

**Mayiny-galang-ngadyang  
(peoples water)**

# National First Nations' Water Roundtable

16-17 May 2023

*'Securing water rights for  
First Nations peoples' self-determination'*

## Outcomes Report



Australian  
National  
University



National  
Native Title  
Council

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### Abbreviations

AIATSIS	Australian Institute for Aboriginal and Torres Strait Islander Studies
ANU	Australian National University
ATSI Act	<i>Aboriginal and Torres Strait Islander Act 2005</i>
CAWI	Committee of Aboriginal Water Interests
CtG	2020 National Agreement on Closing the Gap
DCCEEW	Australian Government Department of Climate Change, Energy, the Environment and Water
EPBC Act	<i>Environmental Protection and Biodiversity Conservation Act (Cth) 1999</i>
FPIC	Free, Prior, and Informed Consent
FPWEC	First Peoples' Water Engagement Council
ILSC	Indigenous Land and Sea Corporation
ILUA	Indigenous Land Use Agreements
MLDRIN	Murray Lower Darling Rivers Indigenous Nations
NIAA	Australian Government National Indigenous Australians Agency
NNTC	National Native Title Council
NWC	National Water Commission
NWI	National Water Initiative 2004
SDG	2030 Sustainable Development Goals (United Nations Development Programme)
UFA	Umbrella Final Agreement 1993 (Governments of Canada and Yukon)
UNDRIP	United Nations Declaration on the Rights of Indigenous People 2007

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## Executive Summary

The National First Nations' Water Roundtable (Roundtable) was held on the Country and Waterways of the Ngambri (Kamberri) and Ngunnawal peoples, at the Australian National University (ANU) in Canberra, 16-17 May 2023.

The Roundtable was a joint initiative of the ANU<sup>1</sup>, the Indigenous Land and Sea Corporation and the National Native Title Council. The co-conveners saw an urgent need to bring together First Nations people's perspectives from across the country to examine and discuss the complex situation of First Nations water rights in Australia. This was in the context of current policy reforms, such as the renewal of the 2004 National Water Initiative (NWI) and the growing movement towards enshrining a First Nations Voice in the Australian Constitution<sup>2</sup>.

The urgency to convene the Roundtable was driven by the significant water injustices faced by First Nations people. While there is no public data available, the estimated volume of water access entitlements held by First Nations people nationally was estimated less than 0.1% in 2010 and as much as 0.2% in the Murray Darling Basin<sup>3,4</sup>. This is in stark contrast to First Nation groups holding legal interests in more than 57% of Australia's land mass<sup>5</sup>.

The lack of water access entitlements denies First Nations people the power to prevent water extraction that damages Country and communities. In many cases, this means they are unable to maintain their responsibilities to care for Country, nor can they improve their social and economic conditions. To date, First Nations people have not been compensated in any meaningful way for the dispossession of their waters and for the development of

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<sup>1</sup> The ATSI was represented by a consortium of the [First Nations Portfolio](#), [Water Justice Hub](#), [Institute for Water Futures](#) and [Centre for Aboriginal Economic Policy Research](#)

<sup>2</sup> [The Statement - Uluru Statement from the Heart](#)

<sup>3</sup> Jackson & Langton (2011) Trends in the recognition of Indigenous water needs in Australian water reform: the limitations of Cultural Entitlements in Achieving water equity [86140\\_1.pdf;sequence=1 \(griffith.edu.au\)](#)

<sup>4</sup> Hartwig et al (2020) [Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession - ScienceDirect](#)

<sup>5</sup> Barnett et al (2022) Baseline Study – Agricultural capacity of the Indigenous estate [CRCNA Report \(anu.edu.au\)](#)

private free market water ownership and management practices that directly and continue to exclude their involvement.

The Roundtable was intended to be more than a gathering to articulate First Nations views and positions based on practical experiences. Its main purpose was to make an important contribution to informing Government public policy and ensure that their policy commitments are implemented collaboratively and with clear practical benefit for First Nations peoples.

The Roundtable was attended by a diverse group of about 80 people with expertise on First Nations water rights and its intersection with public policy and water management. They comprised representatives from 43 different organisations from across Australia. Participants included First Nations representatives at the centre of managing their lands and waters, researchers with extensive experience collaborating with First Nations people, and government policy makers. Nearly two thirds of participants identified as First Nations people but a greater number were representative of First Nations organisations.

The Roundtable was framed around three facilitated workshops - *Where Are We Now; What Does 'Good' Look Like; How Do We Get There* - to give attention to current policy settings; gaps and issues as they relate to securing First Nations self-determination; and practical solutions and strategies to enable appropriate institutional and policy frameworks.

Key outputs from the Roundtable include this Outcomes Report, which provides details of the Roundtable, and a Communique that was issued by the co-convenors at the end of the Roundtable and conveys a proposed process going forward.

## **Key Messages**

The Roundtable agreed that the lack of recognition and access to water entitlements is widening the gap of First Nations disadvantage, leading to poor environmental outcomes, as highlighted in the 2021 State of the Environment Report, and contributing to inefficient use and unsustainable management of Australia's water resources for future generations.

The Roundtable also noted the key challenges: the lack of First Nations peoples' participation in water governance regimes; fragmented legislative regimes across State and Territory jurisdictions; rural and remote communities lacking access to clean drinking water and secure water supply; and the lack of institutional frameworks and practices across all levels of Government that adhere to provisions under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Roundtable acknowledged the increasingly positive national political environment highlighted by the Albanese Government's commitment to fully implement the Uluru Statement from the Heart and re-establish the National Water Commission, and its recent



announcement to increase First Nations water ownership. However, the Roundtable was also critical of the slow pace of Government in implementing its commitments.

The consensus of the Roundtable was for a new approach to advance First Nations water rights and needs, and that First Nations leaders needed to act now. As evidenced from work in the Murray Darling Basin and northern Australia, the approach must be led by First Nations, be nationally consistent with First Nations' water rights, informed by evidence and international trends towards water justice for First Nations peoples and facilitate equitable participation for First Nations peoples in the nation's social, economic and environmental futures.

## Recommendations

Federal and State and Territory Governments must:

1. Recognise First Nations peoples' water rights and interests.
  - UNDRIP must underpin national best practice standards implemented across all machinery of Governments, including relevant legislation and policy.
2. Supply clean and secure water to First Nation remote and regional communities.
  - Through infrastructure and water monitoring programs that are owned and managed by First Nation communities, respectively.
3. Authorize First Nations governance and institutions.
  - To be engaged at all levels - local, catchment and regional and jurisdictional - in decision-making regarding their lands and waters.
  - Including at the national level – such as through a First Nations National Body (Council/Alliance) – that is independent of Government.
4. Build First Nations institutional capacity.
  - To participate in all levels of water governance, including to hold and manage water access entitlements for community benefit, including the capacity for ongoing monitoring and evaluation to measure benefits.
5. Address the significant gap in water access equity and justice between First Nations and other water users.
  - Through national policy and legislative instruments and consistent jurisdictional regulatory mechanisms.
6. Make transformational institutional change at national and jurisdictional levels.
  - To align with National Intergovernmental Agreements – NWI, Closing the Gap – and United Nations agreements – UNDRIP, Sustainable Development Goals – and

include accountable measures within and across Federal, State and Territory Governments, with respect to recognising and implementing First Nations water rights.

7. Make changes to relevant legislation.
  - Federal, State and Territory water planning and management legislation and regulatory mechanisms must be consistent with UNDRIP, native title and a renewed NWI.
  - To establish statutory mechanisms, such as a national First Nations water holding or funding body to support community access to and management of water access entitlements.
8. Recognise First Nations people in the constitution.
  - First Nations people must have mechanisms to advocate for their water rights to be recognised and to participate in any national debate regarding their interests.
9. Implement their policy commitments.
  - This must be done in cooperation with First Nations peoples through their authorities and institutions, as determined by them.
10. Resource a First Nations-led research agenda that can inform place-based development and public policy – i.e., a *Living Waters Cooperative Research Centre*.
  - First Nations must lead place-based and evidence-based research to support their management of water and to self-determine and measure community benefits from their water governance.
11. Share data and give First Nations sovereignty over their data.
  - Communities must be able to generate and secure their own intellectual property for decision-making in water governance and for facilitating intergenerational transfer of cultural knowledge systems.
12. Resource and legislate for an enduring funding model – i.e., an *Indigenous Economic Water Fund*.
  - First Nations institutions must be appropriately resourced to participate in water markets, to engage in government processes, undertake research to inform decision-making, manage water access entitlements for community benefit, and facilitate community water governance.
13. Support appropriate scale communication processes and networks.
  - First Nations need mechanisms through which to transfer knowledge, and to engage in debates and advocacy across regional and national levels through various forums.

## Next Steps

The Roundtable called for urgent action to secure recognition and protection of First Nations water rights through Treaties, legislation and other policy means, and for the Federal Government to be held to account on implementing its policy commitments.

To progress the recommendations, the Roundtable proposed that a First Nations Working Group (Working Group) be convened, independent of Government processes, to facilitate the development of a First Nations-led, nationally consistent approach to First Nations water rights.

The Working Group would be a loose federation of experts with experience in advocating the rights and interests of First Nations.

The Working Group would have strong engagement with the ILSC and NNTC to develop and implement the water reform agenda. It would also have strong engagement with the Committee for Aboriginal and Torres Strait Islander Water Interest (CAWI) and the Coalition of Aboriginal and Torres Strait Islander Community Controlled Peak organisations (Coalition of Peaks) to advocate the First Nations Roundtable Communique and in the implementation of recommendations in relevant policy settings, and to engage in the process.

The role of the Working Group would extend to establishing a First Nations alliance that would negotiate and seek to reach a national accord with all Australian Governments to implement a new approach.

The Roundtable co-conveners agreed to act collectively to progress convening the Working Group as a matter of urgency by engaging with appropriate agencies in its construct and design.

The Roundtable should reconvene to discuss progress.



**Professor Peter Yu, AM**  
Vice President First Nations  
The Australian National University



**Dr Joe Morrison**  
Chief Executive Officer  
Indigenous Land and Sea  
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**Mr Jamie Lowe**  
Chief Executive Officer  
National Native Title  
Council



## Introduction

This report outlines the rationale, process undertaken and a synthesis of participant responses collected during discussions at the *Mayiny-galang-ngadyang* (peoples' water) National First Nations' Water Roundtable (Roundtable), held in Canberra, 16-17 May 2023.

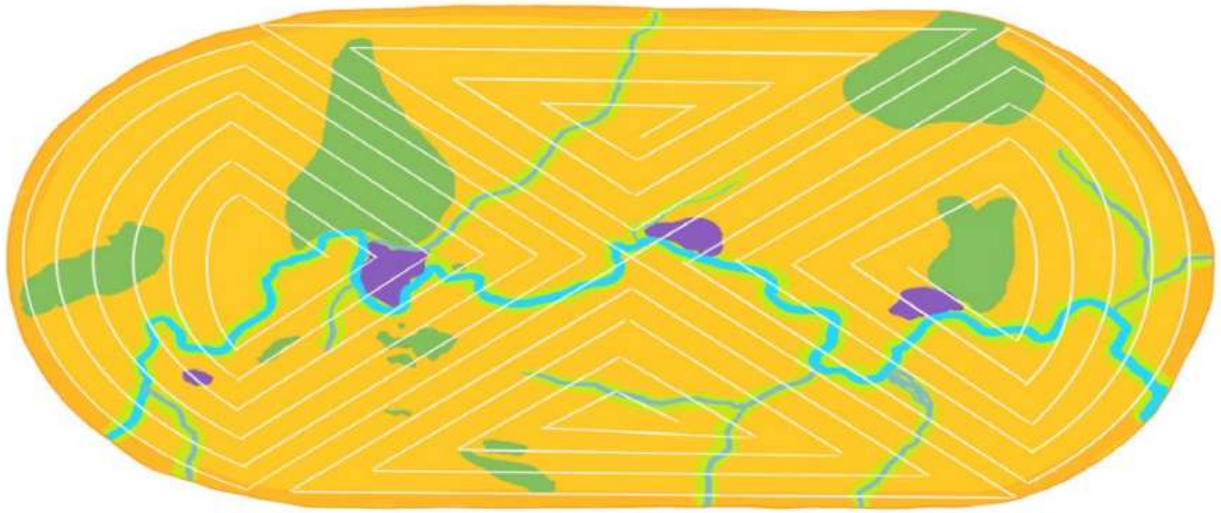
The Roundtable was co-convened by the Australian National University (ANU), the Indigenous Land and Sea Corporation (ILSC) and the National Native Title Council (NNTC). ANU was represented by a consortium led by the First Nations Portfolio and included the Institute for Water Futures, the Water Justice Hub and the Centre for Aboriginal Economic Policy Research.

The Roundtable was a historic event in bringing together national views about the existing challenges and water injustices to First Nations people. It was attended by a diverse group of about 80 people with expertise on First Nations water rights and its intersection with public policy and water management.

## Cultural Setting

The Roundtable was held at ANU on the Country and Waterways of the Ngambri (Kamberri), and Ngunnawal peoples, which has been a meeting place for the traditional custodians of the land for thousands of years.

*Mayiny-galang-ngadyang* is a local Ngambri, Ngunnawal and Wiradjuri term meaning Peoples' water - connecting people and Country.



**Artwork title: Ngambri-Kamberri-Canberra Dhaura**

The artwork shows three main Ngambri (Kamberri) corroboree grounds and 'Canberry Station' depicted in purple located along the Ngambri River at Acton Peninsula (ANU, National Museum Australia, AIATSIS), St John's Church Reid, and Duntroon Dairy (Pialligo) and Ngambri Ck (Sullivan's Creek) at ANU along with Yarralumla Station (Governor General's residence). The Canberry (Ngambri) Plains depicted in yellow and Canberry (Ngambri) Ranges including Black Mountain, Mt Ainslie, Mt Pleasant, Dairy Farmers Hill, Kurrajong / Camp / Capital Hill (Parliament House) and Red Hill are depicted in green. The landscape is embedded with mallangarri yurwangu dhaura (alive and strong on country) tree scarring representing key Ngambri (Kamberri), Walgalu totems, Crow and Eagle.

*Artist and Story: Paul Girrawah House, Ngambri (Kamberri) and Ngunnawal custodian*

## Institutional Settings

### The Australian National University

The ANU is a unique institution in both the context of the Australian higher education sector and the realm of Australian Federal Government policy formulation. Founded immediately after the Second World War in 1946 as the only Australian institute of higher education to be the subject of an Act of the Australian parliament, the ANU was charged with building world-class research capability in Australia, promoting national unity and identity and helping the nation improve its understanding of itself and place in the world, as well as delivering education to the highest standard in fields vital to the nation's future.

The ANU's **First Nations Portfolio**<sup>6</sup> was established in 2020 to enhance the university's nation-building capacity in the context of the relationship between the Australian nation-state and First Nations peoples. The First Nations Portfolio is a branch of the University's executive, reporting directly to the Vice-Chancellor, and is responsible for ensuring that ANU makes a leading contribution to national policy in this regard.

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<sup>6</sup> [First Nations Portfolio - ANU - Home \(anufirstnations.com.au\)](https://www.anufirstnations.com.au)

In context to the remit of the First Nations Portfolio, the Roundtable gave effect to ensuring that concepts of First Nations equity and engagement are embedded in the University's wider research agenda through cooperation of its:

- a. **Institute for Water Futures**<sup>7</sup> within the College of Science, which leads research to understand change and enable action in Australia and beyond. The Institute grows capabilities across the water sector to inform decisions that anticipate increasingly complex and uncertain water futures.
- b. **Water Justice Hub**<sup>8</sup> that was established in 2019 at the ANU as an initiative of the UNESCO Chair in Water Economics and Transboundary Water Governance. The Hub responds to water injustice and promotes both 'voice' and 'truth-telling' in relation to water. While the Hub has a primary focus on Australia, especially justice for First Nations peoples, it also responds to the global challenges of delivering 'water for all' or Sustainable Development Goal (SDG) 6.
- c. **Centre for Aboriginal Economic Policy Research**<sup>9</sup> within the College of Arts and Social Sciences, which is Australia's foremost social science research body focusing on Indigenous economic and social policy from a national perspective.

### **The Indigenous Land and Sea Corporation**

The ILSC is a corporate Commonwealth entity established under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act)<sup>10</sup>. It assists First Nations people to acquire land and water assets to achieve economic, environmental, social and cultural benefits. The acquisition of water-related rights to the ILSC's purpose was introduced under the *Aboriginal and Torres Strait Islander (ATSI) Amendment (Indigenous Land Corporation) Act 2018* (Cth).

The National Land and Sea Strategy 2023 – 2028 is the ILSC's principal policy document that shapes its strategic direction, operations, and performance<sup>11</sup>. The strategy sets out where the ILSC will focus efforts, investment and, most importantly, guide what to do and how to do it, in partnership with Aboriginal and Torres Strait Islander people.

The ILSC's primary grant program – Our Country Our Future – provides assistance for acquiring and managing rights and interests in land, salt water and freshwater Country in order to achieve its mandate under the ATSI Act.

The ILSC also provides direct grant support for First Nations people to manage and develop their assets through conservation of environment and cultural heritage and niche First

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<sup>7</sup> [About | Institute for Water Futures](#)

<sup>8</sup> [Home - Water Justice Hub](#)

<sup>9</sup> [About CAEPR | Centre for Aboriginal Economic Policy Research](#)

<sup>10</sup> [Home Indigenous Land and Sea Corporation \(ILSC\)](#)

<sup>11</sup> [National-Indigenous-Land-and-Sea-Strategy](#)

Nations' products, such as native foods and agribusiness, which translate to local jobs, protection of heritage and healthy Country.

There is significant scope for the ILSC to leverage additional support and partner with First Nations people to unlock the economic value of their Country in a sustainable and culturally appropriate manner. This includes on projects in one or more of the ILSC regions, such as the south-east region relevant to the Murray-Darling, which could contribute to improving community benefits from their access to water and broader water policy reforms.

### **National Native Title Council**

The NNTC is a not-for-profit peak body for the native title sector. Its members are made up of the Traditional Owners of Australia's lands, waters and resources, and their representative bodies<sup>12</sup>. The purpose of the NNTC is to support and strengthen the native title system for the improved economic, social and cultural wellbeing of First Nations people.

Together with the native title sector, Governments and partners, the NNTC works to support First Nations people having greater decision-making power over their Country, community, lands, waters and resources. It provides resources and support for First Nations' development; works with Governments to improve native title's laws and policies; and works with partners and industry to advance the rights and interests of First Nations people.

The NNTC hosts and manages the First Nations Heritage Protection Alliance that is mandated to strengthen and modernise cultural heritage laws, and to create industry reforms that ensure Indigenous Cultural Heritage is valued and protected for the future<sup>13</sup>.

"For real water justice for First Nations in Australia, we need First Nations led leadership and governance in decision-making around responsible water allocations that transcend jurisdictional red tape and equitably meet the diverse needs and interests of our communities".

"Appropriate arrangements for First Nations' ownership and management of water can be achieved through the Commonwealth, state and territory governments working in genuine partnership, based on shared decision making, with First Nations peoples on designing the new arrangements that are required."

*NNTC CEO Jamie Lowe (Gundjitrara Djabwurrung)*

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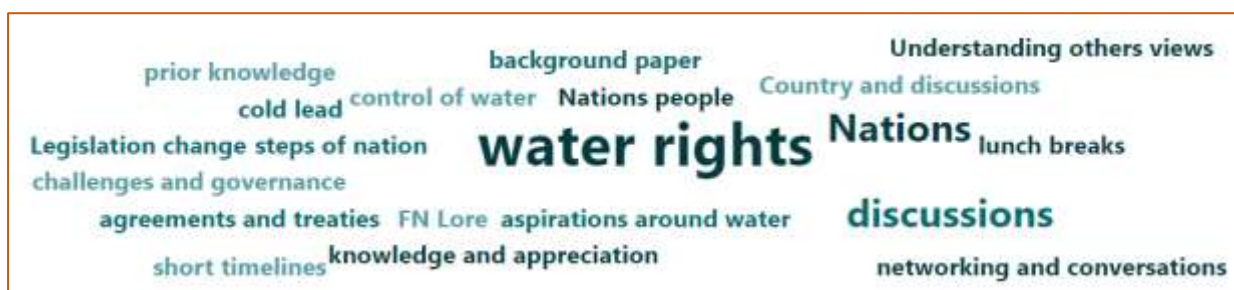
<sup>12</sup> [Home - National Native Title Council](#)

<sup>13</sup> [Cultural Heritage | Home](#)

## Background

### Rationale

The Roundtable was intended to be more than a gathering to articulate First Nations views and positions based on practical experiences. Its main purpose was to make an important contribution to informing Governments and ensure that their policy commitments are implemented collaboratively and with clear practical benefit for First Nations people.



**Fig 1.** A word cloud generated from the participant feedback survey concerning specific topics or discussions most relevant and beneficial to respondents.

The Roundtable purposely built on the momentum of existing agendas, notably:

- Outcomes from the First Nations National Water Reform Roundtable hosted in December 2022 by the Australian Government’s Department of Climate Change, Energy, the Environment and Water (DCCEEW), which noted Minister Plibersek’s commitments for:
  - driving improved coordination of First Nations engagement across her portfolio,
  - expanding across Australia the engagement and communications of Ministerial advisory group, Committee on Aboriginal and Torres Strait Islander Water Interests (CAWI)<sup>14</sup>, which formed in 2020, and
  - improving collaboration and coordination within the Commonwealth to streamline First Nations decision-making.
- The ANU’s First Nations Portfolio-led Seminar Series, *Murru waaruu* (On Track) aimed at developing the components of a policy framework that will facilitate the economic empowerment of First Nations Australians.
  - Of the six series, Seminar 2 - ‘*Niiringal* (the day after) – Implementation of Uluru Part 2: Using the Acquired Assets’ was delivered 18-19 April 2023 at the ANU in Canberra<sup>15</sup>.

<sup>14</sup> [Committee on Aboriginal and Torres Strait Islander Water Interests - DCCEEW](#)

<sup>15</sup> [First Nations Portfolio - ANU - Seminar 2 - Niiringal \(the day after\) - Implementation of Uluru Part 2: Using the Acquired Assets](#)



- Seminar 2 focused on enhancing the fungibility of First Nations land, water, sea Country, bio-cultural resources, intellectual property and financial assets.
- It identified alternative tenure systems, pathways to diversification, broadening of asset use, enhanced First Nations control and management systems, and potential new institutional arrangements to foster economic self-determination.

With respect to the distinct disparity of land ownership across Australia, “First Nations people can’t enter into the economy, we are landless, waterless. It comes back to land-back, not Native Title or Land Rights but *land back*”.

“Cultural values are not recognised. The Great Barrier Reef is managed only for its conservation and environment values. Despite having Native Title, Traditional Owners still do not have a seat at the table. Cultural values need to be recognised in the heritage acts.”

“Land allocations to First Nation’s bodies may be substantial transfers, but if they don’t include water, half of Country is missing. To address this irregularity, two key constitutional issues need to be overcome, over-allocation and over-extraction. The Murray Darling Basin being a clear example. We need to increase the ambition to achieve *transformational change* to address water injustices.”

“Indigenous knowledge is often framed as a ‘tool’ used to achieve ecological sustainability however there are few examples of Indigenous knowledge modelling policy. We need to formulate how western and Indigenous ways of understanding can come together; it requires a systems’ change at national and multidisciplinary levels.”

De-identified quotes are taken from Seminar 2

## Context

In the context of current policy reforms, such as renewal of the National Water Initiative (NWI) and the growing movements towards an Indigenous Voice, Treaty and Truth-telling, the Roundtable co-conveners saw an urgent need to bring together First Nations people’s perspectives from across the country to examine and discuss the complex situation of First Nations water rights in Australia.

The centrality of water, its sanctity, purpose and meaning, is part of the holistic cultural, social, and economic worldview of First Nations peoples. First Nations perspectives intrinsically link land, water, sea, and people. Water is vital: to the health, well-being, and survival of First Nations peoples; to their cultural distinctiveness; and to their ability to fulfil their responsibility and obligation to sustainably manage Country in accordance with their lore and customs.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>16</sup>, to which the Australian Government is a signatory since 2009, is the most significant and comprehensive international instrument on the rights of Indigenous People. Several UNDRIP articles are concerned with the right of Indigenous peoples to economic self-determination (Article 3), including the right to ‘maintain, protect, and develop the past, present and future manifestation of their cultures’ (Article 11.1), and the right to ‘the improvement of their economic and social conditions’ (Article 21.1). Furthermore, UNDRIP explicitly states that any legislative or administrative measures that may impact these interests requires the free, prior, and informed consent (FPIC) of the traditional custodians.

Although Australia has officially endorsed UNDRIP, its Federal and jurisdictional governments have yet to implement it in any meaningful way. Despite having these internationally recognised values and principles, First Nations people have effectively been denied rights to Australia’s water economies, policies, and governance regimes since first settlement. Australian laws, regulations, existing property rights, and policies prevent First Nations from fully participating in, and benefiting from, decisions about surface and subterranean waters.

While there is no public data available, the estimated volume of water access entitlements held by First Nations peoples was estimated less than 0.1% in 2010 and as much as 0.2% in the Murray Darling Basin<sup>17,18,19</sup>. This is in stark contrast to First Nations peoples holding legal interests in more than 57% of Australia’s land mass<sup>20</sup>.

The lack of water access entitlement denies First Nations peoples the power to prevent water extraction that will damage Country and communities. In many cases, this limits their ability to maintain their responsibilities to care for Country, and does not improve their social and economic situations. To date, First Nations peoples have not been compensated in any meaningful way for the dispossession of their waters and for the development of private free market water ownership and management practices that directly excluded their involvement.

Many First Nations people are excluded from Australia’s economic wealth that is tied to water access entitlements. This makes it extremely challenging for First Nations to increase

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<sup>16</sup> [Universal Declaration of Human Rights | OHCHR](#)

<sup>17</sup> Jackson & Langton (2011) Trends in the recognition of Indigenous water needs in Australian water reform: the limitations of Cultural Entitlements in Achieving water equity [86140\\_1.pdf;sequence=1 \(griffith.edu.au\)](#)

<sup>18</sup> Hartwig et al (2020) [Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession - ScienceDirect](#)

<sup>19</sup> **Water access entitlement:** A perpetual or renewable entitlement to exclusive access to a share of water from a specified consumptive pool as defined in the relevant water plan, policy or legislation. This definition includes relevant Strategic Aboriginal Water Reserves and excludes entitlements for the purposes of drinking water supplies and household power generation.

<sup>20</sup> Barnett et al (2022) Baseline Study – Agricultural capacity of the Indigenous estate [CRCNA Report](#)

the productivity of their Country through agriculture, fishing, aquaculture, tourism, and other industries<sup>18</sup>. Many systems are fully allocated. Buying water entitlements on the open market is usually not an option as First Nations people are often priced out. Regardless, buying back their own water is fundamentally an injustice. As a consequence of these massive injustices, First Nations are at a distinct disadvantage regarding their cultural heritage and socio-economic development potential. This situation directly contravenes the UNDRIP.

‘The rights embodied in the United Nations Declaration on the Rights of Indigenous Peoples, as endorsed by the Australian Government and reaffirmed at the Rio+20 Forum (20-22 June 2012, Brazil), are fundamental toward building resilient communities and toward enhancing and enriching a reconstructed relationship focused on improving social, cultural and economic policies for reliable prosperity.

