

Index

- Northern Territory water policy 157, 177, 178, 186–7
NWI (National Water Initiative) 14, 136, 152, 155, 205, 208
and Aboriginal water rights 116–17, 119–20, 160, 166, 171
Agreement 116–19, 122, 147, 186, 215, 221
biennial assessments 120–3
discretionary nature of clauses 144, 163, 221
Draft Implementation Plan 178
failings of 162, 173–3, 176, 188, 192, 221, 222
hierarchy of stakeholders 116, 118, 120, 146
and human rights values 193, 196, 197
inadequacy of consultation 117–19, 120–2, 172–3
Indigenous Actions clauses 116–17, 120, 122, 147
and native title 129
need for reframing of concepts 11, 97–8, 104–11
possibility of litigation 118–19
separation of water from land 116, 119
successes 143, 222
and water sharing 129
and water trading 116
Western Australian responses 181, 187–91
see also water policy
- O'Farrell, Barry 129
O'Regan, Sir Tipene 36
Olney J 31, 84, 86
ontology, Aboriginal 14, 24–6, 98–104, 166, 214
compared to Western 33, 98–104, 219
Ord River Irrigation Area 167–8
over-allocation *see* water allocation
Overcoming Indigenous Disadvantage Key Indicators (2005) 73
Oxfam Australia 156
- Parkes, Henry 45
Pascoe, Bruce 10
Pearson, Noel 34
Productivity Commission reports 73, 161, 164, 176
property rights 97, 104, 108–11, 214–15
Aboriginal 85–6, 91, 110
and obligations 8–9, 24, 29, 37, 54
Aboriginal view of 38–9, 99, 106, 107–11
collective rights 99–100, 146
need for reframing of concepts 11, 97–8, 104–11
and permit system 109–10
and water rights 12, 77, 119–20, 124, 153
and 'web of interests' concept 11, 20–21, 97–8, 104–5, 107, 111
Western view of 99–100, 105–06, 154–5
see also water rights
- Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) 92
Queensland policy 91, 125–6, 155, 157, 177
and LLUAs 91–2
and water management 122, 124, 125–6
- Racial Discrimination Act* 1975 (Cth) 78, 82, 150
and international conventions 78, 82–3
overriding of 199, 200–02, 209
Ramsar Convention on Wetlands 138
reconciliation 33–5, 62, 181, 200
COAG Reconciliation Committee 142, 184–5
Council for Aboriginal Reconciliation 72–3
impediments to 33, 34, 53
Indigenous Reconciliation in Primary Industries and Natural Resource Management 64, 162, 175–6, 189
Report on Aboriginal Community Water Supply and Sewerage Systems 68
Reserved Indigenous Water Rights (RIWR) 55, 141, 153, 163, 221
Reserved Water Right regime 218
Reynolds, Henry 127
Ridgeway, Aden 57, 65
Rights in Water and Irrigation Act 1914 (WA) 91, 183
Rigney, Matthew 8, 193
riparian rights *see* water rights
RIWR *see* Reserved Indigenous Water Rights
Robertson, Geoffrey 191
Roth Inquiry (1904) 44
Royal Commission into Aboriginal Deaths in Custody 34, 47
Rumburriya Borrooloola Claim Group 90
Rubibi Community v Western Australia (No 7) 89
- Said, Edward 102–03
Sampi v Western Australia (No 3) 89
Securing Our Future Together' 127
self-determination, Aboriginal 45, 55, 58–66, 218, 219
and Aboriginal autonomy 160–1, 162
and economic development 59, 63, 159–60
and international law 63, 198
and lack of treaty 47, 62, 63, 65–6, 83, 127, 202
Shergold, Peter 156
Simpson, Virginia, draft report 126, 163, 177, 185–6
Single Noongar Case (Bennell v Western Australia) 25–6, 62–3
'skeletal frame' concept *see* under common law
Social Justice and Native Title Reports 71–2
South Australia 157, 163
South West Aboriginal Land and Sea Council 189
Southwest Pilbara 88
South West Water Plan 59–60
