



*SOUTHWARD MOVEMENT OF WATER – THE WATER WAYS*

A thesis submitted by

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## Abstract

This thesis explores the acculturation of the Australian landscape by the First Nations people of Australia who named it, mapped it and used tangible and intangible material property in designing their laws and lore to manage the environment. This is taught through song, dance, stories, and paintings. Through the tangible and intangible knowledge there is acknowledgement of the First Nations people's knowledge of the water flows and rivers from Carpentaria to Goolwa in South Australia as a cultural continuum and passed onto younger generations by Elders. This knowledge is remembered as storyways, songlines and trade routes along the waterways; these are mapped as a narrative through illustrations on scarred trees, the body, engravings on rocks, or earth geographical markers such as hills and physical features, and other natural features of flora and fauna in the First Nations cultural memory. The thesis also engages in a dialogical discourse about the paradigm of 'ecological arrogance' in Australian law for water and environmental management policies, whereby Aqua Nullius, Environmental Nullius and Economic Nullius is written into Australian laws. It further outlines how the anthropocentric value of nature as a resource and the accompanying humanistic technology provide what modern humans believe is the tool for managing ecosystems. In response, today there is a coming together of the First Nations people and the new Australians in a shared histories perspective, to highlight and ensure the protection of natural values to land and waterways which this thesis also explores.

As a Worimi man I have been part of this community coming together of Australians which recognises the First Nations people's cultural obligations to water and land. This has also extended to the legal theatre where Aboriginal jurisprudence is slowly being recognised in land Rights and Native Title. Hence it is like the Lore for the Kadaitcha man and the Illapurinja (female Kadaitcha) pointing the bone at Australian common law for recognition of the First Nations people being in country and our beliefs for water. Australian law is awash with policy that favours the government and not the community; as a Worimi man I have been part of an Indigenous community thirsty for transformation of this bad policy.

From my perspective as a Worimi man, despite the Australian historical record, popular culture and government acknowledgement of Aboriginal acculturation over many years, Aboriginal ownership of Australia's largest river system is not appropriately respected. This thesis surveys this evidence and compares it with non-Indigenous knowledge, governance and management.

This thesis argues that there needs to be a more equitable footing in Australian law, whereby the First Nations laws (Earth-centred laws), of spiritual, religious and cultural beliefs about water, the natural environment, native title and cultural heritage are respected and valued. This is a movement for the First Nations to be engaged as equal partners for water, cultural heritage, and environmental legislation. Only in this way can cultural practices and knowledge of the waterways be passed on to future generations and so continue the First Nations' obligation to protect the Mother (Earth) for the betterment of all earthly creatures. The thesis, can therefore be understood as a contribution to the field of Indigenous Cultural Studies.

The thesis concludes that unless Aboriginal people are allowed equal participation in managing the Murray-Darling Rivers then ecological arrogance will continue to dominate to the detriment of the rivers and my people.

## **Certification of Thesis**

This Thesis is entirely the work of Dale Wayne Kerwin except where otherwise acknowledged. The work is original and has not previously been submitted for any other award, except where acknowledged.

Principal Supervisor: Associate Professor Libby Connors

Associate Supervisor: Professor Tracey Bunda

Student and supervisor signatures of endorsement held at the University

## **Acknowledgement of Country**

As a Gorrie (an Aboriginal person) from the Worimi nation and the author of this thesis; I acknowledge the Traditional Owners of the land where I study and live. I pay my respect to Elders past, present and emerging and the Elders of the New Australians as they are leaders of their communities.

A cultural warning to Aboriginal and Torres Strait people that this thesis contains names of Elders who have passed away (note due to the anglicised spelling of Aboriginal nations these have changed over time so some are spelt differently today).

Note: The terms First Nations people, Sovereign First Nations, First Nations, Indigenous, Traditional Owners and Aboriginal have been used interchangeably throughout this document. The thesis acknowledges that there exist several different preferences from various Aboriginal and/or Indigenous Nations across Australia and the Torres Straits in how they would like to be referred to.

## **Acknowledgements**

I dedicate this work to the Aboriginal Elders who have instructed me in our cultural ways over the many years of my training, their patience, knowledge of cultural practices for both tangible and intangible ways is reflected in this thesis.

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May their cultural knowledge and memories speak from the pages of this thesis.

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## List of Abbreviations

AELA	Australia Earth Laws Alliance
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i>
ANRM	Aboriginal Natural Resource Management Group
CEWH	Commonwealth Environmental Water Holder
CMAs	Catchment Management Authorities
COAG	Council of Australian Governments'
CRC	United Nations Convention on the Rights of the Child
CSIRO	Commonwealth Scientific and Research organisation
EPBC Act	Environment Protection Biodiversity Conservation Act 1999 (Cwth)
FPWEC	First Peoples Water Engagement Council
ILUA	Indigenous Land Use Agreement
IPA	Indigenous Protected Area
IUCN	International Union for the Conservation of Nature
IWPG	Indigenous Water Policy Group
IWPS	Indigenous Water Policy Statement
MCATSIA	Ministerial Council for Aboriginal and Torres Strait Islander Affairs
MLDRIN	The Murray and Lower Darling Rivers Indigenous Nations
NAIDOC	National Aboriginal and Islander Day Observance Committee
NAILSMA	North Australian Indigenous Land and Sea Management Alliance
NBAN	Northern Basin Aboriginal Nations
NCFRP	National Cultural Flows Research Project
NSW	New South Wales
NTA	Native Title Act 1993
NWC	National Water Commission



NWI	National Water Initiative
NAILSMA	North Australian Indigenous Land and Sea Management Alliance Ltd
SA	South Australia
SIRs	Strategic Indigenous Reserves
TRaCK	Tropical Rivers and Coastal Knowledge
Qld	Queensland
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
Vic	Victoria
WA	Western Australia

## **Chapter 1 Introduction**

I am a Gorrie from the Worimi Nation, Forster-Tuncurry in New South Wales. My people are salt water people who lived by the sea and harvested sea and fresh water products from the ocean and Wallis Lake. My mob traded fish hooks along the songlines and storyways. My general education began when I was 24 when universities were opened up for Aboriginal people in 1982. I am now 61 years old and reflect back on my general education and the transmission of Aboriginal cultural knowledge for this thesis. By comparing the two forms of education, it's like an analogy when viewing Aboriginal art and non-Indigenous art- there are considerations in relation to the explanations of the story being presented. There are also considerations for what is being communicated, where multiple concepts are expressed which can be interpreted differently. In a further analogy of song and stories when comparing an interpretation of these, they present concepts and experiences of the lives we live. My cultural education has been grounded from birth and through working as a ranger trainer with Traditional Owners caring for Country, with the Ang-Gnarra Corporation of Laura North Queensland. I also worked in the National Australia Museum Canberra cataloguing artefacts, and with Elders such as Mr Neville Bonner A.O, Mr Ron Hurley, Uncle John Jones, Jacob George and many other Elders, who have provided cultural knowledge for management of Country and the Waterways. I have been given permission to name providers of knowledge and also to provide these Elders names, because I personally have a relationship with these Elders.

Naming the thesis in this way, explains my embodied practice in being in/with the various locations and individuals/Elders referenced in the research through theoretical and popular cultural texts. The evidence of this practice has been taken up in the age old Aboriginal tradition of a contemporary journeying into other Aboriginal countries as a respectful Aboriginal man. Simply put, I need to know what I write about. The act of journeying sits with a responsibility to give voice – an oral documentation that adds with other Aboriginal voices to write into the present an understanding of the preciousness and spiritual significance of water. This story must be known and must be heard in a time of crises for the Country, .. crises known through a neglect of what Aboriginal knowledges and cultural practices tell us; through what white economics and white law fails to address and through how the effects of climate change will have the ultimate say. My hypothesis despite widespread acknowledgement of Aboriginal acculturation of rivers, Aboriginal ownership and control remain negligible, Western technocratic responses have not worked, hence the need to move to a new legal approach of ecological personhood.

As a record of being a Journey Man and carrying on the cultural tradition of connection to other First Nations Elders, the storying that the thesis engages in, was carried out by travelling to other first Nations countries and following cultural protocols that reaffirm practices of community connection. These are recorded in the thesis by photo-documenting, as evidence of stories of individuals, family, community- as a celebrated evidentiary practice of knowing people and knowing Country and knowing stories that connect the First Nations communities.

This thesis compares mainstream and official sources such as newspaper articles, fact sheets, encyclopaedias, magazines, web articles, government web sites and signage along the waterways to the First Nations people's oral histories, songlines, storyways and creative arts which present the First Nations people's concepts of Country. Here ecological knowledge and management of Country communicates a continuation of our culture. Each type of communication is insightful and merges local knowledge, public authorship and broader academic context to the meaning of the First Nations knowledge of the waterways. Embedded in the thesis are information boards, information pamphlets, information sign posts which are all similar to the First Nations people's scarring of trees and geographical markers along the songlines and storyways, as these are signposts within the cultural landscape. While merging these diverse sources the research nonetheless seeks to keep a focus on the specifics of the questions posed for the thesis.

### **1.1 Aims and Objectives of the Research**

As a Gorrie from the Worimi Nation, Forster in New South Wales, in the tradition of cultural transmission and cultural continuation, my grandfather Lester Charles Leon was a story teller and told stories of the storyways, songlines and trade routes that followed the waterways from Cape York to Goolwa in South Australia. Granddad was also Chairperson of the Aboriginal-Australian Fellowship from 1958 to 1967. Granddad fought for full acceptance of us as the First Nations people and full political rights for us as sovereign peoples. My father Kevin Leon was also a story teller and painter; he also told and painted this knowledge, as did my Uncles and Aunties who followed this practice of cultural continuum. I am continuing this work for recognition of us as sovereign peoples, by doing an autoethnography of the stories that they told us as their children and grandchildren in yarning circles. The autoethnograph I write is a cultural continuum of social, historical events and situations by storying the First Nations way of life. This is an insider viewpoint, in which meanings and views are attached to the 'emic' from the 'etic' (Cahill 2010,

p.xvi). W.E. Roth, an ethnographer and also Chief Protector of Aboriginal people in Queensland in 1904-1905, writes about the Aboriginal tradition of 'walk about' and 'trade routes' as follows:

this walkabout is part and parcel of the great trading or bartering system which is more or less continually going on throughout the various districts. Certain trade-routes laid down from time immemorial ... are followed by members of a tribe or tribes, along which each know that he is free to travel unmolested: these routes, of greater or less extent, are rigidly adhered to ... The recognised routes invariably, and for reasons readily intelligent, run along the water-courses and water-holes (Roth, 1984, Vol. 1, p. 132) .

For this thesis, I am undertaking to follow these storyways, songlines and trade routes along the waterways, as a cultural continuum to map them as a narrative of a traveller recording stories told, and in Illustrations and signage along the road ways (which is similar to the First peoples' scarring of trees, engravings on rocks, or placing significance on earth geographical markers such as hills and physical features), as well as local information boards and government information brochures (which is also similar to the First peoples' educational stories, songs, dance for Country and storyways). As a First Nations methodology which is grounded in relational knowledge and as a First Nations person doing research, I am "related to everything in creation, and accountable to all my relatives and grounded in a First Nations knowledge of spirituality and philosophy" (Yunkaporta, 2009, p.5).

Aboriginal Dreaming stories and communication ways (storyways/songlines) traversed Australia and followed waterways- consequently so did the surveyors, explorers and drovers of the colonisation period in Australian history. Aboriginal knowledge and names for the traditional walking tracks and travelling routes after invasion, were overlaid with new Australian names, traditions, histories and concepts. We also know that the inland water systems became the travelling stock routes for graziers and are known as such today. Aboriginal knowledge of these paths, tracks and roads became subservient and renamed as did the river systems and waterways by the dominant cultural group (Kerwin, 2010).

My starting position is, 'Does Aboriginal knowledge of water flows and rivers (waterways) in Australia, that flow along the main river systems from the Gulf of Carpentaria to Goolwa in South Australia, still survive today through a cultural continuum- and is it remembered as storyways'.

The objectives and concepts, within the study are intended to recognise Aboriginal peoples' worldviews within Aboriginal terms of reference, and how those worldviews relate to both

Indigenous and non-Indigenous peoples. "People who come from outside Australia need to realise that this Country is not a European Country, and neither are the First Nations people of this Country, European" (Watson 1988, p.178). Aboriginal terms of reference and concepts for water flows include: Aboriginal peoples' ways of knowing and theories of knowledge involving values and cultural components. These also include epistemologies, whereby Aboriginal peoples' ways of being, and ways of understanding reality and existence for water etc. Also Indigenous axiologies, which are Aboriginal peoples' ways of doing, which are driven by values that inform the ways Indigenous peoples perceive and assess the world. These also inform Indigenous principles and concepts by way of methodologies- Aboriginal peoples' worldviews that shape, design and understand knowledges and the First Nations methods of cultural practices, tools, techniques and ways of doing gather and valorise knowledge. These methodologies also recognise the abundance of a rich diversity of practice among the First Nations people today along the waterways. It also acknowledges and validates the First Nations rights to self representation, to define Country and who we are, to acknowledge our cultural heritage and cultural traditions.

These principles and concepts for First Nations' worldviews relate to both Indigenous and non-Indigenous peoples concepts of water flows. The thesis actively assesses dominant cultural paradigms and knowledges, and recognises the complexities of cross-cultural knowledge transfer and the need to develop an understanding and acceptance of sensitivities for Aboriginal peoples' cultural knowledge.

## **1.2 Methodology**

Effectively identifying and valuing Indigenous water requirements is of national significance given the imperatives established by current Australian water policy to improve Indigenous access to water and protect Indigenous water cultures and traditions (Bark, *et al* 2015, p. 3).

First Nations knowledge is often marginalised, ignored and unknown. While there is published literature on the First Nations knowledge of socio cultural values for water, many are still largely informed by non-Indigenous theories, perspectives and worldviews. The research for this study values Aboriginal knowledges and seeks to transform this problem. Aboriginal knowledges are increasingly emerging and being recognised by mainstream Australians. The First Nations peoples' viewpoint is the view of the collective on a particular issue whether it is local, state or national within a specific context, such as the waterways. The First Nations peoples' viewpoint could be that of an individual, local organisation, or that of a community. Linda Tuhiwai-Smith

(2004) and Karen Martin (2008) provide the point that the First Nations communities have different ways of knowing, being and doing, and added together provide a whole picture. This provides an Indigenous methodology- a self-reflexive process whereby the First Nations cultural ways of knowing, being and doing are based on values and beliefs.

This promotes the First Nations peoples' discourse for cultural continuity and transmission of ways of knowing, being and doing with traditional cultural frameworks in a contemporary context. Cultural practices of storytelling, song and pictorial evidence, combined with qualitative data including secondary data and primary sources, provide a narrative voice to the many First Nations. In recognising Indigenous methodologies from around the world, the Maori people of New Zealand have *Kaupapa Maori* which provides an Indigenous perspective for methodologies, in which the First Nations intricacies add depth to their own knowledge, as they engage in and learn from other Indigenous peoples' from around the world, ways of knowing and being to inform research paradigms. However, *Kaupapa Maori* is designed for use by the Maori people of New Zealand (Smith, 1997). Tracey Bunda (2014) in her PhD thesis draws on the voices of Indigenous people to understand institutional power on Indigenous people across generations, within critical theory that includes Indigenous thinkers to provide a conceptual map throughout the thesis. Bunda combines "critical theory and creative writing to interpolate our being as a theoretical life" (Bunda 2014, p. 6).

Labelling non-Indigenous knowledge is part of this process: non-Indigenous ways of knowing, being and doing need to be labelled, rather than considered the 'norm'. The thesis methodologies normalise Aboriginal ways of knowing, being and doing that involve challenging widespread myths. The methodology also engages a shared historical philosophy- the shared histories that bring together 'both' ways of approaching knowledge for water flows as it recognises both the First Nations' traditions of knowledge and Western knowledge process and cultural contexts. In this way, shared histories embrace values and diversity. Throughout colonial history, many Australian research methodologies have worked to oppress, subjugate, and colonise Aboriginal people's knowledge. This thesis methodology is important within this context for the study of the waterways, as this acknowledges the First Nations meaning and that this knowledge rests with the First Nations' people. Hence the methodologies are filtered through a First Nations lens.

Today in Australia environment and heritage issues remain constant and contentious so the research for the thesis by necessity, will also draw from digital platforms to provide current First

Nation people's voices speaking on these cultural and environmental issues. In this way the research adapts to a cutting-edge knowledge device used extensively by the First Nations communities.

The thesis will not be based in one methodology, as the thesis traverses and investigates Aboriginal epistemological, ontological and axiologic ways of knowing, being and doing. The combination of discourses, such as ethnographic accounts, discourse analyses, qualitative analyses, Aboriginal standpoint theory, and Aboriginal reciprocal research provides a narrative discourse to the thesis. It is important that "Yarning (talking) and Mooka (listening)" is fundamental for any engagement of the First Nations people of Australia (Yunkaporta, 2009). This informs the theoretical framework of this thesis and is found in the works of three Senior Law Men (Bill Neidjie, David Mowaljarlai and Wandjuk Marika), who turned to the western literate tradition to bring an urgent message to Australians about the Djang (primordial energy). The Djang is out of balance and there is an urgent need to rebalance the Djang. It is up to the individual to act in a lawful manner and behaviour with the environment, a behaviour which patterns them back into land.

In this vein participants are the producers of content and knowledge, therefore the participants are the object and subject of the thesis. Aboriginal story holders are the owners of the cultural knowledge and hold it for the community to engage in, and for future generations to learn through a cultural continuum. Aboriginal story holders keep the memories alive through cultural practices, for both tangible and intangible properties. This provides for future potential for interpretation and management of landscapes and furthering Australians' knowledge of the environment (Lavers 2010:14).

The thesis combines qualitative analysis research strategies to guide the procedures of collecting data, and add a framework for data analysis of the field work. Aboriginal standpoint theory justifies the valuing of Aboriginal ways of knowing and ways of being. This process utilises an Aboriginal world view and experience- it is a multifaceted approach which provides a more objective view of the world. It gives voice to the marginalised by providing another means to appreciate the First Nations understanding of the Australian environment.

While undertaking the research for this thesis, I have been invited to speak at three yarning water conferences by the Heartwood, Site for Transformative Arts, Culture and Science which is a free association of scholars, artists, researchers and educators. Heartwood aims to provide an avenue

of learning that seeks to communicate new ways of seeing, and to initiate events of learning on challenging themes of contemporary interest. Heartwood also promotes that all, economic activity is conducted in accordance with ecological and ethical principles, that reflect human dignity in understanding water as a sovereign being with identities and rights.

The first Yarn conference: *Listening to Country: Understanding the Sovereignty of Indigenous Knowledge: Building Respect for Country and the Original Custodians* was held at Mullumbimby Science School NSW, on the 4<sup>th</sup>-7<sup>th</sup> October 2018; the second *Creative Spirits; Healing the Lands, Healing the people* was held on 25<sup>th</sup>- 29<sup>th</sup> of January 2019, Canberra ACT; and the third, *The Water Yarning- Tidings, Flows and Sorrows* conference held on Gumbaynggirr Country NSW in September 19 - 22, 2019. The focus was WATER - carrier of spirit, culture, story, memory, law & lore, and the theme was a shift from materialistic, greed-driven 'take', to a will to protect all bodies of water. At all three yarning conferences, Elders and law/lore people from around Australia attended and came together to share their knowledge in the yarning circles. For example, Uncle Kev Buzzacott, (Arabunna Nation), Aunty Cheryl Buchannan (Guwamu (Kooma) Nation), Aunty Maureen McKellar (Kunja Nation), Bruce Shillingsworth (Muruwari and Budjiti Nations) and I presented papers at all three Yarning Conferences, but law/lore man Uncle Ned Jampijinpa Hargraves (a rainmaker from the Northern Territory Yuendumu community) attended the Yarning Conference held on Gumbaynggirr Country and talked about the Topabar (Dreaming) which he stated 'is so special that the government has no idea it is the songlines that come with the water.' Uncle Ned explained 'They are destroying our culture, we are going to fight the government. I have a song that goes with the storylines, men and women dance to this song because water is part of them' (Uncle Ned Jampijinpa Hargraves). Uncle Ned sang for us the "Water Song"

Hey Nyuntu nyuntu  
Winkirrpay 2  
Winkirrp yampiya  
Yampiyalka  
Yampiyalku- leave it alone  
Tarrku tarku marulu  
Nguru warlaja  
We see danger ahead of us  
Tarrku  
Our culture is not for you to destroy or break  
Tarrku  
Our connection to country  
our childrens future  
is not for you to take



Tarrku  
(Ned Jampijinpa Hragraves, *pers.comm.*, 20/09/2019).

As stated, the thesis provides an autoethnographic narrative to the research of the First Nations culture, and how it relays knowledge, knowing and doing by paintings, rock art, drawings in the dirt, corroborrees, etchings, tree carvings, archaeological evidence and storytelling. The thesis informs the reader of Aboriginal knowledges of water flows which follow the southward movement of water and Aboriginal knowledges of these water flows. This provides a better understanding of Australia's environment and rivers.

Finally, combining the above methodologies, promotes a two-way context with regard to Aboriginal knowledge bases and Western science. This dictates that by physically following the songlines and storyways, as in the Aboriginal tradition of 'walk about' in field work on Country, this is the most effective way of providing a context to the research (Tan, et al 2012). We can see this with the art work of Laurie Nilsen, who gave me permission in 2008 to use the pictorial reflection (Illustration 1) of a storyway/songline, which the First Nations people used as communication ways for social, ceremony and trade. Laurie's pictorial reflections present knowledge of a First Nations' beliefs that isn't expressed through the written word, but is reflexive of stories told in storyways and songlines. Laurie's pictorial reflections communicate himself in a world derived of a cultural continuum and based on traditional knowledge transmission. Laurie's storyways and songline pictorial reflections are a conversation between the First Nations peoples' traditions and contemporary culture, and Western forms of writing and painting.



*Art by Laurie Nilsen*

Illustration 1. Laurie Nilsen 2008, a Mandandanj man Roma Queensland, art work represents place stories in a variety of forms, which allows viewers, to participate in a variety of ways with his images (see Chapter 3 for Laurie's painting on Mandandanj's nations of seasonal knowledge).