As Australia’s first peoples, we are the custodians of our lands, waters and resources on behalf of the whole nation. Our Traditional Knowledge systems and beliefs contribute significantly to the nation’s development and are essential to our own self-determination and well-being. For us our connections to country, family and culture are paramount. In much of this we have common ground, but we have yet to give new expression for a common equitable future.

Our vision is for a future where our custodial responsibilities are distinguished as a national asset, and our associated rights are central to all decisions affecting north Australian communities’ lands, waters and resources, for the greater benefit of all Australians. Our unique and enduring values are allowed to enhance the entire Australian society and create a prosperous future built upon our own self-determined economic development strategies.’

*North Australian Indigenous Experts Forum, 2012*

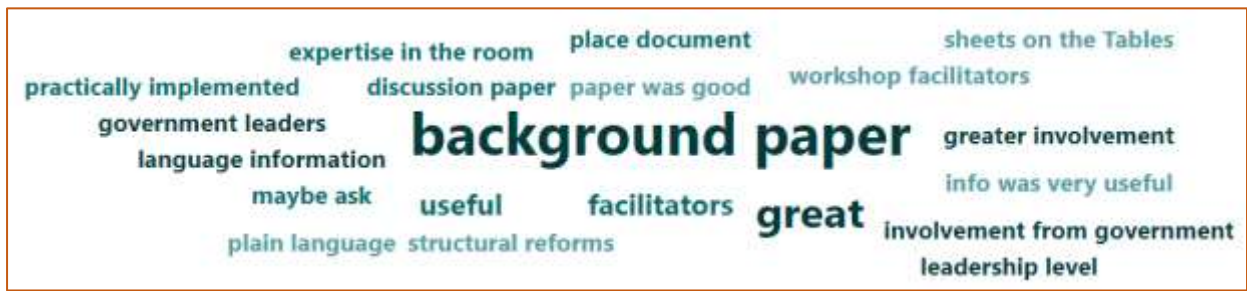
## Background Paper

A detailed Background Paper was prepared for participants attending the Roundtable to provide a preamble to the Roundtable and help their deliberations during discussions. The paper recognises the significant work that First Nations people have delivered in response to continued water reform measures. It also considers current paradigms for securing First Nations people’s water rights and interests.

The Background Paper is available for download at the ANU’s First Nations Portfolio website<sup>21</sup>.

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<sup>21</sup> [Background-Paper-National-First-Nations-Water-Roundtable-16-17-May-2023.pdf](#)



**Fig 2.** Word cloud generated from the participant feedback survey regarding materials and resources provided at the Roundtable.

## Program

The Roundtable Program is at **Attachment 1**.

### *Sponsorship and Support*

Coordination and financial support to convene the Roundtable was primarily provided by the ANU’s First Nations Portfolio.

A Committee was established to engage senior leaders of the co-convenors in the organisation of the Roundtable. The Committee met regularly over the six months leading up to the Roundtable to organise participant engagement, the agenda and associated logistics.

While most participants self-funded their accommodation and travel to Canberra, the ILSC provided a \$30,000 (up to \$2,000/participant) travel bursary to those that applied for travel assistance. Participants were not charged attendance fees.

Professor Peter Yu AM, Vice President of the First Nations Portfolio, Chaired the Roundtable and a team (refer to the acknowledgements) of seven facilitators delivered its program, which included three workshops punctuated by keynote speakers.

The ANU’s Institute for Water Futures supported a group of eight First Nations student representatives (refer to the acknowledgements) from across Australia to attend and support the Roundtable. Each student was assigned to one of the eight discussion tables. They supported table discussions and the collection of information.

The Roundtable Background Paper was prepared by Watertrust Australia (in-kind contribution) and through contributions from the ANU’s Water Justice Hub, Institute for Water Futures and First Nations Portfolio.



### *Participants*

The Roundtable was an invitation-only event. Noting the vast scale of First Nation practitioners and organisations working on achieving improved water outcomes for local communities, the organising Committee capped the number of attendees at 60 to balance financial commitments with maximising outcomes from the Roundtable. Two criteria were set to narrow the list of attendees.

1. The majority of invitees should be representatives from peak First Nations organisations, including for land rights and native title, and some Aboriginal Corporations and industry groups, spread evenly as practical from across Australia.
2. A small portion of invites should be key water experts from relevant research, Government and non-Government institutions.

Excluding support staff that did not participate in the Roundtable, 76 recorded participants attended the event, though many more were interested in attending. The over attendance conveyed to the co-convenors a strong interest in the meeting.

Participants represented 43 different organisations (listed at **Attachment 2**). Organisations were generally spread evenly across Australia, though attendees from South Australia were low (one organisation) and no organisations from Tasmania and the Australian Capital Territory attended (see Table 1 below).

Region	Number of Organisations	Number representing First Nations interests
International	2	1
National	10	5
North Australia	1	1
Murray Darling Basin	4	2
New South Wales	3	2
Australian Capital Territory	-	-
Victoria	4	3
South Australia	1	1
Tasmania	-	-
South-Western Australia	2	2
North-Western Australia	5	5
Northern Territory	4	3
Queensland	6	3
Torres Strait	1	1

**Table 1.** Forty three organisations from across Australia were represented at the event. The table shows the number of organisations represented in each State and Territory and of those, the number representing First Nation-led institutions. Research, Government (excluding NIAA) and non-Government institutions were not included as First Nations-led agencies in the analysis above, though many attendees from those institutions were First Nations people focussed on related First Nations programs.

Of the total number of active participants at the Roundtable, 62% identified as First Nations people. Women’s representation was low. Thirty attendees (40%) identified as female. Female First Nations made up only 15% of the total attendees and 26% of the total First Nation attendees. Forty six attendees (60%) identified as male. Male First Nations made up 47% of the total attendees and 74% of the total First Nation attendees.

Participants were pre-arranged across eight tables that each accommodated about ten people to allow small group discussions. The arrangement was principled primarily on gender balance and that no two people from the same organisation be seated at the same table.

### Evaluation

The following evaluation is based on the recorded anonymous responses from 16% of the participants. Overall, the Roundtable scored 6/10 in relation to its overall effectiveness to address related key issues, the way it was structured, its facilitation, overall participant experience, keynote presentations and organisation. Most respondents said that the Roundtable was beneficial; materials and resources, such as the background paper, were helpful and informative; and discussions would influence their practices at work and inspired action to engage First Nations people. The feedback survey form used to evaluate participant engagement at the Roundtable is at **Attachment 3**.



**Fig 3.** Word cloud generated from the participant feedback survey concerning the relevance of topics presented by keynote speakers in adding value to the Roundtable’s agenda.

### *Framework*

The Roundtable was framed around three facilitated workshops to give attention to current policy settings; gaps and issues as they relate to securing First Nations self-determination; and practical solutions and strategies to enable appropriate institutional and policy frameworks. All information provided during each of the workshops were collated and are included in this report.

Working closely with the Chair, a lead facilitator managed the overall proceedings of the meeting that involved introducing the objectives of each workshop, keeping discussions on track, time management and coordinating table discussions and summaries. The later was achieved through the engagement of six workshop co-facilitators.

Two different co-facilitators were assigned to each of the three workshops. They circulated amongst participants during discussion to provide their expert knowledge and assist tables to keep on-track. At the end of each workshop, the two respective co-facilitators presented a summary of key messages back to the Roundtable and their reflections based on experience and expertise.

Each table was provided the same worksheet respective to each of the three workshops. The worksheets were provided only as a guide to assist discussions. It was identified by the lead facilitator at the introduction of each workshop that some categories in the worksheet may not connect with some of the participants and some categories may be missing. Therefore, worksheets were intended to allow flexibility with respect to an individual’s expertise and experiences.

The worksheets were developed ahead of the Roundtable by the lead facilitator in consultation with both the team of co-facilitators and the organising Committee.

## Where Are We Now?

The objective of the first workshop, *Where Are We Now?*, was to undertake a situational analysis.

To set the scene, Dr Josie Douglas (*Wardaman*) provided a keynote presentation regarding the rights and interests of Traditional Owners based on her extensive professional experiences in northern Australia. She highlighted gaps and issues as they related to policy and planning practices of the Northern Territory Government and opportunities to improve water outcomes through national frameworks. Refer to the next section on key notes that preface this workshop for further detail on Dr Douglas' presentation.

The eight tables were then provided time to workshop the strengths, weaknesses, opportunities and threats under each of the suggested categories, as presented on the worksheet below. Near the end of the session, tables wrapped up with a summary ready for the co-facilitators to present key messages back to the Roundtable. Information was collected and is collated at **Attachment 4**.

Situational Categories (Please expand with specific items in each category)	Strengths	Weaknesses	Opportunities	Threats/ risks	What does this mean for First Nations Water Rights?
Legislation					
Government Appetite and Attitudes (including structures and state of engagement)					
Environment (biophysical, ecological)					
Economic Development (agriculture, energy production, manufacturing and other business development)					
State of Research					
International Attitudes					
Industry and Other Users' Attitudes					
Capacity of First Nations Organisations?					
Other?					
Summary – what does all this mean for First Nations Water Rights?					



### What Does ‘Good’ Look Like?

The objective of the second workshop was to engage participants in describing *What Does ‘Good’ Look Like?*, in the context of First Nations self-determination.

To set the scene, Professor Deborah McGregor (*Anishinaabe*) submitted a pre-recorded keynote to the Roundtable sharing her perspectives of First Nations experiences in Canada. Refer to the next section on key notes that preface this workshop for further detail on Professor McGregor’s presentation.

The eight tables were then provided time to workshop First Nations perspectives and perceived perspectives of different stakeholders. It was noted that while most participants do not represent Government or other water users, many will have had contact with them and could provide insight into what those perspectives may look like from their own point of view. This was positioned on that no one perspective constituent should automatically lose for another to gain, but to seek for win-win situations. Near the end of the session, tables wrapped up with a summary ready for the co-facilitators to present key messages back to the Roundtable. Information was collected and is collated at **Attachment 4**.

What does “Good” Water Rights look like in the context of self-determination, from the perspectives of:	How does “Good” work?	In this future “Good” State, how is good met?	What KPI’s are met?	What will be the benefits?
First Nations People and Communities				
Governance (decision making)				
Property Rights and Entitlements				
Legislative Needs				
Governments				
Other Water Users				
The National Economy				
The Bio-Cultural Environment				
Other?				
Summary – Describe “What Good Looks Like”?				

### How Do We Get There?

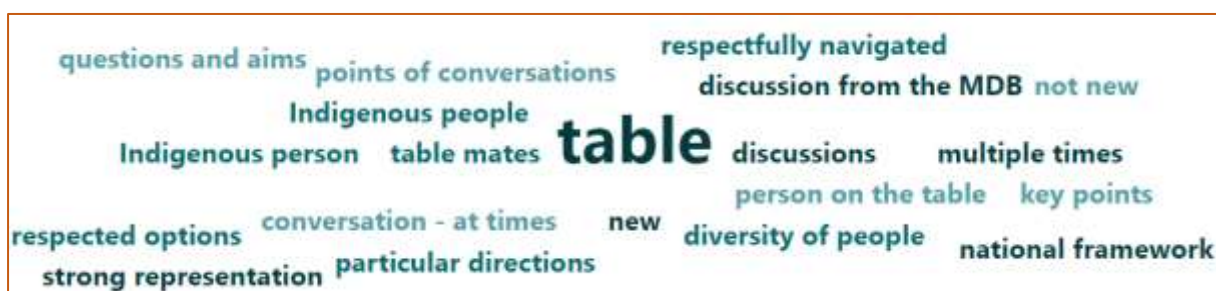
The objective of the final workshop, *How Do We Get There?*, was to discuss approaches to getting to the state of “Good” to overcome some of the key issues and gaps identified in the first workshop, and to provide recommendations in light of potential opportunities or otherwise.

Two keynotes were provided juxtaposing international experience from Canada with experience in Australia. Mr Dana Tizya-Tramm (*Vuntut Gwitchin*), Director of Arctic Circles, submitted a pre-recorded keynote to the Roundtable sharing his perspectives on the role of

agreements in securing water rights, as a First Nation of the North Yukon in Canada. Dr Phil Duncan (*Gomeroi*), reflected on First Nations water rights and interests in contexts of environmental conservation and cultural heritage. Melissa Kennedy (*Tati Tati Kaiejin*), Brendan Kennedy (*Tati Tati Elder*) and Dr Erin O’Donnell talked about Cultural Flows to secure First Nations water sovereignty. Refer to the next section on key notes that preface this workshop for further details on these presentations.

The eight tables were then provided time to reference summaries of the previous two workshops and turn their views to how the state of “Good” can be achieved using the worksheet below. Near the end of the session, tables were encouraged to arrive at a set of six to 12 key recommendations ready for the co-facilitators to present a summary back to the Roundtable. Information was collected and is collated at **Attachment 4**.

Category	Recommendations	Timeframe
Legislative Change		
Agreements		
Institutional Change		
Relationship with Governments and Political Parties		
Governance and Decision-Making		
Communications and Advocacy		
The Market and the Economy		
Environment and Culture		
Research, Innovation, and Education		
Processes		
Measures		
Other?		
Summary: Recommendations, Next Steps, Roles and Responsibilities		



**Fig 4.** Word cloud generated from the participant feedback survey concerning their experience in participating and contributing to their table’s discussion.

## Outputs

Key outputs from the Roundtable include this Outcomes Report, and the delivery of a communique. At the end of the meeting a draft communique summarising key outcomes was presented to the Roundtable for its review. A final communique from the co-convenors was released 26 May 2023 to a broader network of about 260 people (**Attachment 5**).

*Galing, guugu, Ngadyang* (water) | *Gadyigadyi, nguramayang* (Water bag of skin) | *Marrunba* (Water bag) | *Galing balum* (Water is evaporated) | *Munun, bigun* (Water rat) | *Ngurru* (Water reeds) | *Burragu* (Water, that is stagnant) | *Galinbundinya* (waterfall) | *Weereewaa* (place of council/Lake George) | *Jullergung* (Queanbeyan River) | *Murrumbidyaa* (river) | *Kamberri* (river) | *Molongolo* (river) | *Goodradigbee* (river) | *Goobragandra* (river) | *Gudgenby* (river) | *Ngulburnan* (waterhole) | *Winyu* (Waterhole without water) | *Galinginbanga* (Waterless place, or country, a dry desert) | *Yuyuwi* (Waterless, dry, a dry plain) | *Bila* (river) | *Dhandaang* (River catfish) | *Biyal, yarra, murungal* (River red gum tree) | *Bilawi* (River she oak) | *Yiramal, badha* (River bank of river) | *Yiramir* (Steep bank of the river) | *Yurung, walung, yubaa, galing* (Rain) | *Guwang, guwaang* (Rain, fog or mist) | *Dangaay* (Rain water, old water) | *Yubanirra* (Rain, cause to rain) | *Milgi* (Rain, large drops of rain) | *Yulubirngiin, gunhunggurran* (rainbow) | *Galimbang* (Rainy weather) | *Guwunggan* (Flood) | *Baalmanha* (Floating) | *Wirramarri* (Fish, a large cod fish) | *Gubir* (Fish, black bream, macquarie perch) | *Gugabul, gudung* (Fish, murray cod) | *Gagalin, bidyin* (Fish, golden perch, yellow belly) | *Guyaabadhambildhaany* (Fisherman) | *Ngalamarra* (Fishing) | *Maya* (Fishing net) | *Biyamby* (Fish hook, a hook) | *Yanara* (Fish spear) | *Guya* (Fish) | *Bugal* (Fish line) | *Widyarra* (Drink) | *Galindyrangurang* (Drink of honey and water) | *Yabung, yalgu, burang* (Drought) | *Bambinya* (swim) | *Dharwal, giyimbirr* (swamp) | *Dhundu, ngiyaran, gunyig* (Swan, black) | *Gunir* (Swamp wallaby) | *Gulambali, gulaygali, birriyag* (pelican) | *Molongolo* (river) | *Goodradigbee* (river) | *Goobragandra* (river) | *Gudgenby* (river) | *Ngulburnan* (waterhole) | *Winyu* (Waterhole without water) | *Galinginbanga* (Waterless place, or country, a dry desert) | *Yuyuwi* (Waterless, dry, a dry plain) | *Bila* (river) | *Dhandaang* (River catfish) | *Biyal, yarra, murungal* (River red gum tree) | *Bilawi* (River she oak) | *Yiramal, badha* (River, bank of river) | *Yiramir* (Steep bank of the river) | *Yurung, walung, yubaa, galing* (Rain) | *Guwang, guwaang* (Rain, fog or mist) | *Dangaay* (Rain water, old water) | *Yubanirra* (Rain, cause to rain) | *Milgi* (Rain, large drops of rain) | *Yulubirngiin, gunhunggurran* (rainbow) | *Galimbang* (Rainy weather) | *Guwunggan* (Flood) | *Baalmanha* (Floating) | *Wirramarri* (Fish, a large cod fish) | *Gubir* (Fish, black bream, macquarie perch) | *Gugabul, gudung* (Fish, murray cod) | *Gagalin, bidyin* (Fish, golden perch, yellow belly) | *Guyaabadhambildhaany* (Fisherman) | *Ngalamarra* (Fishing) | *Maya* (Fishing net) | *Biyamby* (Fish hook, a hook) | *Yanara* (Fish spear) | *Guya* (Fish) | *Bugal* (Fish line) | *Widyarra* (Drink) | *Galindyrangurang* (Drink of honey and water) | *Yabung, yalgu, burang* (Drought) | *Bambinya* (swim) | *Dharwal, giyimbirr* (swamp) | *Dhundu, ngiyaran, gunyig* (Swan, black) | *Gunir* (Swamp wallaby) | *Gulambali, gulaygali, birriyag* (pelican) | *Dhurlaang* (River) | *gurradula* (River junction) | *bulingag* (Salt water) | *Guunamaa* (snow) | *Malundi* (Deep water) | *Mundang, muriin, marriny, wagang* (Canoe, boat)

***Yindyamarra bala biladha birri bina birra wuurawin Ngambri (Kamberri) nguram bangga***

(Respect is in the rivers moving quietly through Kamberri country)

Words by Paul Girrawah House, 2023



## Preface - Key Notes

### National Perspectives

In setting the prologue for the Roundtable, **Professor Brian Schmidt AO**, Vice-Chancellor of the ANU, opened the Roundtable. In his opening address he highlighted the significance of First Nations water rights as a critical element for achieving reconciliation.

**Professor Peter Yu AM (Yawuru)**, Vice-President of the ANU's First Nations Portfolio, emphasised in his meeting address, how important water rights are to addressing the injustices of colonisation and dispossession and noted that the legacy of that injustice is strongly felt by First Nations peoples today. Water has played a central and ongoing economic role in colonial dispossession, and it is not surprising that frontier clashes and massacres often occurred over access to rivers and creeks.

Professor Yu also spoke of the frustrations felt by First Nations concerning the lack of progress on regaining their water rights despite it being on the national agenda for many decades. In that regard, Peter brought to the Roundtable's attention the 2009 Mary River Statement<sup>22</sup>, as a reminder that the Roundtable was not the first time that First Nations experts had convened to seek water justice. This Statement was made by 80 First Nations water experts from across northern Australia to influence Government policy.

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<sup>22</sup> [Mary River Statement | NAILSMA](#)

The **Hon Tanya Plibersek MP**, Minister for the Environment and Water, in her meeting address, provided an insight into the Federal Government’s thinking on ways to address the challenges around Indigenous water rights, particularly the lack of clean water in regional and remote communities and lack of water equity. She noted that First Nations peoples are estimated to own only 0.2% of the total volume of national water access entitlements despite making up 4% of Australia’s population.

The \$40 million commitment to purchase First Nations water access entitlements in the Murray Darling Basin will be honoured by the Albanese Government<sup>23</sup>. The Minister advised the Roundtable that consultations would commence with Basin Nations in July 2023. Because it has taken so long to make any purchases, Minister Plibersek also committed that all the funding will be used specifically for this purpose. The associated administrative costs will be absorbed by her Department.

The Minister also gave reassurance that the Albanese Government will seek to reach agreement on a national target to increase water access entitlements owned by First Nations under the 2020 National Agreement on Closing the Gap (CtG) and will be investigating establishing a First Nations national water holding body<sup>24,25</sup>. To achieve the latter, the Minister noted the new funding allocation of \$9.2 million to consult and design an enduring arrangement for First Nations peoples to own, access and manage water in Australia<sup>26</sup>.

The Minister also spoke of the Albanese Government’s commitment of \$150 million over four years to improve water infrastructure for safe and reliable water supply in remote and regional communities<sup>27</sup>.

**Dr Josie Douglas (Wardaman)**, Executive Director of Policy and Governance at the Central Land Council, provided a keynote to preface the first workshop – *Where Are We Now?* Dr Douglas reflected on the current situation in relation to the National Agreement on CtG.

She couched the gap in a series of water injustices.

- The lack of infrastructure to adequately address the poor quality of drinking water in many remote and regional communities across the Northern Territory. She highlighted the consequence to this is significant health issues, and subsequently, health services, such as for dialysis treatment, are also severely lacking.

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<sup>23</sup> [Murray-Darling Basin Aboriginal Water Entitlements Program | National Indigenous Australians Agency](#)

<sup>24</sup> [Home | Closing the Gap](#)

<sup>25</sup> [Joint media release: Delivering water ownership for First Nations | Ministers \(dcceew.gov.au\)](#)

<sup>26</sup> [Media release: Delivering-water-ownership-for-first-nations \(PM&C\)](#)

<sup>27</sup> [Closing the Gap: \\$150 million towards First Nations water security | National Water Grid Authority](#)

- The policy practices of Governments toward water planning in the Northern Territory are essentially racist with Governments favouring industry over the rights and interests of remote Indigenous communities.
  - Governments have an ongoing fascination to ‘Develop the North’<sup>28</sup>. They continue to roll out the red carpet to industry and disregard the interests of Aboriginal communities, which in many cases make up most of the population in the remote and regional areas in the north.
  - The Northern Territory Government’s Strategic Aboriginal Reserve Policy Framework (2017) was viewed as what could be possible for Aboriginal people to access water entitlements for their benefits<sup>29</sup>. But for what purpose? Nothing has happened; no Aboriginal water licences have since been issued to First Nations in the Northern Territory.
- Ongoing lack of engagement. Rather than Governments engaging Aboriginal people at the outset, they are instead choosing to deal with drawn out court appeals at a cost to Australian taxpayers.

Dr Douglas emphasised that the gap will not close without First Nations peoples being positioned to lead the way and be meaningfully engaged at all stages of water planning, project development, implementation and in the ongoing management of water.

Strengths to draw from include the ongoing connections, particularly cultural, that First Nations across Australia are maintaining with their water, and the resurgence in their determination to have their water rights recognised and protected for now and future generations.

Weaknesses include the lack of First Nations ownership over water access entitlements across the country which makes it difficult for First Nations to play more than an advisory role in water governance. The differences and complexity in legislative regimes across States and Territory Governments is also a serious weakness. These regimes are inconsistent and for the most part, do not recognise and protect the rights of First Nations peoples. They are founded on the notion of ‘aqua nullius’ and promote water as an exploitable economic resource<sup>30,31</sup>.

Dr Douglas noted opportunities for advancing First Nations interests including the commitment of the Australian Government to implement the Uluru Statement from the

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<sup>28</sup> [Our North, Our Future: A Vision for Developing North Australia | Australian Government Department of Foreign Affairs and Trade \(dfat.gov.au\)](https://www.dfat.gov.au/our-work/our-north-our-future)

<sup>29</sup> [Strategic Aboriginal Water Reserve - Policy Framework \(nt.gov.au\)](https://www.nt.gov.au/aboriginal-reserve/policy-framework)

<sup>30</sup> Marshall, V. (2017) [Overturning aqua nullius: securing Aboriginal water rights | AIATSIS](https://www.aiatsis.gov.au/our-work/overturning-aqua-nullius)

<sup>31</sup> [The Conversation: Terra nullius has been overturned now we must reverse aqua nullius and return water rights to First Nations People March 2022](https://www.abc.net.au/news/2022-03-15/first-nations-people-march-2022)

Heart in full, which will require establishing a constitutionally enshrined Voice and a Makarrata Commission for agreement making and truth telling<sup>32</sup>. The UNDRIP provides another important vehicle for legislative reform that upholds First Nations water rights, specifically with respect to the practice of FPIC.

She also emphasised some existing threats to making genuine progress, particularly the unwillingness of key institutions including Parliaments to move beyond a way of thinking that has existed since colonisation. That is, viewing First Nations as having no water rights, and the entrenched appetite of Governments to be led by major economic gains.

“We know this, we’ve all said this a million times before. Many people in this room have been a part of developing and pushing for First Nations-led initiatives and programs. So we all have ideas of what some good programs look like, what good consultation and actual empowerment looks like. This Roundtable is an opportunity to challenge the power dynamics and demand what we need to look after; our water, our communities, our families and our culture and country. We will no longer settle for anything less.”

Dr Josie Douglass (*Wardaman*)

**Dr Phil Duncan** (*Gomerai*), Adjunct Industry Fellow with the Australian Rivers Institute and board member of the Natural Resources Access Regulator’s, provided perspectives to preface the third workshop – How Do We Get There? He reflected on pathways for First Nations water rights and interests in the context of environmental management and conservation and the role of cultural heritage.

Dr Duncan elaborated on the concept of ‘Systems Thinking’ of the many pathways to managing and looking after water systems, which must recognise the value of Indigenous knowledges, customary practices and cultural connections in water governance and be intrinsically linked to the health of their Country.

He reflected on the timeline to achieving water rights dating back from the 1967 referendum and 1970’s Land Rights movement. Over 50 years later and after much advocacy from First Nations groups, little has progressed other than a few unremarkable provisions in Government policy leading to less than 0.2% of the total of national water access entitlements and very limited participation in water governance.

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<sup>32</sup> [Home - Uluru Statement from the Heart](#)

Critical is the inclusion of Aboriginal voices in water management. Water planning must be inclusive of traditional knowledges and Indigenous ways of thinking. First Nations need to be involved in decision-making to future proof water access for future generations. The impacts of climate change on food security, the environment and vulnerable communities is already being felt globally. The impacts of climate change is not a new problem. Saibai Islanders were Australia's first climate change refugees in 1947, over 70 years ago. Yet, the future of First Nations livelihoods continues to be overlooked and constrained by Governments' inaction which has ultimately led to the emerging climate crisis.

Poor water quality continues to be a major health issue for remote and regional communities. Providing adequate infrastructure, such as in Walhollow and Wallaga Lake Aboriginal communities, has shown to improve the quality of water and thus the quality of life for those communities.

In summarising, Dr Duncan highlighted some key mechanisms that can advance First Nations water rights and interests:

- A national governance body. For example, the First Peoples' Water Engagement Council (FPWEC) that was established in 2010 to provide advice to the National Water Commission (NWC) on how to improve First Nations access to water for cultural and economic purposes in water planning and management. This was identified as a priority envisaged under the 2004 NWI. FPWEC published an Options Paper for an Indigenous Economic Water Fund and Policy Framework in 2012 that is still relevant today<sup>33,34</sup>.
- Implementation of UNDRIP in water legislative mechanisms, such as the
  - *Water Act (Cth) 2007.*
  - *Aboriginal Land Rights Act 1983 (NSW).*
  - *Native Title Act 1993.*
- The significant body of research that has been and continues to be led by First Nations to advance their water interests, can inform public policy.

Dr Duncan's presentation can be viewed from the First Nations Portfolio web page<sup>35</sup>.

