA, Darwin. Accessed 5 December 2013, nailsma.org.au/sites/default/files/publications/Water-Policy-Statement-web-view.pdf#overlay-context=node/808/draft.

NAILSMA (North Australian Indigenous Land and Sea Management Alliance Ltd). 2011. *Performance story report on the Indigenous Community Water Facilitator Network Project*, NAILSMA, Darwin. Accessed 26 June 2013, nailsma.grasslands.net/hub/resources/publication/indigenous-community-water-facilitator-network-project-performance-story.

Northern Land Council. 2013. 'Water allocation: NLC disappointment in Strategic Indigenous Reserve rejection', media release, March 2013. Accessed December 2013. nailsma.org.au/sites/default/files/2013%2003%2025%20Northern%20Land%20Council.pdf#overlay-context=node/1142/draft.

NOW (NSW Office of Water). 2012. *Water Sharing Plan for the Barwon–Darling Unregulated and Alluvial Water Sources: background document*, Department of Primary Industries, Sydney.

NOW. 2013. *Aboriginal Water Initiative*, Department of Primary Industries, Sydney. Accessed 3 December 2013, www.water.nsw.gov.au/Water-management/Water-sharing-plans/Aboriginal-communities.

NOW. 2012. *Our Water Out Country: An information manual for Aboriginal people and communities about the water reform process*, Edition 2.0, Department of Primary Industries, Office of Water, Sydney.

Nicholas Duff, Karen Delfau and Melanie Durette. 2010. *A review of Indigenous involvement in water planning*. Prepared by Synexe for the National Water Commission.

Tan P & Jackson S. 2013. 'Impossible dreaming: does Australia's water law and policy fulfil Indigenous aspirations?' *Environmental & Planning Law Journal*, 30:132.

Tan P, Baldwin C, White I & Burry K. 2012. 'Water planning in the Condamine Alluvium, Queensland: sharing information and eliciting views in a context of overallocation', *Journal of Hydrology*, 474:38–46.

YMAC (Yamatji Marlpa Aboriginal Corporation). 2012. 'Water compensation a first for Pilbara native title agreement', media release, 20 November. Accessed 4 June 2013 ymac.org.au/wp-content/uploads/2013/05/Water-compensation-a-first-for-Pilbara-native-title-agreement-20-Nov-2012.pdf.

Notes

¹ Two additional recommendations were made in the advice, including that the Commission extend the term of the First Peoples' Water Engagement Council and that all Australian governments, together with their water-planning authorities, policymakers, bureaucrats and technical specialists, implement the principles and advice set out in the document.

² s. 10.52(1)(a) & (b).

³ s. 10.54.

⁴ ss. 10.52–10.54.

⁵ s. 47.

⁶ Previously s. 41.

⁷ Draft strategy, s. 6.4.2.

⁸ See s. 8(a) of the Water Act and s. 85 of the Traditional Owner Settlement Act.

⁹ s. 85.

¹⁰ Draft strategy, s. 6.4.1.

¹¹ Principle 6.

¹² s. 7(h).

¹³ s. 25(4)(a).

¹⁴ Any strategy that refers to the Commonwealth Environmental Water Holder cannot require action beyond the provisions in the *Water Act 2007* (Cwth) or the Basin Plan.

¹⁵ s. 13(1)(e).

¹⁶ s. 55(1).

¹⁷ s. 3(c) (iii-iv)

¹⁸ See the *Water Sharing Plan for the Apsley River Water Source 2003*, Clause 27. However, as noted by Tan & Jackson (2013), the community had a water frontage and it was therefore entitled to a basic landholder right to water for domestic and stock purposes. Tan and Jackson noted that in this plan it is difficult to appreciate the difference between the basic landholder right and the native title right.

¹⁹ See the *Water Sharing Plan for Kangaroo River Water Source 2003*, Clause 27.

²⁰ Although water made available is limited to 500 ML in any one year, as per s. 70 of the *Water Management Act 2000*.

²¹ The manual was part of a \$250 000 project jointly funded by the Australian and New South Wales governments through the intergovernmental Natural Resource Management Joint Steering Committee responsible for the National Action Plan for Salinity and Water and the Natural Heritage Trust.