The research for this thesis will not engage in discussion about invasive species of introduced flora and fauna, tourism, mining nor human impacts of urban development. The focus is on storyways, and the First Nations traditional knowledges of Country, thus providing an analysis of river and wetland history relative to cultural uses. A focus of this thesis is to record the traditional and current state of cultural values and use of Country along the waterways.

## Chapter 2 Methods and Literature Review

### 2.1 Scope of the Thesis

The thesis articulates a First Nations epistemological and ontological lens to the thesis question- *Does Aboriginal knowledge of water flows and rivers in Australia that flow along the main river systems from the Gulf of Carpentaria to Goolwa in South Australia still exist today.*

The aim of the thesis is to demonstrate that Aboriginal knowledge of water flows and rivers in Australia that flow along the main river systems from the Gulf of Carpentaria to Goolwa in South Australia still exist through a cultural continuum. The thesis will build on already known information on water flows along the research perimeters and will add an Aboriginal voice to the historic and contemporary data and information. For the First Nations of Australia these water flows are still alive in Aboriginal memory and are lived through cultural practices of Art, storytelling, journey ways and what they continually mean to the living culture. The thesis will further knowledge for Australian history and protection of the natural environment such as rivers, creeks and soaks i.e. water holes. Aboriginal knowledge flows along the waterways and rivers. For example Tyson Yunkaportaj (2009), demonstrated that Aboriginal knowledge flowed along the rivers in his report to NSW Education Department for regional schools. Yunkaportaj (2009), used three rivers that flowed from Bourke, Brewarrina and Walgett for bringing together the common ways down the rivers (Yunkaportaj 2009, p. 2).

Today more Australians know of the First Nations culture and society than in any other point in Australian history. John Mulvaney (1989), estimated that at the point of invasion there were over a million people inhabiting the continent of Australia (Mulvaney 1989:xv). The discourses the thesis engages in are based on cultural heritage, established geographic and hydrological knowledge (the common knowledge) of rivers, the history of exploration, and the First peoples' knowledge and storyways of and for the river systems from the Gulf of Carpentaria to the southern shore of the continent in South Australia.

The thesis seeks to reinstate the First Nations people's knowledge into the historical landscape of Australia by naming the rivers and Dreaming stories that are still painted, carved, drawn, etched in geographical features, in stone arrangements and scaring on trees and told in oral histories by Aboriginal Traditional Owners of Country. These are also told in information signage along the

waterways and inserted in the thesis as Illustrations. Cultural knowledge of water flows is important in Native Title/Land Rights and the management for the Murray/Darling River flows. Water (both ground and subterranean) is economically essential to Australians and as such is regulated and governed by a number of State and Federal Government laws. In Australia, there are a number of regulatory and legal, institutional frameworks that govern the access and use of water. Acknowledging the First Nations peoples knowledge of water flows will set a different narrative to Australia's history and importantly provide some support for the rights of Aboriginal native title holders for the use of water.

As a First Nations person my research method is based on a flexible data collection which is grounded in the First Nations people's expression for ways of knowing, being, and doing (Martin, 2008). The notion of First Nations person research methods for the collection of data is based on and engages with contested meanings of place and cultural geography, but such an engagement necessarily trespasses on various disciplinary boundaries. The broader research context cannot therefore be identified by the project's contribution to a particular discipline and relies on multiple modes of tangible and intangible objects. The thesis therefore rests, rather, in its contribution to undermine colonised meanings of place, knowledge of water flows and to affirm the relevance of the First Nations cultural knowledge of rivers and water flows. The data collection I used is a cultural responsive technique that was holistic in focusing on the interrelatedness of literature, participants' relationship with me, community and broader community. This technique also focused on social context of travelling, listening to the spirits of the water and land (Country) and ancestral guidance within the signs and messages in the wind and flora and fauna.

## **2.2 Outline of Chapters and Literature Review**

The literature review is compiled along the themes for the chapters. It thus focuses on the National Interest, Native Title, the shared knowledge/histories of water in Australia, geology and geography of eastern Australian water systems, water flows into the Murray/Darling basin and international efforts to grant rights to rivers some of which draw on traditional spiritual knowledges. The literature review also covers recent efforts in northern Australia to incorporate Indigenous Australian knowledge into river management.

The thesis used source material that are- primary, secondary and tertiary sources to offer a commentary on the First Nations knowledge of the waterways. These source materials were summarised, interpreted, critiqued and analysed within the thesis. The use of academic scholarly

works and popular works provide a narrative to local and historical events for the waterways. The use of websites also provides a commentary on the First Nations knowledge of the waterways. These websites can also be seen as primary, secondary and tertiary sources as some provided news, interviews and quotes on contemporary and historical facts for the waterways.

Most of the articles in this literature review have focused on Eurocentric memory and cultural heritage values. This is selective when writing about race relationships with Aboriginal peoples and the contribution Aboriginal peoples have made to the management of the environment. Further most of the works cited express socio cultural values for the management and use of the rivers for the Murray-Darling Basin but do not engage with the spiritual values accorded to water in Aboriginal beliefs. Most of the articles in this literature review have focused on Eurocentric memory and cultural heritage values. This is selective when writing about race relationships with Aboriginal peoples and the contribution Aboriginal peoples have made to the management of the environment. In the Anthropocene age of geological impacts made by human beings, it is important to record the spiritual values for the Murray-Darling Basin when we see the impacts of humans on the rivers for economic and socio cultural activity.

The factors contributing to cultural transmission include historical stories and providing valid and locally-owned information for caring for Country. The research will provide a narrative for the unique circumstances that each of the Traditional Owners of Country have for the waterways. The issues they face will add a context to Aboriginal knowledge of water flows and rivers in Australia that flow along the main river systems from the Gulf of Carpentaria to Goolwa in South Australia.

The scope of the thesis is only on the major rivers on the East of the Australian continent for the Murray Darling Basin that flow from Gulf of Carpentaria south to Goolwa in South Australia. For example, "The Georgina River and the Ilaga-Dhuwani Rainbow Serpent Dreaming are part of the system of major trading routes that existed across Australia before Europeans arrived" but are outside the parameters of this study. However, these are important because they provide a context for the socio-cultural economic perspectives within the thesis (Indjalandji-Dhidhanu Aboriginal Corporation pers.com. 2017). A further example of the cultural continuum of the storyways/songlines is the Seven Sisters Dreaming story that traverses the continent of Australia.

The broader research context rests, in its contribution to undermining colonised concepts of water, place, Country, dystopia of colonial Australia and affirms the relevance of the First Peoples of Australia knowledges.

### **2.3 Chapter 3 The Country Australia and Water Flows into the Murray/Darling Basin Australia My Country**

As early as 1971, Nancy and Andrew Learmonth analysed Australian landscapes and human impact on the environment by commercial activities, town planning, water flows and policy making of every kind in respect to the economic use of the environment. This geography, although written pre Native Title, acknowledged Aboriginal rights to water and inclusion in policy decisions along the Murray River.

In this spirit, the Murray-Darling Basin Authority web site which provides the historical overview of the development of agreements between four Australian states for legislative machinery for the utilisation of the Murray River and its tributaries from 1895 to contemporary times, also provides details of the Traditional Owners and Aboriginal histories for the length of the Murray-Darling Basin. The web site provides educational resources and geographical information concerning the Murray-Darling Basin which will help to ground this study but which will be significantly elaborated by this project.

### **2.4 Chapter 4 A History of Legal Exclusion of First Nations**

Bain Attwood edited a compilation of work In the *Age of Mabo: History, Aborigines and Australia* (1996). In the introduction he writes that the discourse of history has played a role in how Aboriginality has been constructed here in Australia. These constructs presented Aboriginal society in a negative vein and the new studies in Aboriginal history are based in the national interest and Australia's future in presenting a positive view ie. Reconciliation. In the same year Henry Reynolds (1996) argued that the key elements for discussion on Native Title are: "questions of sovereignty, annexation, extinguishment of property rights; possession; historical recognition of native title" (p. 17). If we consider the national interest, water would have to be added to property rights and Aboriginal rights to water would not have been extinguished by colonisation. In the field of Aboriginal Studies water was being centred as essential to Aboriginal identity and is the framework this study develops. For example, *The People of Budj Bim*, *Meralte The Boat People* and *Bubbles on the surface: a methodology of water*.

## **2.5 Chapter 5 Historical Engagement of the First Nations People for Water**

Chapter 5 draws upon the work of Indigenous writers especially Janis Constable and Karen Love who have done detailed reports on Indigenous people's relationships to the waters of the Qld Murray-Darling and of the Galilee Basin. Their work complements the work done by environmental lawyers and by state natural resources departments across the basin all of which have affirmed the necessity of recognising Aboriginal people's right to water. This chapter draws on this literature to show how despite successive consultations and official reports of the past few years, governments have failed to incorporate Indigenous water rights.

Cheryl Buchanan, Chairperson: Northern Basin Aboriginal Nations (NBAN) submission to the review of the *Water Act 2007 (Cwth)* in 2014, added an Indigenous voice that detailed the development and endorsing of the definition for cultural flows. The NBAN is an Indigenous voice that promotes Aboriginal lore and cultural flows which is supported by non-Aboriginal documents such as state consultants, Environment lawyers, AgForce Indigenous Cultural Water policy Policy Position (endorsed August 2019), and Marsden Jacob Report. (2019). Additionally, the Murray Darling Basin Authority supports the position of the NBAN position for Indigenous water through the Independent Assessment of Economic and Social Conditions in the Murray-Darling Basin.

Environmental Justice. (20/11/2014). Aboriginal water rights Legal analysis of submissions to the Review of the *Commonwealth Water Act*. The analysis of submissions made to the review of the Commonwealth Water Act identified that submissions were made by Indigenous organisations and environmental NGOs that considered, legal perspectives, on how the proposals within those submissions could be implemented. The submission proposed amendments to the *Commonwealth Water Act* which would be beneficial to Aboriginal Nations in the Murray- Darling Basin.

## **2.6 Chapter 6 Oral Histories the StoryWays**

The sacred meaning that rivers have to First Nations was explained to me by Richard Percey an Aboriginal man who worked at the Kalkadoon Tribal Council Limited Cultural Keeping Place, Mount Isa, Queensland in 2002. In an interview he told me a story of the woman from the Dreaming who sings a song across the Channel Country and its tributaries flowing southward of the Diamantina and Georgina Rivers where her song can be heard. "Yamma-coona is the woman of the bush who alluringly sings a nameless tune across the rivers of the Channel Country and speaks of life and death" (Richard Percey pers. comm. 10 July 2002).

In this decade contact histories were also beginning to elucidate Aboriginal relationships to Country in the Murray-Darling catchment. Jan Critchett, (1990) researched the histories of cultures in contact for the Western District of Victoria from 1822 till the 1950's. The research focused on two Aboriginal missions Lake Condah and Framlingham. Critchett studied the records of George Augustus Robinson, the chief Protector of Aborigines (1840) and James Dawson a pioneer and author of a book (1881) on Aboriginal languages of the Western District of Victoria. Critchett's research supports the Traditional Owners history of the Western District of Victoria and adds context to the physical material culture for this region.

Another important contribution was by Josephine Flood, (1990) who writes about the human history of Australia and the principles for conservation of this human history. Flood provides a commentary on tangible and intangible heritage values that add value to this research.

The most important revision of Aboriginal material culture in recent times has been by Indigenous scholar, Bruce Pascoe, (2014) who challenges the hunter-gather construct of the First Australians by the colonisers by interpreting the evidence written in journals by historical characters such as explorers, surveyors, pastoralists, and Aboriginal protectors. Pascoe did not rely on Aboriginal oral histories but used the Euro-centric lens in his argument for a re-consideration of the economic and socio-political complexity of the First Australians.

Davidson, D. S. (1935) mapped the geographical distribution of particular cultural traits, interpreting the resulting patterns as largely the result of historical development through innovation and/or diffusion of knowledge. Davidson summarised the types of water crafts used by Aboriginal peoples, he compares the material, the methods, and the geographical locations for both rivers and coastal dwellings of Aboriginal peoples for the use of water crafts.

Thomson, D. F. (1957) provides a description and construction of the simple bark-canoe, that is found only in western Victoria, south-eastern South Australia, and the Murray-Darling basin of New South Wales. Thomson describes the bark-canoe use at Avoca, Darling River, the Riverina region, Goolwa, Murray River, the interior of New South Wales, Encounter Bay, Lake Alexandrina and Yass.

Baker, D.W. A. (1997) writes of how Thomas Mitchell witnessed this dispossession and how Mitchell contributed to this by his search for the inland river. However Baker also provides a



commentary to Mitchell's contradictory attitudes towards Aboriginal peoples from his encounters during his survey of Eastern Australia.

Jean, A. Ellis (1994) provides a factual account of the First Australians cultural heritage that includes a belief in the spiritual, a description of rituals and the presence of Totem ancestors with their ties to human and the natural world. Her work engages in the life styles of traditional and contemporary Wiradjuri peoples. This wholistic understanding of Aboriginal knowledge and relationships is integral to this study of the Traditional owners across the whole river system.

## **2.7 Chapter 7 Shared Histories: the Foot Prints in Sand**

Raymond Evans (1992) writes about race relationships and Australian social history across a wide area that includes Aboriginal and European frontier conflicts. Evans provides a commentary on how Eurocentric memory is selective when writing about race relationships with Aboriginal peoples and the contribution Aboriginal peoples have made to contemporary histories.

Bobbie Buchanan (1997) is the great granddaughter of Nat Buchanan who from 1860's to 1900's was an explorer, drover and cattle station owner/pioneer – Buchanan's work gave a European map of the entire northern part of Australia for pastoral use. At a time when Aboriginal society was being demonised he employed Aboriginal men as drovers, and ambassadors; he used conciliatory, innovative peaceful measures to further his objectives of pioneering. Bobbie's writings add a context to places along the Darling River.

W. G. McMinn (1970) provides an insight into Allan Cunningham a botanist who explored and surveyed much of south-eastern Australia in the years 1817 to 1828. McMinn provides an historical account of Cunningham's exploration of large areas of land adjacent to the settled districts of New South Wales and the passage to the Liverpool Plains, and the survey of the Darling Downs and later Pandora Pass.

The Journal of Thomas Livingston Mitchell (1848) records Mitchell's survey from Sydney to the Gulf of Carpentaria in December 1845 which lasted 12 months. His objective was to find the great river that flows from the north of Australia. Mitchell records his encounters with Aboriginal people as he explored. He also recorded the Aboriginal names for rivers and geographical locations on his exploration. This adds a context to the study of Aboriginal knowledge for the movement of water.

Tim Murray (1999) explores the 160 years of histories of contact and the exploration and exploitation of the Murray River. He explores the archaeology and history of Aboriginal Australia and how it can play a positive role in environmental outcomes for the benefit of all.

Chris Guest (2016) provides an overview of the historical agreements, documents and deals of State and Federal governments since colonisation for water history of the Murray Darling Rivers. Guest investigates the important moments in water histories, and political interests, values, cultures and economic aspirations for water reform policies for the Murray- Darling Basin.

Angela and Mike Bremers (2017) explore the 200 years of human powered crafts on the rivers of the Murray-Darling Basin. This also includes Aboriginal crafts and contact for this 200 years history. The Bremers' research provides a comprehensive study of journeys of exploration, surveying, paddle steamers, and the economic exploitation of the Murray-Darling Basin.

Val Donovan (2010) provides a narrative about the mutual curiosity of first contact between explorers and the Traditional owners of Country that was being surveyed. Donovan highlights the explorers who surveyed Queensland followed Aboriginal roads, used Aboriginal guides and recorded Aboriginal names used for the physical landscape that were recorded in explorers journals.

D.W. A. Baker (1998) provides an account of Thomas Mitchell using Aboriginal guides to survey the Australian landscape; this occurred on Mitchell's southerly surveying exploration in May 1828. This began Mitchell's association with Aboriginal men as guides, an association which was developed and extended on his four journeys of exploration. Baker describes the guides as hired help and their characteristics.

D. J (John), Mulvaney (1989) investigates the evidence of contacts between the colonial explorers, settlers, and Aboriginal peoples and how this contact had affected Aboriginal cultures and societies. Mulvaney also explores the multicultural heritage in which not all contact between European settlers was hostile but positive within a shared history. He challenges past held beliefs and understandings about Australia. Mulvaney's work emphasises place, he cites the physical and symbolic remains of encounters with Aboriginal people for their social and historical elements. The research will further the notions of reconciliation with the fact that Australians are now

understanding connection to Country and spiritual aspects for the environment. These authors provide a window to historical notions of Aboriginal people and the water environment.

## **2.8 Chapter 8 Water and the Environment**

Nathalie Rühs and Alex Jones (2016) research explores the construct of the “Anthropocene to define our new relationship with nature” (Rühs and Jones 2016, p.1). Rühs and Jones argue that there needs to be a shift from this paradigm to an Earth-centred paradigm. They argue that there is also a need for “the concept of Earth Jurisprudence ... and the constitutional right of nature ... to address the challenges that we now face globally” (Rühs and Jones 2016, p.1).

At least three Nation states have taken up this idea. Barbara Kingsolver (2010) explores how the rights of the environment and water were acknowledged with the Ecuador 2008 Constitution’s recognition of the Vilcabamba River. Kingsolver states that Ecuador has become the first nation to include the rights of water into their constitution. On March 30, 2011, the Provincial Court in Loja, Ecuador ruled in favour of Nature – specifically the Vilcabamba River – marking the first successful case enforcing the Rights of Nature outlined in their 2008 Constitution. The Ecuador law recognises the rights of rivers and forests, not as property, but in themselves. The Ecuador law provides rights to rivers and forests to enable them to flourish.

Jason Daley (2017) describes the processes that the Indian courts made to grant rights to two of its rivers - the Ganges and Yamuna Rivers. He describes how the Ganges and Yamuna rivers were granted the same legal rights as human beings in 2014. The Ganges River and its waters are considered sacred by well over a billion Indians. A court in the Uttarakhand state of Northern India passed a law that the Ganges and the Yamuna its tributary are “legal and living entities having the status of a legal person with all corresponding rights, duties, and liabilities” (Daley 2017).

Cathy Newman (2010) introduces the ideas of the spiritual for Pima Indians, Hebrew, Greek and Aztec cultures for mother earth and water. Newman discusses the biblical aspects for water in the book of Genesis and explores the construct of ‘hierophany’. It is a paradigm where the sacred is manifested into a reality for traditional “man” where all things conform and imitate the sacred in an ontological model. Newman discusses and examines various natural phenomena in turn, and provides traditional people’s myths of the sacred and supernatural becoming beings in the world.

Aaron T. Wolf (2012) in his paper explores these constructs of spiritual and biblical. Wolf describes the construct of 'Enlightenment Rift' for understanding water in today's contemporary world. Wolf, discusses the process by which the global West and North has separated the worlds of rationality and spirituality. Wolf argues that the impact of this rift on ideas related to natural resources management, might be interwoven, for more effective water conflict management and transformation (Wolf 2012, p.73). In light of Wolf's 'Enlightenment Rift', the Murray–Darling Basin web site for Aboriginal heritage and culture provides and describes Aboriginal 'Spiritual connection' to water. It is seen that this empowers and promotes an Aboriginal voice.

In 1987 the first Murray–Darling Basin Agreement was reached, which established the Murray–Darling Basin Commission (MDBC). In 1998 the Commission partnered with Aboriginal nations for the Murray Lower Darling Rivers Indigenous Nations. Then in 2007 the Australian Government passed legislation for the *Water Act 2007* (Cwth), and in 2008 formed the Murray–Darling Basin Authority. In 2010 the Northern Basin Aboriginal Nations consultative group was formed. In all as a collective there are 46 delegates representing Traditional Owner interest across Murray–Darling Basin. In 2008 the MDBC changed how reviews and knowledge should be focused with the inclusion of Aboriginal cultural knowledge of water flows. The *Aboriginal Assessment Program for the Murray- Darling Basin* (2015), assessment tools were designed and tested based on the Maori example for Traditional Owners.

Tropical Rivers and Cultural Knowledge [TRaCK] (2011) recorded Aboriginal knowledges for water with Traditional owners from the Daly River in Northern Territory and the Fitzroy River in Western Australia. It was a collaborative study that was conducted over 3 years from 2008 to 2010 by CSIRO and Aboriginal communities. The aim of the project was to build on Australia's capacity to protect the waterways as they see them as "valuable assets" to continue and develop economic "sustainable livelihood opportunities" in the northern Australian region.

## **2.9 Conclusion**

The thesis recognises that there is a lack of non-Indigenous writing on the First Nations use of the waterways and the deficiencies in recognising the human rights of the First Nations people for equal rights for 'cultural water'. This is evidenced by the limited rights given to the First Nations people for water and the absence of recognition of Aboriginal legal rights to water. So far only the Yarra River in Victoria has a recognised legal status which includes Aboriginal people's interests. This is the first time in Australia's settlement history that an Act of parliament is co-

titled and written in an Aboriginal language (Woi-wurrang) and provides a permanent voice in the governance and protection of the Yarra River. This challenges the legal position and the inadequacy of the *Water Act 2007* (Cwth). The thesis concludes that further changes are needed to incorporate, better than done to date, Aboriginal knowledge of the Murray Darling Basin.

## **Chapter 3 The Country Australia- and Water Flows into the Murray/Darling Basin Australia- My Country**

### **3.0 Introduction**

This chapter engages in a discourse of Aboriginal ways of knowing and being and Western scientific paradigms for Country, landscape, environment and waterways. Aboriginal world views for nature and religious/spiritual beliefs are compared to non-Indigenous. There is an analysis of Aboriginal mythological knowledge of water flows and non-Indigenous Australians definition of Bild (image and picture), mythos and logos. When non-Indigenous Australians notions of resource conquest is compared to Aboriginal peoples notions of balance the philosophical imbalance for management of Country, landscapes, environment, and the waterways is clear.