"In the Aboriginal world view, people and country, including lands, waterways, wetlands and seas, are independent entities that are intrinsically linked. We share a symbiotic relationship with our land and waters."

Dr Phil Duncan (*Gomerai*)

<sup>33</sup> [Duncan, IEWF Options Paper.pdf \(colorado.edu\)](#)

<sup>34</sup> ["SLIDES: Policy Framework: FPWEC: First Peoples' Water Engagement Council" by Phil Duncan and First Peoples' Water Engagement Council \(colorado.edu\)](#)

<sup>35</sup> [First Nations Portfolio - ANU - Home \(anufirstnations.com.au\)](#)



**Melissa Kennedy** (*Tati Tati Kaiejin*), **Brendan Kennedy** (*Tati Tati Elder*) and **Dr Erin O'Donnell**, Senior Lecturer at the University of Melbourne, provided a local perspective as part of the third workshop. They presented on processes that the Tati Tati Nation has been engaged. One project was developing the Margooya Lagoon report on establishing a Cultural Flows model on Tati Tati Country<sup>36</sup>. The report was intended to inform environmental water planning processes for the Margooya Lagoon and address issues of public land management laws and policies that exclude any cooperative arrangements with the Tati Tati Nation.

The concept for Cultural Flows that was used in the Margooya Lagoon report was modelled on the integrated land and resource assessment, planning and management framework developed by the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) organisation<sup>37</sup>. That framework recognises three key legal and policy requirements - water laws and rights; water management; and governance.

The Margooya Lagoon report identifies a set of legal and policy measures for a Cultural Flows relevant to the Tati Tati Nation and a set of strategic opportunities to using those measures to achieve revitalisation of Country and connection to Country.

The Tati Tati Nation has also engaged in the Victoria Government's Aboriginal Water Program. The program aims to improve both the recognition of First Nations values in caring for cultural water and landscapes across Victoria's waterways, and First Nations access to water for cultural economies<sup>38</sup>. The Government recently delivered the Report - Water is Life: Traditional Owner Access to Water Roadmap, which provides policy guidance for the Government to achieve First Nations self-determination through having access to Cultural Flows. The Roadmap is intended to inform the statewide Treaty process which is due to commence negotiations with First Nations peoples in the near future.

## Canadian Experiences

**Professor Deborah McGregor** (*Anishinaabe*), York University Faculty of Urban and Environmental Change, provided a pre-recording presentation regarding two projects relevant to First Nations in the Ontario Great Lakes region in Canada.

Professor McGregor detailed the Source Water Protection Project which is about improving drinking water quality in communities which is in a crisis due to industrial and other sources of pollution. The Source Water Protection Project is also about the perspectives of First

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<sup>36</sup> Environmental Justice Australia [Cultural-Flow\\_Margooya-Lagoon.pdf](#)

<sup>37</sup> [Cultural Flows – Murray Darling River Indigenous Nations \(mldr.in.org\)](#)

<sup>38</sup> [The Aboriginal Water Program](#) (Vic.gov)

Nations and their ongoing relationship with water that dates back 1000s of years<sup>39</sup>. The key challenge relates to jurisdictional issues. First Nations interests and related laws sit under Canada's federal jurisdiction, yet, provinces have jurisdiction over water through the Canadian *Constitution Act 1982*. Water legislation, such as Ontario's *Clean Water Act 2006*, applies to provincial lands and waters for people, but not for First Nation communities that come under the Federal jurisdiction - meaning there are no laws to protect communities' water. To address this gap, progress is being made with the implementation of Source Water Protection Plans. This involves engaging communities to prepare and implement their Nation's Plan to prevent, minimize, and control potential sources of contaminants in or near the community's raw water sources<sup>40</sup>.

The Decolonising Water Project seeks to enhance the protection of water and Indigenous water governance<sup>41</sup>. The project entails community-led research on water, including its ecological, socio-economic, cultural and spiritual dimensions. Lands and water are not only sites of learning, but are also actively involved in the process of education. The project involves a cohort of First Nations academics with expertise in water law, governance and community-based research, a First Nations Advisory Council and a network of employees and students who contribute research and technical skills.

Professor McGregor also highlighted six key instruments being used across Canada to advance First Nations water rights and water governance.

1. **Treaties.** Water is generally not mentioned in Treaties, but typically, waters define the boundaries of a Treaty in Canada. However, First Nations have unextinguished Aboriginal title to water because it was never extinguished under the Treaty process. As such, Treaties also govern water.
2. **UNDRIP.** Specific to Article 25 (see text box below). In Canada, a Bill (C-15) was passed in 2021 affirming UNDRIP as a universal international human rights instrument with application in Canadian law. The Bill requires the Government of Canada to take all measures necessary to ensure the laws of Canada are consistent with UNDRIP, and to prepare and implement an action plan to achieve its objectives.
3. **United Nations General Assembly Resolution (64/292)**, which explicitly recognises access to water and sanitation as a human right<sup>42</sup>.
4. **The SDGs**, adopted by 37 Countries in 2015, recognise the human right to clean water – SDG 6<sup>43</sup>.

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<sup>39</sup> [Water | Free Full-Text | Source Water Protection Planning for Ontario First Nations Communities: Case Studies Identifying Challenges and Outcomes \(mdpi.com\)](#)

<sup>40</sup> [First Nations On-Reserve Source Water Protection Plan \(sac-isc.gc.ca\)](#)

<sup>41</sup> [Decolonizing Water | Building Resilient Water Futures](#)

<sup>42</sup> [Water and sanitation | OHCHR](#)

<sup>43</sup> [THE 17 GOALS | Sustainable Development \(un.org\)](#)

5. **'Personhood' of Water.** Defined as "any subject matter other than a human being to which the law attributes personality"<sup>44</sup>. Legal 'Personhood' grants bodies of water the same legal rights in a courtroom as a person – water has the right to flow and maintain its integrity, such as being clean. This law is being used as a way to protect waters in relation to Indigenous laws in countries including Columbia, Aotearoa/New Zealand and Bolivia, and gaining momentum in Canada.
6. **The *Safe Drinking Water Act Ontario 2002*.** This legislation governs the *Clean Water Act 2006* in the Ontario province. It is being used to address the gap between the jurisdiction of provinces over water and the jurisdiction of the Federal Government over First Nations. However, it is not being well received by First Nations because they are positioned to carry all the liability, so continues to be negotiated.

*Article 25 of the UNDRIP*

*Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, water and coastal seas and the other resources and to uphold their responsibilities to future generations in this regard.*

Professor McGregor summarised by saying that First Nations cannot wait for the federal and provincial Governments to resolve the issues First Nations face in governing water. First Nations are organising themselves to live under their laws in relation to water protection and governance, such as through Source Water Protection Planning to assert their relationship to water and how others should respect those relationships. This includes creating pathways for intergenerational transfer of knowledge to future generations.

*"We can't wait for the decisions of governments to go through, the interests of governments change, causing uncertainty. We need to do our own work in relation to our rights and responsibilities to water."*

*Prof Deborah McGregor (Anishinaabe)*

Professor McGregor's video presentation can be watched from the First Nations Portfolio web page<sup>45</sup>.

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<sup>44</sup> [Legal Personhood: the Growing Movement to Give Bodies of Water their Day in Court - Chicago-Kent Journal of Environmental and Energy Law \(iit.edu\)](#)

<sup>45</sup> [First Nations Portfolio - ANU - Home](#)



**Mr Dana Tizya-Tramm** (*Vuntut Gwitchin*), Director of Arctic Circles Strategies, presented his perspectives as a First Nation of the North Yukon in Canada. He emphasised that the current situation is layered and complicated and that First Nations peoples way of life are constantly being threatened by economics and industry in Canada. The role of agreements to mitigate this prospect was the main focus of his presentation.

The Umbrella Final Agreement (UFA), is a framework agreement that was signed in 1993 by the Governments of Canada and Yukon and the Council for Yukon Indians (now Council of Yukon First Nations)<sup>46</sup>. The UFA provides the Yukon First Nations Aboriginal title over 41,595 km<sup>2</sup> in the Yukon, compensation, a set of management principles, structures for self-governance of heritage, wildlife, land and resources, and a Yukon-wide template for settlements (Final Agreements), including provisions related to taxation, Land Use Planning, and dispute resolution.

The UFA is not legally binding but serves as a political understanding between Yukon First Nations signatories and the Territorial and Federal Governments. They are viewed as 'modern treaties'. The UFA provides the basis for Final Agreements signed with individual First Nations. Eleven of the 14 Yukon First Nations have Final Agreements with the Government of Canada and the Government of Yukon, ranking the Yukon with the highest number of modern treaties with Indigenous Peoples in the world.

The Vuntut Gwitchin First Nation has a Final Agreement over about 50,000 km<sup>2</sup> of traditional territory that has the highest designation of surface and subsurface rights, and allocations of quality water. These lands were selected by the Elders at the exact water sheds knowing that all life, even bugs, need water.

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<sup>46</sup> [Umbrella Final Agreement | Government of Yukon](#)

Mr Tizya-Tramm highlighted two key challenges:

1. Implementation, and
2. Lack of baseline data on the quality of waters across their territories and on subsurface aquifers (which are at risk of being contaminated by industries such as oil and gas in neighbouring territories).

Challenges to implementation included:

- The colonial constructs under which agreements are negotiated, which essentially, are racist in terms of how they do not recognise First Nations sovereignty.
- Even though Governments have signed these types of agreements, it doesn't guarantee they will comply and uphold those agreements when moving ahead with economic development initiatives. For example,
  - In 2012, the Yukon Government moved to develop 80% of the 68,000 km<sup>2</sup> land mass of the Peel Watershed that includes six river systems. This was in contravention to the UFA and respective land use provisions under individual Final Agreements. It led to a legal action in 2016 that was won in the Supreme Court of Canada in favour of upholding the UFA.
  - In 2015, the Federal Government changed the *Canadian Navigable Water Act* (1985) to interfere with the protection of 99% of watersheds across the entire country<sup>47</sup>. This provoked extensive protests by First Nation peoples across the country.
- Limited capacity. Although First Nations have the right to undertake Land Use Planning under the UFA, many Yukon First Nations do not have appropriate resourcing to implement them. For decades Yukon First Nations have been advocating for more funding from Federal and Territory Governments to implement their Final Agreements.

Despite these challenges to implementation, modern treaties remain important tools that governments can be challenged on in courts to protect First Nations interests, even when not successful.

Getting Elders together with experts to capture the value of areas is vital. The wetlands in the Yukon are the driver of ecosystems traditionally used by First Nations. This knowledge is maintained and stretches back for millennia thanks to the intergenerational transfer of information from Elders. Capturing this intergenerational knowledge on the importance of these areas in planning processes is integral to First Nations maintaining and protecting those values against Government development interests for future generations.

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<sup>47</sup> [Canadian Navigable Waters Act \(justice.gc.ca\)](https://www.justice.gc.ca)

Mr Tizya-Tramm key messages regarding 'modern treaties' included:

- Though not legally binding they are a form of protection of rights that can be tested in the high court.
- They should be negotiated to include provisions for water quality.
  - Including water quality studies to establish baselines and for collection of ongoing water monitoring data that can be used to challenge any third party interest that may impact water quality.
- They should identify future risks to water and establish appropriate planning tools ready for future generations to minimise those risks.
- Funding must be part of the commitment so that
  - Community representatives can adequately participate in committees with other parties like Governments and industry, and
  - First Nations have access to evidence-based information to participate in decision-making and negotiations.
- Pre-planning is the key to ensure all rights and interests are captured.

“The Elders in our Territory that selected these watersheds as our highest level for protection in our areas that feed the lands and the animals, told us that that was our bank account, not what we could sell. So it is important to record these stories, to record their reasons.”

Mr Dana Tizya-Tramm (*Vuntut Gwitchin*)

Mr Tizya-Tramm’s video presentation can be watched from the First Nations Portfolio web page<sup>48</sup>.

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<sup>48</sup> [First Nations Portfolio - ANU - Home](#)



## Key Messages

Information collected from the eight tables during each workshop has been ‘cleaned’ of repetition and collated at **Attachment 4**.

A summary of each workshop is presented below including the de-identified voices at the Roundtable. Summaries draw from table responses at **Attachment 4** and the narrative of the workshop co-facilitators when wrapping up each session.

Due to time constraints and varying interests and expertise of individual participants, there is variability in the detail and depth of information provided for different scenarios in each of the workshops. It should be noted that the information and synthesis of key messages captured at the Roundtable may not reflect the views of all individuals participating in discussions. Similarly, they may not reflect all possible views due to the limited number of First Nations leaders and practitioners participating at the Roundtable.

## Where Are We Now?

*“The Roundtable has awoken a sleeping giant. That is water”*. Essentially, *“we are in a pretty shitty place”*. There are many issues caused by entrenched colonial racist policies and laws that continue to erode and devalue First Nations traditions, cultures, laws, sciences and economies, and degrade, over-extract and mismanage living rivers and ground water systems. This is having *“a massive impact on our communities’ well-being”*. Compounding this are the *“emerging impacts of climate change, our continued disengagement in decision-making”* and the preferential treatment of industry for economic gains over First Nations interests and the health of Country. *“Agriculture and industry control the public narrative*

*and political influence over Governments”*. This has critically impacted the formation of laws and water governance for which First Nations have no part in.

Key themes drawn from this session include:

- Colonial systems continue to impact on First Nations governance systems,
- First Nations people lack representation in water governance,
- Governments are failing to implement public policy commitments, and
- First Nations people lack water access entitlements.

### **Colonial Systems Continue to Impact on First Nations Governance Systems**

*“How do we tell our Elders we have the Land, but we don’t have the Water?”*

Colonial systems continue to separate water from land to market it for economic purposes. This is perplexing in context to First Nations holistic views and ways of managing Country. It was viewed by participants at the Roundtable that some headway has been made since colonisation in regaining land rights. The challenge now is for First Nations people and their representative bodies around the nation in regaining water rights and their governance regimes under the constraints of colonial systems.

*“At the foundation is the Crown, and then every layer above that are layers of white fella rights, and then somewhere above that are native title rights.”*

The challenge is to make sure that those untethered rights hovering over the top are anchored to the foundation. It was viewed at the Roundtable that to do this will require a different way of thinking about rights and agreements across all colonial systems. Critical to this will be leveraging those rights during the implementation phase of native title.

Water, as a resource, has multiple layers and uses but legislative frameworks and practices were regarded by participants as not differentiating these. Cultural values are still being parceled with environmental values. While the environment is getting some improved protections through various legislative provisions, this does not offer the same assurances for First Nations people with respect to their cultural imperatives. Further, it was stressed emphatically that environmental benefit must surpass economic benefit. Responsible and sustainable development needs to be standard practice and aligned to strategies mitigating climate change and other adverse impacts on both the environment and First Nations culture. It was identified that monitoring and evaluation frameworks are needed, as determined by First Nations people, to assess the cumulative impacts of development on Country and people and to hold Government and industries to account.

*“How do we progress beyond political whims and the political cycle?”*



Long-term targets are needed to secure First Nations water rights that go beyond election cycles. Similarly, strategies are needed to overcome the challenges of markedly different water practices implemented across State and Territory jurisdictions to achieve equity for First Nations, and in relation to their disparate land tenure across the nation. Although there is currently a political shift toward goodwill at the Federal level, how this filters down and translates across State and Territory jurisdictions is highly inconsistent in both its politics and policy reforms. Participants at the Roundtable were cognizant however of these complexities to First Nations peoples achieving water equity.

### **First Nations Peoples Lack Representation in Water Governance**

*“Water is the biggest issue and First Nations have very little say in policy and planning”.  
“We lack power, authority and processes to have a say.”*

First Nations peoples are underrepresented in all areas of water management, including associated legislative and policy measures. Current structures lock First Nations peoples out from having water rights. To redress this, participants called on governments to enable mechanisms for First Nations people to be represented in all water governance decision-making. While governments’ goodwill extends to improving engagement practices, the appetite from governments to truly embed significant reforms is not yet in scope.

*“This goes to the structure; and structure goes to governance; and rights have to be embedded into its infrastructure.”*

### **Governments are Failing to Implement Policy Commitments**

The implementation of the UNDRIP in all machinery of Governments was resoundingly argued at the Roundtable to achieve First Nations water sovereignty. Views expressed by the participants were the same as succinctly summarised by the Australian Human Rights Commission. The UNDRIP ‘affirms our rights to make our own decisions, to control our own organisations, to put in place governance bodies grounded in our culture, and to restore our societal and cultural structures, practices and knowledge systems, to emancipate ourselves from the inequalities we face’<sup>49</sup>. Yet, the implementation of UNDRIP continues to remain absent in Australian Federal laws and policy, in stark contrast to other countries, such as Canada and Aotearoa New Zealand. In Aotearoa, its Federal Government is developing a national UNDRIP implementation plan and a technical working group report, He Puapua, that outlines the approach.

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<sup>49</sup> [Incorporating UNDRIP into Australian law would kickstart important progress | Australian Human Rights Commission](#)

It was also argued by participants that many targets of SDG 6 are not being achieved. This is reflected in the 2021 State of the Environment Report, which is a reporting tool currently being used by the Commonwealth Government. The report advises that water related ecosystems are not being protected and restored because of growing pressures from climate change, habitat loss, invasive species, pollution, and resource extraction. Further, access to clean, healthy drinking water for First Nations communities' remains below standard<sup>50</sup>.

The advice in that report contrasts with the United Nations Association of Australia 2022 statement. It reported that Australia was on track to achieving at least two of the 17 SDGs by 2030 - Goal 3, Good Health and Wellbeing, and Goal 6, Clean Water and Sanitation<sup>51</sup>. The Goal 6 targets include achieving by 2020, protection and restoration of water related ecosystems, and by 2023, equitable access to safe drinking water, improving water quality by reducing pollution, increasing water efficiency across all sectors, and implementing integrated water management. These inconsistencies with the 2021 State of the Environment Report bring into question the connectivity of government instruments, including CtG targets, with international instruments. It suggests that the aggregation of all national data, such as measures against SDG 6 for access to clean water, is dissociated from the real situation in First Nations remote and regional communities which are most vulnerable.

Another clear message from the Roundtable was that although there is good intent and progress of some Governments, communities are frustrated by the lack of progress by the Commonwealth on its 2018 commitment to make \$40 million available to buy water entitlements for the benefit of Aboriginal people across the Murray Darling Basin. This criticism extends across jurisdictions and tersely communicates the lack of water equity for First Nations people who hold only 0.2% of the total national water holdings.

### **First Nations Peoples Lack Water Access Entitlements**

*"0.2 % is insignificant, it needs to be 100%."*

There was significant discussion at the Roundtable about water allocations for First Nations Peoples, or lack thereof. It was agreed that First Nations peoples need to hold all the water rights and be the water holders. Further, they need to be central in decisions on how water should be used and allocated for activities on Country. In this context, priority setting, such as through water planning process, should be done at the local level to meaningfully enable FPIC and self-determination on how water should be managed relevant to local customs. This was positioned by participants as the appropriate distributive justice model.

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<sup>50</sup> [Key findings | Australia state of the environment 2021 \(dcceew.gov.au\)](https://www.dcceew.gov.au/state-of-the-environment/2021)

<sup>51</sup> [Sustainable Development Goals \(una.org.au\)](https://www.una.org.au)

The CtG Agreement mandates new ways of working across Governments to achieve better life outcomes for Aboriginal and Torres Strait Islander people, including in co-designing priorities and measures through agreed targets. The Roundtable however, highlighted frustrations with the slow pace of the Joint Council for CtG to deliver its 2022 commitment to recommend a new Inland Waters Target to First Ministers, the President of the Australian Local Government Association and the Coalition of Peaks for agreement<sup>52</sup>. This new target (87 b) is intended to measure progress towards securing Aboriginal and Torres Strait Islander interests in water bodies inland from the coastal zone under state and territory water rights regimes. The target includes collecting data to identify a nationally consistent measure for inland waters that encompasses, for example, water licenses, water rights and water allocation plans. The Inland Waters Target was meant to be agreed within 12 months of signature. Today, however, neither the water allocation target nor the delivery framework have been agreed, again raising concerns at the Roundtable that Government commitments are not being met.

*“Twenty years on from the NWI, both the practical and legal reform of water laws continue to limit our rights and interests in water access entitlements and governance.”*

This view is reflected in the 2021 Productivity Commission review of the NWI<sup>53</sup>. The review highlights the ongoing contention of First Nations people that they should be allocated cultural water entitlements that are beneficially owned by them, separate to the environmental allocation in water planning processes, for both cultural and economic purposes. Further, the Productivity Commission called for greater understanding of First Nations ‘aspirations for greater access to, and control over, water resources’ (p.4). ‘...more needs to be done to include Traditional Owners’ interests in water in jurisdictional planning and the management of water. Slow progress against commitments made in the 2004 National Water Initiative, coupled with the contemporary context including the Closing the Gap and wide support for action, warrants inclusion of both a dedicated objective and new element in a renewed National Water Initiative’ (p. 12). Renewing the NWI was widely supported at the Roundtable but participants reiterated that it must be done cooperatively with First Nations peoples.

Overall, it was regarded by participants that governments need to be accountable and follow through on commitments by undertaking structural reforms that enable legislative and statutory frameworks for procedural and distributive water justice for First Nations people.

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<sup>52</sup> [Joint Council on Closing the Gap Communiqué](#)

<sup>53</sup> [National Water Reform 2020. Productivity Commission Draft Report February 2021](#)

*“Things are either not happening, disjointed, or not having the intended impact on the ground at the local level. There is a real need for long term and bi-partisan change.”*

“We are embarking on one of the most perplexing policy and legal journeys to regain our sovereignty of water. The 2002 Lingiari Onshore and Offshore water rights discussion booklets, and the multitude of positions and statements delivered by First Nations since then, all assert our rights and interests. Yet today, there is still no clear articulation of what water means for Indigenous people, from Indigenous people, in Government processes and instruments.”

Mr Joe Morrison (Dagoman and Mualgal)

### What does ‘Good’ Look Like?

*“Water needs to provide health equity for all, for our future generations.  
Country first, economy second.”*

There were many and varied views about what ‘Good’ looks like in terms of First Nations self-determination. All were principled on the fundamental recognition that First Nations peoples never ceded sovereignty over their lands and waters during settler colonisation.

The notion of what ‘Good’ looks like was considered by the Roundtable as, simply, not adequate. First Nations peoples aspire for transformational changes to colonial systems that will enable their communities and waterscapes to ‘Thrive’. This was regarded as a human right, yet one that First Nations remain at a distinct disadvantage. Aboriginal people and Torres Strait Islanders are yet to be recognized in Australia’s constitution.

*“The recognition of First Nations people in the Australian constitution will secure our water sovereignty.”*

Some key messages raised during this session included calling for improved water quality for Country and community, monitoring water source quantity and impacts from different water uses, and for holistic management of Country that is inclusive of cultural values and practices. The benchmark, as a minimum and basic human right, is for communities to have access to clean drinking water. In addition, communities should have equitable access to water for social, cultural, economic, environmental, and health and wellbeing benefits.

*“As First Nations we have the right to self-determine and prosper from our cultural economies that integrate all these measures for equitable water access and a healthy Country”.*

The key themes drawn from this session include:

- Instruments that restore First Nations peoples’ water rights.
- Participation in decision-making and water governance.
- Capacity and two-way engagement.

Each of these themes are discussed further below.

### **Rights and Instruments**

One position that is growing momentum globally, is that rivers should be seen as ‘living waters’. That is, some rivers are recognised in laws as legal persons and/or living entities, with a range of legal rights and protections<sup>54</sup>. The case in Canada, of the legal recognition of personhood of water, was discussed on page 31. The concept of ‘living waters’ is also being discussed in Australia and in context to First Law and First Nations customs that ensures the health of living systems<sup>55,56</sup>. The Roundtable regarded that recognising inland waters as living systems could better protect and value the integrity of waterways and associated customary systems.

*“The legal review of water laws is needed to protect our rights and values (bio-cultural and economic)”.*

Though with challenges, as described above, international agreements were viewed as possible avenues through which to achieve positive outcomes, if governments reframe their connectivity with national reforms. This is particularly relevant to connectivity between SDGs and CtG targets with the NWI. Disaggregating data concerning First Nations interests from the general Australian population would present a more compelling account from which to accurately report on international targets and to improve domestic public policy impact and subsequently, governments’ accountability in meeting their commitments.

The position of the Roundtable however, was that UNDRIP is the primary international instrument that should be used to make transformational institutional change. The role of UNDRIP to achieve water sovereignty was consistently reaffirmed by participants. As stated by the Australian Human Rights Commission, ‘incorporating UNDRIP into the structures of

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<sup>54</sup> O’Donnell, E. (2021) Rivers as living beings: rights in law, but no rights to water? Griffith Law Review 29(4), pp 643-668

<sup>55</sup> Martuwarra RiverOfLife, Taylor, K. & Poelina, A. (2021) Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia, Australasian Journal of Water Resources, 25(1), pp 40-56

<sup>56</sup> Martuwarra RiverOfLife, Pelizzon, A., Poelina, A., Akhtar-Khavari, A., Clark, C., Laborde, S., Macpherson, E., O’Bryan, K., O’Donnell, E., and Page, J. (2021). Yoongoorrookoo: The emergence of ancestral personhood. Griffith Law Review 30(3), pp 1–25

this nation - its laws, policies and institutions - would be a strong commitment from all Australian Governments to working in genuine partnership with First Nations people to respond to our needs and aspirations. Like the Uluru Statement, the declaration is a beacon that can guide us on our way to reconciliation and to a better and fairer future.'

The Roundtable affirmed that First Nations peoples must be involved in all decision-making at every level regarding the development of water plans and the allocation of water for different purposes. FPIC, as presented under UNDRIP, should be enshrined in the *Water Act (Cth) 2007* and regulatory frameworks for all government water planning processes. Further, FPIC should be enshrined in all the practices of governments and industry when making decisions about water.

The Roundtable went further and stated that UNDRIP should also be enshrined in other Australian laws regarding the protection of Aboriginal heritage, biodiversity and wetlands as they relate to water resources. In particular, reform of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was highlighted. It has limited inclusions for First Nations rights and interests, in this regard. The 2019 Independent review of the EPBC Act identifies both, that places with Indigenous heritage can be protected and managed under the EPBC Act, and that there are mechanisms in the Act to support the contribution of Indigenous Australians through their active involvement in the management of Commonwealth reserves<sup>57</sup>. This could include the management of water as it relates to provisions under UNDRIP.

DCCEEW is currently establishing some guidance through processes of the Interim Engaging with First Nations People and Communities on Assessments and Approvals under the EPBC Act (Interim Guidance). The Interim Guidance it intended to outline the statutory obligations that apply to, and the Department's expectations of, proponents engaging with First Nations people and their communities under the EPBC Act<sup>58</sup>. The extent that UNDRIP principles will be adopted in this guidance will be known sometime in 2023. It was expected by the Roundtable participants that the EPBC Act must empower First Nations landowners to participate in also commercial decisions about land uses so that Country can be holistically and sustainably managed in accordance with their cultural obligations, as well as for social and economic benefits.

