

# Appendix 7

## Overview of Australian water sector legislation and policies<sup>1</sup>

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1 Adapted from Jackson S, Indigenous Interests and the National Water Initiative: Water Management, Reform and Implementation, Background Paper and Literature Review, Report for the IWPG (2007), p 42. At: [http://www.nailsma.org.au/nailsma/publications/downloads/NAILSMA\\_NWI\\_Review\\_UPDATEDec07.pdf](http://www.nailsma.org.au/nailsma/publications/downloads/NAILSMA_NWI_Review_UPDATEDec07.pdf) (viewed 17 December 2008).

Jurisdiction	Organisation Responsible	Key responsibilities	Key policy documents and legislation	Summary of policy objectives
Commonwealth	Department of Environment, Water, Heritage and the Arts	National heritage Water policy and resources (if negotiated with states)	National Water Initiative <i>Water Act 2007</i> commenced on 3 March 2008 (mainly for the Murray-Darling Basin) <i>Environmental Protection and Biodiversity Conservation Act 1999</i> Living Murray Snowy Initiatives	To implement national water reform focussing on water security, ecosystem health, efficiency and conservation. Provides a basin plan for the Murray-Darling water trading, establishes Murray-Darling Basin Authority to optimise economic, social and environmental outcomes and to ensure sustainable use of water. To protect the environment, especially matters of national significance in line with the World Heritage Convention and Ramsar wetlands.
Queensland	Department of Natural Resources and Water	Responsible for water planning and management	<i>Water Act 2000</i> , Qld Water Plan 2005-2010, Qld Smart State Strategy 2005-2015 <i>Wild Rivers Act 2005</i> <i>Cape York Peninsula Heritage Act 2007</i>	A strategy for improving sustainable water management, ensuring a secure future water supply for communities, farmers, industries and rivers. Preserve natural values of rivers that are almost untouched. Provides for the identification of the significant natural and cultural values of Cape York Peninsula and joint management of national parks.

Jurisdiction	Organisation Responsible	Key responsibilities	Key policy documents and legislation	Summary of policy objectives
New South Wales	Department of Water and Energy Department of Environment and Climate Change	Water responsibility is shared between two departments responsibility for water extraction in terms of planning and licensing protection and management.	<i>Water Management Act 2000</i> Water Sharing Plans (statutory object prepared under Water Management Act) <sup>2</sup> <i>Murray-Darling Basin Act 1992</i>	Provide for the sustainable and integrated management of the water sources s 3. Protect water for the environment while also securing the rights of water users. Provide to carry out intergovernmental agreement.
Victoria	Department of Sustainability and Environment	Water management.	<i>Water Act 1989</i> Green Paper: Securing our water future <sup>3</sup> <i>Our Water Our Future: The White Paper</i> <sup>4</sup>	Sustainably manage water resources.

2 NSW Department of Natural Resources, *Water Sharing Plans*. At: [http://www.naturalresources.nsw.gov.au/water/sharing\\_plans.shtml](http://www.naturalresources.nsw.gov.au/water/sharing_plans.shtml) (viewed 17 December 2008).

3 Department of Sustainability and Environment, Victoria, *Our Water, Our Future*, <http://www.ourwater.vic.gov.au/programs/owof> (viewed 17 December 2008)

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Jurisdiction	Organisation Responsible	Key responsibilities	Key policy documents and legislation	Summary of policy objectives
South Australia	Department of Water Land and Biodiversity Conservation Department for Environment and Heritage	Improve sustainability through the integration and management of all of the State's natural resources. Achieve improved health and productivity of our biodiversity, water, land and marine resources.	<i>Natural Resource Management Act 2004</i> <i>Water Resources Act 1997</i> <i>Murray-Darling Basin Act 1993</i> <i>River Murray Act 2003</i>	Promote sustainable and integrated management of the state's natural resources including water. Provide to carry out intergovernmental agreement. Protection and enhancement of the River Murray and related areas and eco-systems.
Western Australia	Department of Water Department of Environment and Conservation	Responsible for water planning and management	Rights in Water and Irrigation Act 1914 (under review) State Water Plan Implementation Plan for the NWI Government Response to the Blueprint for Water Reform	Water managed and developed to maintain and enhance natural environment, cultural and spiritual values, quality of life and economic development. WA's Environmental Water Provisions Policy affirms Government commitment to protecting water dependent eco-systems.
Tasmania	Department of Environment, Parks, Heritage and the Arts Department of Primary Industries and Water	Water pollution Manage natural resources	Water Management Act 1999 (undergoing review)	Promote sustainable development and water use and ecological processes.