Previous analyses of Australia as a continent have generally relied on the abstract qualities and generalisations about the country which historically negate and ignore an Aboriginal perspective and qualities. Historically Aboriginal views of country, when written, end up providing a view that is seen as an abstract position and generalisation about country. When Aboriginal people are interviewed, their thoughts and words provide an anthropomorphic concept that comes from their knowledge of country (Nicholls 2007, p.89). Today the new Australians are starting to understand Aboriginal relationship to country, and that Australia was not a wilderness - 230 odd years later we have a shared history. This relationship has and is being expressed through "biological research, land management, language, art and many other facets of contemporary Australian life" (McCarthy (in) Rose 1996, p. v.). If we explore Aboriginal cultural expression for country, it conveys knowledge and life experiences. If we view the ancient Aboriginal belief for Lore of Kadaitcha man and Illapurinja women who are law-keepers these leaders kept the natural order of communities by ritualistic practices and one of these was pointing the bone at offenders. In this expression the bone is now pointed at Australian colonial history. This Lore is older than any other mainstream religious beliefs and has been dismissed as a native superstition. Each bit of cultural expression, from an Aboriginal point of view, communicates axiologies, epistemology and ontology (ways of doing, knowing and being) for country. Aboriginal cultural expression speaks to those who want to listen, about connection to country, and Aboriginal beliefs through cultural expression provide a context for how Aboriginal societies managed knowledge and the country (land and water).

An Aboriginal man Cecil (Cec) Fisher born at Cherbourg Mission in Queensland, Cec (1933-2009) served in the Australian army in the Korean War and is also a poet. Cec wrote poems about Aboriginal men serving in the Australian armed services and Aboriginal beliefs in the Dreaming, including connection to country. His poems engage in the many injustices inflicted on Aboriginal peoples, the struggle for freedom and human rights. Cec's poetry was published in the "*Flag of Unity*", "*Poems from the Bush*" and "*Unity Now*". Cec was also the Aboriginal Liaison officer for the Queensland Anti-Discrimination Commission in 1997.

I've travelled this country from the bight to the cape  
 I've seen you change seen the rape  
 Development and mining tortures you  
 The riches from your belly made you spew.

Aboriginal people your children know  
 What these foreigners were doing to you  
 We'd never hurt our mother earth  
 The giver of life and Aboriginal birth.

We chose a flag your colours bear  
 Black, yellow and red to show we care  
 These foreigners plundered your very heart.  
 This action Aboriginals played no part.

Like the trees, mountains, animals, rivers and season  
 You are our life the keeper the very reason  
 When our roaming days are through  
 Mother earth we're coming back to you  
 (Cec Fisher 1993, p.57)

Australia: What is it defined as? What is its history? What is the construct of the continent and human impact by aliens, since the invasion or settlement of 1788 (Anthropocene) through the education and social systems since 1788? Nathalie Rühs and Alex Jones (2016) state, "Anthropocene is defined as our new relationship with nature" (Rühs and Jones 2016, p.1). To define Anthropocene, it is interpreting all things in the universe in terms of man and his values. "The slow, once inexorable influences of 'nature' are far overshadowed by the dramatic power of technology" (Rühs and Jones 2016, p.16). Anthropocene can be summarised as "the world accordingly becomes a Bild (image, picture) that is structured and organised by the thinking-representing being that is man" (Nicholls 2007, p.84). While in the Western tradition, philosophers provided distinctions between mythos and logos as activities of imagination (mythos) and the activities of elucidation (logos). Mythos is understood "as referring to a poem, tale, narrative or legend that has no substantive basis in fact, while logos accords with the recounting of historical

events or truths” (Nicholls 2007, p.87). Western philosophers reason that, “emotions, imagination, and even dreams inform the activity of mythos, while reason, analysis, thinking and reckoning are connected with logos” (Nicholls 2007, p.87). The First Nations people’s beliefs were seen as the ‘absolute nadir’ of human development, this Western epistemological and ontological view is challenged today by studies and theories on myth (Nicholls 2007, p.90). The philosophies and discourses in sciences endeavour to "separate non-rational or mythical thought from logical modes of argumentation” (Nicholls 2007, p.108). For the First Nations cultural expression through myths of the creator (a higher being) are based on an Aboriginal science of nature and religious beliefs. When engaging in a contemporary view on modern humans relationship to nature and world views, Deborah Bird Rose (1996), states that the Aboriginal world view "which is neither human-centred nor geared to the endless satisfaction of human wants” (Rose 1996, p. 3) had very little impact on the land and environment.

Today in 2020, how do our Jur-dooms (children), learn about the construct of Australia. Pre 1980 Jur-dooms learnt through Western scientific paradigms, socio-economic power, curriculum imperialism and curriculum distortions of the origins of Australia (Singh 1994, p.27). Jur-dooms today have to engage in the dominant paradigms, discourses, and descriptivism (in other words, the dominant language and ways of doing and knowing things) when reconstructing an historical consciousness through historicist hermeneutics. This is no more evident than in the constructs of human impacts on the environment with contemporary paradigms of ecological issues for nature including Australian river systems and water resources. We can read about ‘conservation’ issues and what ‘conservationists’ are saying and writing about the ecology of Australia and the massive loss of flora, fauna and water habitats from mining, agricultural, and population density caused by the new Australians.

Aboriginal society has a different philosophical interpretative view of the ecological issues that are constructed by scientists and environmental lobby groups (Nicholls 2007, p.83). Aboriginal society, over a long human history of living on the land, developed knowledge and land management systems that are quite different from the new Australians metaphysical grounding knowledge of ecology, land and water (Nicholls 2007, p.84). From an Aboriginal viewpoint, Australia as a continent is made up of many countries, each country with its own earth, with its own people, its own beliefs, its own storyways/songlines, its own sacred places, its own Law/lore and knowledge of waterways (Rose 1996, p. 9). Aboriginal societies, as the first peoples of



Australia with the connection to country by way of ecosystems, see many more environmental zones than the 40 described in geological books.

### **3.1 A World View**

In detailing Aboriginal cosmology, Aboriginal people, since the invasion of this country by aliens, have been forced to accommodate other ways of knowing and being, and take these as fact (Nicholls 2007, p.85). However when viewing the Australian continent through an Aboriginal cultural lens of "the Mother" (Country), Aboriginal people have been here since time immemorial - Aboriginal people say 'we have been here forever'. It would be negligent of me not to say that Australia has a long human history; well before 1788 when Aboriginal Australia was first invaded, then colonised. The Anglicised concept of Aboriginal religious beliefs in the creator and a higher being was termed as the Dreaming and taught - the term gained wide spread coinage and acceptance in mainstream Australia and academia - as "mysterious and mythic times" (Nicholls 2007, p.87). Where the First Nations beliefs were termed as "dream-oriented", a society that believed in dreams was "wholly primitive, pre-religious and magical society" (Nicholls 2007, p.87). Eve Fesl writes about the term Dreaming and states that it is a complex belief system that cannot be envisioned by Europeans ((in) Nicholls 2007, p.106).

We know today that this thinking began to be inculcated 208 years ago with the first schools, a 'Charity School' in Australia, which was instituted by the London Missionary Society at Parramatta, New South Wales and the first Principal was John Eyre in 1810 (Gunson, date accessed 08/05/2020). John Eyre was appointed by Governor Lachlan Macquarie at Parramatta, the Colony of New South Wales. The Church of England (Anglican) ran a school system in all of the Australian Colonies (Logue et al 1970, p.454). We also know that in 1816 Governor Lachlan Macquarie opened a school at Parramatta for Aboriginal children who were removed from their families and forced to assimilate. Western constructs about the First Nations began to be entrenched in the educational curriculum when the first schools were opened and further, the intention was for these Aboriginal children to be civilised, and educated in the Christian beliefs and lose their language, their belief systems, heritage and way of life. (It should be noted here that John Eyre was not related to Edward John Eyre, the explorer and governor, born 1815.)

It is not till today that we can look back through the historical gaze of invasion/contact history with a focus on Australia as a country. Through the education, legal and political systems, Aboriginal culture was seen as primitive and concepts of the Dreaming/ Dream Time were thought to be that

of animism "a form of inductive logic....thoroughly at home among the savages" (Nicholls 2007, p.90). An Aboriginal lens through a cultural continuum is now slowly being recognised in this construct of the continent Australia and that the forced assimilation did not stop Aboriginal cultural knowledge and beliefs being passed onto future generation irrespective of the political denial of Aboriginal ownership of the country.

It is not widely known by mainstream Australians that the First Nations religious beliefs were not recognised in the Australian constitution in 1901 and are still not protected today at a constitutional level. In the vernacular of Australian popular culture it is known that all rights were denied from colonisation to Federation and until the 1967 Referendum. Furthermore not all Aboriginal people were to be included in decision making for the environment and water management until 2000. To review the extreme nature of this in 1901, after all colonies joined together for Federation and writing the constitution, the *Immigration Restriction Act, Cwth* 1901 was introduced into Australian law. This piece of legislation had the power to prevent the legal return of the Aboriginal people who had left Australia, from coming back into Australia. Aboriginal people were not seen as Australian citizens. The decision to allow people into the country was at the discretion of the minister: this piece of legislation also cemented the notion of the 'White Australia Policy' (Reynolds 1996, p.112).

The 1967 Referendum was for a constitutional change for the recognition of Aboriginal society "section 51 (federal service power) by deleting the reference to 'the aboriginal race' in sub-section (xxvi) and by repealing section 127 (reckoning Aborigines)" (Sawer 1988, p.20). Before the 1967 Referendum many Aboriginal peoples were not counted in the census nor seen as Australian citizens. Their rights to vote were not recognised until 1962.

The 1967 Referendum also ended the practice of Aboriginal peoples being classified with the environment or being part of the flora and fauna. There is no piece of legislation that basically states that Aboriginal peoples were considered to be part of the flora and fauna, however, it was firmly based on concepts of racial discourses as outlined in the fields of "critical race studies, post-colonialism and Australian history" (Anderson, and Perrin 2007, p. 2-3). The theory that Aboriginal peoples were part of the flora and fauna started from the time that the new Australians colonised Aboriginal Australia, with the thoughts that it was the failure of the Aborigines to have surpassed a state of nature (Anderson and Perrin 2007, p. 2-3). Anderson and Perrin (2007), state that the notion that Aboriginal people were no more than flora and fauna was a preoccupation of

Cook and Banks as early as 1770. They quote Cook and Banks who wrote that "the country was 'in the Pure State of Nature', 'the Industry of Man' having had nothing to do with any part of it" ((in) Anderson and Perrin 2007, p. 7).

In summary the doctrine of humanism is defined against the backdrop in which 'the human' can change nature by cultivating the land with technology, this dismisses Aboriginal land management practices, spiritual practices, cultivation practice and technologies. This thesis of Aboriginal people as flora and fauna is that, "at a certain historical moment, 'the human' had evolved out of nature and onto civilisation" (Anderson and Perrin 2007, p.17). Aboriginal people old enough to remember the change in acceptance through Australian society and in legislation with the 1967 Referendum, recount and remember being viewed as flora and fauna (plants and animals) and not as being humans (ABC News; *Fact check: Were Indigenous Australians classified under a flora and fauna act until the 1967 referendum?* Date accessed 15/07/2018).

### **3.2 Miwi, the Inner Connection to Lands, Waters and all Living Things.**

Kungun Ngarrindjeri Yunnan (Listen to what Ngarrindjeri people have to say) Our Lands, Our Waters, Our People, All Living Things are connected. We implore people to respect our Ruwe (Country) as it was created in the Kaldowinyeri (the Creation) (*Valuable Aboriginal Water Knowledge*. Date accessed 05/07/2018).

Australia is flat and very dry, and a geographically isolated continent. As a continent, its land mass has a "land area of about 7.692 million square kilometres" (*Australia's land mass*. Date accessed 21/06/2018). This is also almost as large as the United States, not including Alaska. Australia is sixth in the ranking of nations for size, being larger than India but smaller than Brazil, the distance from the west coast to the east coast is approximately 4,000 kilometres and from south to north approximately 3,153 kilometres. "Australia is 50 per cent greater than Europe, and 32 times greater than the United Kingdom. Australia is the smallest of the world's continents" (*Australia's land mass*. Date accessed 21/06/18). Australia is one of the oldest land masses, geologists calculated that the Australian landmass is at least 3,000 million years old. Australia is also "the lowest, the flattest and (apart from Antarctica) driest continent in the world" (*Australia's land mass*. Date accessed 21/06/18)". Australia is geographically the island continent that lies between the Indian and Pacific oceans and our weather patterns are formed by these two ocean systems.

Australia was once part of the land mass known as 'Gondwanaland', "today's southern continents were once combined along their continental shelves to form a supercontinent, dubbed Gondwanaland by scientists. North America, Europe and Asia formed a second supercontinent known as Laurasia" (*Discover Australia* 1991, p.12). Australia is a timeless land, an old landmass with ancient features that have only been weathered by time – that is until recently. Aboriginal people have given the land a history, a culture and a spatial dimension. Aboriginal society acculturated the land by fire stick farming, by painting it, by managing the resources, by walking it, by singing about it, by mapping it, by naming it and by developing stories of place. Deborah Bird Rose (1996), in *Nourishing terrains: Australian Aboriginal views of landscape and wilderness*, describes Aboriginal estates where a mutual responsibility was and is part of the cultural continuum:

being shared along Dreaming tracks, and through trade, marriage, and other social/ritual relationships, management of the life of the country constitutes one of Aboriginal people's strongest and deepest purposes in life (Rose 1996, p.10).

The First Nations occupied the Australian continent throughout coastal areas, the grassy plains, the subtropical regions, the mountainous regions and desert regions. The First Nations people lived in these diverse environments and utilised the land for "physical substance" and "spirituality" (Bottoms 1999, p.1). The First Nations Dreaming tracks/songlines and spiritual places are represented by a continuous variable physical quality located in the environment such as mountains, waterholes, rivers, flora and fauna. "There is a commonality" in the First Nations spiritual beliefs in the Mother Earth-country across the continent of Australia from north to south and east to west, these beliefs follow the dreaming tracks/songlines (Bottoms 1999, p.1). Spiritual beliefs of central Australia First Nations "have their analogues ...in Far North Queensland, in the beliefs in Bulurru (Storytime)" (Bottoms 1999, p.1). Timothy Bottoms (1999) states that this relates "the time of creation of events and beings of that time, who are ever-present in the land, in its Storyplaces and Storywaters" (Bottoms 1999, p.1).

As a cultural continuum Aboriginal people know that Story speaks country, country is acculturated and not a wilderness, "but a humanised world, partaking of the spirit of the ancestors, their blood, their bones, their story, ever-present in the land and in its creatures" (Bottoms 1999, p.3). Songlines, Story places are like maps that orientate Aboriginal people through country and are socially derived with meaning and significance in celebrating the landscape.

Yet the land is more than symbolic, it does not merely point to something beyond itself... it is that Other. That's the water talking ...Bulurru that's the spirit in the water, Gudju Gudju, the Rainbow. When you see that Rainbow wonderful he shows, That's our Father (Bottoms 1999, p.3).

Bottoms is recounting the religious beliefs of the Djabugay nation from north west of Cairns as told to him by Elders of the Clan.

John Mulvaney (1976), called this the "chains of connection" in considering the ritual cycles of exchange where goods were traded along Dreaming tracks. He considered it was possible that an individual person could have smoked pituri that was traded from Mulligan River, have ochre traded from Parachilna South Australia (SA), have an axe traded from Cloncurry Queensland (QLD), a boomerang traded from Boulia QLD and shell pendants traded from Carpentaria (p.80).



Illustration 2. The Aboriginal trade routes of Australia, These trade routes also follow the major river systems for example from the Gulf of Carpentaria south along the Darling River and on the Murray River into Goolwa in SA. ( McCarthy ([1939](#)). p. 63-65).

Isabel McBryde (1972), supported this evidence as understanding that there was a "system of exchange that was intimately entwined with the symbolic construction of the landscape" by Aboriginal societies across the Australian landscape (Binns and McBryde 1972, p. 63-65). To view this map in Illustration 2 water flows from the Carpentaria at Camooweal and flows into the Georgina and Diamantina Rivers then south into Lake Eyre.

As a low, flat land Australia has only about 6 percent of the land mass higher than 610 metres; the highest range is the Great Dividing Range, which is in fact a series of low plateaus. The Great Dividing Range separates the eastern and western river systems.

The highest point on the Australian mainland is Mount Kosciuszko, New South Wales, at 2228 metres above sea level. The lowest point is the dry bed of Lake Eyre, South Australia, which is 15 metres below sea level (*Australia's land mass*. Date accessed 21/06/2018.)

*Gariwerd*, an Aboriginal name for the Great Dividing Range, also known as the Eastern Highlands, stretches along the entire eastern coast from Victoria to Cape York in Queensland, with an average width of 240 kilometres. Its most northern peak is located on Thursday Island in the Torres Straits. This range is not high, but extremely rocky and rugged, and weathering has carved

gorges and escarpments in the sandstone. The narrow coastal strip that lies between the sea and the highlands receives a good annual rainfall (*Discover Australia* 1991). Over 1 million years ago Tasmania was also connected to Australia during the last ice age (*Discover Australia* 1991, p.12). Australia is an island nation, the coastlines defining national, state and territory boundaries.

Gariwerd is a compound noun. Gar means 'pointed mountain' and is cognate with the word for 'nose'. The -i is the particularizing suffix, which translates into 'the'. Werd means 'shoulder' and appears in 'werdug' (pronounced werdook) 'his shoulder', the correct form for 'Wartook'. The compound simply means 'The Mountain Range', and is descriptive and specialized for the mountain range (Luise Hercus 1990, p. 23).

Australia is the driest inhabited continent in the world, the early concept of Australia by the new Australians was that Australia had a 'dead heart' because "approximately one-third of the continent is semi-arid and another third completely arid" (*Discover Australia* 1991, p.330). With a low average annual rainfall, rainfall across Australia is circular, depending entirely on rainfall intensity high in the tropics with the monsoonal seasons and some coastal areas. The rainfall on the Australian continent is influenced by the human impact on the environment (anthropogenic) and the Pacific and Indian Oceans. These produce seasonal variants with weather patterns such as El Niño and La Niña (Pacific Ocean) and Indian Ocean Dipole (IOD), these by theory are defined as:

El Niño Southern Oscillation (ENSO) effect. This is a periodic climatological phenomenon in which normal current and wind patterns between Australia and South America are reversed, creating a severe drought cycle, interspersed with occasional destructively heavy rainfalls. (*El Nino*. Date accessed 22/10/17).

La Niña is defined by the Australian Government Bureau of Meteorology as: "cooling (La Niña) in the central and eastern tropical Pacific. The ENSO cycle loosely operates over timescales from one to eight years" (*Australian rainfall patterns during La Niña*. Date assessed 04/07/2018). Whereas the Indian Ocean Dipole (IOD) is understood as:

the difference in sea surface temperature between two areas (or poles, hence a dipole) – a western pole in the Arabian Sea (western Indian Ocean) and an eastern pole in the eastern Indian Ocean south of Indonesia. The IOD affects the climate of Australia and other countries that surround the Indian Ocean Basin, and is a significant contributor to rainfall variability in this region. (*Indian Ocean Dipole (IOD)*. Date assessed 04/07/2018).

It is known by Australians that water is a precious resource in many parts of Australia where rainfall is low, variable and unreliable, with droughts occurring frequently. It is also generally known that the inland of Australia is hot and dry and rain fall evaporates before filling up creeks and over flow areas into the rivers. In detailing Western scientific knowledge of meteorological patterns, the structure of the Australian continent and environments, what has been denied in Australian scientific philosophy and environmental management is the First Nations culturally intrinsic knowledge and practices for astronomy, biology, geography, meteorology, and seasons which is passed on as a cultural continuum today. The First Nations scientific philosophies are older than the Greek's and Egyptian's and those developed in the Western scientific communities. The First Nations scientific philosophies have suffered through the authoritarian rule with Genocide (of people, language and culture), the denial of rights, and the label of being primitive. It is now recognised that the Aboriginal people have witnessed major environmental changes through their long occupation of Australia and these are passed on as Dreamtime stories. The Dreaming is now embedded in both Aboriginal English and Australian culture.

Since time immemorial these Dreamtime stories have been passed from one generation to the next by way of cultural exchange such as language, law/lore, storystrings, and beliefs in the creator and higher being. These are passed on by tangible and intangible knowledge and objects and may differ from one region to the next. The stories translate information on geography, meteorology, and management of country. These stories also provide the vehicle for transmission of socio-cultural economics and weather and environmental knowledge. Roth noted in his works that Aboriginal people didn't go on walk about in the summer months (Roth 1984, Vol. 1, p. 132). If we review his comments, the summer months are the monsoonal and cyclone season whereby flooding occurs. These storystrings also passed on knowledge of season variants for weather and plants, insects and animals through a long occupation of Australia by observing the natural world that the mother provided. This observation tells the trained eye when the weather patterns are going to change with the movement in astronomy, of animals, fish, insects, and floral changes and flowering. The very bases of Aboriginal people's philosophy is that all things are connected whereby the very observable subtle changes to flora, fauna and weather are linkages to the natural order of the mother. Angie Abdilla is a Palawa (Trawlwoolway) First Nations person who presented to the United Nations Permanent Forum on Indigenous Issues for Indigenous Knowledge Systems, Robotics, and Artificial Intelligence; she states that "within an Indigenous paradigm, Indigenous Sciences are not segregated but part of all aspects of our culture and lore" (Angie Abdilla from *Science Narragunnawali*).



Painting by Laurie Nilsen on the Bureau of Meteorology (BOM) web site for *Indigenous Weather Knowledge* (*Indigenous Weather Knowledge*. From: <http://www.bom.gov.au/iwk/>. Date accessed 26/01/2020).

Illustration 3. Painting by Laurie Nilsen (a Mandandanj man), Represents Mandandanji peoples seasonal, meteorological, and astronomical traditional knowledge. Date accessed 26/01/2020.

Laurie Nilsen's painting "represents the relationships between seasonal, meteorological, and astronomical changes- and how the Mandandanji people read these changes to inform life on country" (*Indigenous Weather Knowledge*. Date accessed 26/01/2020). Laurie is an Aboriginal artist from the Mandandanji Nation Queensland. Laurie was born in 1953 and works with Campfire Group and the ProppaNow Artists Collective which are both in Brisbane. Laurie has won several awards for his artistic works for example his piece on Goolburris on the Bungil Creek in 2007 at the Wandjuk Marika 3D Memorial.