The Roundtable recommended that principles of UNDRIP also be enshrined in the NWI. The NWI is positioned by the Commonwealth Government as providing a blueprint for national water reform. It concerns the implementation of nationally agreed standards that seek to optimise economic, social and environmental outcomes in relation to Australia's inland

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<sup>57</sup> [Indigenous involvement | Independent review of the EPBC Act \(environment.gov.au\)](#)

<sup>58</sup> [The Interim Engaging with First Nations People and Communities on Assessments and Approvals under Environment Protection and Biodiversity Conservation Act 1999 \(interim guidance\) - DCCEEW](#)

waters. Though the agreement was negotiated and settled without input from First Nations peoples or their organisations, it does, in general, take account of First Nations interests<sup>59</sup>. This includes allocations of water from the consumptive pool to legally recognised native title holders, statutory recognition of cultural values and the restriction of water trading where it impacts First Nations cultural heritage.

*“Despite having significant land holdings, the lack of legislated rights to inland waters puts us at a distinct disadvantage in terms of our economic development and participation in decisions regarding the management and use of inland waters.”*

First Nations participation in the review of the NWI was viewed by the Roundtable as critical to redressing this and other water governance inequities. Participation must be at all scales of governance - local, regional, catchment and national. The Productivity Commission concluded in its 2021 report that the NWI be revised to reflect the importance of both sustainable water resource management and effective, equitable and efficient water service provisions. Water resource management should include the new objective – influence for Traditional Owners - to recognise the interests of First Nations, asserting that water entitlement frameworks need to consider all key water users, and water planning should be upgraded to this best practice.

The Productivity Commission recommended that this new objective should be developed by CAWI and report directly to water ministers overseeing the revision of the NWI to give First Nations issues the status in policy making as implied by CtG. It stated, ‘the new element should include advice on water management measures to achieve cultural and economic outcomes for Aboriginal and Torres Strait Islander people and the inland waters and service delivery targets in the 2020 National Agreement on Closing the Gap’. The Productivity Commission’s position that the provisions of the NWI be coupled with the CtG Agreement was positively endorsed at the Roundtable provided that this is supported by appropriate policy and legislative mechanisms.

A concern raised at the Roundtable was the potential pressure on CAWI to achieve significant traction in national water reforms in a limited time frame with limited resources. CAWI is made up of 12 Aboriginal and Torres Strait Islander members from across Australia and gives advice to the Commonwealth Government<sup>60</sup>. In 2022, DCCEEW extended CAWI’s term of appointment until 31 December 2024 to provide advice on national policy and strengthen existing jurisdictional approaches to accommodate First Nations interests, and in the development of the national reforms of the NWI. The role of CAWI was positively

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<sup>59</sup> [O’Donnell, M. \(2011\) Indigenous Rights in Water in northern Australia, NAILSMA- TRACK Project 6.2, John Toohey Chambers, Darwin.](#)

<sup>60</sup> [National water policy - DCCEEW](#)

acknowledged at the Roundtable. However, CAWI must be appropriately resourced and supported to achieve these significant activities.

*“Treaty will enable the primacy of First Nations rights and our ability to negotiate those rights”.*

Another resounding key message from the Roundtable was using Treaty as an instrument to achieve First Nations water sovereignty. Treaty has re-emerged in Australian political discourses and being embarked upon in some States and Territories. As discussed previously in the Canadian experience, Treaties can recognise the unique status, rights, cultures and histories of First Peoples and provide a path to negotiate the transfer of power and resources to First Peoples, including water, so that they have greater control over their own lives.

Similar to learning from international experiences, participants were interested in learning from processes occurring across Australia. In this context, the processes of the Victorian Government were viewed positively by participants and could provide a model for other jurisdictions to follow similar processes. The Treaty processes in Victoria is committed to implementing the Uluru Statement from the Heart, including facilitating a First Nations voice to its Government<sup>61</sup>. Governance of the Treaty process is progressive. The First Peoples’ Assembly of Victoria and Treaty Authority, the Yoorook Justice Commission, have been established to formalise Truth-telling, grants and training packages for community infrastructure and programs, and Cultural Heritage plans, register and enforcement measures. Governance also includes institutions, such as the Federation of Victorian Traditional Owner Corporation. This institution supports cultural custodians benefit from the sustained connection to their Country by instrumentally supporting their capacity to participate in decision-making throughout the Treaty process, including negotiating greater participation in water governance<sup>62</sup>.

Equally important to achieving self-determination, are the land holding bodies created under land rights legislation and Native Title Prescribed Body Corporates to negotiate agreements with Governments and corporations, known as Indigenous Land Use Agreements (ILUAs). There is extensive experience and learnings in this area from several decades of negotiations, mostly with minerals and energy companies. Not all these experiences have been positive. Some, like Rio Tinto’s destruction of a significant cultural site at Juukun Gorge, have been outright traumatic<sup>63</sup>. Further, ILUAs have typically provided

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<sup>61</sup> [Treaty for Victoria | First Peoples - State Relations](#)

<sup>62</sup> [Treaty — FVTOC](#)

<sup>63</sup> [Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia – Parliament of Australia \(aph.gov.au\)](#)



marginal benefits associated with cash dividends rather than meaningful partnerships in the land use activity.

The 2020 Yamatji Nation Land Use Agreement, however, was viewed as a landmark example of improved agreement making because it has been fully informed by Yamatji native title holders<sup>64</sup>. The ILUA is made up of a package of agreements, such as for heritage, business development, housing, conservation and for water access entitlements. As part of the ILUA, the Western Australian Government Department of Water and Environmental Regulation has committed to a \$21.3 million water package<sup>65</sup>. The package includes the creation of a Strategic Aboriginal Water Reserve that will be used solely by the Yamatji Nation. It also includes funding to undertake groundwater investigations to better inform water allocation practices and provide long term water monitoring, and jobs and training for the Yamatji Nation to develop and manage their Aboriginal water reserves.

*“Native title recognises our unextinguished cultural rights to our lands and waters, but does not recognise our economic rights. It does however provide a mechanism to influence legislation and policy to improve our capacity to self-determine our rights and interest.”*

The Roundtable acknowledged that instruments for land rights and native title are also important to improving laws and regulations to support First Nations water governance. For example, the *Aboriginal Land Rights (Northern Territory) Act 1976* provides the legal framework for progressing social, commercial and economic development activities on Aboriginal land on behalf of traditional Aboriginal owners. This has typically been used for third parties to engage in Section 19 land use agreements but could be a significant growth area for Aboriginal landowners to lead and self-determine their land use interests. Similarly, native title also provides powers to native title holders through the ILUA process, as described above regarding the Yamatji agreement. Native title was viewed by the Roundtable to be another primary instrument to enable protection of Aboriginal interests and an opportunity to improve decision-making power over inland waters.

*“ First, decolonise water legislation, policy, planning and science – culture will lead us to the rest”.*

### **Participating in Decision Making and Water Governance**

*“We need a clear position and leadership.*

*First Nations perspectives must be clearly outlined and prioritized.*

*Local perspectives must be connected to jurisdictional, regional and national ways of doing things. It needs to be a bottom-up approach, community-led.*

*There needs to be a strong focus on UNDRIP. Everything must be underpinned by FPIC.*

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<sup>64</sup> [Yamatji Nation Indigenous Land Use Agreement Fact sheets \(www.wa.gov.au\)](http://www.wa.gov.au)

<sup>65</sup> [Water Package Yamatji ILUA \(www.wa.gov.au\)](http://www.wa.gov.au)

*We need it now; we need to think forward 5-15 years, succession planning – thinking about our future leaders; and we need to plan ahead 15-30 years – is Treaty coming? We need adequate frameworks and infrastructure through our institutions to properly engage, other than the few ‘advisory’ committees at the national level that have no real power or authority and limited capacity.”*

In this session, discussions again turned to the layering of governance. *“First Nations already hold their own authorities of ‘Government’.”* However, that authority is superseded by the Crown, even though First Nations never ceded their rights over Australia’s lands and waters. Governments need to appreciate First Nations ‘Government’ and governance, and that there must be a cohesive framework for communication between all layers of governance. First Nations peoples need both autonomy in making decisions about their communities, and strong bilateralism regarding the political, economic and cultural relations of the nation, its regions and local communities. *“Local nation rebuilding needs local ownership, control and governance.”*

*“All water is First Nations water, in all forms. Governance of water must be in the hands of each First Nation. This needs to be a separate governance structure to Government.”*

A clear message from the Roundtable was that a nation-wide statutory body with authority over First Nations water rights is essential to securing water sovereignty. The body must have strong powers of authority, including veto powers, to guide decision-making and directly inform Governments regarding all First Nations social and cultural determinants in relation to water. Despite its national remit, it must also facilitate a bottom-up approach. To enable this, it was suggested that each First Nation or First Nations groups needs its own institution, also independent of Government structures, to determine how their water rights will be managed.

In this regard, the 2010 Echuca Declaration remains relevant today. Governments ‘must identify funding and non-monetary mechanisms for the allocation of water entitlements’ to First Nations and ‘transfer water entitlements to such incorporated body as the Indigenous Nations may nominate’<sup>66</sup>. The Roundtable asserted that authority must be positioned within First Nations institutions to determine water use purposes for commercial, social, cultural and environmental benefits and to inform laws, regulatory measures and policy created through Government institutions so that their native title rights are upheld.

It was also argued by Roundtable participants that while First Nations should be able to self-govern without Government intervention, they also need to participate in collective decisions concerning water management. This includes other scales of co-governance at catchment and regional levels. Co-governance should be ‘trilateral’ in construct, enabling

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<sup>66</sup> [Echuca Declaration \(culturalflows.com.au\)](http://culturalflows.com.au)

key parties from industry water user groups, government policy makers and First Nations custodians upstream and downstream to determine best practice water management. In this regard, the Natural Resource Management model was proposed because it integrates the management of all natural resources across appropriate scales of governance (from local to national) and facilitates processes that can result in partnerships and participation in water planning.

The co-governance model must be principled on respectful engagement, UNDRIP, FPIC and equal partnership. Co-governance requires unpacking what co-design means to everyone, negotiating agreed terminology, and securing positions of leadership for First Nations people. The purpose of co-governance is to share decision-making, agree to actions or activities, hold accountability for the implementation of those activities, provide evidence-based assessments to negotiate trade-offs, and monitor and evaluate progress and impacts.

To achieve these scales of governance requires a transformational shift away from the power of industry over Government decision-making to one that is centered on the health of Country for future generations. This was viewed by participants as necessary to minimize and adapt to the impacts of climate change on the future of national food security and water supply. Integrated holistic assessments of catchments concerning impacts to its wellbeing, including economic, social, cultural, environmental (quality, quantity, health of ecosystems and biodiversity), and people's health through co-governance models was considered to be the best practice model.

### **Building Capacity – two way engagement**

To exercise autonomy over water management, First Nations communities and their institutions will be required to build their capacity to develop and determine targeted solutions, implement actions and measure impacts. Fundamental to this is capacity building, through change management, of industry and Government to properly recognize First Nations rights and interest in business and public policy, and laws and regulations to account for provisions of UNDRIP and FPIC.

Additionally, First Nations need access to resources to undertake their own catchment planning. The Roundtable agreed that First Nations need resources to organize institutional facilitation of negotiations and tradeoffs with Governments and industry regarding water access and to co-design and measure accountable targets. Decisions need to be evidence based, for example by mapping values and opportunities for cultural, social, environmental and economic benefits. Transparency and access to data from other institutions is also needed to inform decision-making. The ability to undertake autonomous place-based research is also necessary to investigate matters of relevance to the community. This includes engagement of academic expertise and legal advice. First Nations want data sovereignty and greater protections for their intellectual property rights.

*“First Nations and their organisations should be the regulators”.*

Implementation of water plans is critical to the capacity development model. A multipronged approach that includes funding, training and job creation was proposed at the Roundtable to support communities and their institutions create and implement their water management plans. This includes enduring funding to support training and employing community water Rangers, compliance officers and researchers to monitor water quality and quantity, and to measure and monitor the health of Country and people in their communities.

By mapping and planning for the management of Country, the economic and land use opportunities through water access entitlements can be identified. However, community planning practices are resource intensive because it requires time and expertise to enable the process. Further, resources are needed to support feasibility studies, business planning, and negotiate business partnerships and agreements that rely on water access entitlements. The Roundtable postured that the question of how these resources are accessed equitably needs further attention, including an appropriate funding model that provides accessibility to First Nations communities and their organisations under an overarching national framework.

A community of practice to network interests and solutions was also identified as a need and at all scales of water governance. From community, through planning processes, to catchment and regional frameworks, this community of practice could be similar to the Resource Land Management model mentioned previously, and at appropriate scales, such as for MLDRIN, Aboriginal Land Councils and Native Title Representative Bodies.

This community of practice should extend across national and regional forums. Although the Roundtable was not entirely representative, with many First Nations water practitioners missing from the conversation, the Roundtable was still viewed as a landmark meeting due to the lack of national dialogue concerning this interest over the past few decades. National dialogues among the leadership, such as through Roundtables, and with practitioners working at the community level, similar to national and regional Ranger forums, facilitate a community of practice. Investing in and supporting the Roundtable to continue was a valued proposition.

The Roundtable also believed it necessary to support First Nations leadership, capacity and debate at the national level. Without diminishing the important role of CAWI, the committee is reliant on only a small membership and on the processes of the Commonwealth.

*“We believe that a revised First Nations-led national approach to securing our freshwater rights is a national urgency”.*

## How Do We Get There?

*“We need to make sure that there is constant collaboration and co-design, that governments are putting UNDRIP into practice and that there is a transformational shift from ‘just awareness’ to ‘true competency’”.*

The Roundtable indicated that to get there requires a level of leadership, commitment and readiness in Government for new approaches to implement First Nations water rights and interests.

States and Territory Governments must show a willingness to commit to new forms of water planning, informed and determined at the local and catchment levels using agreements - such as under the Treaty process that is soon to commence in Victoria.

Governments also must be held accountable to existing and future policy commitments. This includes existing commitments under both national and international agreements and to future legislative reform to fulfil those agreements and recognise First Nations water rights. All such policy must be designed and implemented cooperatively with First Nations peoples at appropriate scales of governance.

*“We need to add in a regulatory and compliance framework to show transformation in western systems of authority with respect to First Nations governance and law systems through implementation actions of legislation, regulations and public policy”.*

It was proposed that, similar to the role of the State of the Environment reporting tool, a State of First Water Law, or similar, should be reported every five years to assist with measuring water policy impact and accountability.

The Roundtable asserted that Governments need to “rethink” the funding model and commit adequate and enduring resources that extend beyond governments’ election cycles. It was proposed that organisations, such as a First Nations Water Trust or Water Funding Body, which has statutory responsibilities, could provide both long term funding security and accountability. Program funding was viewed as being necessary for First Nation representative bodies and organisation to both support their communities in water planning and land use activities and to inform public policy.

*“Following the High Court decision on the Akiba case, we need to lean into ‘the right to take for any purpose’<sup>67</sup>. The right to use water, for whatever purpose. We need to understand that, and all of the determinations that preceded Akiba. We need to ensure that we capture*

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<sup>67</sup> Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v. Commonwealth of Australia and Ors [https://www.hcourt.gov.au/cases/case\\_b58-2012](https://www.hcourt.gov.au/cases/case_b58-2012)

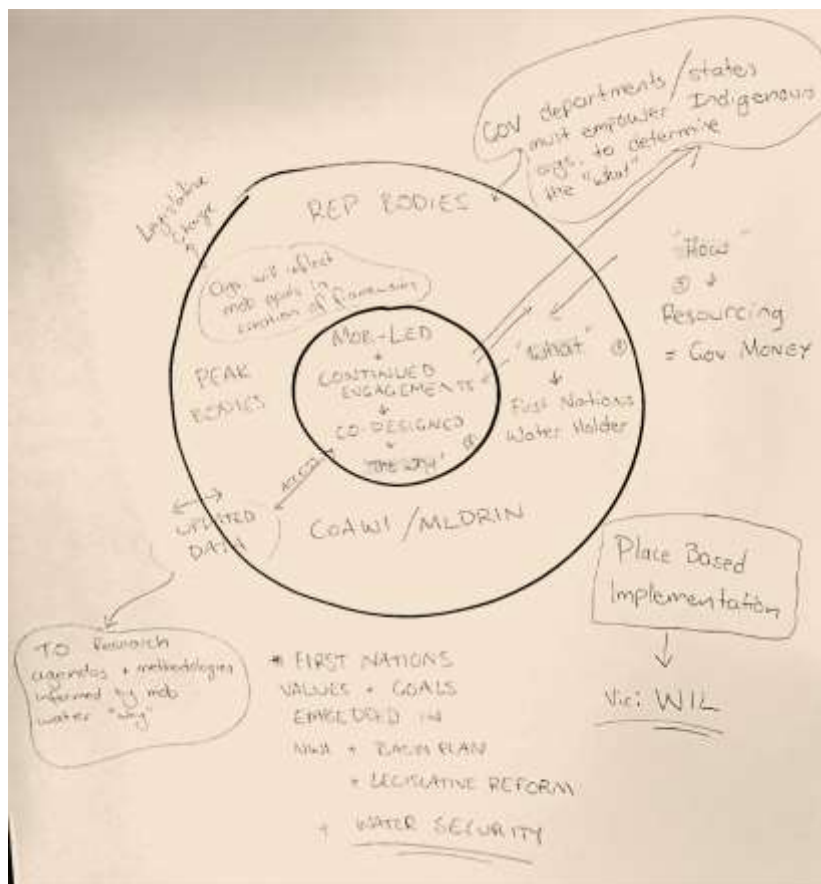
*the lessons from these determinations. It is important for native title to include our inland waters and this needs to be reviewed across the country.”*

Participants at the Roundtable expressed that a fundamental shift in water reform must first be underpinned by UNDRIP and FPIC. It is a priority that UNDRIP is embedded in regulatory mechanisms so that key provisions, i.e., FPIC, are enforceable across all water governance practices.

*“Water reform needs to be done with a cultural lens and be ground-up so that it is properly informed at the community level. We can’t leave anyone behind.”*

Equally important is establishing the enabling environment. An enduring governance model is required to build the capacity of community decision-making in Federal, State and Territory water policy and legal instruments. The Roundtable recommended that a National First Nations Body is established, such as, a National Indigenous Water Council or Alliance (National Body) could provide such guidance. The National Body would be governed by First Nations members appointed by their community or representative organisations.

The role of the National Body would be to provide the vehicle to progress the recommendations of the Roundtable through the implementation of a First Nations-led Water Reform Agenda.



**Fig 5** Schematic of an operating environment to implement First Nations interests proposed at the Roundtable.

## Recommendations

A detailed list of recommendations collected from table discussions is provided at **Attachment 4** under ‘*How do we get there*’. A summary is provided below.

The Roundtable called for urgent action to secure recognition and protection of First Nations water rights through Treaties, legislation and other policy means and for the Federal Government to be held to account on its commitments.

*“A roadmap of interim and long-term processes is needed to navigate and measure progress.”*

The Roundtable recommended that Federal, State and Territory Governments must:

### **1. Recognise First Nations people’s water rights and interests.**

- UNDRIP must underpin national best practice standards implemented across all machinery of Governments, including relevant legislation and policy, such as
  - In the review of the *Water Act (Cth) 2007*,
  - Renew and implementation of the 2004 NWI,
  - In the 2026 review of the Murray-Darling Basin Plan, and
  - In the review of the EPBC Act 1999.

### **2. Supply clean and secure water to First Nation remote and regional communities.**

- Through infrastructure and water monitoring programs that are owned and managed by First Nations communities, respectively.
- Through commitments to SDG # 6.

### **3. Authorize First Nations governance and institutions.**

- To be engaged at all levels - local, catchment and regional and jurisdictional - in decision-making regarding their lands and waters.
- Including at the national level – such as through a First Nations National Body (Council/Alliance) – that is independent of Government to
  - coordinate across different scales of First Nations water governance,
  - manage and lobby legislative changes,
  - undertake evidence-based research, and
  - inform public policy.
- Better support the role and capacity of CAWI.
- Undertake broad scale consultations with First Nations peoples and their institutions to agree on the appropriate scales of water governance.
- Through appropriate scales, First Nations peoples and their institutions hold and manage water access entitlements for community benefit.

#### **4. Build First Nations institutional capacity.**

- To participate in all levels of water governance, including to hold and manage water access entitlements for community benefit.
- River Ranger programs, beyond just the Murray Darling Basin.
- Education and training for local communities on water quality and quantity monitoring programs.
- To negotiate and implement local and catchment First Nations Water or Land Use Plans.
- To undertake place-based research.

#### **5. Address the significant gap in water equity and justice between First Nations and other water users.**

- Through national policy and legislative instruments and consistent jurisdictional regulatory mechanisms (i.e., Treaty, Land Use Planning Agreements, First Nations Water Catchment Plans).
- Provision, through statutory mechanisms, equitable water access entitlements to First Nations peoples or their institutions (i.e., Land Councils or Prescribed Body Corporates) to hold, manage and participate in water governance.
- Through commitments to the CtG inland water target and a renewed NWI.

#### **6. Make transformational institutional change at national and jurisdictional levels.**

- To align with National Intergovernmental Agreements – NWI, CtG – and United Nations Agreements – UNDRIP, SDGs – and include accountable measures within and across Federal, State and Territory Governments, with respect to recognising and implementing First Nations water rights in policy and legislative measures.
- Engaging holistic land management practices with respect to managing water, including balancing environmental and social benefits and cultural values with economic gains.
- Implementation of UNDRIP is a normalised practice of government when engaging with First Nation groups and developing related public policy and legislation.
- More First Nations people are employed as water practitioners and hold more positions of leadership across all levels of the bureaucracy.
- Stronger First Nations representation and leadership in existing catchment boards and committees.

#### **7. Make changes to relevant legislation.**

- Federal, State and Territory water planning and management legislation and regulatory mechanisms must be consistent with UNDRIP, native title and a renewed NWI.



- Through the review of the EPBC Act and *Water Act (Cth) 2007*.
- To establish statutory mechanisms such as a national First Nations water holding or funding body.
- To ensure water planning committees established under water legislation are led by First Nations people.

#### **8. Recognise First Nations people in the constitution.**

- First Nations people must be able to advocate their water rights and participate in any national debate regarding their interests.

#### **9. Implement their policy commitments.**

- This must be done in cooperation with First Nations peoples through their authorities and institutions, as determined by them, including
  - \$40 million toward First Nations water entitlements from the Murray-Darling Basin.
  - CtG regarding setting and implementing a national water target and framework.
  - \$9 million to establish a Water Trust – governed by First Nations.
  - Renewal of the NWI.
  - Achieving SDG #6.
  - Implementation of UNDRIP.

#### **10. Resource a First Nations-led research agenda that can inform place-based development and public policy – i.e., a *Living Waters Cooperative Research Centre***

- First Nations must lead place-based and evidence-based research to support their management of water and self-determine and measure community benefits from their governance of water.
- A research agenda could include:
  - Policy and legislative review to improve recognition of First Nations water rights.
  - Frameworks to benchmark and measure benefits from water access entitlements.
  - Establish long term catchment level baseline assessment and monitoring plans for management water quality and quantity.
  - Support infrastructure and innovation to improve community access to clean drinking water.
  - To implement First Nations Water Plans or Treaty.

### **11. Share data and give First Nations sovereignty over their data.**

- Communities must be able to generate and secure their own intellectual property for decision-making in water governance and for facilitate intergenerational transfer of cultural knowledge systems.
- Establishing accessible data depositories and policy at appropriate scales, e.g., a First Nations Murray-Darling Basin Authority database/repository.
- Create legislative and policy measures for data collection.
  - In line with FPIC.
  - Communities set data collection parameters relevant to their local needs.
  - Communities have the right to refuse third party access to their information.
  - To protect Indigenous Cultural Intellectual Property.

### **12. Resource and legislate an enduring funding model – i.e., an *Indigenous Economic Water Fund/Trust***

- First Nations institutions must be appropriately resourced to participate in water markets, to engage in government processes, undertake research to inform decision-making, manage water access entitlements for community benefit, and facilitate community water governance.
- Funding for local groups such as Land Trusts and Prescribed Body Corporates to purchase water entitlements and implement local water plans.
- Funding to convene and participate in First Nations water Boards and Committees.
- Funding for Land Councils and representative bodies to establish water units to support local groups.
- To undertake First Nations-led research.
- To manage Water Rangers and a relevant First Nations workforce.

### **13. Support appropriate scale communication processes and networks.**

- First Nations need mechanism through which to transfer information, and to engage in debates and advocacy across regional and national levels through various forums.
- Campaigns advocating CtG in water equity.
- Strategies to raise public and industry awareness regarding First Nations rights and interests, and First Nations understanding of the interests of other water use groups.

## Next Steps

*“We want to be the leaders in all water management frameworks. All Nations need to have a voice. We need to act now to secure ongoing recognition and protection of our rights through Treaties, legislation and other policy means.”*

To progress these goals, it was recommended that a First Nations Working Group be convened to facilitate the development of a First Nations-led, nationally consistent approach to First Nations’ water rights. The Working Group would be a loose federation of experts with experience in advocating the rights and interests of First Nations.

The role of the Working Group is to implement recommendations of the Roundtable and include establishing a First Nations alliance that can negotiate and seek to reach a national accord with all Australian Governments to implement a new approach.

The First Nations Working Group would have strong engagement with the ILSC and NNTC to develop and implement a First Nations water reform agenda. CAWI and the Coalition of Peaks could advocate the First Nations Roundtable Communique and recommendations in relevant policy settings and also engage in the process.

To progress convening the First Nations Working Group, the Roundtable co-conveners agreed to act collectively to progress convening the First Nations Working Group, as a matter of urgency with respect to engaging with appropriate agencies in its construct and design.

The Roundtable should be reconvened to discuss progress.

*“ILSC is proud to be partnering with ANU and the NNTC to bring together like-minded individuals and organisations to hold important conversations around water rights for First Nations peoples. First Nations ownership or control over water access entitlements is estimated at less than one per cent of the total volume across Australia. This statistic speaks to the barriers of Indigenous access to commercial water rights by separating land and water titles. First Nations peoples have never separated land and water, even saltwater, and that’s why it’s vital to explore ways to improve Indigenous access to natural resources. Given the functions of the ILSC, and that we have heard from many Indigenous peoples around the country through our National Indigenous Land and Sea Strategy consultations, we believe that a revised Indigenous-led national approach to rights in freshwater is a national urgency.”*

*Joe Morrison (Dagoman and Mualgal)*

## Attachments

### 1. Roundtable Program



## National First Nations' Water Roundtable

*'Securing water rights for First Nations peoples' self-determination'*

16 - 17 May 2023

The Innovation Space, Level 2, Birch Building  
35 Science Road, Australian National University, Canberra

Co-convened by:



Australian National University



This meeting is being held on the Country and Waterways of the Ngambri (Kamberri), Ngarigo and Ngunnawal peoples.

