



# ABORIGINAL RIGHTS TO WATER

WA reform and opportunity

# Introduction

Upon settlement, colonial powers granted the 'wealth' of Australia almost exclusively to non-Indigenous settlers.

Indigenous people own or control ~30% of Australia's land mass, yet less than 0.01% of Australia's water diversions.

Unique opportunity for the WA Govt to come some way towards remedying this disparity.

Legislation needs to incorporate Indigenous views, views, rights, priorities and interests (inclusive of economic).



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# Commonwealth Legislation

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***The Native Title Act 1993 (Cth)*** provides a wide gradation of rights, explicit protections and many limitations (i.e. planning laws).



Under the NTA, compulsory acquisition of land for mining gives Indigenous groups a right to negotiate.



Where regulatory decisions involving water are proposed, there is only a right to comment.



There is an ability to control access to land for exclusive possession Native Title Holders.

***The Water Act 2007 (Cth)*** – focused on the Murray Darling Basin



Despite being relatively modern, contains very few direct references to Indigenous interests.



Restrictions on extraction, diversion or use, can only be applied to manage features of **MAJOR** Indigenous, cultural heritage or spiritual significance.

# The Murray–Darling Basin

## The National Water Initiative

Government acknowledgement that water planning frameworks need to recognise Indigenous needs in relation to access and management of water.

Too many phrases like “wherever possible” or “wherever can be developed.”

Image-  
[environmentality989.blogspot.com.au/2014/05/environmentality-30-april-2014-cam.html](http://environmentality989.blogspot.com.au/2014/05/environmentality-30-april-2014-cam.html)



# WA Water Legislation

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*Metropolitan Water Supply, Sewerage and Drainage Act 1909*

*Rights in Water and Irrigation Act 1914*

*Country Areas Water Supply Act 1947*

*Waterways Conservation Act 1976*

*Metropolitan Arterial Drainage Act 1982*

*Water Agencies Power Act 1984*



***Water Resources Management Act  
(proposed)***

# Indigenous Concerns v the 'Status Quo'

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"The cultural and economic aspirations of Aboriginal peoples' remains an unmet demand on the Australian water system" – *NWI 2011 Assessment*.



No expressed provision for Aboriginal people to be on any of the committees established by the Water Act (Cth).



Guidelines for inclusion, although few examples of Indigenous aspirations being met.



No substantive requirements that enable TO groups to utilise the market-based water policy framework for economic advantage.



Delays in NT determinations have caused opportunities to be missed, lack depth and generally preclude economic development.



Tensions between rural, urban and Indigenous water uses resulting in inequitable outcomes.



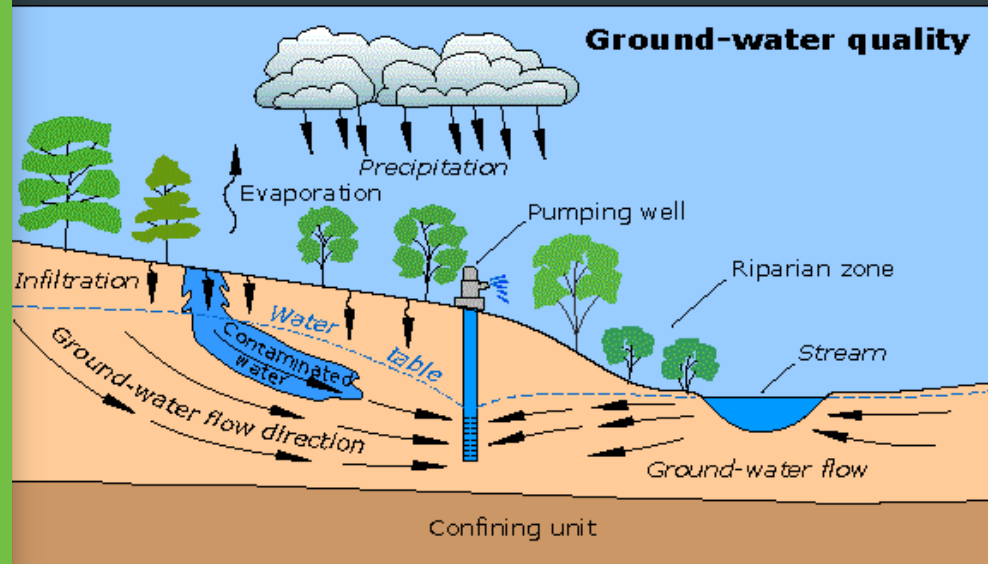
Lack of focused capacity development and commercial water utilisation strategies.

# Consultative Processes and Capacity

- ✓ Indigenous views need to be incorporated in line with the principles of FPIC as established in UNDRIP.
- ✓ Aboriginal people need to be elevated above simple “stakeholders.”
- ✓ Nationally consistent targets, KPIs and penalties in the absence of ‘stronger’ substantive rights.
- ✓ Development of clear policy positions – without qualifications.
- ✓ Appropriate consultation, long term capacity development (of TO groups and policy makers), and resources.
- ✓ Clear guidance around how TO groups can pursue their reasonable economic objectives.



# Best practice mechanisms for the legal framework



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- ✓ Engagement process and collaborative management
- ✓ Aboriginal governance systems and the need to develop capacity broadly
- ✓ Collaborative management and the need for early engagement.
- ✓ Establishment of a high level commission



# Statutory Entitlements / Reserves



Provide a legal instrument to address Indigenous water requirements!

Potential for commercial opportunities



## Statutory Licenses

- ✔ Cultural access license
- ✔ Aboriginal commercial license
- ✔ Aboriginal community development license
- ✔ Aboriginal environmental license



## Statutory Reserve

Legal water entitlement





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## 3 Key Pillars

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**Control of Environmental  
Water**



**Water for Cultural  
Purposes**



**Allocation of Water of  
Economic Purposes**

Groundwater

# CONCLUSION



## Three key pillars



Co-management  
of environmental  
water;



Examining the  
potential need for  
cultural water;



Economic development  
opportunities arising out of  
water management.

Recognition of Aboriginal rights and interests is not just another 'cost' to the State.

The State as a whole stands to benefit from a shared prosperity.