The CSIRO through the TRaCK project has worked with Aboriginal people in Northern Territory and Western Australia to develop seasonal calendars which provide detailed knowledge of seasonal ecology. The TRaCK project has informed Western science about the First Nations interrelationship with flora and fauna seasonal cycles and meteorology cycles. Philip Clarke (2009) has termed this knowledge as Ethnometeorology. This approach combines several methodologies of cultural anthropology, historiography, of Aboriginal people's knowledges, and ethnography. The study asserts that the Aboriginal peoples beliefs are that "the forces driving the weather are derived from Creation Ancestors and spirits" and "that short term changes are produced through ritual" (*Indigenous seasons calendars*. Date accessed 26/01/2020).

Aboriginal people's science for astronomy and meteorology for the seasons can be observed in stone arrangements and petroglyphs. An example of this can be found at the corner-country near the borders of Queensland, New South Wales and South Australia (Sturt National Park) on Wangkumarra's Nation land (Karnic language group). This stone feature/arrangement is older than Stonehenge and is believed to be around 11,000 years old; it is an arrangement of carved



stone megaliths placed on each other. It is a stone calendar that is also similar to a compass as the points align to North, South, East, and West.

Aboriginal people observed the night sky and rationalised the motions of “celestial bodies with terrestrial events, such as the passage of time, the changing seasons, and emergence of particular food resources” (Hamacher, and Norris, 2011. p. 103). If we look at a Western parable for the weather ‘red sky, at night sailors delight, red sky in the morning shepherd’s take warning’. Across Australia Aboriginal observations of weather patterns and well defined seasons are being recorded such as those of the Yolngu Nation who had annual cycles for the harvesting of nuts and berries, this was also a time to catch barramundi. One such nut the rakai nut was important during the dry season. These seasonal changes were predicted by the arrival of migrating birds such as the eastern mirrlarr (koel) known as the rain bird that migrates from Papua New Guinea and Indonesia into Queensland and down to New South Wales.

There is also the black cockatoo which follows the Great Dividing Range from North Queensland down south indicating the monsoonal/wet season is coming. It has also been observed that when there is a lot of insect movement such as ants taking to the wing and flying that rain is coming. The First Nations people observed that when storms were coming certain tree species would turn their leaves and also when various trees and plants would fruit and flower. Aboriginal nations living by the ocean would notice that in the middle of the day if the tide is high a big storm would occur. In central Australia, Aboriginal nations would observe the bearded dragon lizard sitting erect and looking up at the sky which would mean rain is coming. As part of cultural continuum my Elders, grand dad Charlie Leon, my dad Kevin Leon, Uncle Len Leon, Mr Neville Bonner, Tommy George (a Kuku Tappan Elder Laura Qld), and George Musgrave (a Kuku Tappan Elder Laura Qld), Ron Hurley (a Gareng Gareng Elder Qld), Noel Nannup (a Wajuk Elder from the Bibbulmun nation WA), all shared stories and educated me culturally of these weather events.

Bill Neidjie (Mr Kakadu man) a Gagadju man, was the traditional custodian of the Kakadu area of the Northern Territory. Bill was instrumental in the establishment of Kakadu as a National Park in 1979. Bill was an author and a poet and explored his deep feelings for his country and his vast knowledge of traditional culture in his writings. In his writings he described the seasonal changes to weather “I look at star, I know just about time for wet season, maybe time for dry season, I know from star” (Bill Neidjie (in) Norris 2016).

Mr (Bob) Robert Anderson a Brisbane Elder from Mulgumpin (Moreton Island) told me that,

When travelling on Mulgumpin if you face Bege, the sun and rise your left hand and hold Bege in your palm and look over your shoulder that's north (Robert Vincent Anderson pers.comm. 2003).

Dick Smith was born at Beagle Bay, Broome Western Australia. His people are from Tennant Creek and Halls Creek Western Australia; when he was 74 years old he told me a story about how he used to navigate by the stars when he was droving horses and cattle from Victoria River Downs to Dajarra.

If I fixed the pointer stars of the Southern Cross on my shoulder and kept it to my right I would make it to all the water holes along the Murranji track and make it to Dajarra (Dick Smith pers. comm. 2004).

The First Nation peoples astronomy and identification of celestial bodies in the night sky also indicate seasonal changes and directional markers for travel for example in Victoria the Boorong people know that when the Mallee-fowl constellation (Lyra) appears in March it signifies that the Mallee-fowl are building their nest, and when the Mallee-fowl constellation isn't observed in the night sky the eggs are laid and ready to be collected (Norris 2016 online article. DOI: <https://doi.org/10.1017/pasa.2016.25>. Date accessed 29/01/2020).

A further example of recognising changes to the weather patterns is that of the Kamilaroi people of New South Wales and Southern Queensland who observed in the night sky the Emu, it indicated when to move from one settlement to the next. For example when the emu head appeared in the night sky (in February) it was time to move from the summer camp. The Emu legs would appear in April and this indicated for the Kamilaroi people to move to the winter settlement. In August and September the belly was still there but the Emu neck and legs disappeared; this represented that the Emu has laid eggs and the chicks have hatched (Norris 2016 online article. DOI: <https://doi.org/10.1017/pasa.2016.25>. Date accessed 29/01/2020).

Uncle Des Sandy, a senior Elder of the Yuggera Nation, (Yugara Yugarapul people) Brisbane in an interview provided information for traditional knowledge of seasonal variants for around the south east of Queensland. "When the coastal clouds come rolling in and the flying foxes are on the wing and the rain bird cries out its going to rain. You know up North when the march-flies are swarming and bite you it's the end of the dry season and rain is coming. When the wattle tree is flowering it's the beginning of summer but if it doesn't flower there is no rain for months and it will be a dry year. Also when the hairy caterpillars follow each other in a string like procession

and the mountain lorikeets are flocking to the trees mullet and tailor and salmon are in Moreton Bay” (Des Sandy 2018. pers.comm).

This connection to Country- the land, water, plants and animals within the environment is strong and is central to the First Nations culture, spirituality, and identity. Aboriginal people are embedded in the natural environment for enjoyment of foods and medicines, caring for and utilising the land, and passing on of culture knowledge. This connection to country strengthens social-cultural economics and connections to other First Nations and country. An example of this is the metaphysical world of the “Bulurru Storywaters and the physical world of walking tracks” which provide a map connecting rivers, waterholes, mound springs and Aboriginal nations (Bottoms 1999, p.17). Each place in the physical world has a “meaningful association with other places, connected by Story” (Bottoms 1999, p.17).

In Queensland there are five categories of rivers: these are those that have their head waters on the eastern slopes of the Great Dividing Range and flow eastward to their mouth at the Pacific Ocean. There are the Coastal Rivers that flow north-west from the Great Dividing Range to the Gulf of Carpentaria, further there are the rivers whose head waters are on the west side of the Great Dividing Range and flow south - west into the Murray Darling Basin. Another category of rivers are those that have their head waters in the western region of Queensland and flow south-west to Lake Eyre basin and are known as the Lake Eyre Rivers. The last category of rivers is an isolated river that does not flow to any basin or to a mouth at sea. It is neither part of the Murray Darling Basin nor the Lake Eyre Basin. The Bulloo River (which is a Kullilli First Nations people word meaning slow) is an isolated river drainage system in Western Queensland and Central Australia; it extends into Northern New South Wales. The Bulloo as a river is usually dry but has water holes along its course. The Kullilli First Nations people are the Traditional Owners of the land that the Bulloo River flows through (*Bulloo Shire*. Date accessed 03/02/20).

Following the southward movement of water from QLD into New South Wales (NSW), rivers have a different classification south of the border. In NSW the river systems are classified as ‘Coastal NSW Rivers and Inland River systems’. The coastal river systems flow east from the Great Dividing Range to their mouth into the ocean. The Inland River systems flows west from the Great Dividing Range to the Murray Darling system which flows to its mouth in South Australia (SA) at Hindmarsh Island and into the ocean. These two systems or categories are organised and defined by their ‘drainage basin, catchments and sub catchments’. For example,

the inland river systems are categorised into two groups such as the northern half of the state flowing from the western side of the Great Dividing Range such as the Barwon, which flows into the Darling River. The other is located in the southern part of NSW that flows from west of the Great Dividing Range from the head waters at the Snowy Mountains, meets with the Murray River and flows through Victoria (Vic) onto SA and out at its mouth at Hindmarsh Island SA into the ocean (Learmonth 1971, p.158).

The Australian river systems have hardly changed their courses and can be crossed easily, that is until the impact of commodification of the rivers for unsustainable forestry practices, climate change, hydroelectric projects, destructive extractive projects, farming, agriculture, mining and industrial activities. Flannery (1994) states that "the rivers of the east coast have maintained their position for tens of millions of years. Indeed, some have cut as little as a few tens of metres deeper into their beds in over 30 million years!" (Flannery 1994, p. 78).

There are many stories that Aboriginal nations relate to water, particularly where a First Nations perspective is concerned, rivers were and are treated as people. Anne Poelina a Nyikina person from the lower Fitzroy River in an interview for SBS told of song cycle that is part of her cultural identity the "story of Woonyoomboo and how Woonyoomboo created" the Martuwarra (Fitzroy River) in Western Australia (WA). The song cycle talks about the journey of Woonyoomboo who is Ancestor of the Nyikina people and how "Woonyoomboo travelled along the river with his family, naming the places, from the very beginning of the river (the source)" the river is a "special place, it's a sense of our whole creation, it's a sense of who we are as Mardoowarra people Mardoowarra means 'belonging to the river'" (*Three Sisters: Women of High Degree*. Date accessed 01/11/2017).

The Australian landscape is splashed with massive lakes that periodically dry out and low mountain ranges that are unaffected by volcanic disturbances. In short, the landscape possesses some geological permanence. It is a timeless land with eroded hills with well-rounded and weather-beaten ridges, the plains seem perpetual and the coastline orderly. This gives the landscape a worn character. Australia also has an extremely long geological record and a long history of humans managing the resources of the land (Lawlor 1991; Flannery 1994; Griffiths 1996). The natural environment provided the foundations for Aboriginal religion, morality and legal systems as well as providing a place for spiritual gratification and an economic base. The land provided marital relationships and obligations. The land is the source of all order because all

the relationships of the universe are guaranteed in the land through law, and is taught as such by Aboriginal Elders.

### 3.3 Ground Water

Fred Hooper a First Nations person from the Murrawarri nation of northern NSW, served in the Australian Navy. Fred in 2013 declared his Murrawarri nation statehood from the Crown of Great Britain. Fred was also the Chairperson of the Northern Basin Aboriginal Nations, Fred is also an advocate for the First Nations rights and interests for the Murray-Darling Basin. Fred Hooper points out that:

It needs to be considered that, First Nations' ownership rights and Native Title rights over groundwater and surface waters have never been extinguished, nor ceded, nor surrendered, nor legally traded, therefore First Nations rights to water are preserved in International Law and domestic Common Law (Fred Hooper 2018, p.12).

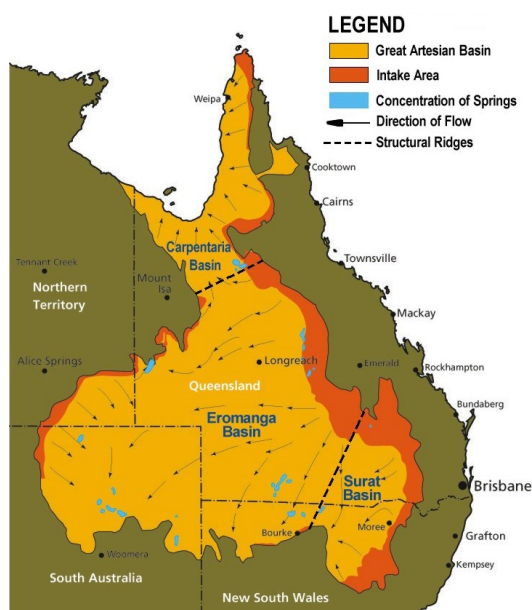


Illustration 4. The Great Artesian Basin, (2011). from Department of Environment and Resource Management's information pamphlet.

Groundwater in Australia has a shared cultural history; it is culturally significant both to Aboriginal people as well as the new Australians. The significance of groundwater and the many springs and permanent lakes that are located across the Great Artesian Basin to the Aboriginal peoples and the New Australians, can be viewed through the spiritual, social, and cultural economics of arid Australia.

The National Centre for Groundwater Research in a Training information pamphlet defines it as:

water that is located below the earth's surface. Over time, water from rain and rivers migrates through the ground and is stored in porous soils and rocks. The study of groundwater is known as hydrogeology (*What is groundwater*. Date accessed 11/06/2019).

Groundwater is an important resource for general livelihood, well being, survival and exploitation across large parts of Australia for pastoralism, mining and population use as:

It currently makes up around a third of our total water consumption, although this varies from location to location. In the Northern Territory, 90% of water is sourced from aquifers, while the highest concentration of groundwater use is in the Murray–Darling Basin (*What is groundwater*. Date accessed 11/06/2019).

Today there is an ever increasing awareness towards environmental issues as the springs, lakes and groundwater are drying out across the Great Artesian Basin. The First Nations are the Traditional Owners as the springs and lakes linked one nation to the next, following the songlines across the waterways as they provided permanent water along the trading routes. These were utilized since the spiritual beings created them for use by people. One example of an Aboriginal trading route following these springs is the Oodnadatta Track and knowledge of the route was passed onto the new Australians. The Oodnadatta Track crosses the traditional lands of the three First Nations country: the Kuyani people, Arabana people and the Arrernte people (p.2).

The Camp of the Mankarra-kari, the Seven Sisters (at Kewson Hill) is where: The Seven Sisters came down here to dig for bush onions (*yalka-pakanha*). As they peeled the onions they tossed the skins to one side creating the dark coloured extinct mound spring on the south west side of the Track and the peeled bulbs to the north east creating the light coloured hill (*yalka-parlumarna*), also an extinct mound spring (*The Oodnadatta Track: String of Springs: Your guide to water, plants and trees of the Oodnadatta Track*. Information Pamphlet, p.3).

As a cultural continuum knowledge of these springs has been passed down through generations of Kuyani people, Arabana people and the Arrernte people since the Dreamtime. The storystrings sing of a path that was well travelled for socio-cultural ceremonies and trading purposes. There are other storylines that sing the route. These follow the springs along the path for the songlines/trading route: such as "Yanta", Willy wagtail (or thunti-thuntinha), the Kuyani ancestor Kakakutanha, and Algebuckina are just some examples of the storystrings following these springs and lakes (*The Oodnadatta Track: String of Springs: Your guide to water, plants and trees of the Oodnadatta Track*. Information Pamphlet, p.3-12). Powell, Silcock, and Fensham, (2015), provide that "Aboriginal people considered springs to be the creation of powerful spirits and ancestral beings and thus possessed potent spiritual and cultural meaning" (Powell, Silcock, and Fensham 2015, p. 172).

The Great Artesian Basin is an area of the Central Lowlands. It is the largest artesian basin (under ground water system) in the world (see Illustration 4. The Great Artesian Basin, 2011). "It underlies more than one-fifth of the Australian continent, extending across parts of the Northern

Territory, Queensland, New South Wales and South Australia” (*Cultural Values of the Great Artesian Basin Fact Sheet*. Date accessed 05/07/2018). The Great Artesian Basin has a total area of 1,078,700 square kilometres expanding over parts of Queensland and New South Wales, the northern corner of South Australia and into the Northern Territory. The Great Artesian Basin lies under parts of four catchment divisions: the Lake Eyre, Murray-Darling, North-east Coast and Gulf of Carpentaria. It is the largest and deepest artesian basin in the world. The Great Artesian Basin provides the only reliable source of fresh water throughout much of inland Australia (*Australian river catchments and the Great Artesian Basin 2017*. Date accessed 28/08/2017). The Great Artesian Basin consists of rocks that are impervious to the movement of water. "Below the sublime landscape of the Channel Country lies the Great Artesian Basin, the only reliable source of water across 22% of Australia” (Western Rivers Alliance 2016, p.10).

Since time immemorial Aboriginal nations have used the many springs fed by the Great Artesian Basin as travel routes maintained by songlines (mura stories - meaning ‘pathway’ in the Ngunnawal Aboriginal language). The semi-permanent waterholes provided ochre, stones for weapons and tools, food and goods for trade. The wet lands and overflow springs that feed from the artesian basin also provide spiritual beliefs, birthing sites, medicinal places, law/lore, initiation places, funeral rites, marriage ceremonies: these are still part of tradition and beliefs today. The creator of these aquifers are still alive in Aboriginal memory today, the spiritual being is still being recounted in art, oral histories and told by Elders as lore (*Cultural Values of the Great Artesian Basin Fact Sheet*. Date accessed 05/07/2018).

Much of the water falls as tropical rain and enters the Great Artesian Basin through intake areas south of Mt Isa, "and much of its groundwater is tens of thousands, even hundreds of thousands of years old” (*What is groundwater?* Date accessed 11/06/2019). The intake areas for water at the head of the Great Artesian Basin is formed below the Flinders River and its tributaries at Western Gulf of Carpentaria, Queensland. It enters as rain in the upper catchments of the Georgina, Diamantina, Thomson and Barcoo Rivers which combine to form the iconic Coopers Creek (Western Rivers Alliance 2016, p.18). Further the Channel Country rain water enters at the headwaters of the Barcoo, Nogoa, Warrego, and the Maranoa Rivers. These are known as desert river systems and all add to the water of the Great Artesian Basin (Western Rivers Alliance 2016, p.10). These desert river systems are known as the Channel Country.

The Channel Country Bioregion is an extensive stream system draining into Lake Eyre. River channels and wide floodplains cross a landscape of gibber plains and low stony rises. The word 'gibber' is understood to derive from an Aboriginal word for stone (*Sturt National Park Plan of Management* 2018, p. 7).

The overflow from the Great Artesian Basin flows through Aboriginal lands, and is significant because these are part of the Storylines/Dreaming tracks - trading ways in the heritage of such First Nations as the Budjiti, Kunja, Mardgany and Baakandji (Paruntji) people.

The First Nations that live along the Warrego, Paroo, Bulloo and Nebine catchment areas have a long cultural and spiritual history with the water flows of these rivers. The nations are Bidjara, Budjiti Gunggari/Kungarri, Kooma/Guwamu, Kullilli, Kunja, Mandandani, Mardigan, Murrawarri. These Aboriginal nations are representative of Northern Basin Aboriginal Nations (NBAN), Queensland Murray-Darling Basin catchments areas (*Warrego, Paroo, Bulloo and Nebine water resource plan and resource operations plan Aboriginal values and uses report* 2016, p.4-5. Date accessed 04/02/2020).

Mound springs are an important source of water for the First Nations.

Mounds form where artesian water emerges from the Great Artesian Basin through fault lines in the rock, with mounds forming from the sediments as the water evaporates. Mound or artesian springs are listed as an endangered ecological community (*Burke and Wills 150th Anniversary: The importance of water*. NSW Government Western Catchment Management- Caring for Country. Date accessed 04/02/2020).

The mound springs at Peery Lake, about 30 km east of White Cliffs, are significant to the Baarkindji, Traditional Owners of the area because of the Dreaming ancestor Kuluwirru. Kuluwirru travelled to Peery Lake where he was teased "about his over-sized head". Kuluwirru was fed "a water lizard in his food to try to poison him" (*Burke and Wills 150th Anniversary: The importance of water*. NSW Government, Western Catchment Management- Caring for Country. Date accessed 04/02/2020). Kuluwirru became extremely sick and he was brought back to good health by his family members. Kuluwirru in retribution drained Peery Lake of all its water and he put it into a kangaroo skin water bag. The people who teased him died of thirst and turned to stone. Kuluwirru only shared the water with his family members. Kuluwirru struck a rock and water flowed from it, providing spring water to keep his relatives alive; he then taught a special ceremony that would bring rain which;



brought a flood down the Paroo River and refilled Peery Lake with water. Today despite their significance to the First Nations people's, the Peery Lake mound springs are the only artesian springs within a nature reserve (*Burke and Wills 150th Anniversary: The importance of water*. NSW Government, Western Catchment Management- Caring for Country. Date accessed 04/02/2020).

The "Budjiti, Kunja, Mardgany and Baakandji (Paruntji) people are the Traditional Owners of the wetlands in the Paroo River catchment" (Kingsford and Lee 2010, p.49). The overflow of the Paroo River flows into Peery Lake, and is a "particularly important focal point to Baakandji Aboriginal nation. The Baakandji value the overflow areas due to their significant role in the regional system of dreaming tracks" (Kingsford and Lee 2010, p.43-44).

Aboriginal people believe that ancestral beings, such as Kuluwirru (a big fellow) and the two Ngyati (water serpents), travelled through the area, creating many of the landscape features including boulders, rivers, lakes and the springs. Some of the areas created by Kuluwirru were particularly important as places of law enforcement where unacceptable social behaviour was punished (Kingsford and Lee 2010, p.43).

For the First Nations people water is life - it is for every living thing not just people. In the deserts, the tracks and sites of Dreaming have significance which link surface and subsurface water, these form part of sacred geography. The geography of country is song and sacred in the environment and remembered as part of the subsistence where rockholes, soaks, wells, rivers, claypans, springs and the like form part of songways as these are plentiful and most reliable water sources and are sites where plants and animals are protected in law/lore.

Springs are also significant cultural places, embodying traditional folklore, and mythology and supporting settlements along ancient trade routes (Powell, Silcock, and Fensham 2015, p.171).

A submission made by Gundabooka people to the draft Warrego, Paroo, Bulloo and Nebine Water Resource Plan in 2003 identified mound springs as significant cultural sites that needed protection (*Warrego, Paroo, Bulloo and Nebine water resource plan and resource operations plan Aboriginal values and uses report* 2016, p. 8). As identified by Powell et-al (2015), many springs and waterholes within the Great Artesian Basin area "have retained their Aboriginal names, or at least anglicized versions" (Powell, Silcock, and Fensham 2015, p.172).