*Galing, gungu, Ngadyang (water) | Gadyigadbi, ngaramyang (Water bag of skin) | Merrunba (Water bag) | Galing hulu (Water is evaporated) | Mamon, Mgun (Water rat) | Nguru (Water meek) | Burrage (Water, that is stagnant) | Galinhundiyaa (waterfall) | Werrereaa (place of council/Lake George) | Julirgung (Quambeyan River) | Merrumbidjya (river) | Kamberri (river) | Moolongola (river) | Goodradigbee (river) | Gooiragandra (river) | Gadgerby (river) | Ngulburman (waterhole) | Mitya (Waterhole without water) | Gallinghanga (Waterless place, or country, a dry desert) | Yiyawi (Waterless, dry, a dry plain) | Bila (river) | Dhandaang (River catfish) | Blyal, yarra, murungul (River red gum tree) | Bilani (River she oak) | Yiramai, hadha (River bank of river) | Yiramir (Steep bank of the river) | Yurung, walong, yubaa, galing (Rain) | Guwang, guwaang (Rain, fog or mist) | D-gung (Rain water, old water) | Yabanira (Rain, cause to rain) | Milyi (Rain, large drops of rain) | Yufahringin, gushungurran (rain water) | Galinhang (River water) | Guwungga (Food) | Baalmanha (Fishing) | Yiramamir (Fish, a large cod fish) | Gubir (Fish, black beam, murray perch) | Gupabul, gudung (Fish, murray cod) | Gagalin, bidya (Fish, golden perch, yellow belly) | Guyaahadhadhadha (Faheruna) | Ngulamara (fish) | Myra (Fishing net) | Blyandy (fish hook, a hook) | Yamaru (fish spear) | Guya (fish) | Bagal (fish) | Mitya (fish) | Galinhangurung (Drink of honey and water) | Yabung, yalga, burang (Drought) | Bambiya (swine) | Dhurwa, gyalahir (swamp) | Dhunhu, gyalahir (swamp) | Gungir (Swamp, black) | Gungir (Swamp, white) | Galambal, gulyagali, Mityag (swamp) | Miburaha (Deep water) | Gooiragandra (river) | Gadygny (river) | Ngulburman (waterhole) | Mitya (Waterhole without water) | Gallinghanga (Waterless place, or country, a dry desert) | Yiyawi (Waterless, dry, a dry plain) | Bila (river) | Dhandaang (River catfish) | Blyal, yarra, murungul (River red gum tree) | Bilani (River she oak) | Yiramai, hadha (River bank of river) | Yiramir (Steep bank of the river) | Yurung, walong, yubaa, galing (Rain) | Guwang, guwaang (Rain, fog or mist) | D-gung (Rain water, old water) | Yabanira (Rain, cause to rain) | Milyi (Rain, large drops of rain) | Yufahringin, gushungurran (rainbow) | Galinhang (Rainy weather) | Guwungga (Food) | Baalmanha (Fishing) | Yiramamir (fish, a large cod fish) | Gubir (fish, black beam, murray perch) | Gupabul, gudung (fish, murray cod) | Gagalin, bidya (fish, golden perch, yellow belly) | Guyaahadhadhadha (Faheruna) | Ngulamara (fish) | Myra (Fishing net) | Blyandy (fish hook, a hook) | Yamaru (fish spear) | Guya (fish) | Bagal (fish) | Mitya (fish) | Mityara (Drink) | Galinhangurung (Drink of honey and water) | Yabung, yalga, burang (Drought) | Bambiya (swine) | Dhurwa, gyalahir (swamp) | Dhunhu, gyalahir (swamp) | Gungir (Swamp, black) | Galambal, gulyagali, Mityag (swamp) | Dhurwa, gyalahir (swamp) | Gooiragandra (River jaxton) | Milyag (Salt water) | Gooimaa (swamp) | Mibundi (Deep water) | Moolong, murin, muririg, waggung (Cause, boat)*

*Yindiyamarra bala biladha birri bina birra wuurawin Ngambri (Kamberri) ngurambanga*  
(Respect is in the rivers moving quietly through Kamberri country)  
Words by Paul Girrawah House, Ngambri (Kamberri) custodian

#### Context

In the context of current policy reforms, such as the renewal of the National Water Initiative and the growing movements towards an Indigenous Voice and Treaty, there is an urgent need to bring together First Nation people's perspectives from across the country to examine and discuss the complex situation of First Nations water rights in Australia.

#### Background Paper

A detailed background paper, provided separately, serves as a preamble to the Roundtable. It recognises the significant work that First Nations people have delivered in response to continued water reform measures. It also considers current paradigms for securing First Nations people's water rights and interests.

#### Deliberations

The Roundtable is far more than a gathering to articulate First Nation views and positions based on practical experiences and extensive research concerning First Nations rights to water. It will be an important contribution to the process of engaging governments about ensuring that their policy commitments are implemented collaboratively and with clear practical benefit for First Nations people.

#### Program

The Roundtable is framed around three facilitated workshops to give attention to current policy settings; gaps and issues as they relate to securing First Nations self-determination; and practical solutions and strategies to enable appropriate institutional and policy frameworks. A communique summarising outcomes will be developed by Roundtable delegates and released to the public.





Tuesday 16 May

- 8.00am Registration and Convene for Tea and Coffee**
- 8.30am Welcome to Country**  
Paul Girrawah House, Ngambri (Kamberri) custodian
- 8.40am Opening Address**  
Professor Brian Schmidt AO, Vice Chancellor, The Australian National University
- 8.50am Opening Remarks**  
Chairperson: Professor Peter Yu AM, Vice President, First Nations Portfolio, ANU
- 9.00am Meeting Address**  
The Honourable Tanya Plibersek, Minister for the Environment and Water.
- 9.15am Roundtable Process**  
Lead Facilitator: Mr Teik Oh, Chief Executive Officer, OTS Management
- 9.30am Where Are We Now?**  
Keynote Speaker, Dr Josie Douglas, Executive Director of Policy and Governance at the Central Land Council  
  
The objective of this workshop is to provide and discuss information about the current water landscape in Australia. An outcome will be an analysis of the current situation.  
  
Workshop co-facilitators:  
Mr Kevin Smith, Chief Executive Officer, Queensland South Native Title Services  
Dr Kat Taylor, Research Fellow, Water Justice Hub at ANU and Adjunct Research Fellow, Nulungu Research Institute, University of Notre Dame
- 10.30am Morning Tea**
- 10.50am Workshop Deliberations Continued**
- 11.50am Delegates wrap up their deliberations and highlight key points**
- 12.10am Plenary - Co-facilitators report back workshop key points**
- 12.30pm Lunch**



Tuesday 16 May - Continued

- 1.20pm Vignette: International Perspective - Peel River Basin (Northern Yukon)**  
(Pre-recording) Professor Deborah McGregor from York University in Toronto, Ontario, Canada, provides an international perspective of both challenges and opportunities to First Nations securing their water interests.
- 1.30pm What Does 'Good' Look Like? – In the context of self-determination**  
Keynote Speaker, Shirley McPherson, Business Coach, Waalitj Hub, WA Indigenous Business and Employment Hub  
  
The objective of this workshop is to reference any lessons from the previous session, to describe a "vision" of First Nations Water Rights, and to describe key indicators of that Vision.  
  
Workshop co-facilitators:  
Mr Grant Rigney, Director and Acting Chairperson for the Murray Lower Darling Rivers Indigenous Nations (MLDRIN)  
Professor Quentin Grafton, Australian Laureate Fellow at ANU; and Chairholder UNESCO Chair in Water Economics and Transboundary Water Governance
- 3.00pm Afternoon Tea**
- 3.15pm Workshop deliberations continue**
- 3.40pm Delegates wrap up their deliberations and highlight key points**
- 4.00pm Plenary - Co-facilitators report back workshop key points**
- 4.20pm Closing Remarks**  
Professor Peter Yu AM, Vice President, First Nations Portfolio, ANU
- 4.30pm Preparatory Session for Day Two and Meeting Close**  
Mr Teik Oh, Chief Executive Officer, OTS Management
- 4.45pm Closed preparatory meetings for facilitators, co-conveners and support staff**
- 6.00pm Dinner**  
Monster Saloon, Ovolo Nishi Hotel,  
New Acton Precinct, 25 Edinburgh Avenue, Acton

Wednesday 17 May

8.00am Reconvene for Tea and Coffee

8.30am Opening Remarks - Day 1 in Review

Chairperson: Professor Peter Yu AM, Vice President, First Nations Portfolio, ANU

8.40am Vignette: International Perspective - Peel River Basin (Northern Yukon)

(Pre-recording) Mr Dana Tizya-Tramm has served the Vuntut Gwitchin First Nation (VGFN) and the Gwich'in Nation for over six years as a council member and four years as Chief. He provides an international perspective of both challenges and opportunities to First Nations securing their water interests.

8.50am How Do We Get There?

(live stream) Keynote Speaker, Dr Phil Duncan, Adjunct Industry Fellow with the Australian Rivers Institute, Griffith University and member of the Natural Resources Access Regulator Board

The objective of this workshop is to discuss approaches of getting to "good". The suggested deliverable is a concise list of approaches, strategies, recommendations and key actions.

Workshop co-facilitators:

Mr Rene Woods, Gayini Project Manager, The Nature Conservancy Australia  
Ms Kathryn Ridge, PhD Candidate at the University of Technology Sydney & Lawyer in Practice at Ridge Legal

10.30am

Morning Tea

10.50am

Workshop Deliberations Continued

11.50am

Delegates wrap up their deliberations and highlight key points

12.10pm

Plenary - Co-facilitators report back roundtable key points

12.30pm

Lunch

1.15pm

Future Generations Panel

First Nations Student representatives from across Australia present perspectives

1.30pm

Communique

Co-convenor: Dr Joe Morrison, Group Chief Executive Officer, Indigenous Land and Sea Corporation

2.00pm

Acknowledgements and Meeting Close

Chairperson: Professor Peter Yu AM, Vice President, First Nations Portfolio, ANU

## Biographies



### Welcome to Country:

**Mr Paul Girrawah House, Senior Community Engagement Officer, First Nations Portfolio, The Australian Nation University**

Paul Girrawah House has multiple First Nation ancestries from the South-East Canberra region, including the Ngambri-Ngurnal (Walgalu), Pajong (Gundungurra), Wallaballoo (Ngunnawal) and Erambie/Brungle (Wiradyuri) family groups. Paul acknowledges his diverse First Nation history, he particularly identifies as a descendant of Oryong aka Jindoomang from Weereewaa (Lake George) and Henry 'Black Harry' Williams from Namadji who were both multilingual, essentially Walgalu-Ngunnawal-Wiradjuri speaking warriors and Ngunnawal-Wallaballoo man William Lane aka 'Billy the Bull' - Murrjinille. Paul was born at the old Canberra hospital in the centre of his ancestral country and strongly acknowledges his First Nation matriarch ancestors, in particular his mother Dr Aunty Matilda House-Williams and grandmother, Ms Pearl Simpson-Wedge. Paul completed a Bachelor of Community Management from Macquarie University, and Graduate Certificate in Wiradjuri Language, Culture and Heritage and Management from CSU. Paul provided the Welcome to Country for the 47th Opening of Federal Parliament in 2022. Paul is Board Director, Ngambri Local Aboriginal Land Council, Member Indigenous Reference Group, National Museum of Australia and Australian Government Voice Referendum Engagement Group.



### Opening Address:

**Professor Brian Schmidt AO, Vice Chancellor and President, The Australian National University**

Professor Schmidt is one of Australia's most eminent scientists. Winner of the 2011 Nobel Prize in Physics, alongside many other academic awards and distinctions, Professor Schmidt spent most of his academic career as an astrophysicist at the ANU Mount Stromlo Observatory and Research School of Astronomy and Astrophysics before starting his tenure as the Vice-Chancellor of ANU on 1 January 2016. Professor Schmidt makes a significant contribution to public debate through the media, and via his membership of bodies including the Prime Minister's National Science and Technology Council. Professor Schmidt received undergraduate degrees in Astronomy and Physics from the University of Arizona in 1989, and completed his Astronomy Master's degree (1992) and PhD (1993) at Harvard University. Under his leadership, in 1998, the High-Z Supernova Search team made the startling discovery that the expansion rate of the Universe is accelerating. Fellow of the Australian Academy of Science, The United States Academy of Science, and the Royal Society, he was made a Companion of the Order of Australia in 2013.



### Meeting Address:

**The Honourable Tanya Plibersek, Minister for the Environment and Water**

Tanya entered Federal Parliament as the Member for Sydney in 1998. Between December 2007 and September 2013, she served as Minister for the Status of Women, Minister for Housing, Minister for Social Inclusion, Minister for Human Services and Minister for Health and Medical Research and served as Deputy Leader of the Opposition and of the Labor Party from 2013 to 2019. Tanya has a Bachelor of Communications (Hon) from the University of Technology Sydney and a Master of Politics and Public Policy from Macquarie University. She is passionate about protecting and preserving Australia's natural environments for future generations.



**Roundtable Chairperson:**

**Professor Peter Yu AM, Vice President First Nation, The Australian National University**

Peter Yu is a Yawuru man from Broome with over 40 years' of practical experience and advocacy in Indigenous social, cultural and economic development, including negotiating the Federal Government's response to the 1992 Mabo High Court judgement and the Yawuru Native Title claim with the Western Australian Government. Currently, Peter is the inaugural Vice-President of the First Nations Portfolio at the Australian National University, Deputy Chair of the North Australian Indigenous Land and Sea Management Alliance, Board member of Watertrust Australia Trustee of the Princes Trust Australia, Council Member of the JANA Sustainability Advisory and Chair of the Australian Advisory Group to Rio Tinto.



**Roundtable Co-convenor:**

**Dr Joe Morrison, Group Chief Executive Officer, Indigenous Land and Sea Corporation**

Joe Morrison has Dagoman and Torres Strait Islander heritage and over 30 years' experience working with Indigenous people in northern Australia, nationally and more recently globally. He has extensive advocacy, policy, research and practical experience across Indigenous communities, non-profit and government sectors. Joe has a BA in Land Management from the University of Sydney and an Honorary Doctorate from the University of New South Wales. Prior to his current position held at the ILSC, he was the Managing Director of Six Seasons consulting, the CEO of the Northern Land

Council and the founding CEO of the North Australian Indigenous Land and Sea Management Alliance (NAILSMA). Currently, he is also Director of the Reef and Rainforest Research Centre, International Savanna Fire Management Initiative, National Centre for Indigenous Excellence, Primary Partners Pty Ltd, Voyages Indigenous Tourism Australia and a member of the AFL Indigenous Advisory Council.



**Roundtable Co-convenor:**

**Mr Jamie Lowe, Chief Executive Officer, National Native Title Council**

Jamie Lowe, a proud Gundjitmara Djabwurrung man, first joined the National Native Title Council as Chair in 2017. Two year later, he was appointed CEO, charged with supporting First Nation's people's right to true self-determination, advocating for their right to speak for and manage their own Country; to govern their own communities; to participate fully in decision making and to self-determine their own social and economic development. As a key influencer, Jamie firmly believes that creating economic independence and maintaining and growing cultural identity are vital in creating a self-determining nation of First Nations peoples.



**Lead Facilitator:**

**Mr Teik Oh, Chief Executive Officer, OTS Management Pty Ltd ("Providing Advice From Outside The Square")**

Teik Oh is the founder of OTS Management. He started working as a Chartered Accountant in England in 1979 and worked for international management consulting firms in the UK, the US, Southeast Asia and Australia before he started his own business in 1991, focusing on Not-for-profit organisations and entrepreneurs who have a passionate vision, yet need the help to merge best business practice with their vision. Teik has specialised in working with Indigenous organisations on planning and corporate development since 1987.

**Where Are We Now?**



**Keynote speaker:**

**Dr Josie Douglas, Executive Director of Policy and Governance at the Central Land Council**

Josie is a Wardaman woman based in Mparntwe (Alice Springs). As well as work experiences with community-controlled organisations, Josie has extensive experience in policy and governance and has held executive management positions at the Central Australian Aboriginal Congress. She has also held senior research positions at CSIRO and Charles Darwin University. In 2017, she was awarded the W.H. Stanner Award for her PhD research on young people and intergenerational transmission and acquisition of ecological knowledge.



**Workshop Co-Facilitator: Mr Kevin Smith, Chief Executive Officer, Queensland South Native Title Services**

Kevin has been the Chief Executive Officer of Queensland South Native Title Services since 2008. He is also the Deputy Chair of the National Native Title Council. Kevin holds traditional connections to Ugar (Stephen Island) and Erub (Darnley Island) in the Torres Strait and has over 28 years of professional experiences in Indigenous affairs. He has held senior positions with the National Secretariat of Torres Strait Islander Organisations, the Brisbane Aboriginal and Torres Strait Islander Legal Service, the National Native Title Tribunal and the Aboriginal Hostels Limited. He holds qualifications in both law and business management from the University of Queensland and was admitted as a solicitor in 1994.



**Workshop Co-Facilitator: Doctor Kat Taylor, Research Fellow, Water Justice Hub, the Australian National University and Adjunct Research Fellow, Nulungu Research Institute, University of Notre Dame, Broome**

Kat is a Research Fellow at the ANU's Water Justice Hub within the Crawford School of Public Policy. Through her work and research in Central Australia and Western Australia, she has experience in environmental technology, drinking water risk management and water policy. Kat has a BSc (Hons) Environmental Science and Conservation Biology. Her PhD explored water security, water governance and decolonisation pathways in the West Kimberley, Western Australia. Kat is also a co-host of the [Water Justice Podcast](#).

## What Does 'Good' Look Like? (In context of self-determination)



### International guest speaker (pre-recording)

**Professor Deborah McGregor, York University, Toronto, Ontario, Canada**

Deborah is the Canada Research Chair in Indigenous Environmental Justice, cross-appointed with Osgoode Hall Law School and the Faculty of Environment and Urban Change at York University. She is at the forefront of Indigenous environmental justice research as well as Indigenous research theory and practice. Deborah's work has focused on Indigenous knowledge systems and their various applications in diverse contexts including water and environmental governance, environmental justice, climate justice, and Indigenous research theory and methodologies.



### Workshop Co-Facilitator: Mr Grant Rigney, Director and Acting Chairperson for the Murray Lower Darling Rivers Indigenous Nations

Grant is Ngarrindjeri man and prominent figure in Aboriginal governance. He is Chair of the Ngarrindjeri Regional Authority, Ngarrindjeri Peoples Native Title Compensation Charitable Trust, Murray Lower Darling Rivers Indigenous Nations, Member of the federal government's Committee for Aboriginal Water Interests, Director of Kuti Co and the Secretary for the Ngarrindjeri Regional Authority. Recently he was appointed to the position as the Chief Executive Officer of the Aboriginal Lands Trust.



### Workshop Co-Facilitator: Professor Quentin Grafton, Australian Laureate Fellow at the Australian National University; and Chairholder UNESCO Chair in Water Economics and Transboundary Water Governance

Quentin is an Australian Laureate Fellow, Professor of Economics, Convener of the Water Justice Hub, and Director of the Centre for Water Economics, Environment and Policy (CWEPP) at the Crawford School of Public Policy at the Australian National University. In April 2010 he was appointed the Chairholder for the UNESCO Chair in Water Economics and Transboundary Water Governance, a position that he still holds. He was previously Chief Economist and Executive Director of the Australian Bureau of Resources and Energy Economics and currently serves as a Lead Expert and

Commissioner of the Global Commission on the Economics of Water.

## How Do We Get There?



### International guest speaker (pre-recording)

**Mr Dana Tizya-Tramm Director Arctic Circle Strategies, Canada**

Dana has served the Vuntut Gwitchin First Nation (VGFN) and the Gwich'in Nation for over six years as a council member and four years as Chief. During this time, Dana has defended the Peel Watershed Land Use Planning provisions, which protects over 77,000 km<sup>2</sup> of contiguous land as decided by the Supreme Court of Canada. Dana has also challenged the Trump administration in 2017 to protect the calving grounds of the Porcupine Caribou herd in the Arctic National Wildlife Refuge in Alaska. Dana has also co-chaired the Gwich'in Council International (GCI) and led the GCI on the Sustainable Development Working Group for the Arctic Council. As Chief, VGFN passed the internationally recognized climate declaration Yeendoo Diinehdoo Ji'heezrit Nits'oo Ts'o' Nan He'aa (*After our time how will the world be?*) declaration, which inspired other international declarations and was the first in Canada by a modern treaty first nation. After leading a complete reorganization and modernization of the Vuntut Gwitchin Government, Dana then took up office as a TIME 100 Next rising international leader, Clean 50 Emerging Leader, and Up Here Magazine's Northerner of the Year and continues addressing inter-governmental challenges across Canada, the cultural schism between first nations and non-first nations, and conflict in the modernization and cultural revitalization faced by indigenous peoples in modern society today. He is also the Chair of the First Nation School Board and the Director of Arctic Circle Strategies, where Dana is shaping a new generation of leaders.



### Keynote Speaker: Dr Leslie 'Phil' Duncan, Adjunct Industry Fellow with the Australian Rivers Institute at Griffith University and member of the Natural Resources Access Regulator (NRAR) board

Phil is a Gomeri man and an elected representative of the Gomeri Nation Native Title Claimant Group with more than 38 years' experience working with Indigenous people, communities and government. He was the first Indigenous Chair of the Murray Darling Basin Authority, and first Indigenous Board member of the NSW Natural Resource Access Regulator. He is a member of Watertrust Australia, a National Indigenous Executive of Australian Freshwater Science Society, and a RAP Indigenous Advisory Council Member for LION Pty Ltd. For his services to Indigenous research, he was awarded an Honorary Doctorate from Griffith University.





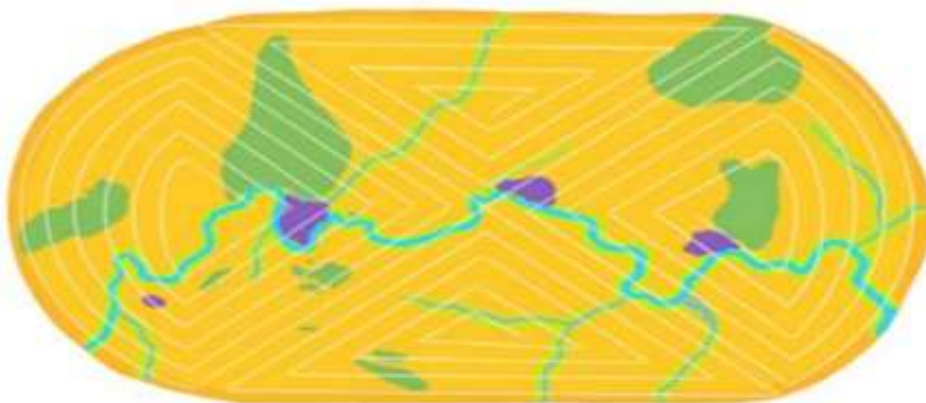
**Workshop Co-Facilitator: Mr Rene Woods, Gayini Project Manager, The Nature Conservancy Australia**

Rene Woods is a Nari Nari man from southwest New South Wales. He has had a long involvement Gayini (water) for Aboriginal people across the Basin. He grew up on the Murrumbidgee River where the river was always central to his family, his community, and their way of life. Rene is a strong advocate for First Nation people in the Murray Darling Basin and has worked in communities in both the public and non-government organisation sectors of the Basin. He is also the Co-Chairperson of the Committee for Aboriginal Water Interests and a member of the Murray Darling Basin Authority.



**Workshop Co-Facilitator: Ms Kathryn Ridge, PhD Candidate, University of Technology Sydney & Lawyer in Practice at Ridge Legal**

Kathryn is a practicing human rights and environmental lawyer and Higher Degree Research student undertaking her PhD at, Faculty of Arts and Social Sciences, UTS Centre for the Advancement of Indigenous Knowledge. She is a part time lecturer at ANU, Centre for Aboriginal Economic Policy research. Her research interest is protecting and upholding First Nations rights and interests in natural resources, relevant to her expertise in environmental and resources law.



**Artwork title: Ngambri-Kamberri-Canberra Dhaura**

The artwork shows three main Ngambri (Kamberri) corroboree grounds and 'Canberry Station' depicted in purple located along the Ngambri River at Acton Peninsula (ANU, NMA, AIATSIS), St John's Church Reid, and Duntroon Dairy (Pialligo) and Ngambri Ck (Sullivan's Creek) at ANU along with Yarralumla Station (Governor General's residence). The Canberry (Ngambri) Plains depicted in yellow and Canberry (Ngambri) Ranges including Black Mountain, Mt Ainslie, Mt Pleasant, Dairy Farmers Hill, Kurrajong / Camp / Capital Hill (Parliament House) and Red Hill are depicted in green. The landscape is embedded with mallangarri yurwangu dhaura (alive and strong on country) tree scarring representing key Ngambri (Kamberri), Walgalu totems, Crow and Eagle.

**Artist and Story: Paul Girrawah House, Ngambri (Kamberri) custodian**

## 2. List of Participating Organisations

AIATSIS	MG Corporation
ANU	MLDRIN
Barkandhi PBC	NAILSMA
Cape York Land Council	NIAA
Central Land Council	NNTC
Centrefarm	Noongar Land Enterprise Group
Charles Darwin University	North Queensland Land Council
Coalition of Peaks	Northern Basin Aboriginal Nations
CSIRO	Northern Land Council
Commonwealth DAFF	NTS Corp
Commonwealth DCCEEW	Nyamba Buru Yawuru
Djidi Djidi Womens AC	One Basin CRC
Embassy of Ecuador	Queensland South Native Title Services
Federation Victorian Traditional Owner Corp	Queensland University of Technology
Gur A Baradharaw Kod, Torres Strait	RMIT University
Griffith University	South Australian Native Title Services
Gunaikurnai Land and Waters AC	University of Melbourne
ILSC	University of Sydney
James Cook University	Watertrust Australia
Kimberley Land Council	Yamatji Southern Regional Corporation
Martuwarra Fitzroy River Council	Yorta Yorta Nation AC
Murray Darling Basin Authority	

### 3. Participant Feedback Survey

Dear Participant,

You are receiving this survey because you registered your attendance to the National First Nations Water Roundtable that was convened at the Australian National University in Canberra 16-17 May, 2023.

Apologies in advance for any cross posting if you were unable to make the event.

To assist the co-convenors with improving future events and to gain insight into the benefit and impact of the Roundtable, they would value your feedback.

To provide feedback, please complete the following anonymous survey. The survey will take between 5-20 minutes to complete.

We would be grateful if you could complete the survey by **COB 29<sup>th</sup> May**.

Regards,

The First Nations Portfolio.

1. On a scale of 1 to 5 (1 being poor and 5 being excellent), how would you rate the overall effectiveness of the National First Nations Water Roundtable in addressing the key issues and challenges related to First Nations water rights in Australia?
2. On a scale of 1 to 5 (1 being poor and 5 being excellent), how would you rate the design of the three workshops (Where are we now, What does Good look like and How do we get there?) in assisting deliberations to position First Nations interests in national water policy, gaps and issues?
3. On a scale of 1 to 5 (1 being poor and 5 being excellent), how would you rate the overall facilitation and moderation of the Roundtable's workshops in ensuring productive discussions and engagement? What do you base this rating on?
4. On a scale of 1 to 5 (1 being poor and 5 being excellent), how would you rate your experience in participating and contributing to your table's discussion? What do you base this rating on?
5. What specific topics or discussions from the water roundtable workshop were most relevant and beneficial to you?
6. Were the materials and resources provided during the Roundtable helpful and informative?
7. On a scale of 1 to 5 (1 being poor and 5 being excellent), how would you rate the relevance of the presentations by key note speakers in adding value to Roundtable's agenda? What do you base this rating on?
8. What additional information or topics would you have liked to see covered during the Roundtable?