Specific Purpose Water Access 160
Spigelman CJ 144
Statement of Intent to Close the Gap on Indigenous Health Equality 167
sui generis rights 76–7, 158, 217
sustainability 101, 121, 162–3, 166
and over-allocation 127, 145–6, 162–3, 208
planning for 118, 127, 136–8, 140–1, 149–50

- and legislation 122, 136–7, 144–6, 181
- and sustainable diversion limits 118, 139
- and water management 70, 115, 121, 139, 181
- Task Force on Water Reform 146
- Tasmania, water licences held by Aboriginal people and organisations 157
- Te Ture Whenua Māori Act 1993 (Maori Land Act)* (NZ) 52–3
- terra nullius* 12, 22, 47, 92–3
 - and *Mabo* 13, 75
- Tindale, Norman 27
- Tjukurrpa (law) 22, 24–5
- Toohey J 84, 217
- Toomelah 57, 192
- Torres Strait Islander people 34, 61, 66, 100, 167, 199
 - and native title 24, 75, 78–9, 160
 - and water rights 71, 89, 126
- Traditional Ecological Knowledge (TEK) 17
- Traditional Owner Settlement Act 2010* (Vic) 122
- treaty 47, 62, 63, 65–6, 83, 158
 - current discussions 127, 201–02
 - New Zealand 36, 52
- Troy Inquiry (1908) 44
- Uluru, Reggie 24–5
- UNDRIP (*United Nations Declaration on the Rights of Indigenous Peoples 2007*) 35–6, 71, 138, 194–8, 214, 215
- United Nations conventions 67
- United Nations Charter (1945) 193
- United Nations Declaration on the Rights of Indigenous Peoples 2007* see UNDRIP
- United Nations Educational Scientific and Cultural Organization's Water and Culture Database 35
- United Nations Permanent Forum 35, 133, 215
- United Nations University of Traditional Knowledge 205
- United States 158, 163, 199–200
- Universal Declaration of Human Rights* 204
- usufructuary rights 76–7, 158, 217
- Vesty 44
- Victorian policy water 157, 159, 177
 - Charter of Rights 200, 203–04
- Victorian Sustainable Water Strategies 122
- von Doussa J 198
- Waitangi Treaty 52
- Warangesda Mission and Aboriginal Reserves 29
- water 5, 8–12, 15–16, 66–7, 124–5
 - and Aboriginal identity 4, 8–10, 13, 15–16
 - contested values 31–2, 38–40, 46, 102–03, 117, 123–5, 213–4
 - cultural value 7–9, 36–40, 128–9, 145, 165, 186–7
 - economic value 13, 69, 111, 153–5, 164–5
 - traditional uses 17, 24–9, 54, 64–6, 81–2, 91, 113, 149, 150, 177
 - and Aboriginal law 16, 18, 20–3
 - Water Act 1912* (NSW) 124–5, 181
 - Water Act 1989* (Vic) 122, 127, 177
 - Water Act 2000* (Qld) 122, 126
 - Water Act 2004* (NT) 128, 178, 186–7, 197–8
 - Water Act 2007* (Cth) (*Water Act*) 132, 136–9, 144–7, 223
 - and Aboriginal cultural interests 141, 144–6, 147, 222
 - amendments to 137, 138–41
 - purpose of 136, 137, 145
 - water allocation 105, 118, 123, 132, 145, 162, 170, 208
 - for cultural flows 122, 148, 150–1
 - for environment 116, 126, 134–5, 148, 150–1, 188
 - ethical decision making, need for 67, 206–08
 - First Peoples' Water Engagement Council (FPWEC) 123
 - lack of for Aboriginal water rights 115, 124, 127, 129, 132, 187
 - and native title 117, 124, 129, 173, 188
 - over-allocation 38, 115, 121, 124–5, 136, 151
 - effect on Aboriginal communities 59, 70, 167–8, 198, 222
 - government policy 73, 135, 153, 177, 184–5, 188, 198–9
 - Murray–Darling Basin 121, 134–5, 151, 197, 222
 - results of 134–5, 139, 213
 - and sustainability 127, 145–6, 162–3
 - and water licences 124
 - permanent 115, 218–9, 221
 - Plans 116, 121, 146, 183–6
 - reserved 55, 184–6, 221
 - see also Reserved Indigenous Water Rights
 - tensions over 33, 114–15, 125