Suzanne Thompson an Iningai woman from Barcaldine Qld in an interview I had with her at GraceVale Station, a property her people brought back with the help of an ILC grant, has a large deposit of rock art depicting the Seven Sisters Dreaming story. The Seven Sisters Dreaming

story transverses Australia. The story was used in the Hindmarsh Island court case by the Traditional Owners of Hindmarsh Island. Suzanne said the "mob from Fitzroy River in WA followed mound springs across country to Barcaldine to partake in socio-cultural economic activities" (Suzanne Thompson 01/06/2020, pers.commm). GraceVale Station is west of Carnarvon Gorge range and is part of a mountain range cluster that surrounds the Great Dividing Range Central Queensland sandstone belt. This range system is major source of many rivers. Some of the rivers that flow from the sandstone belt are Merivale, Maranoa, Warrego, Nive which flow south to the Murray Darling system. The Barcoo river flows west to Cooper Creek and into Lake Eyre. The Lake Eyre Basin Aboriginal Rangers are based in Mt Isa and do cultural work for Traditional Owners who have their lands back in Qld, these I met at GraceVale Station Suzanne Thompson's place. The Seven Sisters Dreaming story is a women's Dreaming Story which is told up and down the waterways and across the country as a cultural continuum.

The *Sturt National Park Plan of Management* (2018), identifies that "permanent and semi-permanent water holes were very important to" Aboriginal people of the Great Artesian Basin area; they were used as "meeting places and ceremonial sites" (*Sturt National Park Plan of Management* 2018, p. 20-23). Further these mound springs are permanent and semi-permanent water holes which enabled social networking and trading over vast distances. In Sturt National Park there is evidence of silcrete blade sites in which some of these blades were traded as far north as Arnhem Land (*Sturt National Park Plan of Management* 2018, p.20-23). Not only were tangible and intangible objects traded out an example is stone axes made of basalt traded from Cloncurry in Queensland, have been found locally in Sturt National Park. "Trading also allowed the oral transmission of knowledge which is central to Aboriginal culture, and stories from the Dreaming tell of interactions between neighbouring groups" (*Sturt National Park Plan of Management* 2018, p.20-23).

The Channel Country's rivers weave their way through western Queensland's vast deserts, stony gibber plains and almost limitless ephemeral swamps. They are among the last untamed rivers and they bring life to the dry heart of Australia (*Western Rivers Alliance*. 2016:10).

The Channel Country rivers are the Mulligan, Georgina, Diamantina and Cooper. In summer they are fed by good summer rain at the head waters which spills out into Eyre Creek, and into Lake Eyre (Learmonth, Nancy & Andrew. 1971, p.281). The Great Artesian Basin link these two catchments as do the First Nations people's songlines/storyways and trading ways.

The Great Artesian Basin is an immense geographical depression, filled with sedimentary rocks of mostly Mesozoic age. The Great Artesian Basin is made up of three sub-basins. These are the Gulf Sub-Basin in the north, the Thomson Sub-Basin in the Central region, and the Thallon Sub-Basin in the south-east. The Great Artesian Basin lies in mostly arid lands, and underlies country reaching its lowest point of 11.9 metres below sea level at Lake Eyre in South Australia (Western Rivers Alliance 2016, p.10-18). The Great Artesian Basin, is the largest ground water basin in Australia and the bore water in Aboriginal mythology is "the blood of the rainbow serpent and we should not be digging down to it. Springs are where it comes up, and that is acceptable" (*Warrego, Paroo, Bulloo and Nebine water resource plan and resource operations plan Aboriginal values and uses report 2016*, p.7-8).

The *Warrego, Paroo, Bulloo and Nebine water resource plan and resource operations plan Aboriginal values and uses report* (2016) details the connectivity and interrelationships of the First peoples to the landscape based on community consultations. These are articulated as a "deep spiritual, physical and cultural connection to the land, water, plants and animals" with their relationship to "environmental and cultural flows" (*Warrego, Paroo, Bulloo and Nebine water resource plan and resource operations plan Aboriginal values and uses report 2016*, p. 8-9).

However, despite the consultations and water management plans for the rivers and water of the Murray Darling Basin the First peoples lack of rights within Australian law, border on "environmental racism" (Collins and Murtha 2010, p.3-5). It is known that Aboriginal people have a unique connectivity to country and socially to other Aboriginal nations across Australia through the waterways and storyways/songlines. The First Nations people have seen environmental harm to the mother (Country) and this has affected Aboriginal communities' health, spiritual attachment, mental health, material culture, and socio-cultural economics. These have and are threatening the cultural survival and relationships to Country of the First peoples of Australia. Where the land in question has spiritual significance, Aboriginal people argue that environmental degradation or destruction of the land violates Aboriginal people's freedom of religion, which should be protected under the freedom of religious practice Act and the Australian constitution for religious freedom. Section 116 (2) of the Australian Constitution provides no legal recognition to the First Nations religious beliefs and all "indications are that Section 116 imposes scarcely any restraint on a determined Commonwealth government and offers virtually no guarantee of religious freedom or equality to that of the churches" (*Indigenous Religion in Secular Australia*. Date accessed 13/02/2020). It does not, guarantee religious

freedom against the “tyranny of the majority and this has not concerned the High Court of Australia” (*Indigenous Religion in Secular Australia*. Date accessed 13/02/2020).

The concept of 'environmental racism' is clear, that environmental laws, heritage laws, water regulations within State and Federal statutes are inadequate in providing Aboriginal people rights in Australian law for water or environmental ownership and religious practices. Australian environmental laws have failed to protect environmental integrity on the First Nations people's Country. All decisions for the environment have been made by Government bureaucrats with little consideration to the impact on the First Nations Country. Generally Aboriginal peoples values for Country are "out weighed by economic and development" (Collins and Murtha 2010, p. 4-5). There is no clear definition for the First Nations people beliefs in “sacred or spiritual and customs” however there is a tendency to avoid the use of religion and religious practices by State, Territory, and Federal Governments in Australian (*Indigenous Religion in Secular Australia*. Date accessed 13/02/2020). It is clear that there is a need to entrench Aboriginal environmental and religious rights in Australian jurisprudence and the constitution.

### 3.4 Australian Rivers

In Australia generally speaking the river systems are truncated from the head waters of their systems (Nancy & Andrew Learmonth 1971, p. 373).

Rivers are usually described in terms of their catchment areas. This means that the entire river system - from its source, all its tributaries and down to its mouth are included in any discussion or assessment. Australia has twelve catchment divisions. The biggest of these is the Murray–Darling, beginning in Queensland flowing through New South Wales and Victoria to its mouth in South Australia. The Murray–Darling River is the third longest navigable river in the world, after the Amazon and Nile. (*Australian river catchments and the Great Artesian Basin*. Date accessed 28/08/2017).

The Web site *Longest Rivers*, (Date accessed: 30/08/2017) provides details for Australia. With the Murray River 2,508 kilometres being the longest, followed by the [Darling River](#) (Baaka) 1,545, the [Murrumbidgee River](#) 1,485 kilometres, the [Lachlan River](#) 1,339 kilometres, the [Warrego River](#) 1380 kilometres, the [Cooper Creek](#) 1,300 kilometres and the [Paroo River](#) 1,210 kilometres. There is conflicting information in regards to the lengths of the Murry Darling Rivers as indicated below.

The Darling River system covers over one million square kilometres, (14 percent of Australia), flowing south from its head water's source in Queensland through New South Wales where it meets the Murray River at the Wentworth junction (see Illustration 5) and flows as the Murray River south-east to the mouth at Goolwa in South Australia. It is 3,672 km long journey.



Illustration 5. Murray Darling Junction Interpretive Feature Project scenic walk Wentworth NSW Photography by Dale Kerwin 2018.

The Darling River ("Baaka": Barkandji name for the Darling) is formed by several rivers that flow from the Great Dividing Range at its head lands. The Darling River generally flowing from the "north-east to south-west, with the headwaters in the Eastern Highlands, the Darling

Downs, (Carnarvon Rangers) in south Queensland, the North-west slopes and the Central Uplands" (Learmonth 1971, p.125). The Severn River is one of the rivers that flows into the Baaka. The Severn River is considered to be the main source of water flow into the Baaka (Darling) River with its headwaters flowing from the Darling Downs in Queensland. Severn is a perennial river and forms part of the Border Rivers. The Severn River, flows to confluence with the Dumaresq (Karaula), Macintyre, Barwon (Barwum). The Severn and its confluence with the Macintyre River, forms part of the Murray Darling Basin.

A two page information sheet produced by the Wentworth Visitors Information Centre states that the "Darling flowed 2740 kilometres from Queensland and northern NSW, while the Murray River flowed 1688 kilometres from the Great Dividing Range of Southern NSW and Victoria" (*Welcome to Australia's Great Rivers Murray Darling Confluence: Where the Murray and the Darling Meet*). The two rivers then join and flow 832 river kilometres south to the Southern Ocean. The information sheet welcomes the tourist/visitor to Barkindji Country. The information sheet notes that the Barkindji (Paakindiyi) people (meaning belonging to the river) call the river Barka (Paaka) (*Welcome to Australia's Great Rivers Murray Darling Confluence: Where the Murray and the Darling Meet*). Where these two rivers meet is an interpretive walk that presents historical features of the social and cultural aspects of the rivers. The information board provides details of the historic meeting of the two worlds (see Illustrations 6 and 7). The information boards and information booklets along the waterways is a form of Western acculturation of the

landscape these inform the public of historic facts and geological features of the Australian environment. These are similar to traditional Aboriginal acculturation of the landscape where information was carved on trees, in the landscape and geographical features were sang to map the songlines that provided information to Aboriginal travellers. This is a form of cultural continuum and will be detail in this thesis.



Illustration 6. Murray Darling Junction Interpretive Feature Project scenic walk Wentworth NSW. Photography by Dale Kerwin 2018.

This initiative is the result of discussion and research with locals and visitors to Wentworth. The general consensus is that the junction needs to provide an informative and visually memorable experience in keeping with its understood validity as an iconic destination.

Aborigines who live in the region hold this point in high esteem. History tells us that at this point Captain Sturt negotiated peace with 600 Aborigines and gave the Murray River its name. At this point, riverboats converged, traded goods and the township of Wentworth was founded. This point marks the confluence of all the rivers west of the Great Dividing Range. It has global positioning and is a daily barometer of the health of the rivers of the Murray Darling Basin.

These stories and more should be known to all and told to our visitors.

Illustration 7. Information signage at the Murray and Darling River junction at Wentworth NSW, providing historical information. Photography by Dale Kerwin 2018.

The Baaka's course through the West receives little annual rain; the river often loses more water by evaporation than is gained from its tributaries, many of which sometimes fail to reach the main stream. There are instances in which the dispersion of rain fall water through tributaries leaves the main stream and disappears into the inland basins. During a large part of the year as we have seen in 2018-2019 the Baaka (Darling) is little more than a chain of scattered water-holes. "The fact that the Darling itself ever reaches the Murray has been attributed to the coating of naturally waterproof clay which lines its bed and banks" (Learmonth 1971, p.125). In Illustration 8 is an interpretive sign that provides details to the public on both of these rivers lengths. This is in contradiction to the Longest Rivers web site.

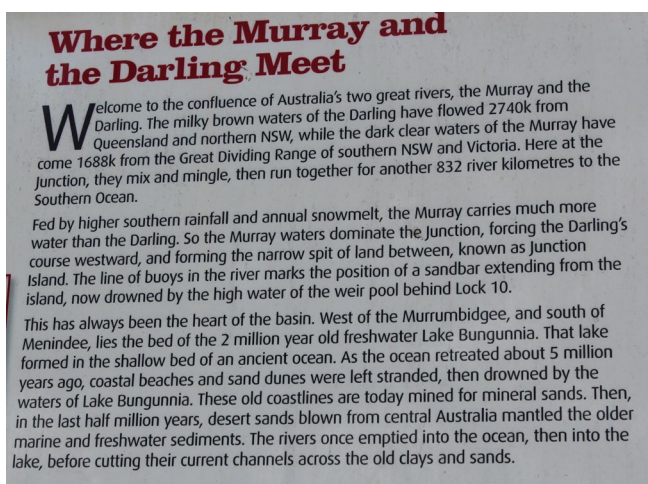


Illustration 8. Murray Darling Junction Interpretive Feature Project sign board Wentworth NSW, providing information on the Murray Darling Basin. Photography by Dale Kerwin 2018.



To build on the knowledge of southward movement of water, a key concept to know and understand in regards to the Australian river systems, is through their catchment and drainage divisions. The key concept is whether a river is classified 'permanent or non-permanent'. Australian rivers can be classified as 'perennial (permanently flowing) or non-perennial (seasonally flowing)'. As a result, Australia's rivers, streams, and lakes will not always have flowing water in them, this too is dependant on seasonal and climatic conditions. Yet even non-perennial sources of water have been important historical sources of water for people and industry (*Australian river catchments and the Great Artesian Basin*. Date accessed 28/08/2017).

*Conversations on the Condamine: an oral history from the Queensland Murray-Darling Basin*, (Potter, Moles, Connors, Postle, (eds). 2002), provides a narrative on the shared histories of the Condamine river. The narrative details knowledge of the First Nations acculturation and use of the river, and the spiritual socio-cultural and economic links with the river for healing and creation stories. The mud of the Condamine at certain spots was used for healing of wounds, and the deep water hole where the Tannymorel Coal Mine located at "Coal Hole a pool on Farm Creek", was a healing pool (Potter, Moles, Connors, Postle 2002, p.24). The water hole/pool was formed from "a large seam of coal and an everlasting stream of water trickled from the coal seam into the pool" (Potter, Moles, Connors, Postle 2002, p.24). Indigenous Men would lie in the water for hours and they would be healed of their ailments. The pool no longer exists; it is a coal mine now. Potter, Moles, Connors, Postle (2002), state that "the Condamine basin had mystical significance for the Clans who lived within it" (Potter, Moles, Connors, Postle 2002, p.24). The Condamine River was created by "Gaiwar in the Barunggam spiritual belief, Gaiwar ...carved out

the rivers, creeks and lakes as it journeyed across the earth in the Dreamtime" (Potter, Moles, Connors, Postle 2002, p.24). Similar to the Bunyip: the "Kitabal" people believed that there in the deep holes along the Condamine lived Mochel Mochel, who is a figure of evil and danger (Potter, Moles, Connors, Postle 2002, p. 25). The Condamine River is an example of significant areas that hold sacred sites, story places and Totems, as well as women's and men's places within first Nations law/lore and custom.

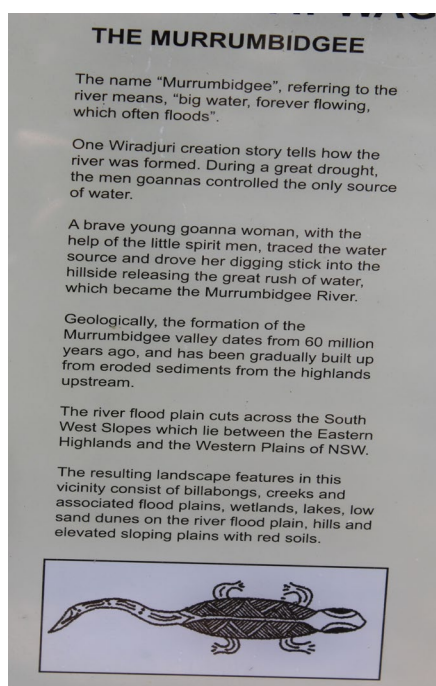


Illustration 9. Darling Point Traditional Owners Restoration Project information signage at Wagga Wagga NSW. Photography by Dale Kerwin 2018.

The First Australian peoples knowledge of water flows as recorded on contact with the first surveyors, explorers, drovers and settlers, provides an account and evidence of the First nations occupation and acculturation of the Murray Darling rivers. Aboriginal names for rivers have been maintained for example the, Murrumbidgee River flowing through Wiradjuri Country, meaning 'big water, forever flowing, which often floods'. As a cultural continuum the creation of the river is told in stories and are now written in information boards for all Australians to learn (see Illustration 9). Aboriginal social memory remembers the contact, the occupation and the economic domination of Country, including the rivers. These can be traced along the Murray Darling River flows with social engagement along their course as meeting places: because Aboriginal people spoke of these encounters too! Aboriginal people have also recorded these encounters with the new Australians in rock art, stories, etchings and now information and interpretive boards.

The First Nations whose traditional lands are along the Darling River and the head waters in Queensland have a long connection with the river systems. The First Nations of the Channel Country and the Darling River major tributaries of the Culgoa, Balonne, Warrego catchment, and Condamine, are recognised by the Murray Darling Basin Authority. The Murray Darling Basin takes in (or closely borders) the traditional lands of the:

Barkindji (Paakintji), Barunggam, Bidjara, Bigambul, Budjiti, Euahlayi, Gamilaroi, Githabul, Gunggari, Gwamu (Kooma), Jarowair, Kambuwai, Kunja, Kwiambul, Maljangapa, Mandandanji, Mardigan, Murrawarri, Ngemba, Ngiyampaa, Wailwan, Wakka Wakka (*Aboriginal partnerships*, Date accessed 18/07/2019).

These are the Northern Basin Aboriginal Nations (NBAN) who represents southern Queensland and the border region of New South Wales the Darling River catchment areas and associated water flows. The Murray–Darling Basin Authority began a partnership with the First Nations people in 1998 with the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and with the Northern Basin Aboriginal Nations (NBAN) in 2010, with the purpose of promoting "the views and perspectives of Aboriginal people on water research, policy and management" (*Aboriginal partnerships*. Date accessed 18/07/2019).

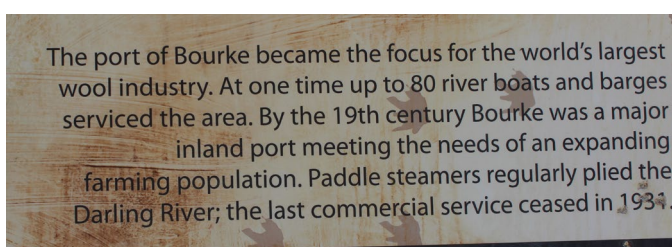


Illustration 10. Information signage at Bourke NSW, on the Baaka River. Photography by Dale Kerwin 2017.



Australia is short of navigable rivers. The Murray is one of the rivers that is navigable to the Darling River and all the way to Bourke in New South Wales (*Inland Shipping: The navigation of the Murray-Darling River System*. Date accessed 18/07/2019). Australia is short of navigable rivers. In the nineteenth century Bourke was a busy inland economic hub (see Illustration 10). The information/interpretive board at Bourke NSW provides historical information on the commercial use of the river at Bourke NSW.

The Murray is the third longest navigable river in the world, after the Amazon and Nile Total length - 2520 kilometres from its source in the Upper Murray and the Kosciusko National Park (Murray-Darling Basin Authority. Date accessed; 05/10/2017).

Note that the Murray-Darling Authority also states that the "Murray River is the world's 16<sup>th</sup> longest river at 2,520 kilometres" from its head waters in the "Kosciusko National Park" and fed by several rivers from the Australian Alps: with the main feeding rivers being the Darling and Murrumbidgee Rivers (Murray-Darling Basin Authority. Date accessed; 05/10/2017).

In September 2008 a re-calculation of Australia's 10 largest rivers was undertaken by Geoscience Australia. Geoscience Australia used data from the National Topographic Database to undertake the re-calculation of the lengths of these rivers. Geoscience Australia confirmed from its review that the longest single river is the Murray River at "2508" kilometres on the continent of Australia's. The lengths of the 10 longest rivers in Australia were re-calculated and documented (*Longest Rivers*. Date accessed 30/08/2017). It is important to note that the new lengths are still only approximations, because they have been measured from a cartographic representation of the rivers, rather than the actual rivers.

### **3.5 New Australians' View of Country the Land and People of Australia**

William Blandowski was a German explorer, soldier, zoologist, and mining engineer of Polish descent. He is most famous for his exploration of the Murray and Darling Rivers in Australia. He arrived in Australia in 1849. His 'original object' was to compile "a natural history, a botanical classification, and a geological arrangement of this country" ([L. K. Paszkowski](#). *Australian Dictionary of Biographical*. Date accessed 14/06/2018).

Blandowski stated that in the mid nineteenth century:

There is no denying that in recent times many academics and travellers have given full attention to this fifth newest continent. However, their research concentrated on Australia's geology, botany and zoology (William Blandowski, (in) Harry Allen, (ed). 2010, p.163).

William Blandowski's, position was that in the nineteenth century academics and travellers rarely considered the study of the Aboriginal peoples, "languages, practices, and customs" which were deemed unimportant (William Blandowski, (in) Harry Allen. (ed). (2010), p. 163).

To traverse the Australian continent without the knowledge of how to find water and sustenance, i.e. food/nutrition, from the alien environment seemed impossible to the newcomers and fatal. Some new Australians perished in the belief that it could be done and some today still believe it can be done. For such explorers/surveyors of the eighteenth and nineteenth century, travelling involved life-and-death situations, as it does today. Thirst, starvation and sickness haunted these travellers on their long arduous journeys through the Aboriginal acculturated environment. It was and is an alien and unknown environment to the new Australians. Even in contemporary times there is a cultural cringe to anything that is Indigenous to this country, this is evident in goods that are brought and sold in retail outlets very little is Indigenous to this country.

A basic assumption dominated the European imagination in the eighteenth and nineteenth century with respect to the Australian landscape: it was an impassable wilderness and a vacant land. There was no understanding of the First People's technology in providing for permanent settlements, managing the environment and the methods to hunt, fish, and trap. Aboriginal people's traditional subsistence activities and preservation of the ecosystems were handed down from the creator for continued existence.

The idea of wilderness presupposes a pristine state unmodified by human intervention. Commentaries from the eighteenth and nineteenth centuries did indeed regard Australia as a pristine landscape devoid of signs of culture. The etchings Europeans saw, but could not read, were thought to be crude and primitive art produced by uncivilised humans. That Aboriginal people were so-called primitive seemed evident from their perceived lack of material possessions. The Aboriginal landscape was viewed as utterly empty, and the black fellow country had no great architectural religious structures that could be recognised as sacred by eighteenth century and nineteenth century Europeans.