#### 4. Table Responses

##### Where Are We Now?

Situational Analysis Legislation	
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• International precedents               <ul style="list-style-type: none"> <li>- legal recognition of ‘Personhood of Water’ – the right to flow and be clean</li> <li>- Human Rights to access clean water</li> <li>- UNDRIP</li> </ul> </li> <li>• Strategic Aboriginal Reserve policy in the Northern Territory (SARNT)</li> <li>• Cultural Water Licence in the Northern Territory (CWLNT)</li> <li>• <i>Yarra river Protection (Wilip-gin Birranrung murrn) Act 2017</i></li> <li>• Indigenous Protected Areas</li> <li>• Northern Territory Sacred Sites Act</li> <li>• Environmental Protection and Biodiversity Conservation Act</li> <li>• Government funding</li> <li>• The current will of the Federal Governments and some State and Territory Governments</li> <li>• First Nations maintenance of culture and lore</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• Water legislative frameworks are complex</li> <li>• Water management is industry eccentric; viewed primarily as an economic resource</li> <li>• Institutional constraints               <ul style="list-style-type: none"> <li>- no holistic view to water management</li> <li>- lacking recognition of First Nations interests</li> </ul> </li> <li>• Aqua nullius is embedded in state and territory water legislation</li> <li>• The Crown has complete control and ownership over water</li> <li>• Lack of implementation of the SARNT &amp; CWLNT policy</li> <li>• Lack of engagement of Northern Territory Sacred Site legislation</li> <li>• Lack of recognition for First Nations water sovereignty</li> <li>• Lack of consultation and community engagement and inconsistency across States/Territories</li> <li>• Limited and disparate funding delivery</li> <li>• Aboriginal-led solutions ignored</li> </ul>

	<ul style="list-style-type: none"> <li>• Awareness and education regarding First Nations interests</li> <li>• Inability to coordinate among communities</li> <li>• Soft wording in legislation – “have regard” versus “must regard”</li> <li>• Policy vs legislation – the devil in the detail</li> <li>• Oppressive colonial systems embedded in legislation</li> <li>• Failure to regulate</li> <li>• Lack of framework for whistle blowers</li> <li>• Vagueness of a Federation system – yet States and Territories manage access to water</li> <li>• Western system of thinking with no framework to integrate cultural lore and practices</li> </ul>
<p><b>Opportunities</b></p>	<ul style="list-style-type: none"> <li>• Changing water legislation – Review of the <i>Water Act (Cth) 2007</i></li> <li>• Strengthen wording of legislation; inclusion of First Nations rights</li> <li>• Refresh the NWI – inconsistent implementation across States and Territories</li> <li>• State based Treaty processes</li> <li>• To govern water collectively - First Nations and non-Indigenous</li> <li>• Get foundational planning right</li> <li>• Recognition of rivers as ancestral beings (e.g. Victoria and internationally – ‘Personhood’)</li> <li>• Expanding and connecting Indigenous Protected Areas and other First Nation controlled lands</li> <li>• Development and inclusion of Aboriginal protocols and principles</li> <li>• Statutory mechanism to recognise traditional governance and transfer power to First Nations</li> <li>• Law reform – Water is Life policy</li> <li>• Outcomes similar to that achieved in the Victorian Treaty</li> <li>• Bolstering human rights collective of self-determination</li> <li>• Improving engagement processes to incorporate more First Nations voices</li> <li>• Raising awareness and education of the wider Australian community (i.e. Irrigators)</li> <li>• Review of the Murray Darling Basin plan (2026)</li> <li>• <i>Environmental Protection and Biodiversity Conservation 1999 Act</i> (EPBC)</li> <li>• Implementation of policy in the Northern Territory (SARNT &amp; CWLNT)</li> <li>• Independent arbitration</li> <li>• Increase representation on Water Management boards and other structures</li> <li>• Water justice - equity</li> <li>• Capital fund to purchase/buy back from industries and for implementation</li> </ul>

	<ul style="list-style-type: none"> <li>• Ongoing maintenance of First Nations water lore</li> <li>• Incorporating First Nations way of thinking into legislation</li> <li>• Recognition of water rights through Land Rights and native title legislation</li> </ul>
<b>Threats/risks</b>	<ul style="list-style-type: none"> <li>• Institutional constraints <ul style="list-style-type: none"> <li>- Complexity of legislation and policy</li> </ul> </li> <li>• Strategic Aboriginal water strategy weaponises water</li> <li>• Aqua nullius</li> <li>• Ulterior motives – ‘what can be gained/in exchange for’</li> <li>• Lack of action</li> <li>• Finding loopholes</li> <li>• Public perceptions</li> <li>• Property rights</li> <li>• Mechanism to allocate water</li> <li>• Health risks</li> <li>• Increasing population and demand on groundwater &amp; surface water</li> <li>• Aquifer volume dropping at a faster rate of replenishing; restoring the hydrograph – ensuring water is used in line with seasonal needs/conditions</li> <li>• Demand on bores</li> <li>• Changing governments &amp; policy reforms</li> <li>• Lack of water literacy in remote and regional communities</li> <li>• Climate change on water management</li> <li>• Industry transition will need to be government-led which is weak if governments favour industry interests over First Nations</li> <li>• degradation of land and contamination of water due to poor and unregulated industry practices</li> <li>• Inconsistent implementation of water policy across States and Territories</li> </ul>
<b>What does this mean for First Nations Water Rights?</b>	<ul style="list-style-type: none"> <li>• Need for statutory and legislative reform</li> <li>• Limited authority due to lack of empowerment through governance mechanisms</li> <li>• Primacy for Indigenous rights and Treaty negotiations</li> <li>• Lack of trust for governments; the need for our own First Nations senior advisers to be at the table</li> <li>• Erasure of Traditional Owner water laws and governance</li> </ul>

	<ul style="list-style-type: none"> <li>• Poor drinking water, unsafe communities</li> <li>• Separation of Land and Water</li> <li>• Sites of significance not respected</li> <li>• Livelihoods are at great risk if water rights are not regarded</li> <li>• No traction</li> <li>• First Nations people continue to be left out</li> <li>• Need for environmental allocations to be handed to First Nations people</li> <li>• Need for compensation for unallocated/lost water to redress legislative inequality</li> <li>• First Nations rights be a priority and that imbalances be corrected now</li> <li>• Access to water is a principle issue for First Nations achieving self-determination for their communities</li> </ul>
<b>Situational Analysis</b> <b>Government Appetite and Attitudes (Including structures and state of engagement)</b>	
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Growing interest in Indigenous knowledge systems</li> <li>• Growing participation of First Nation leaders in government processes</li> <li>• Current political will and opportunity</li> <li>• Changing attitude, narrative and intent</li> <li>• Treaty process</li> <li>• The Voice</li> <li>• Water is Life: Traditional Owner Access to Water Roadmap (Victoria)</li> <li>• Funding of Water Offices in Aboriginal Corporations (Victoria)</li> <li>• UNDRIP</li> <li>• Government policy programs</li> <li>• Learning from other State &amp; Territory initiatives</li> <li>• Torres Strait Government has lived up to election rhetoric concerning Torres Strait Islander perspectives</li> <li>• Growing senior Aboriginal people working in the Government</li> <li>• Recognising that First Nations people have rights and interests in water</li> <li>• Ministerial support</li> <li>• Good relationships and engagement with community</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• Industry driven and prioritised</li> <li>• Economic interests outweigh cultural and environmental values</li> <li>• Structures without statutory basis</li> </ul>

	<ul style="list-style-type: none"> <li>• No authority, so people aren't listened to</li> <li>• No follow through on legislation (e.g., QLD)</li> <li>• Lack of resources to implement cultural values in water management</li> <li>• NSW practices are disgraceful</li> <li>• Limited goodwill in the Northern Territory – white washing</li> <li>• Water management practices exclude interests of First Nations peoples</li> <li>• Government don't know what to do and how to do it</li> <li>• Regulatory commitment/engagement with remote indigenous bodies is lacking</li> <li>• Lack of investment by Government in partnership with Traditional Owners</li> <li>• Lack of reinforcing Law reforms</li> <li>• Impractical Government commitments to implementation <ul style="list-style-type: none"> <li>- Lack of accountability</li> <li>- Lack of understanding of the right way to engage First Nations to meaningfully support self-determination</li> <li>- No clear pathways or frameworks</li> <li>- Closing the Gap 2020 review acknowledges this gap</li> </ul> </li> <li>• Lack of Government understanding of how First Nations use water (cultural)</li> <li>• Legislative change and challenges</li> <li>• Government attitudes and bureaucracy</li> <li>• Top down and lack of recognitions of local First Nations values</li> <li>• Limited data on What is the cost of health</li> <li>• Favouritism of large scale industries with respect to water rights</li> <li>• Lack of climate action</li> <li>• No meaningful framework to enable ongoing dialogue between communities and industry</li> <li>• 'Environment &amp; water' considered together at Federal level, but separately at the state and territory level</li> </ul>
<b>Opportunities</b>	<ul style="list-style-type: none"> <li>• Current government and willingness</li> <li>• Treaty process</li> <li>• Economic opportunities if enabled appropriately through Developing Northern Australia strategies: <ul style="list-style-type: none"> <li>- E.g., Cape York industry-led water planning process</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>• Through engagement of the Commonwealth Environmental Water Office and Water Holder and Water Management Plans<sup>68</sup></li> <li>• Through engagement of the Victorian Environmental Water Holder<sup>69</sup></li> <li>• Learning from process managing the Murray Darling Basin</li> <li>• Place-based</li> <li>• Watershed based</li> <li>• Nation scale alignment of Government programs and policies regarding First Nations interests</li> <li>• Genuine engagement with First Nations</li> <li>• Through negotiating Indigenous Land Use Agreements (ILUA) <ul style="list-style-type: none"> <li>- E.g., the landmark Yamatji Nation ILUA</li> </ul> </li> <li>• Accountability mechanisms - Implementation of reporting on reforms and commitments</li> <li>• Leveraging economic opportunities</li> <li>• Recognition of Country as the basis in key decision making</li> <li>• First Nations Water Roundtable to raise awareness of stakeholders</li> <li>• Constitutional Recognition to provide a voice on issues, which is not binding, but advisory</li> <li>• NSW changing land ownership – land back</li> <li>• Victorian Government reviewing its public land legislation<sup>70</sup></li> <li>• New approach to engaging First Nations people in decision-making processes and frameworks</li> <li>• Better appreciation of a diversity of views</li> <li>• Co-capacity development and recognition to realise self-determination</li> </ul>
<b>Threats/risks</b>	<ul style="list-style-type: none"> <li>• Changing political parties in governments</li> <li>• Northern Development will progress without proper engagement of First Nations interests</li> <li>• States override local government decision making</li> <li>• Projects given national significance status are difficult to implement</li> <li>• Ongoing disregard to of right to be informed and negotiate</li> <li>• Bureaucratic incompetency</li> <li>• Lack of funding and resources to build capacity to properly participate</li> </ul>

<sup>68</sup> [Commonwealth Environmental Water Holder - DCCEEW](#)

<sup>69</sup> [VEWH - How the VEWB will work with Traditional Owners](#)

<sup>70</sup> [Renewing Victoria’s public land legislation | Engage Victoria](#)

	<ul style="list-style-type: none"> <li>• Powerful industries reliant on water for production that are resistant to reforms that impact their economic interests</li> <li>• Not place-based</li> <li>• Practical actions not delivered</li> <li>• Commodification of water has primacy in policy and continues to disregard other water values</li> <li>• Separating water from land is viewed only as a First Nations issue relevant to the colonial construct for water management</li> <li>• National goodwill not transpiring in state and territory processes and implemented in different ways that results in inequity issues and disparities across a nation</li> <li>• Compartmentalisation of First Nations issues</li> <li>• Mismanagement of solutions and existing structures</li> </ul>
<b>What does this mean for First Nations Water Rights?</b>	<ul style="list-style-type: none"> <li>• Appetite for improvement at the Federal level</li> <li>• Opportunity to participate in decision-making processes</li> <li>• The ability for First Nations self-determination is inextricably linked to FPIC</li> <li>• The connotations of aqua nullius policy</li> <li>• Need to change legislation to recognising First Nations rights to water</li> <li>• First Nations till don't own any water irrespective of their custodianship of water for millennia</li> <li>• Need bilateral buy-in</li> <li>• All talk, no action</li> <li>• Decision making lacks cultural respect</li> <li>• Lack of appropriate resourcing to support proper engagement of First Nations voices in decision-making</li> <li>• Deficiency in accountability</li> <li>• Avoiding compartmentalising First Nations issues, designing holistic solutions</li> <li>• Rights &amp; interests to be held by First Nations peoples</li> <li>• Award water licences</li> <li>• Lack of recognition that First Nations have customary rights to water and are not a stakeholder</li> </ul>
<b>Situational Analysis Environment (biophysical, ecological)</b>	
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Watershed modelling and mapping</li> <li>• Growing support for managing Country</li> </ul>

	<ul style="list-style-type: none"> <li>- e.g., Cultural Landscape Strategy (VIC) authored by Traditional Owners<sup>71</sup></li> <li>- VIC phasing out of timber harvesting industry</li> <li>• Improving processes to manage the MDB</li> <li>• UNDRIP</li> <li>• First Nations knowledge of Country</li> <li>• Values and growing knowledge of bush medicines and foods</li> <li>• 'Environment-and-water' – good relationship issue with stakeholders in water space; but also huge risk – if correlating with economic development &amp; industry</li> <li>• Existing environmental allocations – though competing with consumptive use allocations</li> <li>• First Nations use of water does not separate consumptive use from environmental and customary uses</li> <li>• Strength of First Nations cultural knowledge and structures</li> <li>• Caring for Country</li> <li>• Framework and principles exist through the multitude of statements</li> <li>• Healthy Country Plans</li> <li>• Traditional structures especially ones that haven't been damaged by legacies of colonialism</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• How does water for the environment relate cultural flows?</li> <li>• Policy and practice on water sustainability – viewed as an infinite resource to promote industry</li> <li>• Lack of knowledge of water resources</li> <li>• Lack of management of spring-flows</li> <li>• Lack of transparency in information; lack of access to data; lack of data</li> <li>• Lack of inclusion of customary knowledge systems about Country</li> <li>• Water quality; bore water contaminated with arsenic</li> <li>• Lack of testing of water quality and research on impacts to health and quantifying the value of water quality on human health</li> <li>• No accountable measures for industry and government decisions that have destructive environmental impacts</li> <li>• Access to clean water is a human right – SDG6</li> <li>• Lack of focus on impacts of climate change to water availability and water quality and mitigation and adaptation strategies</li> <li>• Separation of water from land in context of holistic systems land use practices</li> <li>• Current modelling for climate change</li> </ul>

<sup>71</sup> [Cultural Landscapes Strategy \(deeca.vic.gov.au\)](http://deeca.vic.gov.au)

	<ul style="list-style-type: none"> <li>• Cultural preservation</li> <li>• Misinterpretation of information</li> <li>• Legislative disconnect</li> </ul>
<b>Opportunities</b>	<ul style="list-style-type: none"> <li>• Implementation of cultural flows policy</li> <li>• Environmental water be handed to First Nations for inclusion of cultural flows</li> <li>• Establishing baseline data/bio-cultural mapping for monitoring health of Country</li> <li>• Establishing rules for First Nations intellectual property rights to data</li> <li>• Traditional Owner management of Country</li> <li>• Best practices to ensure native species can traverse manmade infrastructure (Dams, fish ladders etc.)</li> <li>• First Nations decision making in bio-cultural allocations</li> <li>• Reform of the EPBC Act</li> <li>• Reform of Cultural Heritage Act</li> <li>• Climate Change to enforce change in practice</li> <li>• Cultural opportunities</li> <li>• Link water issues with work already being done regarding community health &amp; wellbeing</li> <li>• Cultural determinants of wellbeing – drought resistance</li> <li>• Using satellites to measure surface water</li> <li>• Data reflecting Indigenous ways of thinking beyond just physical measures</li> <li>• Leveraging systems and legislation, demonstrate measurable environmental harm</li> <li>• Speaking of water as an entity – interconnectedness</li> <li>• Community engagement - current government more engaging than previous</li> <li>• Maintaining and improving water quality</li> <li>• Water allocations</li> <li>• Maintenance of the environment (river catchment systems)</li> <li>• Primacy of water gaining greater recognition</li> <li>• Protection of water for subsistence and domestic uses</li> <li>• Greater collaboration with industry sectors</li> <li>• Refresh of the NWI in protecting natural systems =</li> <li>• Treaty process</li> </ul>
<b>Threats/risks</b>	<ul style="list-style-type: none"> <li>• Cultural values of water continue to be ignored in public policy</li> <li>• Cultural flows methodologies developed; but lack of commitment and process to implement</li> </ul>

	<ul style="list-style-type: none"> <li>• Climate change prediction in regard to more extreme weather events, both drought and flooding, and impact on systems quality, flows, availability and uses <ul style="list-style-type: none"> <li>- Displacing communities – i.e. in the Torres Strait with rising sea levels</li> </ul> </li> <li>• Lack of Government investment in bio-cultural mapping and monitoring</li> <li>• Increasing pastoral use</li> <li>• Impact of extractive industries on water quality and flows</li> <li>• Lack of engagement of Indigenous leadership and knowledge in decision making processes</li> <li>• Native title is extinguished</li> <li>• Increased sediment contamination due to colonialist management practices of natural water flows and land use practices</li> <li>• Maintaining connectivity between rivers and wetlands, holistic view and management of systems</li> </ul>
<p><b>What does this mean for First Nations Water Rights?</b></p>	<ul style="list-style-type: none"> <li>• No implementation plan or process to implement cultural flow plans nationally</li> <li>• Lack of redress for water quality to health and the environment</li> <li>• Lack of environmental management as a Bio-cultural Landscape</li> <li>• Lack of integrating and implementation of cultural values and sites and Indigenous ways of being, doing, and knowing in management practices</li> <li>• Increasing prevalence on natural disasters impacting on the environment and cultural values</li> <li>• Indigenous customary practice and knowledge are disengaged from the management of Country through poor public policy</li> <li>• Need First Nations to own water resources to get a seat in water management decisions</li> <li>• Stronger framework for land rights - water rights are linked</li> <li>• Need for a holistic land management approach</li> <li>• Cycle of water remains sustainable</li> <li>• Everything is healthier</li> <li>• Healthy water, land and people</li> </ul>
<p><b>Situational Analysis</b>  <b>Economic development (agriculture, energy production, manufacturing and other business developments)</b></p>	
<p><b>Strengths</b></p>	<ul style="list-style-type: none"> <li>• Emergence of native foods and botanicals markets in mainstream agriculture; <ul style="list-style-type: none"> <li>- environmentally beneficially,</li> <li>- sustainable,</li> <li>- reinvigorates caring for Country,</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- sustains cultural maintenance and decision making practices</li> <li>- provides economic benefits to First Nations people and communities</li> <li>- Self determination to participate in industry using customary practices</li> <li>• Growing recognition of First Nations participation in economic water markets</li> <li>• Shift to renewable energy and sustainable land practices</li> <li>• Integrated in Treaty processes</li> <li>• Establishing a baseline to trade the water</li> <li>• Cultural knowledge of water</li> <li>• Land tenure – ALRA &amp; section 19 land use agreement process &amp; native title provisions – Aboriginal water reserves, land access</li> <li>• Water is linked to Country (both physically and culturally)</li> <li>• Growing First Nations community business planning to bolster their economic development</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• Inequity – access and use benefits those who have water access entitlements, not those whose waters are being given away through government processes</li> <li>• Greenwashing, black cladding and whitewashing – promise a lot but deliver little</li> <li>• Traditional Owners who hold significant land assets don't have ownership of key resources of Country or locked out of land based economies (e.g., biodiversity, carbon farming, agriculture, aquaculture, fisheries)</li> <li>• Lack of investment, coordination and political will among relevant government bodies and industry groups in facilitating First Nations engagement in primary production</li> <li>• Native title doesn't recognise economic rights</li> <li>• Negative industry impacts on water ways and native species – marine animals (turtles, dugong), migration paths, over fishing – with few accountability measures, none of which factor impact to First Nations livelihoods</li> <li>• Lack of consultation, engagement and free prior informed consent of First Nations (e.g. Tiwi and Larrakia nations and Santos) - other stakeholders given preferential treatment, First Nations rights and interests are never considered; except when in court</li> <li>• Industry interests negate and override First Nations opportunities and rights</li> <li>• Industry practices are entrenched in colonial constructs</li> <li>• Lack of comprehensive planning – access to resources and capacity to institutionalise governance regimes</li> <li>• Lack of water ownership to engage in primary industries</li> <li>• Inequity in land ownership across Australia, a construct of colonial invasion and land grabs – lack of land ownership in vast tracts across southern Australia and continued dispossession of those lands traditionally held by First Nations</li> </ul>

	<ul style="list-style-type: none"> <li>• Lack of infrastructure and resources, capacity to start up business</li> <li>• Water reliant crops (agriculture)</li> <li>• Disconnect between government plans vs Traditional Owner groups</li> <li>• Water licences – failure to allocate; alleviate fees; support capacity building and planning for water</li> <li>• Culture values excluded from industry practices</li> <li>• Water policy and legislation is paternalistic</li> <li>• Attitude or unqualified and unquantified justification that giving water entitlement to First Nations will negatively impact national economic development</li> </ul>
<b>Opportunities</b>	<ul style="list-style-type: none"> <li>• Developing a cultural economy that provides benefits to the environment, economy, culture and people</li> <li>• Linking research to economic development <ul style="list-style-type: none"> <li>- Working with academic experts to co-design business models (e.g. extensive work of CAEPR in customary economies)</li> </ul> </li> <li>• Payment for ecosystem services for caring for Country – Rangers become independent of government funding streams</li> <li>• Diversifying services – biosecurity, biodiversity, fisheries, carbon and blue carbon economies, community development, renewable/sustainable energy; protection of waterways</li> <li>• Native food industries, participation in mainstream primary production, freshwater aquaculture activities</li> <li>• Training and jobs embedded in agreements, business and economic development planning</li> <li>• People staying on their country in their communities because they have livelihoods</li> <li>• Growing movement – Personhood of water – right to flow and be clean, creating a niche industry for First Nations to maintain waterways for sustainable development</li> <li>• Some government policy provides resources to access infrastructure and funding for business development</li> <li>• Refresh of the Northern Development White Paper</li> <li>• Growing First Nations leadership to engage in public policy and business</li> <li>• Incorporating First Nations knowledge into planning</li> <li>• Water entitlements</li> <li>• Philanthropic assistance</li> <li>• Community/culture place-based economic modelling – preservation of Country and people</li> <li>• Creating investment models for cultural management</li> <li>• Free Prior and Informed consent for commercial scale development and negotiated agreements to ensure cultural values and community rights and interests are included</li> <li>• Accessing water to bolster economic development; especially on a local and environmental level/scale</li> </ul>

	<ul style="list-style-type: none"> <li>• Repatriation of water to First Nations’ organisation to assist their communities in participating in the market and water reliant industry</li> <li>• Joint equity arrangement</li> <li>• Capturing customary water knowledge and protecting intellectual property for community to use and commercially and culturally benefit</li> </ul>
<b>Threats/risks</b>	<ul style="list-style-type: none"> <li>• Water is viewed and managed as a commodity, rather than a resource that sustains all life</li> <li>• Fracking: what are cumulative impacts on country?</li> <li>• Water quality negatively impacted by industry development</li> <li>• Economic development is diminished through ongoing lack of water access entitlements</li> <li>• Increasing water prices will hamper government buy-back scheme and First Nations ability to participate in the market</li> <li>• Increasing water usage and competition for water access by mainstream industry development will further <ul style="list-style-type: none"> <li>- obstruct First Nations access to water and</li> <li>- diminish recognition of cultural values in water management</li> </ul> </li> <li>• Lack of capacity and fast pace of industry development for First Nations to get a foot hold</li> <li>• Water fees and charges of water licences could result in First Nations water holders selling water entitlements</li> <li>• Over extraction of surface and ground water due to limited western understanding of aquifers and catchments</li> <li>• Over allocation of water to other users – e.g. MDB</li> <li>• Climate change</li> <li>• Financial disadvantage and current economic position of First Nations to participate in industry development</li> <li>• Lack of policy and institutions support services to First Nations</li> <li>• Ongoing inequity in water markets</li> <li>• Disregard to modernise primary industries through funding incentives for sustainable land practices - e.g. cotton versus hemp water use</li> <li>• State ownership and control of water</li> <li>• Colonial control of institutions</li> <li>• Native title framework reform</li> <li>• Government and industry processes continue to fail in recognising First Nations rights and interests</li> </ul>
<b>What does this mean for First Nations Water Rights?</b>	<ul style="list-style-type: none"> <li>• Restoring and enabling a cultural economy – (Bruce Pascoe – Dark Emu)</li> <li>• Animals and plants</li> <li>• Where is the employment?</li> </ul>



	<ul style="list-style-type: none"> <li>- Environmental services</li> <li>- Diversify the work force</li> <li>• Equitable use and allocation of water non-existent – in the same position as 25 years ago</li> <li>• Appetite of government lacks enabling equitable opportunities for First Nations</li> <li>• Understanding systems when making allocation</li> <li>• Understanding value of allocation</li> <li>• Policies to phase out water allocation for conglomerates (BHP, Rio Tinto, Santos) in line with climate change policies for phasing out non-renewable energies</li> <li>• Decolonising institutions - Structural adjustments in the allocation and licensing process to better recognise cultural values, development opportunities, decision making and water justice for First Nations</li> </ul>
<b>Situational Analysis</b> <b>State of research</b>	
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Water development research in the north led by First Nations (e.g., NESP<sup>72</sup>)</li> <li>• Government funding has increased</li> <li>• Increased awareness of Governments and industry of Indigenous knowledge and water rights</li> <li>• First Nation researchers and led research – relevant to First Nations interests</li> <li>• Institutions <ul style="list-style-type: none"> <li>- AIATSIS<sup>73</sup> – ‘Land and Water’</li> <li>- KISSP<sup>74</sup></li> <li>- Indigenous Knowledge Institute<sup>75</sup></li> </ul> </li> <li>• Increasing awareness and adoption of Indigenous Cultural intellectual property</li> <li>• Evidence base to inform government public policy decisions</li> <li>• Cultural flows research</li> <li>• Generating data to inform local decision making</li> <li>• Natural and Social Capital Accounting used in public policy decisions</li> </ul>

<sup>72</sup> [National Environmental Science Program - DCCEEW](#)

<sup>73</sup> [About our research | AIATSIS](#)

<sup>74</sup> [Kimberley Indigenous Saltwater Science – Western Australian Marine Science Institution \(wamsi.org.au\)](#)

<sup>75</sup> [Home Indigenous Knowledge Institute \(unimelb.edu.au\)](#)

<p><b>Weaknesses</b></p>	<ul style="list-style-type: none"> <li>• No accurate baseline for water holdings – gap between First Nations and industry water holders</li> <li>• Natural and Social Capital Accounting excludes cultural values</li> <li>• Lack of access to data and limited ability to create own data to protect local interests, including access to resources, expertise – i.e. mapping cultural values so they can be managed and monitored; water quality; measuring impacts of climate change</li> <li>• Growing First Nations leaders and technical experts in relevant fields - not enough First Nations researchers and policy makers</li> <li>• Not valuing Indigenous knowledges – imbalance favouring western science</li> <li>• Western institutions attitudes to research – <i>‘nothing about us, without us’</i></li> <li>• Ethics processes</li> <li>• Research funding and allocation driven by external and institutional interests</li> <li>• Who owns outcomes?</li> <li>• Complex processes limit First Nations in applying for funding i.e. ARC, CRC, plus lack of trust of institutions that funds will be expended; and don’t meet institutional interests that rely on historical research and methodologies</li> <li>• Lack of social ecological systems and thinking</li> <li>• Lack of consent when doing research regarding First Nations</li> </ul>
<p><b>Opportunities</b></p>	<ul style="list-style-type: none"> <li>• First Nations-led research on Country</li> <li>• Collective wisdom to work together</li> <li>• Traditional story telling</li> <li>• Integrated research for transformational change</li> <li>• Community-led water projects producing economic benefits</li> <li>• Improving third party processes for research - good example of research permits on Eastern Marr Country</li> <li>• Government research funding being contingent on First Nations interests and decision-making</li> <li>• To properly resource First Nations bodies to undertake research</li> <li>• Reciprocity of research conducted on Country</li> <li>• First Nations have ownership of research</li> <li>• Indigenous leadership in research and co-design of research</li> <li>• Embedding Indigenous paradigms in research</li> <li>• Contracts and agreements to include partnerships between communities and research and industry agencies</li> <li>• Reshaping the way research agencies engage activities on Country – bottom up approach</li> <li>• Agreement system in place (i.e. contract) to protect cultural IIP</li> <li>• Independent research not beholden to lobbyist interests - “holding government accountable”</li> </ul>