 - see also NWI; water trading
 - Water Amendment Act 2008* (Cth) (*Water Amendment Act*) 132, 137–8, 147, 222, 223
 - water exploitation 139, 165, 208, 213, 218, 219
 - and contamination 207–08
 - effect on Aboriginal communities 115–16, 125, 151, 153, 167, 168
 - history of 125, 134–6, 153, 198, 222
 - impact on aquifers 164–8, 189–90
 - by mining 163–4, 166
 - in the Murray–Darling Basin 134–5
 - over-allocation 124, 125, 151, 198, 218
 - spring water extraction 164–5
 - sustainability 121, 145–6, 151, 163
 - and water licences 124–5
 - water exploration licences 185
 - Water Forum, 2009 35, 205
 - Water Initiative (WA) 70
 - water knowledge, Aboriginal 4–5, 17–18, 81, 128, 133, 147–8, 189–91
 - complexity of 6, 20, 50, 114
 - Garma Conference 35–6

Index

- and international law 194, 196
- and law 21–6, 48
- misrepresented 6, 8–9
- recognition of 13, 104, 112, 144, 172, 188, 190, 196
- recommendations regarding 223
- Traditional Ecological Knowledge 17
- water licences 115, 119–20, 154, 174, 179, 191
 - Aboriginal ownership of 16, 148, 157, 160, 174, 180
 - commercial 119–20, 160, 174, 180
 - cultural 121–2, 144, 153, 160, 175
 - licence stacking 125
 - restrictions 124–5, 174–5
 - tradeable 59, 119–20, 160
 - water exploration licences 185
 - see also* over-allocation *under* water allocation
- water management 7, 16, 18, 20–3, 67, 139, 170–1, 222
 - and Aboriginal autonomy 160–1, 162
 - and Aboriginal involvement 119, 122, 139, 174, 180, 187
 - and community capacity 57–8, 64, 68–9, 70, 159, 189
 - and consultation 121–2
 - and cultural flows 60–1, 112–15, 120, 172–3, 175
 - non-allocation of 122, 139, 140
 - and environmental flows 139, 148, 151
 - and Murray–Darling Basin 141–2, 147, 148, 151
 - economic emphasis of 124, 134–5, 173, 174, 176
 - and environmental flows 60–1, 112, 136, 139, 145, 148, 222
 - and cultural flows 39, 148, 151
 - and Murray–Darling Basin 136, 139, 147, 148, 151
 - and policy 116, 127, 145, 188
 - and ethical principles 206–9, 223–4
 - legislation 132–3, 141, 144, 188
 - see also* Water Acts
 - and native title 121, 122, 124, 127
 - in New South Wales 124, 174
 - in Queensland 122, 124, 125–6
 - in South Australia 122
 - state of waterways 125–6, 171
 - Murray–Darling Basin 134–5, 138, 147, 149–50, 222
 - in Victoria 122, 124, 127–7
 - water trading 6, 35, 119–20, 124, 136, 154, 159–60, 162, 173–4, 180
 - in Western Australia 187
 - see also* water allocation; water licences
- Water Management Act 2000* (NSW) 93, 103, 121, 174, 181–2, 187
- water policy 5, 7, 14, 45–6, 135–9, 145, 196, 214, 220
 - and Aboriginal communities 119–20, 151, 160, 203, 219
 - and consultation 113, 115
 - development of 113–14, 219
 - and economic values 124, 136, 141, 192
 - and tension between stakeholders 114–15, 158
 - water reform 115, 125–31, 143–4, 148, 192, 218–9
 - and recognition of Aboriginal water values 125–6, 128, 129
 - see also* NWI; water allocation
 - water quality 68–72, 192, 217
 - in Aboriginal communities 24–5, 68, 70–2, 189
 - Guidelines 190–1
 - and human rights 68–70
 - management failures 125, 126
 - Standards 71
 - and state of waterways 125–6, 171
 - Aboriginal obligations to 21, 24–6, 37, 50, 124
 - in Murray–Darling Basin 134–5, 138, 147, 149–50, 222
 - water pollution 57, 165–7, 190–1, 218
 - and ethical funding 207, 208
 - and mining 57, 166–7, 207–08