We know today that Australia has its own unique environment with 'its own distinct landscape, flora, and fauna' and is an ancient landscape that was acculturated by Aboriginal land management practices (Kerwin 2006, pp 11-12). James Cowan 1989, Tim Flannery 1994, Tom Griffiths 1996 write that this land management system presented the colonisers a landscape that

was well managed 'a gentlemen's park', a 'palaeontological' penal colony' (Kerwin 2006, pp 11-12). Thought by colonists as a land that had relic forms of nature and Aboriginal people were seen as a primitive people. Further, Western thought also theorised that this balance that Aboriginal peoples social systems have with ecological conditions is unlike European societies development (Kerwin 2006, pp 11-12). These are an 'ideological view' about Aboriginal people Tom Griffiths 1996, provides a more descriptive view as 'ecological beings'. Tim Flannery 1994, also provides a descriptive view of Aboriginal people as 'ecological agriculturist' (Kerwin 2006, pp 11-12). These refer to Aboriginal people's practices and innovations that 'did not degrade the environment', were driven by nature and influenced by nature, and not by culture (Kerwin 2006, pp 11-12). Where as European development was driven by the culture of economic development. In the 21st century it is now known that Aboriginal people built stone houses, did hydraulic engineering, undertook mining activities, and dam constructions. These were done by living in harmony with the environment and using Aboriginal land management activities that conserved the environment (Kerwin 2006, pp 11-12).

In 1979, one of Australia's largest contemporary conservation battles began with the proposed damming of the Gordon and Franklin Rivers by the Tasmania's Hydro-Electricity Commission. Bob Hawke, after winning the 1983 election became Prime Minister and stopped the proposed dam. This led to the Franklin River's world heritage listing as a wild river (as part of the Tasmanian Wilderness world heritage area). This was reinforced by the then Australian High Court decision in stopping the damming of the Franklin River as a wild river (*Bob Brown: Hawke was our environmental prime minister*. Date accessed 10/06/2019).

All of these activities impacted on ecosystems and so challenge the view of Aboriginal people as ecological beings but as Deborah Bird Rose points out the:

Aboriginal relationships to land link people to ecosystems 'rather than giving them dominion over' them. In this mode of thought, the values of life are pre-given in the sacred origins of the world. There seems to me to be a fundamental philosophical gap between European cultures of conquest and Aboriginal cultures of balance (Rose 1996, p. 10-11).

In summary Aboriginal peoples perception of country and ecosystems is multifaceted whereby the environment is the mother that consists of many diverse forms. All interact with each other such as the spirit world, spiritual beings, plants and animals, and as people who are constantly engaging with the ecosystems. The Yanyuma people see this as "a two-way process with the

concepts of Yanyuwangala (way of being) and narnu-yuwa (doing things or law)” (Bradley 2001, p.297). This relationship can be seen with the carving of the Red Gum trees (see Illustration 11).



Illustration 11. Aboriginal scarred tree. The bark would be used for canoes, shelter, water containers, and baby containers. Located at Wood Wood on the Murray River Vic. Photography by Dale Kerwin 2018.

### 3.6 First Nations View of Country

To use the English word, ‘Aboriginal cosmology’ is a reflection of concrete events, life patterns and of the condition of the world that is shared. It is also acutely spiritual through observed cosmic and natural events, where the rhythmic patterning of seasons and predictability of solar, lunar and earthly events, created an Aboriginal reality. Aboriginal people use the lexicon

‘country’ which embeds Aboriginal existences and ‘being in and to the land’. Pat Dodson, a past (Aboriginal) Social Justice Commissioner and currently a senator, makes this point:

For Aboriginal people land is a dynamic notion; it is something that is creative. ... Land is the generation point of existence; it’s the spirit from which Aboriginal existence comes. It’s a place, a living thing made up of sky, of clouds, of rivers, of trees, of wind, of sand, and of spirit that has created all those things; the spirit that has planted my own spirit there, my country. ... It belongs to me; I belong to the land; I rest in it; I come from there (P. Dodson 1976, p.16).

The country is the proof of ideas and creation stories, and indeed the country and its features have always been here.

Physical landmarks within the Australian environment provide places of spiritual identification. These are places where the spirits dwell and are the resting places of the ancestral spirits and the concept of reciprocity. Aboriginal intrusion on the landscape came by the way of ceremonies, storytelling, signposting and settlement. These activities are complex and reaffirmed obligations of Aboriginal people to law/lore, teaching practices and country. The interaction with the land presented Aboriginal people with the ability to change the natural environment to suit social, spiritual and economic well-being.

Deep listening is an Aboriginal epistemology where by the voices that come from the deserts, along the waterways and forests are not simply the spirits of the trees, but those of Aboriginal ancestors; the voice provides an understanding to country. These beings still talk and sing to Aboriginal people from their location in the environment. The voice is a primal thing that is silent and scarcely obvious, except to Aboriginal people for whom the voice is known as 'country'. The voice is humble and enduring of the original spirits of Australia. Aboriginal people inherited the country from the ancestors who pioneered the landscape. The voice is as old as the continent of Australia, and was created before Aboriginal people took their human form. The spirits used the natural environment to seek out food, and create paths to waterholes and soaks (which became their drinking places) and to meeting places by known tracks. The ancestral spirits are wise and through their work and through infinite time they sculptured the landscape and taught how the country should be read. Aboriginal people see the country in the landscape and the ancestral paths are everywhere. As the rivers and long chains of escarpments were moulded, Aboriginal ancestral tracks provided law to groups of people, as the stars also did. Spirits, which are the foundation of Aboriginal religion/spiritual beliefs, flowed along the ancestral tracks and leapt from Aboriginal village to village by way of stories. These became known as storystrings and changed from one location to the next and in life too they have their own regional variants: "As the ancestral spirit travelled from place to place they sang many songs and performed corroborees which belong to big one" (Minyanderri-Pitjantjatjara 1966, (in) Robinson 1966, p. 91). The ancestral spirits provide the voice for country and it is a way of knowing the world and of being in it.

David Wroth, (2015) in his exhibition for *Water Dreaming*, describes how important it is for Aboriginal people in the desert areas in having knowledge of where to find water for survival:

throughout Aboriginal Australia all water sources – rockholes, fresh water springs, soakages, rivers, underground water and billabongs – form a vital part of traditional knowledge and ritual life (Wroth, *Water Dreaming* 2015, Japingka Gallery Date accessed 04/06/2018).

Ancestral myths explain events in the natural world. Ancestral beings of the Dreamtime explain things that once happened and events that might occur, similar to those of European nursery rhymes. These myths contributed to the culture of Aboriginal people and transcend time and space. Ancestral beings provide the existence and dimension of time and add to the physical, spiritual, and socio-economic fabric of Aboriginal people. The events of the Dreaming and the spiritual forces that helped shape Australia still exist. They inhabit the landscape and reside in

place. Nancy Munn (1973), describes this as ancestral transformation, meaning that ancestral beings metamorphosed into natural features of the landscape. She also states that they left some imprint of themselves, such as footprints, tools or rivers, and finally an object or thing, which the ancestors removed from their bodies and these become sacred (Munn 1973, p. 142). These stories are used as an educational tool, where the narrative tells about rules, relationships, science and skills to compete successfully in an environment such as Australia. In an Aboriginal voice deep listening requires some one to yarn about myths while sitting in a circle, the story goes around the circle. Yarning is a vehicle for knowledge to be shared. It also recognises Elders, lore people and people who have a relationship to country and responsibilities for caring for people, flora, fauna and cultural sites.

Deborah Bird Rose (1996) articulates that the Arrernte people of the Lake Eyre region sang songs of the ancestral beings who laid the path down for the songlines from the Dreaming for country to follow their path along the rivers into the desert.

They followed the tracks of Dreamings who brought ceremony, and groups that might only see each other during the best rains (which might be years and years apart) met up at major Dreaming centres for regional ceremony, trade, marriages, initiations, dispute resolution, and to enjoy the temporary abundance of the flourishing desert (Rose 1996, p. 52).

Some stories are localised and tell of ancestors that inhabit the local region while others are a part of a 'storyline'. These 'storylines' can move through one Aboriginal nation and travel great distances over other territories. These stories, as they move over the landscape, may tell of the same events and use the same characters, but differ in that they use localised knowledge and features of the landscape. These are important variations because they teach different aspects of law and depict the country as maps. For maps, the stories are important as they direct movement over country. In this respect, they tell people where water and other resources can be found and provide knowledge of a country the traveller may not have had. Daisy Bates (1985), notes that people living in Ooldea in South Australia had detailed knowledge about the tribal relationship of individuals who lived up to 1600 kilometres away (Bates 1985, (in) Kerwin 2010, p. 129).

As travellers move over the landscape, these stories/songs are shared along the travel routes when travellers encounter other peoples. Like all societies, Aboriginal communities valued new knowledge. Ancestral beings sang stories as they moved across the country, and they left a record of the stories in the form of natural features, such as rivers, mountain ranges, waterways, water holes and soaks and the Milky Way. These are known as song cycles and songlines.

These are also about moving through life, "coming and going out of being, visiting the same camping places, sitting around a story place which has been used by ancestral beings long gone, reproducing and re-performing events that were taught from the ancestors" (Reser *et al* 2000 p.49).

In the First Nations social memory for country and law they perform ceremonies to

keep alive the memory of both the creation and the location of these sites. Aboriginal people meet for ceremonies beside water holes and their birthplaces are generally near one. Special ceremonies are performed seasonally to ensure that rains come to regenerate the plants and to provide food for both animals and people (Wroth, *Water Dreaming* 2015, Japingka Gallery. Date accessed 04/06/2018).

Songs such as ones from the Arrernte peoples, are ostensibly records of the travels of ancestral spirits, and relate to the major routes of socio-cultural economics along the waterways. As travellers reach one of these song places, they perform a ceremony and recount verses that have been passed on from generation to generation since the Dreamtime. As the traveller recounts the verse, they sing the song of that site or feature, which in turn leads to the next stanza, which



Illustration 12. Artist Shorty Jangala Robertson- *Water Dreaming* (2015). (Japingka Gallery). Date accessed 04/06/2018).

represents the next site or feature in the songline or cycle (Edwards 1988 p. 17–18). In Western culture, the emphasis is on education and is a major concern for society in general. Information is recorded in textbooks to be used by students, teachers, artists, designers, musicians, etc. In Aboriginal society, intellectual property is used in much the same way, intangible knowledge is converted into a tangible cultural expression through the vehicle of storytelling,

song, dance, lines drawn in the dirt, into symbolic rock art, scarred trees, carved figures and ornaments, or the crafting of the various organic materials such as wood and stone into useable functional objects (as represented in Illustration 12). These provided the means for Elders to establish their position in the Clan group and to teach. Other methods used to convert intangible knowledge into a tangible teaching medium are, for example, body paintings and ground paintings.



### 3.7 The Oldest Collective Memory

William Blandowski (2010): noted that

whereas the study of the Aboriginal people, their languages, practices and customs has not been deemed important. The physical appearance of Aborigines has merely caused pity if not disgust. However, as somebody who has come to know them must admit that they have qualities in spirit and heart, which are not to be underestimated (Blandowski, (in) Harry Allen (ed). 2010, p.163).

It can be posited here that Aboriginal belief systems and cosmology are the oldest collective memories of all the races of people. This is evident by archaeological evidence along the water ways from Gulf of Carpentaria to Hindmarsh Island and in mound springs and lakes throughout the Great Artesian Basin, and Aboriginal stories of place and creation. One of the features of the construction of time for Aboriginal people by researchers is the concept of the 'Dreaming', better known as the 'Dreamtime'. This is a unifying concept that is referenced to Australian Aboriginal people and all Australians learn about Aboriginal Dreamtime or the Dreaming. What is the Dreaming? Who first used the term? Australia has a long history of non-Aboriginal clergy and scholars busily attempting to describe the Dreaming. The term 'Dreaming' was coined by Carl Strehlow in 1894 through his interpretation of the Aranda peoples word *Altjiringa* at Finke River Mission, Hermannsburg, in Central Australia. Unfortunately, no one remembers the Aboriginal people who shared the information with Strehlow and he drew upon this knowledge with biblical references to God. Other early researchers used the term including Elkin (1961), Stanner (1968), Edwards (1987) and Lawlor (1991). Their description is romantic and presents notions of a world that is constantly pregnant and waiting for the ceremonial rebirthing of life, in tune with the rhythmic movements of time through space. A veritable Garden of Eden where all needs are met by nature, this negates the seasonal variants of flood and droughts from feast to famine. The scholars and travellers interpretations are more in tune with the circular movement of seasons and patterns that repeat themselves, in the knowledge that the sun will rise and set, followed by the same actions of the moon, through their never-ending movement across the sky. Others have drawn analogies to biblical references of John's Gospel and Greek terminology of '*logos* – the word'. In both the examples, they become subjective and rely on ethnocentric realities of subjectivities that contaminate the nature of Aboriginal existence.

Generally up until the 1970s, Aboriginal people were excluded from educational institutions throughout Australia and it wasn't until 2005 that Aboriginal people were included in policies for water management (*aqua nullius*). No positive images and concepts of Aboriginal people, culture



and language were presented through the many public institutions. Aboriginal knowledge systems were invisible and no inclusion of Aboriginal perspectives was given. English is the only official language used in Australia today. This has affected how Aboriginal society educates the young and interprets the world. Aboriginal author Nancy Williams pointed out that not all Aboriginal languages have concepts or terms for the Dreamtime and it is not a universal concept (Williams 1986, p. 25). As noted Dreamtime was a vision created by Europeans who did not understand Aboriginal peoples languages and beliefs. Australia's First Nations people are represented by many interconnected cultural groups, rather than a 'homogeneous', or a pan-Australian culture. We know today with the revival of some of the 350 odd First Nations languages being taught that there is more than one universal concept of the creator just to provide a couple of examples: Bulurru, Gudju Gudju, Baiame, Mardoowarra, Woonyoomboo, Tjukirita time and Altjira. But these spiritual beings are all seen as the creator for various First Nations. Today there is more of an intercultural understanding of the First Nations' religious beliefs in country as both the Mother Earth and the Creator. Wandjuk Marika's Foreword speaks about the relationship of Dreamtime stories and the role they played in the creation of the landscape:

Our people of the desert in the centre of the continent speak of the Tjukirita time when land was a flat disc, a vast featureless plain which stretched to the horizon without rivers or hills. But as the ages passed many different giant mythical beings emerged from beneath this crust and wandered about. (Marika (Foreword) in Jennifer Isaacs 1980).

### **3.8 Conclusion**

The First Nations through the 230 odd years of occupation have retained connection to country and the waterways. Aboriginal knowledge of water flows and rivers (waterways) in Australia that flow along the main river systems from the Gulf of Carpentaria to Goolwa in South Australia still survive today- and they are remembered as storyways. Aboriginal nations of these regions through connection to country have retained their history, knowledge, culture and lore/law which are interconnected with the waterways.

Since colonisation, there have been concerns about the southward movement of water flows into South Australia from the Murray - Darling Basin and the drying of springs and lakes in the Great Artesian Basin. These concerns are historic, environmental, economical and political (Learmonth, 1971, p. 126).

Aboriginal People of the Murray River have been providing evidence of the ways in which they the Ngarrindjeri (people of South Australia's Murray River region), the Yorta Yorta Nation

(Echuca region) and other Aboriginal nations along the Murray River and Darling River First Nations people such as the Barkandji nation lived. This is also supported by archaeological artefacts such as scarred trees, burial areas, fish traps, storyways/songlines, and other cultural manufactured product.

The Aboriginal nations along the Murray Darling Rivers created permanent villages, economies, and managed the environment to provide a sustainable life style on its banks and the nearby flood plains for thousands of years, right up to the present. Within the discursive spaces of settlement/invasion/Native Title, it is time to provide a narrative on Aboriginal relationship to water along the Murray Darling Basin. The discussions of political, economical and theoretical debates on identity of Aboriginality will be explored in the next chapter.

## Chapter 4 A History of Legal Exclusion of First Nations

### 4.0 Introduction

This chapter aims to narrate an imagined, and a broad, overview of the history of the National Interest for water and the First Nations rights for water in Australia. The chapter provides historical background to Federal and State policy and legislation up till the 21st century for the engagement of the First Nations and for rights as the First people for country and water. The chapter is framed by three principles: a critical examination of Australian history; traditions and moral concerns for 'The National Interest'; and recognition of the First Nations people's land and water rights within the current *Native Title Act (Cwth) 1993*. The discourse in this chapter will dig through the historic layers of legislation, policy and public comment for the First Peoples knowledge and religious practices to country and waterways, like an archaeologist digging into the deep past. In the 18th century philosophers posited that property was founded on either 'natural' law or 'positive' law. One of these philosophers who asserted positive law- Jeremy Bentham (1748-1842) constructed "that rights of 'property are a matter of law: Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases" (Bentham 1843, p.309a).

This was the modern way of thinking by Australian law makers from colonisation till the *Native Title Act (Cwth) 1993*: that Aboriginal society had no laws and therefore had no real property ownership. Native Title is now enshrined in both Federal and State Acts of Parliament and so are water rights for the First Nations people. Yami Lester a Yankunytjatjara Elder and a member of the Pitjantjatjara Council and an anti-nuclear and Indigenous rights advocate and awarded an OAM advocated that "Wapar (land) is like a combination of: the Constitution, the High Court, all the laws of land tenure, and what the Christians would call the Holy Spirit- all rolled up into one" (Robert Lachowicz 2001, p.1).

At the time of the invasion of Australia by aliens, the British Governor Arthur Phillip on 26 January 1788, took possession of Australia in the name of King George III. Governor Arthur Phillip began the denial that Aboriginal society, who up until the invasion, had a developed way of life that was suited to the maintenance of Australian ecology (both climactically and geographically) had property. This process also denied that Aboriginal societies had "religious systems and a political economy" (Griffiths 2018, p.176). The dogma that persisted, is that "Aborigines stagnated in illiterate savagery" and that Aboriginal people "did not develop the

institutions and processes of Government" similar to those of Europe (Griffiths 2018, p.14, Sawyer 1988, p.2). In 1964 a book that was used in Australian schools *Australia's Heritage*, claimed that:

In the tens thousand years during which the natives occupied our land before the coming of the white man, they never advanced beyond the stone age or hunting stage of development... (Logue, et al 1964, p.46).

The accommodation of 'mutual comprehension' and 'power differentials' of the new Australians and Aboriginal people needs to be examined in order to understand the social relations of that era and flag the social outcomes (Evans 1992, 8-9). What were the social relations and the consequence of the 'colonial intrusion' that were manifested through 'cultural incomprehension' of frontier slaughter and mistrust (Evans 1992:9)? Reynolds (1990) suggests that dual themes of - 'resistance and assistance', and 'confrontation and collaboration' have been weaved through Australian history since the first settlement was established at Sydney Town in New South Wales in 1788 (Reynolds 1990, p. 233, Willey 1979, p. 201).

When these constructs are investigated it raises questions such as - how are Aboriginal societies, as the First Nations people of Australia, included in the 'National Interest'? Further how is the Australian environment and water/waterways included in the 'National Interest'? From a First Nations perspective how is an Aboriginal position for water included in the 'National Interest', How does society progress from perspectives such as 'Terra Nullius', 'Aqua Nullius', 'Economic Nullius' and environmental racism to a treaty with full equitable rights as sovereign nations for 'real property rights' in Australia?

'The National interest' has not been defined in any legal parameters; however, it is used to justify actions of the State. Niccolò Machiavelli, an Italian, is believed to be the first political philosopher (fourteenth century) to advocate the term. The French gave the expression to the National interest as d'État (reason of the state). It can be defined as "a country's goals and ambitions whether economic, military, or cultural (The National interest)" (Church 1973, p. 168). When we consider land and territory boundaries, water and cultural heritage, these are also in the National interest to preserve and protect for the betterment of all Australians.

#### **4.1 Land Tenure to Land Rights and Native Title**

When the English colonised Australia, they brought with them common law as a "settled" colony of the Crown. It is well known that the colonists brought with them English law which

was "applicable to their own situation and the condition of an infant colony" (Newton 2001, p.3). It can be seen that Terra Nullius (Australia was a land belonging to no one) was in the British National interest then. However, Henry Reynolds (August 27, 2018), writes that it was based on hypocrisy, in that for the first 50 years of colonisation people were transported to the colony for punishment when they stole property. "This was all done in accordance with the common law as it operated at the time" (Reynolds, '*The Conversation: Academic rigour, journalistic flair*'. Date accessed 02/09/2018). In light of this it is also known that on the founding of the colony, British laws were imposed, and Aboriginal people were supposedly subjects of the Crown and protected by Common law with property rights (Reynolds. Date accessed 02/09/2018).

Land is defined as real property. The fundamentals of land tenure and land ownership in Australia was imposed by the Crown, and based on English property law. Further, all lands in Australia were held by the Crown rather than absolute ownership, and as a result Australian governments, both Federal and State, are the source of all land tenure. When the Crown sold land it was through the Torrens system of title to possess, control and own land or territories. The Torrens system of land tenure was written by Sir R. R. Torrens in 1858, originated in South Australia and was enacted as law in all colonies then states of the Commonwealth (Land Tenure 1911, *Canberra Time* 01/01/1910. Date accessed 20/08/2018, p.241).

However, today with some exceptions under common law in Australia land:

when used in relation to a particular parcel mean[s] the surface of the Earth, the soil beneath the surface to the centre of the Earth and the column of air above the surface. It include[s] all things growing on or affixed to the soil, such as trees, crops and buildings... also ... all the minerals in the soil excepting gold and silver, which at law belonged to the Crown as royal metals (Donnelly. Date accessed 10/11/2017, p.5).

These 'royal metals' or 'mines royal' is a doctrine that was introduced to Australia. Its purpose was to provide the Crown with rights over gold and silver and was part of the royal prerogative. These can be described as being the subject of a 'proprietary prerogative' for example, "ownership of lands, ownership of the foreshore and the bed of the sea within territorial limits" (Newton 2001, p.1). It can therefore be perceived that 'royal metals' are in the National interest, and also can be questioned in regards to the First People's rights to property in common law and under Native Title as is water. The common law has a history of protecting these mineral rights and water rights for the Crown. This is seen as the sovereign's prerequisites and a royal

prerogative right was considered to give absolute title to ownership by the Crown. This was before common law was challenged by 'Mabo 2' for Native Title, that recognised Aboriginal and Torres Strait Islander people's residual ownership and shared title to Country (lands) (Newton 2001, p.1).

In Australia, there is leasehold land, crown lease, and Native Title that are recognised as separate forms of ownership by both Acts of Parliament and the courts of the land. Crown land is "remaining" land that has not been allocated and is held by the Crown. The Australian Capital Territory is leasehold, much of the Northern Territory is held under crown lease and Native Title (Donnelly (N.D), *Fundamentals of Land Ownership, Land Boundaries, and Surveying*. Intergovernmental Committee on Surveying and Mapping. Date accessed 10/11/2017, p.6).