	<ul style="list-style-type: none"> <li>• Sustained review/monitoring of research outcomes to ensure relevance and benefit of research</li> <li>• Developing a transformational research agenda to engage First Nations interests</li> <li>• Improve methodologies to engage First Nations values and interests</li> </ul>
<b>Threats/risks</b>	<ul style="list-style-type: none"> <li>• In action on climate science</li> <li>• Not equal partners in research i.e. NESP</li> <li>• Not resourcing practice and implementation (e.g., cultural flows)</li> <li>• Academic view – devaluing Aboriginal knowledges and systems thinking</li> <li>• Lack of genuine Indigenous engagement</li> <li>• Indigenous data sovereignty</li> <li>• Unethical research praxis – FPIC, information reciprocity</li> <li>• Lack of capacity and resources to enable Indigenous research opportunities</li> <li>• First Nations leading the research agenda – community-led</li> <li>• Lacking cultural perspective &amp; understanding</li> <li>• Changing of public policy and appropriation</li> <li>• Government attitude in recognising the relevance of Indigenous-led evidence based research</li> <li>• Reputable out-dated research and practices favoured over co-designed contemporary research methods</li> <li>• Limited engagement of local governments in the process</li> </ul>
<b>What does this mean for First Nations Water Rights?</b>	<ul style="list-style-type: none"> <li>• Should have our own CRC to flip research process</li> <li>• Indigenous-led research and researchers</li> <li>• Genuine Indigenous engagement in all research</li> <li>• Indigenous research and data sovereignty</li> <li>• Ethical research praxis</li> <li>• Transformational change of research systems</li> <li>• Review of implementation failures – i.e. cultural flows; interrogating outcomes</li> <li>• needs FN to direct research interests</li> </ul>
<b>Situational Analysis International Attitudes</b>	
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Growing national recognition of rivers as having legal rights – ‘Personhood’</li> <li>• World Heritage Listing; protecting culture values and sites – i.e. Budj Bim in VIC</li> </ul>

	<ul style="list-style-type: none"> <li>• Use international experiences to learn from and to leverage improved outcomes in Australian policy contexts, i.e. Treaty</li> <li>• United Nations as a policy and advocacy body <ul style="list-style-type: none"> <li>- Conferences on Environment and Sustainable Development<sup>76</sup></li> <li>- Human Rights - Peace, dignity and equality on a healthy planet<sup>77</sup> and associated instruments<sup>78</sup> <ul style="list-style-type: none"> <li>○ Notably UNDRIP</li> </ul> </li> <li>- Framework Convention on Climate Change<sup>79</sup></li> <li>- Convention on Biological Diversity<sup>80</sup></li> <li>- Sustainable Development<sup>81</sup></li> </ul> </li> <li>• The role of Treaties in upholding rights in courts– New Zealand and Canada examples</li> <li>• Governance models, i.e. Assembly of First Nations in Canada<sup>82</sup>; Congress of Aboriginal Peoples (Canada)<sup>83</sup></li> <li>• Growing recognition by Australian government of international commitment and conventions</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• International contexts may not always be relevant to the local context</li> <li>• Domestic political will</li> <li>• Agenda 21 – does not consider First Nations voices (Agenda 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which human impacts on the environment)<sup>84</sup></li> <li>• Disconnect between commitments and action; rhetoric and practice</li> <li>• Largely non-binding</li> <li>• Poor implementation</li> <li>• Accountability - intention doesn't equal outcomes</li> <li>• Limited or no meaningful outcomes at the community level</li> </ul>
<b>Opportunities</b>	<ul style="list-style-type: none"> <li>• UNDRIP</li> </ul>

<sup>76</sup> [Conferences | Environment and sustainable development | United Nations](#)

<sup>77</sup> [Universal Declaration of Human Rights | United Nations](#)

<sup>78</sup> [Human Rights Instruments | OHCHR](#)

<sup>79</sup> [UNFCCC](#)

<sup>80</sup> [Home | Convention on Biological Diversity \(cbd.int\)](#)

<sup>81</sup> [THE 17 GOALS | Sustainable Development \(un.org\)](#)

<sup>82</sup> [Assembly of First Nations: Representing First Nation citizens in Canada \(afn.ca\)](#)

<sup>83</sup> [Home - Congress of Aboriginal Peoples \(CAP\) \(abo-peoples.org\)](#)

<sup>84</sup> [Agenda 21 | Department of Economic and Social Affairs \(un.org\)](#)

	<ul style="list-style-type: none"> <li>- enquiry into Australia’s commitment to principles</li> <li>- Measure of progress and benefits of implementation</li> <li>- be implemented in full in government processes</li> </ul> <ul style="list-style-type: none"> <li>• Combining efforts – i.e. with Pacific Islands on mitigating shared threats of climate change</li> <li>• Expand reach and networks of First Nations people globally to share experiences and practices</li> <li>• Using the court system to uphold First Nations rights</li> <li>• International political influence in domestic policy process</li> <li>• Learning from existing international practice models and experiences</li> <li>• Standing seat in the UN, similar to Canadian First Nations</li> <li>• Domestic implementation of SDGs in public policy</li> </ul>
<b>Threats/Risks</b>	<ul style="list-style-type: none"> <li>• No action or accountability for international covenants – imperative is the implementation of UNDRIP in domestic policy and practice</li> <li>• Persistent paternalism – top down approach, limiting inform engagement and consultative practices to co-design processes</li> <li>• Commodification of water</li> <li>• SDG framework – disaggregate First Nations interests</li> </ul>
<b>What does this mean for First Nations Water Rights?</b>	<ul style="list-style-type: none"> <li>• FPIC if UNDRIP is implemented</li> <li>• International examples can frame potential paths to solve similar local issues</li> <li>• Shift from litigation to policy influence</li> <li>• Platform for First Nations cultural knowledges, perspectives, rights &amp; interests</li> <li>• Frameworks for engagement and solutions</li> <li>• Improved legislation</li> <li>• End of coercive control</li> <li>• Power equity in decision making</li> </ul>
<b>Situational Analysis Industry and Other Users’ Attitudes</b>	
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Treaty – to negotiate agreements</li> <li>• Emerging First Nations representation in industry</li> <li>• Growing First Nations industry groups in primary production</li> </ul>

	<ul style="list-style-type: none"> <li>• Growing recognition of First Nations water rights among industry</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• Limited awareness and understanding of non-Indigenous industry</li> <li>• Social licence to operate is only emerging and not adopted across all industry sectors</li> <li>• Different attitudes; miscommunication of information</li> <li>• Tendency to “consult” rather than partner irrespective of whose land the industry is on</li> <li>• Racist, colonial attitudes</li> <li>• Aversion to change and reform</li> <li>• Failure to recognise opportunity in mutual benefits</li> <li>• Government favouritism for industry water users for commercial purposes in public policy</li> <li>• General disregard of First Nations rights and interests</li> </ul>
<b>Opportunities</b>	<ul style="list-style-type: none"> <li>• Equitable participation in economic development</li> <li>• Environmental, Social and Governance standards apply to industry development and includes Cultural</li> <li>• Increasing pressure on industry to transform practices to adapt to climate change</li> <li>• Current goodwill of Government to support First Nations industry development</li> <li>• Participate in renewable energy industries</li> </ul>
<b>Threats/risks</b>	<ul style="list-style-type: none"> <li>• Power and influence imbalance in Government policy in favour of political lobbying power of industry &amp; economic development</li> <li>• Commodification of water rather than protection of water as an essential resource</li> <li>• Scare mongering</li> <li>• Impact of mining companies on water flows and quality</li> <li>• Racist, colonial attitudes</li> <li>• Increased foreign ownership</li> </ul>
<b>What does this mean for First Nations Water Rights?</b>	<ul style="list-style-type: none"> <li>• Transformational change of policy and frameworks to support First Nations engagement in decisions making processes regarding industry development</li> <li>• FPIC is adhered to</li> <li>• Public policy to support First Nations participation in primary industries</li> <li>• Accountability of industry – social licence to operate</li> <li>• Accountability of Governments – ESG (+Cultural values)</li> </ul>

<b>Situational Analysis</b>	
<b>Capacity of First Nations organisations</b>	
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Government has capacity</li> <li>• Cultural knowledge and practices for managing water</li> <li>• Ongoing connection to Country and water, in managing country</li> <li>• Negotiating settlements and compensatory benefits</li> <li>• Supporting governance frameworks in decision-making and participatory practices in co-designing solutions</li> <li>• Generosity and goodwill in engaging with wide ranging stakeholders regarding Country and people</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• First Nations organisations left to lead and redress complex problems of colonisation</li> <li>• Absence of supporting infrastructure</li> <li>• Native Title Act</li> <li>• Funding! For participatory engagement and planning, raise awareness, engage evidence based research to support decision making, to generate data, engage expertise</li> <li>• Reliance on government funding and policy</li> <li>• Limited authority of First Nations</li> <li>• Controlling bodies &amp; centralisation - trickle down to community and top up approaches</li> <li>• No accountability measures</li> <li>• No fit for purpose legislation to redress inequity in water access</li> <li>• Lack of skilled First Nations staff, in remote and regional communities</li> <li>• No real capacity of peak bodies for transformational shift from land rights to economic empowerment in terms statutory legislation</li> <li>• Capacity of peak bodies to actively participate in government water reform processes</li> <li>• Capacity to deal with climate change adaptation measures in communities – still working on getting access to water to get a seat at the table in management decisions</li> </ul>
<b>Opportunities</b>	<ul style="list-style-type: none"> <li>• Moving from co-design to co-governance if UNDRIP enacted</li> <li>• Negotiating water access entitlements; treaty agreements</li> <li>• Management of water to enable sustainable economic development, protection of cultural flows and water quality</li> <li>• Real engagement &amp; communication with community - Participate &amp; be informed of water management decisions</li> <li>• Control over Country</li> </ul>

	<ul style="list-style-type: none"> <li>• Inclusion of Elders knowledge in decision making processes</li> <li>• Investment to fund place based approaches – water entitlements, planning, research, development, monitor and evaluation</li> <li>• First Nation business and employment</li> <li>• Capacity development using bottom up approaches</li> <li>• Generating First Nation data systems to inform local decision making</li> </ul>
<b>Threats/risks</b>	<ul style="list-style-type: none"> <li>• Loss of livelihoods, customary practices, lore, knowledge, intergenerational transfer of knowledge, connection to Country</li> <li>• Infrastructure developments and changing the natural environment in industry, land use and management practices</li> <li>• Consultation fatigue without no meaningful outcomes – more data for government or research sake that we don't get access to for our own purposes</li> <li>• Short term outlook with no long-term outcomes</li> <li>• Scarce resource allocations</li> <li>• Racism &amp; attitudes of government and land users</li> <li>• Prevailing power imbalance</li> </ul>
<b>What does this mean for First Nations Water Rights?</b>	<ul style="list-style-type: none"> <li>• Funding to build limited capacity of First Nations organisations to engage in the water space</li> <li>• Infrastructure</li> <li>• Establishing First Nations governance in decision making process</li> <li>• Negotiation agreements for water access and use</li> <li>• Building skills and training in community</li> <li>• Enabling business development</li> <li>• Facilitating direct engagement of First Nations organisations with industry, governments and expertise</li> </ul>



*What Does 'Good' Look Like?*

<b>For First Nations communities and people</b>	
<b>How does "Good" work?</b>	<ul style="list-style-type: none"> <li>• Customary laws and practices that recognise First Nations water sovereignty are applied and recognisable in western constructs of laws and practices</li> <li>• Statutory functions with veto rights</li> <li>• Enabling authority and proactive participation in decision-making processes so that First Nations have power and influence on how water is managed</li> <li>• Domestication of UNDRIP into Australian law and the application of FPIC in all the process of government and industry engagement</li> <li>• Recognising ancestral Personhood and maintaining connection to country</li> <li>• Water is considered a living being and treated accordingly – health of Country is essential to sustainability and future generations</li> <li>• Australian Drinking Water standards and guidelines are adhered to in all remote and regional communities</li> <li>• There is enough good quality water to meet all environmental, social, cultural and economic needs</li> <li>• Redesigning the use of water so that the political power of industry does not lead the direction of Government</li> <li>• Legal rights to water - 100% ownership; a head license recognising traditional custodian ship and levers to enable distribution of access entitlements through FPIC mechanisms</li> <li>• First Nations set the strategy for managing water on country – First Nation Catchment Water Plans</li> <li>• Water can be used for any reason or purpose without the need to justify and without restrictions</li> <li>• Access to infrastructure to enable participation and planning and development strategies</li> <li>• Compensation for community with respect to the impact from their exclusion on their social, cultural and economic interests</li> <li>• Cultural framework applied in water management</li> <li>• Accountability of Governments with checks &amp; balances set by First Nations</li> <li>• Dispute resolution &amp; mediation mechanisms</li> <li>• Strong people empowered through having a voice as well as privacy of First Nations voices - autonomy</li> <li>• Respectful relationships with Governments and industry and other users</li> <li>• Resilience of Country and people to climate change and impacts of colonisation on our water ways and social systems</li> <li>• What 'Good' looks like will vary and should be determined at the local level respective to the community's situation</li> </ul>

	<ul style="list-style-type: none"> <li>• Establishing a Roundtable Governance Group directly after Roundtable</li> </ul>
<p><b>In this future “Good” State, how is good met?</b></p>	<ul style="list-style-type: none"> <li>• Economic development on First Nations terms</li> <li>• Recognising “health” of Country in a holistic sense</li> <li>• Bio-cultural rights to live autonomously and manage water flows</li> <li>• Recognising water as central to culture, customs and knowledge</li> <li>• Goodwill, good policy, good process and good measurable practices</li> <li>• Buy in by all parties</li> <li>• Evidence of benefits defined by First Nations people</li> <li>• Reconciling water injustice with truth telling to raise awareness and inform public attitudes – e.g. 25,000 people don’t have access to safe drinking water; and First Nations are locked out of economic development because their significant land ownership fails to include its water</li> <li>• Generation of data, data sovereignty and ownership of the intellectual property that is constantly gleaned by governments in its relentless endeavour to fix our problems for us</li> <li>• Treaty</li> <li>• First Nations living on country and generating sustainable livelihoods from their management of water and Country – i.e. carbon farming; biodiversity offsets; primary industries</li> <li>• Direct action through Indigenous leadership</li> <li>• Empowering Indigenous leadership</li> <li>• Public water campaigns</li> <li>• Transformational change of government public policy and legal reforms</li> <li>• State and Territory statutory function committee</li> <li>• Funding for infrastructure and capacity building</li> <li>• Centralised support via a national body and regional governance framework</li> <li>• Veto rights</li> <li>• First Nations are the Water Holder</li> <li>• Arizona Homeland Standard<sup>85</sup> to measure Indian water rights in Gila River</li> <li>• Self-determining pathways</li> <li>• Tailored and targeted solutions – no “one size fits all”</li> <li>• Enacting rhetoric</li> </ul>

<sup>85</sup> <https://www.jstor.org/stable/24888659>

	<ul style="list-style-type: none"> <li>• Learn from successful models e.g. agreement between the Commonwealth Water Holder and the Ngarrindjeri Nation<sup>86</sup></li> <li>• Framework for First Nation communities to have direct communication and the ability to make representations to relevant Ministers and Departments</li> <li>• Community-led co-design process</li> <li>• Government resources and frameworks to mediate distribute resolution</li> <li>• Realistic timeframes; longevity and security beyond Government political cycles</li> <li>• Next Steps - identify priorities</li> </ul>
<p><b>What KPI's are met?</b></p>	<ul style="list-style-type: none"> <li>• The Closing the Gap - water allocation target and a delivery framework is agreed</li> <li>• State and Territory implement water target</li> <li>• Nationwide access to safe drinking water with necessary infrastructure</li> <li>• Stronger regulations and accountability measures on industry to prevent over extraction and use impacts on water quantity and quality, respectively</li> <li>• Increase in the number of Ranger programs and funding</li> <li>• A national network of Aboriginal Water Officers</li> <li>• Healthy thriving environment as evidenced in the State of the Environment Report that includes disaggregated data relevant to First Nations values and interests and assessments, including funding for First Nations institutions to make those assessments – i.e. cultural standards and indicators to measure water health</li> <li>• FPIC and UNDRIP provisions are enabled in all government policy and practices</li> <li>• First Nations have autonomy and decision-making power in all policy and water management instruments</li> <li>• Both ownership and managers</li> <li>• Governments show measurable accountability</li> <li>• Governments show progress on commitments i.e. 2018 pledge of \$40 million to buy water back in the MDB to allow economic participation which is yet to be bought for First Nations; 2023 further \$9 million pledge to advance First Nations water rights in the MDB for First Nations</li> <li>• Cultural sites have better protection through relevant heritage protection legislation and enactment of regulations</li> <li>• Treaty and Treaties</li> <li>• Legal rights for ALL water uses (noting lack of inclusion of cultural purposes)</li> </ul>

<sup>86</sup> [Landmark agreement signed between Commonwealth and Ngarrindjeri Nation - ABC News](#)

	<ul style="list-style-type: none"> <li>• Benefits of water access entitlements are determined and measurable by local communities against their planning and development plans</li> </ul>
<b>What will be the benefits?</b>	<ul style="list-style-type: none"> <li>• Improved social, cultural and economic indicators</li> <li>• Social, cultural, economic and environmental benefits at local, catchment and national levels</li> <li>• Healthy country, healthy people - improved health and wellbeing</li> <li>• Increased awareness about First Nations people and our contribution to Australia’s identity, heritage, values and GDP</li> <li>• First Nations rights and interests are respected and valued in policy and management regimes and protected through legislative and regulatory mechanisms</li> <li>• Bolstered national economy through First Nations activating the Indigenous estate and economic participation</li> <li>• Preservation and maintenance for future generations</li> <li>• Positive community-led solutions</li> <li>• Self-determination and autonomy</li> </ul>
<b>For Governance (decision making)</b>	
<b>How does “Good” work?</b>	<ul style="list-style-type: none"> <li>• Implementation of FPIC and principles in the co-designing and co-management of water management at the local, and regional levels with respect to decision-making processes</li> <li>• Implementation of agreed priorities and actions</li> <li>• Reframing water policy and management practices through institutional frameworks and statutory legislation</li> <li>• Indigenous leadership enabled through institutional frameworks and statutory legislation</li> <li>• First Nations National policy framework – designed and led by First Nations</li> <li>• National Indigenous Audit to discern the current baseline of what good looks like that can be measured against</li> <li>• First Nations perspective are outlined; priorities are agreed</li> <li>• Leadership succession planning for intergeneration transfer of knowledge and authority</li> <li>• Strong regional level of scalability</li> <li>• Articulation of strong leadership on regional and national level</li> <li>• Treaty – for power sharing, partnerships, self-governance, water entitlements, community water management plans and associated legislative reforms</li> <li>• Transfer water ownership to First Nations</li> <li>• True self-determination and increased capacity to self-govern</li> <li>• Bottom-up nation building</li> </ul>

	<ul style="list-style-type: none"> <li>• Open forums for discussion and decision-making by consensus</li> <li>• At the watershed scale for collective and informed decisions and partnerships</li> <li>• Governance decisions principled on the authority of Country</li> <li>• Contributing to The Indigenous Voice To parliament, recognition and makarrata</li> <li>• Attitudes and practices of the bureaucracy has changed through greater awareness and policy informing their work</li> <li>• Legislative reform and consistency in the application of rights across States and Territory water mechanisms</li> <li>• Recognition of the Personhood of water as having its own authority</li> <li>• Working in small groups with respect to caring for country</li> <li>• Authority and business is conducted on Country</li> <li>• Business done on country</li> <li>• Our own institutions - separate governance structure – Echuca Declaration 2010</li> <li>• Reconvening this Roundtable</li> </ul>
<p><b>In this future “Good” State, how is good met?</b></p>	<ul style="list-style-type: none"> <li>• Decisions are being made at the catchment scale - First Nations governing bodies at all scales (local, catchment, regional and national) consistent across arbitrary State and Territory borders</li> <li>• Sustainable governance institutions</li> <li>• Strong leadership</li> <li>• Institutional capacity</li> <li>• Governance processes are improved through legal mechanisms and inclusive of cultural mechanisms</li> <li>• Collaborative governance with governments, industry and other users (50:50)</li> </ul>
<p><b>What KPI’s are met?</b></p>	<ul style="list-style-type: none"> <li>• Environmental, Social, cultural and economic health and wellbeing</li> <li>• Veto powers</li> <li>• Priorities are agreed, implemented and benefits measures and evaluated, and process and practices regularly reviewed and updated</li> <li>• Local community water planning and development - clean water, cultural sites are protected and practices are maintained, livelihoods are secured, economic development is providing financial security and measurable social benefits</li> <li>• Regional and catchment outcomes scaled up from community engagement</li> <li>• Growing networks and partnerships and access to resources – Governments, industry, research, land managers and owners working together</li> <li>• Legislative and policy reforms – i.e. <i>Water Act (Cth) 2007</i>; NWI</li> </ul>

	<ul style="list-style-type: none"> <li>• Consistent framework &amp; umbrella organisations</li> <li>• First Nations have a collective voice in policy and management decisions</li> <li>• Disaggregation of SDG and national policies relevant to First Nations interests to better measure benefits of transformational change in water reform measures</li> </ul>
<b>What will be the benefits?</b>	<ul style="list-style-type: none"> <li>• Environmental, Social, cultural and economic health and wellbeing</li> <li>• Autonomy to self-govern and self-determine transformative futures</li> <li>• Basic human rights</li> <li>• Increasing cultural authority in decision making processes</li> </ul>
<b>For property rights and entitlements, and legislative needs</b>	
<b>How does “Good” work?</b>	<ul style="list-style-type: none"> <li>• Assertion of rights to water and cultural heritage values</li> <li>• All water allocated (existing) to cultural use</li> <li>• Complete legislative reform and structural change</li> <li>• Reforms should ensure ‘the markets’ take responsibility in the change/rehabilitation</li> <li>• Reconnecting land and water – holistic management and decision making</li> <li>• Compensation</li> <li>• Improved measures and accountability to mitigate damage to water ways and cultural sites of significance – e.g. not to repeat the Juukan Gorge atrocity</li> <li>• Legal Personhood for water systems</li> <li>• Outcomes focused</li> <li>• Moving beyond ‘consultation’ to having a seat at the table and working in partnership</li> <li>• Having control over the process</li> <li>• Participating in management, governance</li> <li>• Self-determination of practices and actions</li> <li>• Recognition of the unextinguished lands and waters rights of First Nations under native title and Treaties and the inclusion of cultural rights under other legislation</li> <li>• Having property rights to water – entitlements and licences</li> <li>• Recognitions of First Nations Water Management Plans</li> <li>• Legislated secure water access entitlement that supports sustainable enterprise development</li> <li>• Water ownership for cultural purposes</li> </ul>

<p><b>In this future “Good” State, how is good met?</b></p>	<ul style="list-style-type: none"> <li>• Personhood of water ways are recognised and protected - Living waters</li> <li>• New Kind of Water Entitlement (NKOWE) for First Nations</li> <li>• Communal property rights</li> <li>• Start from scratch. New institutional and legislative frameworks</li> <li>• Compensation for extinguished rights</li> <li>• States defer regulatory power to FN people to regulate “good government, peace &amp; order”</li> <li>• Consistency across States and Territories</li> <li>• Redistribution of resources</li> <li>• <i>Water Act (Cth) 2007</i>– Commonwealth and jurisdictional legislation</li> <li>• Learning from Canadian Treaty and other agreement making experiences</li> <li>• Through the leadership of the Commonwealth to instil constituent process across jurisdictional</li> <li>• Change in rhetoric to strengthen provisions from ‘consider’ to ‘MUST’ and ‘where able’ to ‘will’</li> </ul>
<p><b>What KPI’s are met?</b></p>	<ul style="list-style-type: none"> <li>• Water allocation targets met</li> <li>• Law reform to recreate (NKOWE)</li> <li>• Veto rights to say no to extractive industries</li> <li>• Access to data and transparent information sharing of industry and governments</li> <li>• Jurisdictional processes reflect national policy reforms</li> <li>• Jurisdictions meet and are accountable for obligations due to strength of policy and legislative instruments set at the Commonwealth level</li> </ul>
<p><b>What will be the benefits?</b></p>	<ul style="list-style-type: none"> <li>• Stronger compliance and enforcement in jurisdictions</li> <li>• Improved quality &amp; increased quantity of water through sustainable practices</li> <li>• Enhancing the understanding of water as a living system and precious finite resource</li> <li>• Maintaining cultural obligations</li> <li>• Health (physical &amp; cultural)</li> <li>• Compensation re capital works</li> <li>• Income generation</li> <li>• Self-sufficiency</li> <li>• Repatriation of water to people and Country</li> <li>• Economic gain for communities</li> </ul>

<b>For Governments</b>	
<b>How does “Good” work?</b>	<ul style="list-style-type: none"> <li>• Invited into indigenous governance structure – States and Territories and Commonwealth (trilateral arrangement)</li> <li>• The NWI recognises bio-regional and bio-cultural interest and planning</li> <li>• Shifting power to Indigenous governance structures</li> <li>• Shared decision-making</li> <li>• Built trust in First Nations decision-making</li> <li>• The EPBC Act requires First Peoples input into planning decisions</li> <li>• Governments fulfil policy commitments through accountable measures; held accountable</li> <li>• Government attitudes change; reorganisation of bureaucratic layers; driven by public policy not political</li> <li>• Full government buy-in</li> <li>• Proper negotiation of trade-offs, not exclusive to industry economic values, some environmental and no cultural and social</li> <li>• Strengthened national leadership in a national approach for water management (i.e. instruments of the NWI and NWC).</li> <li>• The South Australian Alinytjara Wilurara Landscape Board – offers a model for First Nations-led local government<sup>87</sup></li> <li>• Solutions are being led by community for the benefit of community</li> <li>• Groundwater management</li> <li>• First Nations water ministers at all levels of governments</li> <li>• Recognition and implementation of First Nations authority and lores</li> <li>• Continuity in governance regimes beyond the government political cycle</li> <li>• Ability to veto public policy decisions</li> </ul>
<b>In this future “Good” State, how is good met?</b>	<ul style="list-style-type: none"> <li>• EPBC Act reforms</li> <li>• Refresh of the NWI</li> <li>• Clear commitment to water reform through priority settings, action planning and institutional capacity to participate</li> <li>• First nations are recompensed for past actions of governments</li> <li>• This Roundtable’s recommendations are implemented</li> </ul>

<sup>87</sup> [Landscape South Australia - Alinytjara Wilurara](#)