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Australian Capital Territory	Department of Territory and Municipal Services		<p><i>Water Resources Act 2007</i></p> <p><i>Think water, act water – a strategy for sustainable water resource management 2004</i></p> <p><i>Water ACT 2003</i></p>	<p>Maintain human needs whilst protecting eco-systems.</p> <p>Water conservation and efficiency.</p>
Northern Territory	Department of Natural Resources, Environment and the Arts Landcare Council	Responsible for ensuring achievement of resource management outcomes	<p><i>Water Act 2000</i></p> <p>Water Regulations 2002 is the subordinate legislation providing rules pertaining to issuance of water licences and permit.</p> <p>Living Rivers Policy</p>	No formal policy documents.

Summary of reported progress on implementing Indigenous access provisions of the NWI by each Australian jurisdiction<sup>5</sup>

Jurisdiction	Indigenous access to water resources	Inclusion of Indigenous representation	Water plans to incorporate Indigenous objectives	Take account of native title	Account for water allocated to 'traditional cultural purposes'
Australian Government	No specific Indigenous provisions. <i>Water Act 2007</i> s 29 – Authority to consult holders and managers of environmental water in implementing environmental watering plan – this could arguably apply to Indigenous peoples.	Australian Government will continue to work through the Advancing Reconciliation Working Group of the NRM Ministerial Council for water-related Indigenous issues.	Most native title issues relating to NWI will be the responsibility of the relevant state or territory government department. The Australian Government will provide advice to other Australian Government departments on water planning processes and native title implications. <i>Water Act 2007</i> s 13 – the <i>Native Title Act 1993</i> not affected.		

5 Adapted from Jackson S, *Indigenous Interests and the National Water Initiative: Water Management, Reform and Implementation*, Background Paper and Literature Review, Report for the IWPG (2007), pp 104-109. At: [http://www.nailsma.org.au/nailsma/publications/downloads/publications/download/NAILSMA\\_NWI\\_Review\\_UPDATEDec07.pdf](http://www.nailsma.org.au/nailsma/publications/downloads/publications/download/NAILSMA_NWI_Review_UPDATEDec07.pdf) (viewed 17 December 2008).

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Queensland	<p>Include Indigenous representatives on water management advisory structures.</p> <p>Achieved through representation and consultation in development of water resource plans.</p>	<p>Representatives involved in development of water resource plans (s 41 of the <i>Water Act 2000</i> requires a community reference panel (CRP) with representatives of, inter alia, cultural interests).</p> <p>May also have Indigenous Working Groups to complement a CRP.</p> <p>Consultation through NRM bodies.</p>	<p>Traditional Indigenous uses generally provided for by ensuring there are sufficient environmental flows. Their purpose is to mimic natural flow patterns.</p> <p>Provides for maintenance of water levels in water holes of identified significance.</p> <p>Special issues papers prepared for Diamantina and Georgina WRPs.</p>	<p>As native title rights to water have not been legally recognised, Qld has not been able to make any specific legislative or Water Resource Plan provisions.</p> <p>However, water allocated to protect ecosystem processes acts to protect traditional uses associated with water.</p>	<p>Wild rivers</p> <p>The wild river declaration or water resource plan must provide for a reserve of water in the area to which the declaration or plan relates for the purpose of helping indigenous communities in the area achieve their economic and social aspirations. This only applies to a small area in Cape York.</p>

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<p>New South Wales</p> <p><i>Water Management Act</i></p>	<p>Commitment to Aboriginal peoples</p> <p><i>benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water, (s 3(c)(iv))</i> in the objects of the act.</p> <p>Each Water Sharing Plan (WSP) provides for access in the form of Aboriginal cultural access licences. Fees for such licences have been waived.</p> <p>Certain WSPs provide for commercial access licences (North Coast Rivers). Future WSPS will provide for these types of licence.</p>	<p>Each WSP Management committee included 2 reps from the local Aboriginal community (s 11-14).</p> <p>Their responsibility to convey information discussed at meeting to community for comment.</p> <p>CMAs are establishing Aboriginal Reference Groups to be used for ongoing consultations on future WSPs.</p>	<p>Many plans have general aspirational statements. To evaluate this component would require more direct research.</p> <p>From conversations this has not really happened.</p>	<p>Native Title recognised s 55</p> <p>Native title rights provided for under the Basic Landholder Rights provisions of the WMA, allowing a native title holder to take and use water without a licence or approval in the exercise of native title rights.<sup>6</sup></p> <p>Native title claimants are notified of applications for consents under the WMA (eg. new grants of water).</p> <p>Applications for new/amended works will be assessed to avoid impacts on Aboriginal heritage.</p>	<p>Each of the WSP recognise that extractions as part of a native title right may increase over the term of the WSP, if native title is granted in NSW.</p>

6 M Durette, *Indigenous Legal Rights to Freshwater: Australia in the International Context* CAEPR Working Paper No. 42/2008 (2008), p 27. At: <http://www.anu.edu.au/caepr/Publications/WP/CAEPRWP42.pdf> (viewed 17 December 2008).