The *Aboriginal Land Rights Act Cwth* (1976) is a statutory title to land granted by legislation to Aboriginal groups as inalienable freehold land, which means it cannot be sold in the same commercial sense as ordinary freehold land. Under this Act land title would be transferred to the Aboriginal Land Trusts. It is a statutory title and is granted on the provision that Aboriginal people have a spiritual connection to a site on the land. This spiritual connection is called 'spiritual affiliations' to a place. It further denotes that this spiritual connection provides a responsibility for continuation of traditions for management of that spiritual place, with rights to 'hunt and forage' on that land (*Butterworths Australian Legal Dictionary* 1997, p.5). The Commonwealth *Aboriginal Land Rights Act* was brought into law in 1976.

The Northern Territory in 1979 enshrined in law the *Aboriginal Sacred Sites Act (1979)*, this was introduced as a complementary piece of legislation for Aboriginal Land Rights. The sole purpose of this piece of legislation was for the protection of Aboriginal sacred sites. As an objective of this Act, the *Aboriginal Sacred Sites Protection Authority* was established to administer the Act, and a governing board was set up with members of the governing board drawn from the Aboriginal community. Further the significance of a site and sacredness was defined by the Northern Territory Aboriginal community - this Act was repealed and the current *Northern Territory Aboriginal Sacred Sites Act (1989)* was enacted (Hayes 2009, p. 3).

The Federal High Court in the Mabo 2 (1992) decision overturned the doctrine that all waste land solely belongs to the King or Queen (Newton 2001, p.1). The High Court of Australia 1992 decision was that "on white settlement of Australia in 1788, the Crown acquired sovereignty and

the right to alienate all land in Australia, but that native title survived" (*Butterworths Australian Legal Dictionary* 1997, p.713). The High Court established the doctrine that Native Title has survived if it can be established that Aboriginal people have had a continual association with lands that they were traditionally associated with. It is further qualified by provisions that the continual association with lands has not been "extinguished by use, and possession by another or alienation by the Crown" (*Butterworths Australian Legal Dictionary* 1997, p.713).

In Australia the legal recognition of the First Peoples rights to land and water came with the passing of the *Native Title Act 1993 (Cwth)*, however, as Hartwig, Jackson and Osborne (2018), point out "in reality, [it provided] quite limited means- for recognizing and protecting Aboriginal peoples' rights to land and water across Australia" (Hartwig, Jackson and Osborne 2018. Date accessed 11/11/2018, p.1).

Land granted through Native Title applications to Traditional Owners by the Federal Courts are not derived from a Crown grant (*Butterworths Australian Legal Dictionary* 1997, p.1157). Native Title is classified as a "special law with a bundle of rights" for the original descendents of the original inhabitants of the Country Australia (Lavarch 1994, p.3). For Native Title to be recognised through the Australian legal system across Australia, various assumptions of law have to be satisfied such as:

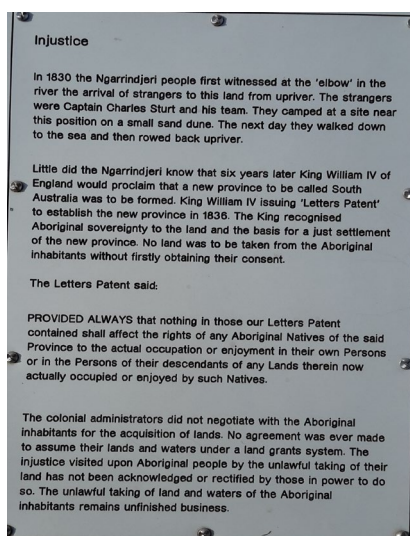
When the Crown acquired sovereignty over the claimed area, which happened at different times in different parts of Australia, there had to be an identifiable group of Aboriginal people inhabiting the claimed area, with traditional laws and customs giving rise to native title rights at that time (Donnelly. Date accessed 10/11/2017, p.8-9).

Further to these determinants in law, Aboriginal claimants must show a continual occupation of the land being claimed in accordance with their traditional customs and rites from the time of colonisation to today. Historically, these have to have been observed and documented;

The Aboriginal laws and customs giving rise to the native title rights must have been observed and recognised continuously during that period, and there must not have been an event that had the effect of extinguishing the native title rights, such as a valid freehold grant, or valid extinguishing legislation (Donnelly. Date accessed 10/11/2017, p.9-10).

These determinants do not mention massacres, forced removal from Country, nor do the Letters Patent written by the King William IV in 1836, effectively recognising Aboriginal sovereignty in South Australia (see Illustration 13 below). Australian land ownership is based on Common

Law and can be overruled by an Act of the Commonwealth Parliament through legislative 'Acts and Regulations', for example the *Native Title Act 1993* (Donnelly. Date accessed 10/11/2017, p.4).



The Letters Patent was written into law by King William IV establishing South Australia in 1836. The Letters Patent recognised the First Nations Sovereignty in SA. The Letters Patent stated “nothing in these The Letters Patent contained shall affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any lands therein now actually occupied or enjoyed by such Natives (Illustration 13. The Letters of Patent 1836)”.

Illustration 13. The Letters of Patent 1836 provided to the Ngarrindjeri people of South Australia Yekeyere (Jekejere) Park Goolwa S.A. Photography by Dale Kerwin 2017.

The Letters Patent 1836 was engendered to give First Nations people land rights in South Australia we know this never occurred, historically (Reynolds 2003). We know that there were no agreements, no negotiations; the Ngarrindjeri people call this unfinished business for the unlawful taking of land and waters. The invaders saw the land as “Terra incognita” that is a Country that was “waste and unoccupied lands” (Reynolds 2003, p.127-130). The Ngarrindjeri people as other First Nations see it as “wholesale robbery of territory committed upon them by the Government and settlers who become receivers of stolen property” (Reynolds 2003, p.115). Today the First Nations people have “a deep and enduring sense of injustice” with the processes of showing a continual occupation of the land in accordance with traditional customs and rites from the time of colonisation to today (Reynolds 2003, p.115). This is never more evident than with the Gove Land Rights case in 1971 the Yolngu people took Nabalco Mining Company to the Northern Territory Supreme Court to stop mining on their land as it was illegal because they never gave consent to mining (Reynolds 2003, p.150). This marked the beginning of First Nations taking legal action for Land Rights. The Northern Territory Supreme Court was constituted by a single judge, Justice Blackburn who rejected the Yolngu peoples claim pertaining to the concepts in the “Letters Patent 1836” for occupation of the land (Reynolds 2003, p.150-152). Justice Blackburn ruled that the Yolngu peoples customary laws or lore had no legal significance and the Australian governments were not committed to the clauses within the Letters Patent 1836 (Reynolds 2003, p.150-152).



For Native Title, the Federal Government in 1993 recommended that a 'system of specialised tribunals' across States jurisdictions' be established to provide a more cost effective and a less 'adversarial process' to determine Native Title rather than the court systems (Bartlett 2000, p. 497). The National Native Title Tribunal was established to mediate and arbitrate on disputes and examine if future acts can be asserted over Country through the Native Title process (Bartlett 2000, p. 497). The National Native Title Tribunal, when a settlement could not be settled or resolved through an agreed process, would refer cases on to the Federal Court. However, changes were brought about to this process in 1998 due to a constitutional challenge by *Brandy v Human Rights and Equal Opportunity Commission 1995* (Bartlett 2000, p. 497). This constitutional challenge forced cases to be brought to the Federal Court and passed onto the National Native Title Tribunal for their processes for consideration and determination to be made by the Federal Court. Determinations can also be made by State and Territory bodies if recognised in their statutes and the Federal Minister has the power to determine if this can be actioned by various State and Territory bodies (Bartlett 2000, p. 497).

It should be pointed out here there is a difference in the area of law that these two court systems have jurisdiction in, the Federal court begun its jurisdiction on the 1st February 1977 and shares its jurisdiction with the Supreme Courts of the States and Territories. *The Native Title Act 1993 (NTA)* falls within the Federal Courts jurisdiction and any appeals with NTA from the Supreme Courts of the States and Territories go to the National Native Title Tribunal (NNTT), then if no settlement onto a full Federal Court hearing (*Federal Court of Australia*. Date accessed 10/02/2020). Where as the High Court of Australia was established in 1901 by Section 71 of the Constitution and is the highest court in Australia. The High Court of Australia's jurisdiction is to "interpret and apply the law of Australia" and to decide on cases of federal significance such as "validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts" (*High Court of Australia*. Date accessed 10/02/2020). In Australian law recognition for native title is a set of complex legal frameworks.

An example of this complex legal frameworks is the Federal Courts' jurisdiction in regards to granting Native Title to Traditional Owners and the Full bench of the Federal Court in decision making in regards to appeals is the Yinjibarndi people grant of native title in 2017 to 2,700 square kilometres of Pilbara land, north of Karijini National Park. Mr Andrew Forrest's Fortescue Metals Group (FMG) appealed to the Full bench of the Federal Court in regards to the decision by the Federal Court in 2017 granting exclusive native title to the Yinjibarndi

people. FMG's appeal claimed that the Federal Court's determination in regards to "meaning and significance of the Yindjibarndi's activities on country" was not justified (Mayes and Parish 2019. Date accessed 12/04/2019). Justices Robertson and Griffiths wrote in their rejection of the appeal that;

implicit in these comments is the notion that the exercise of traditional rights over country is in some way a less legitimate form of occupancy than that seen in the context of Anglo-Australian relationships to real property (Mayes and Parish 2019. Date accessed 12/04/2019).

The full bench of the Federal Court rejected the appeal on all grounds and stated in writing that: such a position "is to misunderstand the concept of native title rights and interests to require them to fit into non-Aboriginal concepts of property, the exercise of proprietary rights and the enforcement of property rights" (Mayes and Parish 2019. Date accessed 12/04/2019). "That is why what occurs is recognition of native title; not conferral, and not transformation into non-Aboriginal property rights", they wrote (Mayes and Parish 2019. Date accessed 12/04/2019). This rare legal recognition is required for ownership of water but as this chapter and the next will show this process has been rocky and drawn out for waters on the eastern side of Australia. Australia, since colonisation in 1788, has had a history of classifying land and denoting descriptives for land and land ownership. In 1789 began the history of land being alienated by the Crown and the Secretary of State. The provision for granting of land was only for liberated prisoners, and then extended to free settlers/immigrants and marines who served in the detachments to New South Wales and Van Diemen's Land. The granting of land initially was for the East Coast of Australia, which was then New South Wales, and not to exceed more than 100 acres. The fee for the granting of land was one shilling per 50 acres yearly for five years. The first granting of land was as an experiment, on the 25th February 1789, to an ex-prisoner, James Ruse, of 30 acres at Parramatta. Ruse was finally awarded the title of the land in April 1791.

In reviewing the High Court of Australia's decision recognising *Native Title 1993* Bain Attwood (1996), argues that history as a discourse, constructed Aboriginal society as either a society that is "of another time or timeless and were not of our time, that is modernity i.e. the missing link" (Attwood 1996, p. viii). This historical construct was articulated as the Aboriginal being didn't understand time or history. This construct is still held by governments of Australia today, when viewing the concept of 'Aqua Nullius' but not by the Federal court. Toni Swain (1993), challenges this position of modernity and that of an Aboriginal society that didn't understand

"time as the horizon of understanding of Being" (Swain 1993, p. 2). Swain argues that this ignores "the Aboriginal notion of being in the world" (Swain 1993, p. 2). The conceptualisation of time, as Bain Attwood (1996) points out, was important and "integral to the British colonisation of Terra Australis" that is, no-man's land (Attwood 1996, p. viii). This provided the denial of Aboriginal societies' concept of being.

In the 1889 Privy Council case of *Cooper v Stuart* the court considered that in 1788 on settlement by Europeans, there were 'no settled inhabitants or settled law' in Australia (Weir 2002, p.2). Henry Reynolds provides that the concept of Terra Nullius was first proposed by Sir Joseph Banks, a man of power and influence. In his writing and in evidence to Britain's parliamentary committees, Banks declared that the long coast of eastern Australia was "thinly inhabited even to admiration" (Reynolds, *The Conversation: Academic rigour, journalistic flair*'. Date accessed 02/09/2018). As for the vast hinterland, of which he knew nothing, he said that it was almost certainly uninhabited (Reynolds, *The Conversation: Academic rigour, journalistic flair*'. Date accessed 02/09/2018).

Garth Nettheim writes that "one central feature of the property law of England was the feudal doctrine of tenures. Under this doctrine, no one could establish any title to land unless such title could be traced to a grant from the Crown" (Nettheim. Date accessed 13/02/2020). This caused problems to any claims made by the First Nations people to ownership of Country or "any recognition of pre-existing land rights" (Nettheim. Date accessed 13/02/2020). This common law rule arrived with the invasion and colonisation of the Australian First Nations people Country, Garth Nettheim calls it "some sort of invisible baggage" that came with settlement. Nettheim further writes that appeals "to the Privy Council from the High Court of Australia was effectively abolished by statutes enacted by the Commonwealth Parliament in 1968 and 1975" (Nettheim. Date accessed 13/02/2020).

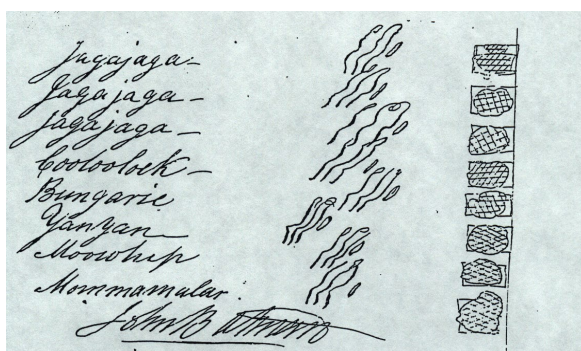
Under international conventions of the time, this gave the British Government the convention of acquiring colonies on the basis of discovery and effective possession (Attwood 1996, p. ix). Under these laws Aboriginal societies were seen to be just hunter-gatherers, with limited rights to property. Aboriginal societies were viewed as being in their original state of nature. Bain Attwood states that, "seventeenth and eighteenth-century philosophical and legal authorities ... drew upon historical theories regarding human nature" (Attwood 1996, p. ix). In the nineteenth and early twentieth century, it was assumed that First Australian societies were "static and

doomed to disappear" and that the colonisers (English) were superior within the "archaic evolutionary assumptions" (Griffiths 2018 p. 34).

Eighteenth-century philosophers such as Adam Smith and Adam Ferguson developed an influential theory concerning the evolution of human society. They developed the construct that "human society developed from a state of nature through four stages" (Attwood 1996, pg. ix). These four stages are represented through, "hunting and gathering, pastoralism, agriculture, and commerce" (Attwood 1996, p. ix).

Thus the new Australians denied that the First Australians had progressed through the four stages of developing institutions, development of laws, real property interests, and society structures. The dogma that was constructed is that the First Australians did not progress beyond that of a hunter-gatherer society, with no concept of property nor governance structures, which is a colonial artefact (Griffiths 2018, p. 256). Further they constructed a notion that the First Australians as Aborigines were "historically transient" and passing away. The term Aborigine is a Latin word *ad origine* which is contradictory as it actually means original inhabitants. This means from the beginning with no property rights to Australia (Bain Attwood 1996, pg. x).

Still today, there is a problem within Australian law with regards to no clear explanation for the First Peoples' having sovereignty to lands and water, and how this passed onto the British crown and was embedded in Australian law. As the British crown recognised in law the rights of other First Nations people in countries they colonised, with treaties that are still recognised in those countries, like Canada and North America. No such mechanism has occurred here in Australia and is "part of the most enduring political debate in our history" because there has been no treaties nor negotiations for the acquisition of property in our two hundred odd years history (Reynolds, *The Conversation: Academic rigour, journalistic flair*. Date accessed 02/09/2018). However there was one treaty made in 1835.



In 1835, a treaty by Batman in Victoria and the Chiefs of Port Phillip District (Geelong) in 1835 was signed. Batman traded blankets, knives,

Illustration 14. Australian Aborigines treaty signed by Batman and the Traditional Owners in Geelong 1830. (In Dawson (1981)).

tomahawks, looking glasses, scissors, handkerchiefs, red shirts, flannel jackets, other clothing and flour, for Geelong (Haydon 1911, p.416). When inspecting the Batman Treaty and viewing the copy of the Traditional Owners' symbols, as signatures and cross hatching, representations of their Country are portrayed in the treaty (see Illustration 14). The treaty was overturned on 26 August 1835 by Richard Bourke, Governor of New South Wales. Still today in 2020 the First Nations people of Australia are calling for a Referendum for a treaty and for our right to be heard by government to be imbedded in the Australian Constitution.

There is a long history of the First Nations across Australia seeking recognition as the Indigenous people of Australia and as sovereign owners of traditional Country. We are also calling for reforms that make a real difference to involvement in decision making process for management of land and waterways and recognition as the Tradition owners of Country. In the politics of the 21st century, we First Nations are using traditional law/lore and Australian Commonwealth law to have our rights to Country recognised through petitions and statements. We can see this historically with the Yirrkala (Bukudjulni gonga'yurru napurrunha Yirrkalalili) Bark petition in 1963 which provided a vehicle to bridging the traditions of both laws and a document for the recognition of the First Nations rights in Australia. The petition is written in both Yolngu Matha/Gumatj language and English and was presented to the Australian House of Representatives and the Senate, by the Yirrkala people of Northern Territory (*Yirrkala Bark Petitions 1963* (Cwth). Date accessed 10/02/2020). This was also achieved by the Woi-wurrang people of Victoria for in 2017 the Victorian Parliament signed into legislation the *Yarra River Protection (Wilip-gin Birrarung murrn)* Act. This is also written in English and Aboriginal Woi-wurrang language.

The Yirrkala (Bukudjulni gonga'yurru napurrunha Yirrkalalili) Bark petition is hung in the Australian Parliament for all to see. The painting represents Yirrkala/ Yolngu people's deed to land and was a symbolic petition for the Yirrkala/ Yolngu people's Native Title rights and protests against excision of land from their reserve for bauxite mining. The creators are Yirrkala law men. The bark petition was used to symbolise the Yirrkala communities' aspirations to be recognised as the original owners of the land (*Yirrkala Bark Petition*. Date accessed 09/02/2020).

The Yirrkala Bark petition began the historic tradition of protests of calling for reform to the Australian constitution by combining the First Nations people's symbolism and language with

English and text type in a call to be recognised as Traditional Owners of Country. In 1988, the Jawoyn community in Barunga, Northern Territory presented to the then ALP Prime Minister the Hon. Bob Hawke the *Barunga Statement*, the statement was a painted declaration that called on the government to “negotiate with [Indigenous people] a Treaty recognising our prior ownership, continued occupation and sovereignty and affirming our human rights and freedoms” for all Aboriginal people as owners and occupiers of Australia. John Howard who was the Opposition Leader and leader of the Liberal and National parties at the time released a statement that a treaty was “utterly repugnant.... (and a) recipe for separatism” (*The Barunga Statement*. Date accessed 09/02/2020).

On 3 August 1993 Aboriginal and Torres Strait Islander nations from around Australia met at Eva Valley for a two day forum, near Katherine in Northern Territory, to draft a response to the Australian High Court decision in 1992 for the Mabo 2 case ending Terra Nullius. The response was to inform the Australian Government’s drafting of the Native Title Legislation. The First Nations people “insisted on a national standard of rights to be given to all Aborigines” (*Eva Valley Statement*. Date accessed 10/02/2020). This *Eva Valley Statement* was presented to Prime Minister Paul Keating by Galarrwuy Yunupingu the then Chairman of the Northern Land Council and a member of the Reconciliation Council (*Eva Valley Statement*. Date accessed 10/02/2020). The statement firmly rejected the Keating government's plan to introduce state and federal legislation aimed primarily at protecting the interests of mining companies and pastoralists from claims for "native title", made possible under common law since the High Court's 1992 Mabo ruling.

Kalkaringi near Wattie Creek is known historically as the site of the Wave Hall strike and walk off in 1966 which began the modern Land Rights movement across Australia. The Central Land Council organised the Kalkaringi Constitutional Convention and the Aboriginal and Torres Strait Islander Commission (ATSIC) funded First Nation’s of Central Australia to attend the Convention. The convention discussed the “topic of Statehood for the Northern Territory including the Draft Constitution plan which had been endorsed by the Northern Territory Parliament” (*The Kalkaringi Statement*. Date accessed 10/02/2020).

In April 2000 Chairperson of the Queensland Government's Aboriginal and Torres Strait Islander Advisory Body in cooperation with the Queensland Indigenous Working Group (QIWG) and the Foundation for Aboriginal and Islander Research Action (F.A.I.R.A) Corporation organised a

State-wide conference of the First Nations Law/lore men and women (Anderson 2001, p. 219-221). The conference was held in Brisbane at the Brisbane City Hall's 'Ithaca' Auditorium' to discuss the proposed changes to the archaic and ineffectual *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 (Qld)* (Black and Watson. 2001. Date accessed 09/02/2020). From this three day conference Law/lore men and women devised *The Ithaca Statement* and marched to Queensland Parliament House and presented the statement to the then Queensland Premier Peter Beattie. *The Ithaca Statement* now hangs in Queensland Parliament House. The main principles of the statement are that legislation must embed the First Nation's rights to ownership of cultural heritage in legislation. *The Ithaca Statement of Principles* clearly states that the Traditional Owners of Queensland have a birth right for cultural continuation and that "ownership of our spiritual and religious traditions which are inherent in our environment including those associated with the land, sea, water, and atmosphere" (*Ithaca Statement of Principles*).

On the 26th of May 2017- 182 years since the signing of the 1835 treaty by Batman in Victoria, a statement was issued from over 250 First Nation delegates who met at Uluru in Northern Territory, for the 2017 First Nations National Constitutional Convention. The statement released through the media is called *the Uluru Statement*. In *the Uluru Statement from the Heart issued in May 2017*, it provides a clear voice for constitutional change not just a simple statement of acknowledging, but reforms that make a real difference as Sovereign Nations of Country.

This sovereignty is a spiritual notion: the ancestral tie between the land, or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born there from, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown. We seek a Makarrata Commission to supervise a process of agreement - making between governments and First Nations and truth - telling about our history (*The Uluru Statement from the Heart issued in May 2017*. Date accessed 12/06/2019).