	<ul style="list-style-type: none"> <li>• Investment &amp; support for this Roundtable to continue</li> <li>• Strong leadership to progress framing the appropriate infrastructure</li> <li>• Corporations hold more accountability through regulatory reforms</li> <li>• Collaborative relationship building across all levels of governments, industry, other users and research institutions</li> <li>• Legislative solutions – i.e. establishment of Landscape Boards at the regional, the creation of First Nations water plans, water allocations with limited government bureaucratic red tape unless set by First Nations</li> <li>• Bottom up approaches</li> <li>• Action based rather than perpetual consultation</li> <li>• First Nation-led resourcing &amp; licencing allocation</li> <li>• Integrated solutions; evidence based</li> <li>• Action</li> </ul>
<b>What KPI's are met?</b>	<ul style="list-style-type: none"> <li>• Genuine partnerships and transfer of power</li> <li>• Legislative reforms, i.e. <i>Water Act (Cth) 2007</i>; EPBC Act to enable institutional change, development and capacity</li> <li>• Raised awareness of public servants and industry</li> </ul>
<b>What will be the benefits?</b>	<ul style="list-style-type: none"> <li>• Collaborative and holistic governance or broad ranging interests and rights</li> <li>• Less First Peoples requiring dialyses</li> <li>• Contribute to mitigating climate change and improved landscape management</li> <li>• Better use of resources – tax payer funds</li> </ul>
<b>For Other Water Users</b>	
<b>How does "Good" work?</b>	<ul style="list-style-type: none"> <li>• Clarity around access rights</li> <li>• Collaborative governance of water</li> <li>• Taxes/fee/levy based on use/profit</li> <li>• Paying the 'rent' on access and use</li> <li>• Irrigators and primary industries understand and accommodate cultural &amp; Indigenous water uses in land use practices</li> <li>• Catchment wide engagement to mitigate impacts on upstream and downstream users and interests</li> <li>• Shareholders working together</li> <li>• All users view the health of waterways is fundamental principle to water management from which to sustain use</li> </ul>

	<ul style="list-style-type: none"> <li>• Using ILSC capital funds to acquire lands and water</li> <li>• Regenerative practices on Country – Land and Water Rangers (local employment, connected to customary practices; engages across catchment)</li> <li>• Joint agreement on structural adjustments in government instruments</li> <li>• Reframe user perception of entitlement and ownership and its responsibility and accountability to maintaining living water systems</li> <li>• Review system of pastoral leases – diversification to better integrate other customary economies of land management practices and uses; i.e. biodiversity services, native food markets</li> <li>• Removal of hooved animals and harmful farming practices</li> <li>• Using pastoralists’ bargaining power – co-design solutions</li> <li>• Building community and other institutional capacity</li> <li>• Clear equitable outcomes (water &amp; country)</li> <li>• Health of Country is positioned as the development driver</li> </ul>
<b>In this future “Good” State, how is good met?</b>	<ul style="list-style-type: none"> <li>• Managing uncertainty</li> <li>• Proactive collaborative approach in water usage and projects related to water</li> <li>• Collaboration across catchments and across multiple catchments</li> <li>• Power balance between users</li> <li>• Farmers &amp; pastoralists adopting traditional practices or services for those practices – cool-burning, animals/grazing practices</li> <li>• Improved awareness and responsible access to sacred sites</li> <li>• Truth telling; education of history (land grabbing and massacres)</li> </ul>
<b>What KPI’s are met?</b>	<ul style="list-style-type: none"> <li>• Cultural water levy</li> <li>• Yarns on farms or related community engagement projects</li> <li>• Increased level of engagement</li> <li>• Resource use tax on water</li> <li>• First Nations water compliance officers (e.g. models of Indigenous Rangers, biosecurity and fisheries)</li> <li>• Redressing the leasing system</li> </ul>
<b>What will be the benefits?</b>	<ul style="list-style-type: none"> <li>• Levy put back into First Nation self-determination – community planning and development models</li> <li>• Increased engagement and capacity of First nations in decision making and self-determination and autonomy</li> <li>• First Nations rights and interests are embedded in all governance and compliance frameworks</li> </ul>

<b>For the national economy</b>	
<b>How does “Good” work?</b>	<ul style="list-style-type: none"> <li>• Postcolonial economy recognising the spiritual, cultural, environmental and social systems.</li> <li>• Economic and social equity for all</li> <li>• National economy aligns with the cultural economy</li> <li>• Framing ‘the First Nations economy’ in institutional frameworks</li> <li>• First Nations commercial water rights</li> <li>• Enterprise for First Nations communities; both mainstream and customary livelihoods</li> <li>• ACCESS TO WATER IS KEY – streamlining the process for resource and site access</li> <li>• SDG #6 is not restricted to drinking water, but also includes access for cultural purposes</li> <li>• Integration of cultural needs and practices at the forefront of the market</li> <li>• Reduce the risk for the agricultural industry</li> </ul>
<b>In this future “Good” State, how is good met?</b>	<ul style="list-style-type: none"> <li>• Expanding wealth creation beyond colonial constructs and perception of economies</li> <li>• Distributive justice</li> <li>• Participation in the economy and the benefits that flow from holistic water management for all</li> </ul>
<b>What KPI’s are met?</b>	<ul style="list-style-type: none"> <li>• Education</li> <li>• Health (Country and people)</li> <li>• Customary practices embedding in management and enterprise development</li> <li>• Intergenerational transfer of knowledge and practices</li> <li>• Economic and social indicators improve for all</li> <li>• Increased employment through Aboriginal water corporations, rangers, compliance officers, researchers</li> </ul>
<b>What will be the benefits?</b>	<ul style="list-style-type: none"> <li>• More cohesive society</li> <li>• Economic stability, equitability and sustainability</li> </ul>
<b>For the bio-cultural environment</b>	
<b>How does “Good” work?</b>	<ul style="list-style-type: none"> <li>• New paradigm for conservation – land and water management (Country), at local, catchment, regional, national levels – shift from state and territory regimes; colonial constructs of state and territory borders are arbitrary to water flows and cultural connections to Country</li> <li>• Bio-cultural values of rivers are recognised as living systems – Personhood</li> </ul>

	<ul style="list-style-type: none"> <li>• The relationship between people and country is restored through policy and practice</li> <li>• Funding for the rehabilitation of water resources, public awareness and education and to facilitate industry engagement</li> <li>• Improving practices for integrated Land Use Planning principled on the health of Country</li> <li>• Improved understanding of the cyclic nature of environment to assist better regulation for water use practices – Indigenous knowledge systems, local and regional contexts</li> <li>• Adaptation &amp; mitigation strategies for both predictive increases in water use, reflecting increasing populations, and climate change, including displacement of people from Country due to extreme weather events (remote and regional town planning) &amp; allowing preparedness for Climate Change impacts <ul style="list-style-type: none"> <li>- Groundwater and surface water – access to data in determining sustainable levels; local capacity to monitor and evaluate</li> </ul> </li> <li>• Understanding culture as dynamic and living – intergenerational and adaptive</li> <li>• Through First Nations water sovereignty</li> </ul>
<b>In this future “Good” State, how is good met?</b>	<ul style="list-style-type: none"> <li>• Systems management of bio-cultural landscapes</li> <li>• Recognition of the unique cultural values of rivers in policy and practice and allocations</li> <li>• Integrated environment, economics, social, cultural assessments – i.e. State of the Environment reviews - disaggregating First Nations interests</li> <li>• Mapping and monitoring data on water resources, values, uses, quality and quantity</li> <li>• Direct agreements to overcome notions of ‘aqua nullius’ – Treaty, MOUs, Plans, contract law agreements</li> <li>• Education of pre-colonial governance &amp; cultural values of managing Country</li> <li>• No more groundwater mining</li> <li>• Comprehensive planning</li> </ul>
<b>What KPI’s are met?</b>	<ul style="list-style-type: none"> <li>• Removal of unnecessary water infrastructure</li> <li>• Application of a Cultural benefit framework in water decision-making</li> <li>• Embedded at local level council planning schemes</li> <li>• First Nations are leading local and regional Climate Change response</li> </ul>
<b>What will be the benefits?</b>	<ul style="list-style-type: none"> <li>• Better management for Country and of its resources; reduced over-extraction of resources</li> <li>• Holistic approach in land and water use</li> <li>• Accountability of all water users and policy makers</li> </ul>

How Do We Get There?

Recommendations	Actions
<ul style="list-style-type: none"> <li>• Establish a National First Nations Working Group to coordinate direction and implementation</li> </ul>	<p>Within the next 3 months</p>
<ul style="list-style-type: none"> <li>• Establish the authorising environment, led by First Nations communities and their organisations and support frameworks at regional, i.e. ATSI model, councils and water committees, and national scales               <ul style="list-style-type: none"> <li>○ Appropriate scale governance arrangements for First Nations to hold and manage water access entitlements and participate in decision making processes i.e. statutory mechanisms for Land Councils or other to manage water funding and or allocation</li> <li>○ A Legislative National First Nations Water Holding &amp; Funding body to provide                   <ul style="list-style-type: none"> <li>- national scale water governance and ownership</li> <li>- coordinate and lobby legislative changes</li> <li>- directly engage with Productivity Commission relevant to progress of the NWI and NWC (when re-established)</li> <li>- coordinate across different scales of First Nations governance (e.g. national peak bodies, regional institutions, individuals groups and institutions) to support access and use of water entitlements</li> </ul> </li> <li>○ To include broad scale consultations - Community engagement, using consistent standards for engagement regardless of Government</li> <li>○ Enable a strong collective voice to advocate and influence policy</li> <li>○ Support the role of CAWI which has an important advisory role, noting increasing pressure for collection action in the water space                   <ul style="list-style-type: none"> <li>- More resourcing to support First Nations national water agenda</li> <li>- Construct to include a mix of appointed experts and senior leaders as well as community nominated positions</li> </ul> </li> <li>○ Direct engagement with federal and state ministers via committees</li> <li>○ Frameworks for accountability, including for litigation</li> <li>○ Long term self-nominated ministerial council of First Nations embedded within Treaty</li> </ul> </li> </ul>	<p>Within 12-18 months</p> <ul style="list-style-type: none"> <li>○ Roundtables at a regional level to</li> <li>○ Establish a framework to approach designing representation models</li> <li>○ Community consultations - guidance to frame authorising environment</li> <li>○ Collect statements</li> <li>○ Consolidate community needs</li> <li>○ Informed - ANU develop a position paper regarding governance options/ model(s)</li> <li>○ Convene a National Summit 2023 to consolidate a First Nations water policy reform agenda</li> <li>○ Federal and other Ministers attending</li> <li>○ Issue a national Declaration 2023 – asserting rights &amp; interests (refresh)</li> <li>○ Federal Government commits funding for dialogues and community engagement strategy; and research and policy program (DCCEEW)</li> <li>○ Annual dialogue to review progress</li> <li>○ Strengthen links and two way communication between community &amp; CAWI</li> </ul>

	<ul style="list-style-type: none"> <li>○ Establish a National First Nations Working Group to coordinate delivery going forward, working with CAWI</li> <li>○ ANU continue to convene the leadership group with secretariat support to progress agenda</li> <li>○ ILSC to fund ANU to be secretariat plus NNTC to coordinate native title intersection</li> </ul>
<ul style="list-style-type: none"> <li>● Set national best practice standards concerning engaging First Nations water rights and interests specific to provisions under UNDRIP and FPIC in all machinery of Governments, including the implementation of: <ul style="list-style-type: none"> <li>○ The <i>Water Act (Cth) 2007</i></li> <li>○ Refresh of the 2004 NWI and adopted uniformly by all State and Territory Governments</li> <li>○ 2026 review of the Murray-Darling Basin Plan</li> <li>○ The EPBC Act 199</li> <li>○ Other</li> </ul> </li> </ul>	<p>Within 2 years</p> <ul style="list-style-type: none"> <li>○ Budget allocation for policy development and implementation, led by First Nations</li> <li>○ Budget for raising whole of Government awareness and communication and implementation strategies</li> <li>○ <b>Allowing adequate time</b> for informed development of standard practices and to communicate progress of delivery and <b>further time</b> to monitor and measure impact</li> <li>○ Monitoring and Evaluation Framework</li> </ul>
<ul style="list-style-type: none"> <li>● Undertake legislative reform to recognise First Nations rights and interests (relevant to above, i.e. UNDRIP and NWI refresh) and harmonise benchmark standards in regulatory processes across state and territory Governments <ul style="list-style-type: none"> <li>○ Review national and state and territory water planning and management legislation consistent with UDRIP and native title (i.e. <i>Water Act (Cth) 2007</i>; Murray-Darling Basin Plan; EPBC Act)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Develop timeline for legislative change in parallel to above regarding setting standard practice</li> <li>○ I.e. review NWI before review of the <i>Water Act (Cth) 2007</i></li> </ul>

<ul style="list-style-type: none"> <li>○ Separate legislation at the catchment level, reflected at state level <ul style="list-style-type: none"> <li>- First Nations groups become the water regulators</li> </ul> </li> <li>○ Strengthen language – ‘native title holders’ instead of ‘stakeholder’; ‘will’ instead of ‘where able’</li> <li>○ Cultural heritage reflected at catchment level, reflected at state level</li> <li>○ Establish frameworks to enforce transparency and accountability of implementation of legislation</li> <li>○ Committees established under legislation are led by First Nations people</li> <li>○ Regulatory space is a mix of statutory recognition &amp; independent</li> </ul>	<ul style="list-style-type: none"> <li>○ Build on positions of strength – i.e. method used in Victoria through Treaty</li> </ul>
<ul style="list-style-type: none"> <li>● Create a Native Water Act at the Commonwealth level to provide overarching provisions for a national statutory water holding body and mechanisms for responsibility. <ul style="list-style-type: none"> <li>○ The new Act would enshrine provisions under UNDRIP</li> <li>○ Encapsulate “water is life” and associated processes for water management</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Engage First Nations people and their institutions in the refresh of the NWI <ul style="list-style-type: none"> <li>○ Installs UNDRIP in the mechanisms of water planning and governance</li> <li>○ To enforce nationally consistent processes and incentives for buy in at state and territory levels</li> <li>○ To establish frameworks for accountable measure of impact</li> <li>○ To link measures into reporting mechanisms of the Productivity Commission</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Reform the <i>Water Act (Cth) 2007</i> consistent with a refreshed NWI and relevant to recognition of UNDRIP and native title so all States and Territories are held to account <ul style="list-style-type: none"> <li>○ Including regulatory reforms to measure accountability</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Enshrine ancestral ‘Personhood’ of River Systems within legal systems</li> </ul>	
<ul style="list-style-type: none"> <li>● Establish mechanisms to engage First Nations knowledge into management systems</li> </ul>	
<ul style="list-style-type: none"> <li>● Strengthen recognition of the Native Title Act to better recognise water rights and interests</li> </ul>	

<ul style="list-style-type: none"> <li>• Constitutional recognition of First Nations people <ul style="list-style-type: none"> <li>○ To create a representative body to give voice to First Nations in Government processes</li> <li>○ The Voice as a mechanism for Water Rights</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Create Integrated Land Use Planning Agreements to bind rights in agreements that ensure connection between Country and water and holistic management <ul style="list-style-type: none"> <li>○ Land Use Plan negotiated through <b>Treaty</b> toward autonomy &amp; self-determination</li> <li>○ Holistic management of catchments First Nations Lead Conservation Groups</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Undertake assessment of past agreements to develop a national benchmark of what works well and not so well, i.e. those without FPIC</li> </ul>
<ul style="list-style-type: none"> <li>• Engage First Nations Catchment Agreements <ul style="list-style-type: none"> <li>○ Cohesive agreements among Nations to reflect upstream and downstream interests and to mitigate any risks to those interests and negotiate any trade offs</li> <li>○ Supported with a communication strategy to network interests and reporting</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Supported through evidence based research to address any issues of both interest and contention</li> </ul>
<ul style="list-style-type: none"> <li>• Institutional change <ul style="list-style-type: none"> <li>○ Stronger First Nations representation in existing catchment boards and committees</li> <li>○ Shift towards natural resource management, inclusive of water management practices</li> <li>○ Similar to the Victoria State Governments Aboriginal Water Program</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Build capacity of networks to provide advocacy and policy advice through i.e. <ul style="list-style-type: none"> <li>○ Increased funding for existing networks e.g., MILDRIN, NBAN and representative bodies</li> <li>○ Funding for emerging First Nation networks and network gaps</li> <li>○ Secure long-term funding programs, independent of Government cycles</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Enabling framework to encourage more First Nations people take up positions of authority in the bureaucracy <ul style="list-style-type: none"> <li>○ First Nations in senior executive roles</li> <li>○ First Nations portfolio in all agencies</li> <li>○ First Nations people appointed to Government positions and within political parties</li> <li>○ Utilise leverage in negotiation of agreements</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ I.e. QLD Procurement policy</li> <li>○ Education pathways</li> </ul>



<ul style="list-style-type: none"> <li>• Evidence based research, development, innovation and policy <ul style="list-style-type: none"> <li>○ Improved communication of existing information, transparency</li> <li>○ Provision for First Nations-led research in Government programs and research institutions for national and regional benefits linked to related policy i.e. CtG, SDG's, NWI</li> <li>○ Provision to conduct independent research for the benefit of First Nations communities <ul style="list-style-type: none"> <li>- Design place based frameworks to enable First Nations leadership in the design, governance and implementation of research activities of relevance to their community and their data sovereignty</li> </ul> </li> <li>○ Baseline assessments of water holdings and water use to inform national public policy and agreements including monitoring framework to measure impacts of water entitlements</li> <li>○ Long term state/catchment level baseline assessments of water quality and quantity</li> <li>○ Map existing water governance groups nationally</li> <li>○ Review markets and the economy and consider alternative economic scenarios for Australians Water policy settings</li> <li>○ Develop a robust First Nations research program, independent of Government, to support place based <ul style="list-style-type: none"> <li>- First Nations mapping and planning</li> <li>- Implementation of First Nations water plans</li> <li>- To negotiate access water entitlements</li> <li>- Participate in mainstream water manage practices</li> <li>- Engage cultural water management practices</li> <li>- Create jobs in water management and monitoring</li> <li>- Establishing livelihoods to participate in the national economy</li> <li>- Water security risk reduction strategies regarding impacts of climate change of catchment water supply and quality</li> <li>- Influence policy and legislative reforms</li> </ul> </li> <li>○ Review of water prices for residents in remote communities, i.e. creating subsidies</li> <li>○ Review infrastructure and technology to improve community access to clean drinking water</li> <li>○ Independent review of legal provisions for legislative reform to recognise First Nations rights and interests</li> <li>○ Developing frameworks to benchmark and measure benefits from water access entitlements <ul style="list-style-type: none"> <li>- Prioritising community values i.e. health and cultural wellbeing over economic gain</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Create a Living Waters Cooperative Research Centre</li> <li>○ Access ARC funding</li> <li>○ ANU to undertake baseline water data assessment and governance mapping</li> <li>○ Philanthropic research funding, including in-kind from experts</li> <li>○ Indigenous STEM workforce</li> <li>○ First Nations-led research organisations and (AIATSIS, CAEPR, NAILSMA)</li> </ul>
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<ul style="list-style-type: none"> <li>- Activating the Indigenous estate to achieve achieving self-determined economic independence through water access entitlements</li> <li>o Repatriate (native title evidence) knowledge of the old people in community water planning and action management processes</li> <li>o Build capacity of local community to undertake research, analyse data and inform policy</li> <li>o Indigenise AI</li> <li>o Establish best practice community engagement protocols and practices for third party interests</li> <li>o Establishing accessible data depository and policy at appropriate scales on access e.g. Murray-Darling Basin Authority database/repository</li> </ul>	
<ul style="list-style-type: none"> <li>• Commonwealth Government fulfils commitments i.e. <ul style="list-style-type: none"> <li>o \$40 million to the First Nations water in the Murray-Darling Basin</li> <li>o CtG – setting and implementing a national water target</li> <li>o \$9 million to establish a Water Trust – governed by First Nations</li> <li>o Refresh of the NWI with inclusion of First Nations people</li> <li>o SDGs</li> <li>o UNDRIP</li> </ul> </li> </ul>	Within 2023-2024
<ul style="list-style-type: none"> <li>• State &amp; Federal Governments alignments <ul style="list-style-type: none"> <li>o Murray-Darling Basin Ministerial Council</li> <li>o COAG processes: CtG, NWI, SDGs, UNDRIP</li> <li>o Water allocation mechanisms; water access entitlements</li> <li>o Water Regulatory processes; water management</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Water entitlements and community/catchment scale water plans <ul style="list-style-type: none"> <li>o State and territory negotiate agreements under a Treaty or other agreed framework</li> <li>o Centralised and autonomous of Governments</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Communications and advocacy <ul style="list-style-type: none"> <li>o National strategy to facilitate annual national and regional dialogues and ‘First Nations Think Tanks’ to inform policy</li> <li>o Campaigns advocating Close the Gap around water advocacy</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>○ Two way strategies to raise public and industry awareness regarding First Nations rights and interests and First Nations understanding of interests of other water users</li> </ul>	
<ul style="list-style-type: none"> <li>● Education platforms and pathways (Governments, communities, industry, public) <ul style="list-style-type: none"> <li>○ Identify challenges and issues regarding safe water supply in remote and regional communities</li> <li>○ Impacts of climate change on water supply and the natural environment</li> <li>○ Cultural water practices as an integrated way of caring and managing water</li> <li>○ Tertiary curriculum for First Nations water managers</li> <li>○ First Nations water knowledge in water management and national truth telling in all levels of education</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Secure long-term funding and models to self-funding <ul style="list-style-type: none"> <li>○ For PBCs, in perpetuity</li> <li>○ Land Trusts</li> <li>○ Capital Funds</li> <li>○ Land Councils representative bodies to establish water units</li> <li>○ Indigenous Economic Water Fund</li> <li>○ First Nations water Boards and Committees</li> <li>○ Indigenous research &amp; science</li> <li>○ To establish Water Rangers workforce to regulate water sources</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Reframing water management as part of a 'Living Environment' and to reflect a bio-cultural lens <ul style="list-style-type: none"> <li>○ Broadened unrepresentative narrow definitions of cultural water</li> <li>○ Convey holistic perspectives of Living Waters Scapes</li> <li>○ Restoration of First Nations water governance</li> <li>○ Increased accountability of water users – fines or compensation for degradation to waterways, rehabilitation mechanisms</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Data Sovereignty and repositories <ul style="list-style-type: none"> <li>○ FPIC applied regarding any information collected about or on behalf of First Nations</li> <li>○ Standardisation/legislation for data collection</li> <li>○ Community set parameters for data collection relevant to their local interests,</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>○ Right to refuse third party access to undertake research relating to their interests without FPIC</li> <li>○ Involve all levels of community in data collection (recognising different knowledge authorities within a single community and to facilitate intergenerational transfer of knowledge systems)</li> <li>○ Legislative and policy measures to protect Indigenous Cultural Intellectual Property</li> <li>○ Creating repositories for nationally and regionally accessible information with different access criteria</li> </ul>	
<ul style="list-style-type: none"> <li>● Jobs &amp; Training <ul style="list-style-type: none"> <li>○ Building cultural capabilities &amp; capacities across water resource managers</li> <li>○ Cultural Awareness training</li> <li>○ Research and project management</li> <li>○ Water monitoring; compliance of water quality and quantity, use practices</li> <li>○ Community engagement and planning – mapping Country</li> <li>○ Government water planning and policy</li> <li>○ Industry</li> <li>○ Working with Government and industry and other external interests regarding cultural awareness, FPIC, and best practice community engagement i.e. community protocols</li> </ul> </li> </ul>	

## 5. Meeting Communique

(Issued by the Roundtable co-convenors 26 May, 2023)

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The National First Nations' Water Roundtable was held on the Country and Waterways of the Ngambri (Kamberri), Ngunnawal and Ngarigo peoples, at the Australian National University (ANU) in Canberra, 16-17 May 2023.

A joint initiative of the ANU, the Indigenous Land and Sea Corporation (ILSC) and the National Native Title Council (NNTC), the historic Roundtable was attended by a diverse group of about 80 people with expertise on First Nations water rights and its intersection with public policy and water management.

They comprised First Nations representatives from across Australia at the centre of managing their lands and waters, researchers with extensive experience collaborating with First Nations people and government policy makers who work in this space.

The meeting heard from First Nations leaders around the country about the unique view of First Nations who do not separate themselves from water, land or sea and how this interconnectedness has allowed First Nations to live sustainably for more than 65,000 years. It also heard of the dire and urgent circumstances surrounding First Nations access to water as it relates to First Nations holding rights to about 40% of Australian land through native title and traditional ownership – yet own and control less than 0.2 percent of surface water entitlements.

The meeting also heard from Canadian Indigenous leaders Dana Tizya-Tramm of the Vuntut Gwitchin First Nation and Professor Deborah McGregor from the Whitefish River First Nation. They discussed the challenges of First Nations people in Canada on their journey of securing water rights in similar circumstances to that in Australia.

A cohort of young First Nation leaders and students provided a fresh and reinvigorated sense that a new approach to managing the Nation's water is urgent and First Nations require a new approach.

### Key Messages

The meeting agreed that the lack of recognition and access to water entitlements contributes to widening the gap of First Nations disadvantage, leading to poor environmental outcomes as highlighted in the 2021 State of the Environment Report, and contributing to inefficient use and management of Australia's natural resources at an unsustainable level for future generations.

The meeting revisited previous work undertaken across the country, noting the key challenges of lack of ownership over water access entitlements; lack of participation in water governance regimes; fragmented legislative regimes across States and Territory jurisdictions; rural and remote communities lacking access to clean drinking water; and the lack of institutional frameworks and practices consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Roundtable noted opportunities to advance First Nations peoples' rights to water in Australia through the implementation of UNDRIP and the United Nations' Sustainability Development Goals and in the Australian policy environment, through the proposed reforms to the Environment Protection and Biodiversity Conservation Act 1999; refresh of the National Water Initiative; the 2026 review of the Murray Darling Basin Plan; and the 2024 review of the *Water Act (Cth) 2007*.

Also appreciated by participants in the Roundtable was the increasingly positive national political environment highlighted by the Albanese Government's commitment to fully implement the Uluru Statement from the Heart and re-establish the National Water Commission, and its recent announcement to increase First Nations water ownership. In that regard, the Roundtable had the benefit of a presentation by the Hon Tanya Plibersek MP, Minister for the Environment and Water, who confirmed that the Government will consult and design an enduring arrangement for First Nations peoples to own, access and manage water in Australia.

There was consensus at the Roundtable for a new approach to advance First Nations water rights and needs and that First Nations leaders needed to act now. As evidenced from work in the Murray Darling Basin and northern Australia, that approach should be built around a First Nations led, nationally consistent approach to First Nations' water rights, that is informed by evidence and international trends towards water justice for First Nations people and equitable participation in the Nation's social, economic and environmental futures.

### **Key Recommendation**

It was recommended that going forward a First Nations Working Group be convened to facilitate the development of a First Nations led, nationally consistent approach to First Nations' water rights. The Working Group would be a loose federation of experts with experience in advocating the rights and interests of First Nations over the past decades. The role of the Working Group should extend to facilitating the establishment of a First Nations alliance that can negotiate and seek to reach a national accord with all Australian Governments to implement this new approach.

The Roundtable co-convenors agreed to act collectively on this recommendation as a matter of urgency with respect to engaging with appropriate agencies in its construct and design.