 - water reform *see* water policy
 - Water Report 1994 72
 - water resources 72, 115–6, 123–5, 133–5, 173–4
 - commercialisation of 35, 39–40, 163–7
 - competition for 40–6, 164, 170
 - historical use of 149, 150
 - regulation of 118–19, 126, 171–2
 - Water Resources Act 1989* (Qld) 126, 177
 - water rights 26–7, 35, 41, 106, 122, 130, 163, 214
 - Aboriginal 109–10, 115, 146, 153
 - absence from government policy 39–40, 159
 - arguments for 133, 192–4, 215
 - impediments to 66–7, 93, 113–15, 132, 185
 - and Aboriginal economic development 129, 130–1, 163
 - Aboriginal view of 50, 51, 93, 103, 147–8
 - need for economic certainty 94, 175–6, 218–220, 221
 - 'balancing of interests' 93–4
 - and building community capacity 57–8
 - 'bundle of rights' 84, 106–08, 111, 155, 217
 - and common law 48–50
 - complexity of 80–2, 84, 97–8, 104–05, 111
 - consumptive 51, 70, 110–12, 124, 126–7, 218
 - cultural 6, 89–91, 100, 124, 143–5, 213
 - cultural values 112, 113, 132–3, 146, 162
 - defined 48, 89–90, 182
 - dominance of Western concepts 98–104
 - and economic value 33, 60–1, 71, 110–14, 119–20, 152, 162–3, 172
 - empowering Aboriginal people 3, 147–8, 150, 204
 - and erosion of rights 94
 - extinguishment of 41–2, 91, 155
 - Garma Conference 35–6
 - government opposition to 45–6, 51–3, and government policy 113, 141–2, 171, 175–91, 193

- hierarchy of stakeholders 55, 64, 65, 93, 124, 159, 171, 177
- and human rights 67, 71, 144, 181, 194–8, 204, 222
- Indigenous Action Plan 142–3
- lack of recognition of 67, 143, 144, 171–3
- and limitations to 89–90
- and native title 33, 75, 178, 183–4
- ownership of 65, 119–20, 159
- perpetual 115, 126–7, 159, 177, 197
 - for Aboriginal communities 141, 218–19, 221
- and tradeable 160, 171, 173
- as property rights 48–50, 112, 129, 160, 172
- as customary property 51–3
- recommendations for 150–1, 181
- reserved 212, 221
 - see also* Reserved Indigenous Water Rights
- saltwater rights 81, 86, 87
- and sustainability 70, 115, 118, 162–3
- and tradeable water licences 59, 160, 171, 173
- and 'web of interests' 105–09, 111
- water royalties 60, 163–4
- water scarcity 12, 126, 132, 139, 170, 213
- water security 35
- Water Services in Discrete Indigenous Communities (WA) 70
- water sharing 113, 116, 118, 121–2, 129, 137, 140, 157
 - lack of consultation 173, 184
 - New South Wales 69, 157, 166, 174, 179–81
 - water sharing plans 129, 166, 174, 180, 184
 - Western Australia 184–5
- Water Summit 123
- water trading *see* water management
- Wave Hill strike 44
- Wentworth, William Charles 154–5, 170
- Westpac Bank 207
- Western Australia v Commonwealth* (1995) 82
- Western Australia v Ward* 80–1, 85–8, 94, 107–08, 183, 198
- Western Australian water policy 70–71, 82–3, 163–4, 167–8, 170–1
 - Aboriginal water use 157, 182, 184–6, 190–1, 221
 - and mining 164, 166
 - and native title 85, 88–9, 183–4, 188
 - and NWI 181–6, 187–91
- Wet Tropics World Heritage Area 91
- Whitlam, Gough 46–7, 66–7
- Wik v Queensland* 53, 83, 85–6, 93
- Wilcox J 62, 201
- Wilson v Anderson* (NSW) 83, 93
- Windsor Inquiry 136, 138–40
- Wiradjuri Heritage Study 30
- Wiradjuri Regional Aboriginal Land Council 29
- World Bank 198
- World Commission on Environment and Development 157–8
- World Water Forum (2009) 205
- Yangkaal peoples 89–90
- Yarmirr v Northern Territory* 86
- Yarran, Kathy 29
- Yorta Yorta Community v Victoria* 9, 31, 32, 88, 93