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<p>New South Wales</p> <p><i>Water Management Act</i></p>		<p>An Aboriginal Water Trust is now established under the WMA as a strict commercial program.</p> <p>Supports participation in the water economy. \$5m is available for the first 2 years of operation.</p> <p>A performance evaluation in 2007 will determine continuity.</p> <p>The Water Trust has not led to significant outcomes for Indigenous people.<sup>7</sup></p>			

7 M Durette, *Indigenous Legal Rights to Freshwater: Australia in the International Context* CAEPR Working Paper No. 42/2008 (2008), p.20. At: <http://www.anu.edu.au/caepr/Publications/WP/CAEPRWP42.pdf> (viewed 17 December 2009).

Jurisdiction	Indigenous access to water resources	Inclusion of Indigenous representation	Water plans to incorporate Indigenous objectives	Take account of native title	Account for water allocated to 'traditional cultural purposes'
Victoria	<i>Water Act 1989</i> currently incorporates public processes into water allocation decisions	2001 – Indigenous Partnership Strategy including NRM. A framework (ILMF) is being developed. Regional Indigenous Facilitators undertaking information sessions with environmental agency. By mid 2007 formal agreements will be established with groups involved in NRM issues.	Victorian River Health Strategy (2002) highlights the importance of protecting rivers of high community value, including those with sites of significance 'for Indigenous culture'. Indigenous consultation must occur during the development of river health strategies (eg. Glennig Hopkins River). A key objective of bulk entitlements consultative processes is to ensure that water is provided to the rivers and floodplains in a way that 'ensures continuation of indigenous spiritual and cultural practice (eg. Yorta Yorta Cooperative Management Agreement and Lake Condah Sustainable Development Strategy).	Since 2000 all affected Indigenous groups are invited to participate in bulk entitlement consultative processes. No native title has been awarded in Victoria. One native title consent order was granted involving Wotjobaluk people around the Wimmera River. There is no provision relating to the allocation of water for traditional cultural purposes.	In the event that water is legally allocated to native title holders for traditional cultural purposes, it will be accounted for within the relevant water account.

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<p>South Australia</p> <p><i>Natural Resource Management Act 2004</i></p>	<p>Water allocation plans must take into account those water users who are dependent on the water source [s76]. Could be applied to Indigenous peoples.</p>	<p>One member suitable to represent Indigenous interests – Natural Resources Management Council [s 13 (2)(9)(e)]. Minister must give notice to Aboriginal people of Board appointment (s 25). Initial discussions have commenced with Indigenous groups to ascertain likely issues. Said to be an intrinsic part of the review of all WAPs.</p> <p>2005 – established an Aboriginal Statewide Advisory Committee to advise on Indigenous issues.</p>	<p>Natural Resources Management Act 2004 provides for consideration of traditional owner interests in any natural resource. This includes water allocation plans (s 7).</p>	<p>ILUAs have been used 'in relation to access to and for a range of purposes. It is likely a similar approach may be adopted for indigenous access to water resources especially given Aboriginal cultural practices which integrate management of land, water and cultural practices'.</p>	<p>Undergoing review.</p>

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<p>WA</p> <p>Undergoing reform process</p>	<p>Water allocation planning processes provide for Indigenous access to water resources; specifically for nonconsumptive cultural uses.</p>	<p>State NRM Council held a 2 day forum on facilitating Indigenous engagement. Forum inc. the NWI.</p> <p>National NRM meeting agreed to improve reporting on Indigenous interests and water management.</p> <p>Establishment of water resources management. Committee must include as far as practicable a person who has knowledge and experience relating to the water needs and practices of local communities, including Aboriginal communities (s 26GK, s 26GL).</p>	<p>Indigenous ecological knowledge is also sought to assist in making appropriate water allocations for the environment.</p> <p>Indigenous engagement is especially sought in development plans eg. Gnarara Mound near Perth.</p>	<p>DOW to liaise with Office of Native Title regarding the current process for dealing with Indigenous interests in water management plans.</p> <p>By Jan 07, obtain legal advice on Indigenous access and entitlements and the requirements under the NTA and Aboriginal Heritage Act 1972.</p>	<p>Policy position papers finalised.</p>

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Tasmania	Review of Water Act only takes into account Aboriginal heritage				
ACT	No available data				
Northern Territory Undergoing reform process	NT water allocation planning processes provide access for non-consumptive cultural beneficial uses and for access to the consumptive pool for agricultural, aquaculture, public water supply, industry or rural stock and domestic uses.	Indigenous engagement is especially sought in developing WAPs and as members of Water Advisory Committees. Water Act provides for water resources review panel where 8 people appointed with experience in Aboriginal affairs one of considerations (s 24(3)).	Indigenous ecological knowledge is sought in allocating water to the Environment.	Implications of rights under the NTA have not been considered or legally tested. Legal opinion should be sought to clarify this issue in the context of water allocation planning and management.	Competent monitoring systems exist and all access to water in WCD is controlled through permits.