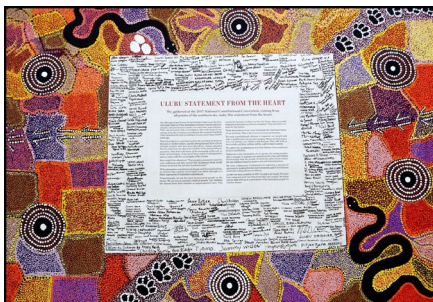


Illustration 15. *The Uluru Statement from the Heart* 2017. Date accessed 12/06/2019.

The Makarrata, in *The Uluru Statement from the Heart issued in May 2017*, is language from the Yolngu people, who are the Traditional Owners of Arnhem Land NT. Makarrata means "two parties coming together after a struggle, to heal the wounds of the past, and to live

again in peace. The words' core message is to acknowledge that something wrong has been done and to seek to make things right" (*Uluru Statement from the Heart: Information Booklet*). Fundamentally this is requesting Sovereign peoples rights as the First Nation's people to Country, which includes ownership of natural land and waters, for economic uses and benefits of sovereign rights to the environment, natural resources, including water and recognition of spiritual/religious beliefs (Illustration 15).

These declarations and statements promote to the Federal, State and Territory governments that the First Nations are rightly frustrated over the lack of sovereign rights for our Country and the protection of flora, fauna, land and waterways. Aboriginal people are tired of having rights stripped from them, and not having sovereign rights to make decisions on environmental issues. In Aboriginal ways of speaking, they are gammon rights. As the First Nations people see it, it is like governments trying to separate our sovereign rights for Country "but they are inseparable. It's like trying to separate land from sea and air and fresh water, they are inseparable, but that's the way white fellas work at times" (Anderson 2001, p. 221).

#### **4.2 "Whispering in Their Hearts"**

When did the revival of Australia's interest inclusive of the First Nations begin to impinge the white Australian psyche? Henry Reynolds (2018) points out that in 1803-1806, the British political philosopher Jeremy Bentham wrote a pamphlet that examined the legal arrangements for the settlement of Australia and the illegal possession of the Aboriginal lands with no negotiation or treaty (Reynolds. Date accessed 02/09/2018). From this genesis, Reynolds writes that:

the fate of the Aboriginal people and the linked problems of property and sovereignty continued to be expressed across the generations by men and women who responded to the "whispering in their hearts (a whispering first raised by Sydney barrister Richard Windeyer in 1842) (Reynolds. Date accessed 02/09/2018).

Contemporary examples include the rise of Aboriginal activism in the 1960s and the use of Indigenous symbolism and visual arts to drive these campaigns. For example the 'Freedom Rides', the *Yarrkala Bark petition* 1963, the *Barunga Statement* 1988, the *Eva Valley Statement* August 1993, the *Kalkaringi Statement* 1998, the *Ithaca Statement* April 2000. In 2002, the national movement for 'Reconciliation' occurred, with millions of Australian people, marching in a mass demonstration of support for reconciliation and Aboriginal people in all Australian



major cities. Then in May 2017, issuing of *the Uluru Statement from the Heart* by over 250 First Nations delegates to the Australian Government.

These developments were remarkable given that there had been a historic "mass of solid indifference in Australian culture to Indigenous Australia" as Stanner (1938), termed it (Stanner 1938, p. 124). Stanner also coined the phrase in 1968, "the great Australian silence" in recognition of the First Nations as sovereign nations and as people with laws and religious understandings. He described Aboriginal culture as a living heritage, with powerful connection to Country, which endured and survived through the 230 years of authoritarian rule that encountered mass murders, rape, dislocation from Country, mass extinction of flora and fauna, destruction of sacred sites, and the denial of all basic human rights up until the 1967 Referendum and the High court decision in *Mabo 2*. This is when the shift in Australian historical consciousness began (Griffiths 2018, p.38). However, this indifference still survives today: Aboriginal cultural heritage is still not recognised as a legitimate part of Australian heritage to be protected and presented as an equal to European culture. For instance, the *Queensland Aboriginal Heritage Act 2004* does not include the protection of Aboriginal and Torres Strait Islander movable cultural property, and does not contain any Aboriginal and Torres Strait Islander heritage protection principles.

Since the mid 1960's, there has been a shift from ethnocentrism to including Aboriginal societies in Australian history, and a scholarly attention to Aboriginal Societies "epistemology and ontology" view of the world (Swain 1993, p. 3). However, today there is more of a "fusion of horizons" and a scholarly understanding of the shared histories. The Australian First Nations have for 230 years engaged in a "hermeneutic process" with encounters with the New Australians (Swain 1993, p. 4). The theoretical concept of 'primordial' (primitive)- "traditional culture was dying out and not transforming" 'the dying race' myth. In late 1959, the then Federal Liberal Minister W.C. Wentworth, wrote a nine page submission to the Australian Government, *An Australian Institute for Indigenous Australians* (Griffiths 2018, p.52). Billy Griffiths (2018), writes that W.C. Wentworth believed that the study of Aboriginal culture would be in the national and world interest: Aboriginal culture is "one of the priceless treasures of mankind" (Griffiths 2018, p.52). This highlights W.C. Wentworth's submission as the beginning of an Australian identity that embraced First Australian societies and culture within a nationalistic approach (Griffiths 2018, p.53). W.C. Wentworth's submission in 1959 to the Australian Government came to fruition "on 2 July 1964, with an act of parliament" (Griffiths

2018, p.54). This was to become the first time in Australia's colonial history when "the Commonwealth is recording its appreciation of Aboriginal life, and the Aboriginal people" (Kim Beazley (Snr) 2018, p.54).

In the 1992 *Mabo v Queensland (No.2)* decision the dissenting judgement made by Justice Dawson viewed property rights through the notion that "when a nation takes possession of a country which belongs to no-one, it is considered as acquiring sovereignty over it as well as ownership" (Reynolds 1993, p. 19). Reynolds (1993), states that Aboriginal and Torres Strait Islander peoples lacked the protection of international law with the notion of "inundation of the prerogative and act of state apart" (Reynolds 1993, p. 20-21). This has been recognised since the eighteenth century. By 1829 the Crown confiscated the continent of Australia and this gave the British and later Australian colonial governments the excuse not to notice the property rights of the First Australian peoples.

In summary 'Land (Real property)', 'mines royal' and 'water rights' can be extended to Native Title holders to assert through their lore/laws and customs. Under Common law in Australia - land is defined as: incorporating, all things growing on and affixed to soil, ownership of the foreshore and the bed of the sea within territorial limits, and cultural heritage. Our current land ownership system excludes all other ways of conceiving land ownership that might exist in a multi-cultural environment like north Australia. We also find in State and Territory jurisdictions for Riparian rights there is no consideration for the First Nations cultural and spiritual obligations to managing Country and water usage. Riparian land is generally known as Crown frontages and owned by the State or Territory. Private land owners have legal rights to take water for domestic use and to watering stock without a water licence. The use of water and "regulation is limited and restricted by governments to industries or individuals willing to pay the highest price, this affects Indigenous access and usage" (*Indigenous Peoples and Water* 2008, p.169). The First Nations rights to littoral zones are more so today being recognised in the High Court of Australia. In 2008 the Yolngu people were given exclusive rights for waters that are on their land which is an intertidal zone (this is discussed below with the 'Blue Mud Bay' decision).

Even though there has been an increased awareness of The First Nations rights to Country and cultural heritage, Aboriginal cultural heritage is still being viewed as relics of the past which belong in museums, as relics with no equitable protection in cultural heritage laws equalling

that of European heritage. How does that affect the way Indigenous people use land in a contemporary context? Is there a way of recognising Indigenous inalienable ownership of land at one level, yet freeing them to use their land as a resource at another level?

### 4.3 Cultural Heritage

In Australia, Aboriginal heritage protection laws were enacted in 1967 and 1975, in state and federal jurisdictions, these were known parochially as 'relic' Acts. South Australia became the first state to pass through their parliament the *Aboriginal and Historic Relics Preservation Act 1965*. Queensland was to follow in 1967 and pass the *Aboriginal Relics Preservation Act 1967*, then New South Wales in 1970, Western Australia in 1972, Victoria in 1972 and finally Tasmania in 1975. The Commonwealth's *Australian Heritage Commission Act 1975* was passed into law by the Whitlam Government. However there were problems with this Act as there were a number of State rights and jurisdictional issues to consider for Aboriginal cultural heritage protection (Hayes 2009, p.3). For example Northern Territory enacted the *Aboriginal Sacred Sites Act (1979)*, as a companion to the *Aboriginal Land Rights Act (1976)*. The objectives of the *Aboriginal Sacred Sites Act (1979)* was the creation of 'an agency to administer the Act' known as the Aboriginal Sacred Sites Protection Authority. Further the governing board members were drawn from the Aboriginal community of Northern Territory, and sacred sites were defined by the Aboriginal community. This Act was repealed and updated to the current Northern Territory *Aboriginal Sacred Sites Act 1989* (Hayes 2009, p.3).

Tamzyn Chapman (2008) argues, that cultural heritage laws designed to protect Australian heritage is weak when it focuses on Aboriginal cultural heritage, and it is weak at all levels of both State and Federal government. Chapman states that these laws will "deprive future generations of outstanding universal heritage" as it is "overly bureaucratic, subject to power legislative frameworks, and lack of bureaucratic co-ordination" (Chapman 2008, p.81). Australian Governments since 1897 have introduced successive legislative machinery that retained protectionist policies and frameworks when it comes to the First Peoples of Australia and heritage. Australian cultural heritage laws are inadequate in protection of Aboriginal sites of significance, for not only the Australian population but also for the international communities. Sites of outstanding universal value are being destroyed; Aboriginal cultural heritage is marginalised in Australia law (Chapman 2008, p.82). *The Protection of Cultural Heritage in the Event of Armed Conflict 1954* provides that:

damage to cultural property belonging to any people means damage to the cultural heritage of all mankind ... that the preservation of the heritage is of great importance for all people (Chapman 2008, p. 83).

*The Protection of Cultural Heritage in the Event of Armed Conflict 1954* was signed at the Hague, Netherlands on 14th May 1954. It was the first international treaty that focuses exclusively on the protection of cultural property in armed conflict and entered into force on 7 August 1956. The convention covers “immovable and movable cultural heritage, including archaeological sites, historical or archaeological interest, regardless of their origin or ownership” (*Armed Conflict and Heritage*. Date accessed 13/02/2020).

In August 1974, the then Labor Prime Minister Gough Whitlam ratified the *UNESCO World Heritage Convention*. In July 1975, the Prime Minister Gough Whitlam also passed into law the *Australian Heritage Commission Act (Cwth)*. One of the objectives of the Act was to set up a register recording sites of significant heritage places in Australia. The ratifying of the *Australian Heritage Commission Act (Cwth) 1975* brought together the two constructs of 'natural and cultural heritage' thus allowing for the promotion and protection of heritage in Australia (Griffiths 2018, p.205, Chapman 2008 p.89). This allowed the Federal Government to control the past and the future of cultural heritage management in Australia. This control caused tension between State and Territory Governments with the Federal Government. The State and Territory Governments viewed as lacking coordination and co-operation between State and Territory Governments and the Federal Government. For Aboriginal and Torres Strait Islander heritage protection The *Australian Heritage Commission Act (Cwth) 1975*, was replaced with the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwth)*.

The lack of protection may arise from either an absence of effective legislation or an unwillingness to enforce the provisions of legislation capable of meeting the goals of this Bill. The Commonwealth wants to encourage States and Territories to use such legislation as they have in the interests of Aboriginal and Torres Strait Islander people for whose benefit it was passed. ....The Bill before the house is intended to meet those situations where, for whatever reason, local law is inadequate (Jones Sen G.N. 15 June, 1984. Date accessed 13/02/2020).

Senator Jones's speech clearly identifies the historic lack of protection for Aboriginal cultural heritage by the State and Territory governments. Jones is also stating what Aboriginal and Torres Strait Islander people have been saying in regards to the inadequate protection of the First Nations cultural heritage. However, the States did not co-operate with the Federal

Government in protecting Aboriginal cultural heritage. For example of the "99 areas subjected to application for protection under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwth)* only one", Atnilte, Atnyere Arrkelthe, Urewe Aterle (Junction Waterhole) was protected under a declaration of the Act under Section 10 as sacred sites, which came into force on 16 May 1992. Robert Tickner Minister for Aboriginal Affairs (Labor MP) made the declaration to protect three significant Aboriginal sacred sites from the construction of a proposed flood mitigation dam (*A colonial chronology of Alice Springs*. Date accessed 13/02/2020). Tickner's decision was based on a report made by Hal Wootten QC in which he writes that the claimants are "a highly secularised culture and a deeply religious one ... and [heritage] simply lacks significance in Western culture" (*Indigenous Religion in Secular Australia*. Date accessed 13/02/2020).

Aboriginal and Torres Strait Islander people criticised the lack of protection for Aboriginal and Torres Strait Islander cultural heritage especially in the provisions in regards to allowing the States and Territories' heritage legislation to be accredited after minimum standards were met. This limited the Commonwealth's involvement in full protection of Aboriginal and Torres Strait Islander cultural heritage. The only time the Commonwealth would interfere in the protection of Aboriginal and Torres Strait Islander cultural heritage was when it was deemed to be in the National Interest (Chapman 2008, p.90). Chapman's research highlights the problems the First Nations have had with colonial laws and what the current issues are today with the First Nations water rights.

In a media release by the Aboriginal and Torres Strait Islander Commission (23 September 1998) the Commission stated in regards to protection of Aboriginal and Torres Strait Islander cultural heritage: "The withdrawal of the Commonwealth from the field of Indigenous heritage protection will leave this vitally important area to the whims of often unsympathetic State and Territory regimes" ((in) Chapman 2008, p. 90).

Heritage protection in Australia is intended to provide primary protection for Aboriginal and Torres Strait Islander peoples cultural heritage yet fails to within the doctrine of "uncontrolled development, economic growth, and progress and the encouragement of private use against public interest in land use, and use of waters" (Australian Heritage Commission Flyer 1993, p.1). So how is cultural heritage defined? *The Laws of Australia* (1993), provides that *Cultural Heritage* is an ethnocentric construct (p.7).

The European concept of heritage may well be narrower than that of Aboriginal and Torres Strait Islander heritage. It is in any case clear that the concept of heritage has become critically important to Aboriginal and Torres Strait Islander people (*The Laws of Australia* 1993, p. 7).

Further, *The Laws of Australia* (1993) states that cultural heritage is integrally related to issues of property and environmental law (*The Laws of Australia* 1993, p.7). In this ideology "under Anglo-Australian law non-Aboriginal definitions and control of Aboriginal cultural heritage" is controlled by the state (*The Laws of Australia* 1993, p.7). These principles relate to real property (for example, land) and to chattels (such as artefacts and other objects). *The Laws of Australia* (1993) argues that there needs to be a redefinition to the laws governing property interest in Aboriginal cultural heritage (*The Laws of Australia* 1993, p.7). To further define Cultural Heritage; *Butterworths Legal Dictionary* (1997), includes "monuments, groups of buildings (from the point of view of history, art or science), sites with a universal value from historical, aesthetic, ethnographical, or anthropological point of view" (*The Laws of Australia* p.311). *The World Heritage Properties Conservation Act* 1983 for sites encompasses "cave dwelling ... and Sites [and] include works of people or the combined works of nature and of people, and areas including archaeological sites" (*The World Heritage Properties Conservation Act* 1983. Date accessed 15/02/2020).

The preamble of the *United Nations Educational, Scientific and Cultural Organisation* (UNESCO) 1968 defined cultural heritage as being part of the heritage of humanity, noting "that cultural property is the product and witness of the different traditions and spiritual achievements of the past and thus is an essential element in the personality of the peoples of the world" (Chapman 2008 p.83). However, the *United Nations Educational, Scientific and Cultural Organisation* preamble does not specifically mention Indigenous/Aboriginal cultural heritage. In 1974, the Australian Government ratified the Convention concerning the *Protection of the World Cultural and Natural Heritage* 1972, yet both State and Federal levels, have ignored the section about protecting Aboriginal cultural heritage. Chapman points to the difficulties [that] may arise where states apply laws that declare all cultural heritage found within a state to be state property" including still undiscovered underground or underwater (Chapman 2008, p.84). In 2007, the General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples*, 144 states voted in favour for the adoption of these rights with 11 abstaining from voting and four countries voted against the declaration. Australia was one of these countries that voted against the declaration. On the 15th of September 2007, the then

Liberal Prime Minister John Howard provided the reason why Australia voted against the declaration for Aboriginal people of Australia:

The Indigenous people's .... future lies in being part of mainstream of this country. We do not support the notion that you should have customary law taking priority over the general law of the country (Howard 2007 ABC News. Date accessed 15/02/2020).

Also in 2008, the then Labor Party Prime Minister of Australia Kevin Rudd, also refused to ratify the *United Nations Declaration on the Rights of Indigenous Peoples*. This was ratified two years later in 2009 by the Australian parliament and officially adopted into Australian law.

In viewing this new recognition today's Australian society's understanding of the First Nations relationship to the flora, fauna, cultural heritage (tangible and intangible), land, and waterways - Country was created by the High Court's Mabo decision in 1992. The Mabo decision established a 'continuing tradition' where claims to Country and heritage protection are expressed through stories about the creator or ancestral beings. These come in many diverse forms which are based in religious traditions and continued through morphology, mythological, and ceremonial and ritual. When referring to the Mabo 1992 case and the Meriam people it was not based on the interpenetration of the religious, social and economic worlds. It was based on the Meriam people's own system of land tenure. The Mabo decision is based on customs and customary law. The *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984 protects sites that have spiritual significance and sacred sites to Aboriginal people. There is now an emerging understanding to the First Nations religious beliefs and relationship to Country through "cross-cultural communication and cultural secularisation" (*Indigenous Religion in Secular Australia*. Date accessed 13/02/2020).

#### **4.4 Environment**

It can be argued that the protection of the Australian environment, the National Estate and the First Australians cultural heritage is in the National Interest. The environment is defined expansively by, *The Laws of Australia* (1993), as "all aspects of surroundings of a natural person (humanity), whether affecting the person as an individual or in the person's social group" (*The Laws of Australia* 1993, p: 310). *Butterworths Australian Legal Dictionary* (1997), defines the National Estate as "those places, being components of Australia's natural or cultural environment" (*Butterworths Australian Legal Dictionary* 1997, p.772). These places are also of "aesthetic, historic, scientific, or other special value for future generations" (*Butterworths*

*Australian Legal Dictionary* 1997, p.772). In 2002 the then Aboriginal and Torres Strait Islander Commissioner for Tasmania Rodney Dillon, at the *Ministerial Council for Aboriginal and Torres Strait Islander Affairs* (MCATSIA) Indigenous Heritage Conference 20-23 March 2002, advocated that Aboriginal and Torres Strait Islander cultural heritage protection is in the National Interest. Rodney Dillon (2002) cited the judgment made by the Australian Federal Court Justice Van Doussa in the Hindmarsh Island Bridge (South Australia) compensation case (Federal Court Justice Van Doussa. Date accessed 13/12/2017). The case went to the High Court over compensation and damages to a developer where the Ngarrindjeri women were trying to stop the development of a bridge to Hindmarsh Island which would have destroyed a sacred Aboriginal women's heritage site. Federal Court Justice Van Doussa's judgment in the Federal Court was based on the Heritage Protection Act which is:

clear in its purpose, broad in its application, powerful in the provision it makes for the achievement of its purpose. The remedial effects of the legislation, and the importance of preserving and protecting Aboriginal culture, are matters of national interest which transcend the private proprietary and economic interests of individuals in the community which may be adversely affected by grant of protection (Dillon 2002, p.3-4).



Illustration 16. Woman and child- Yekeyere (Jekejere) Park Goolwa S.A. before the bridge to Hindmarsh Island S.A. Photography by Dale Kerwin 2017.

The validity of Ngarrindjeri women's spiritual belief in the 'Seven Sisters' Dreaming Story in the Hindmarsh Island case- provided the recognition within *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwth)* and in State and Territory cultural heritage legislation which enable areas of cultural or spiritual significance to the First Nations to be protected within the National Interest. In recognition of the win a statue was erected at Yekeyere (Jekejere) park Goolwa S.A. (see Illustration 16). The Ngarrindjeri women's spiritual belief win provides a broader recognition of the First Nations significant spiritual beliefs, with theological meaning, to be accepted as a religious world view that is analysed in the First Nations own cultural terms of reference. All Australians benefit from this protection with recognition on a world heritage stage. This decision in a sense goes against Neo-Liberal political theory where advancing material and civil interests is the main objective for the Australian society (*Indigenous Religion in Secular Australia*. Date accessed 13/02/2020).



In the Western tradition we come to know the environment as part of Western objective reality and Western ways of using science as a tool to find out about this reality. It is a one way process where people do things to Country to make it productive. For the First Nations the environment is a universe whose ecology consists of many diverse forms that include spirit beings, or spiritual aspects of flora and fauna, human beings, and natural phenomena, all of which are able to interact with each other. This represents a two-way interaction between people and the environment (Bradley 2001, p. 295-297). The term used by the Yanyuwa people is Yanyuwangala or the Yanyuwa way of being: or doing things of narnu-yuwa, or Law.

Australia became a signatory to the *Ramsar Convention* in 1974 with the registration of “Cobourg Peninsula Aboriginal Land and Wildlife Sanctuary as a world’s Wetland of International Importance” (*Australia’s obligations under the Ramsar Convention: Legislative support for wetlands*. Date accessed 03/06/2019). In 1971 international intergovernmental bodies met in the Iranian city of Ramsar. These international governmental bodies adopted the convention at this meeting. The convention came into force in 1975 as an international agreement. The *Ramsar* mission is “the conservation and wise use of all wetlands through local, regional and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world” (*Australia’s obligations under the Ramsar Convention: Legislative support for wetlands*. Date accessed 03/06/2019).

Due to the ecological arrogance of the invaders/ colonisers from 1800 till today water flows from the Murray River and Darling Rivers to the mouth has virtually ceased. This is due to the over extraction of high volumes of water from the Murray Darling Rivers for human and agriculture use. This has caused ecological issues for the flora, fauna and fish species. The over extraction of water has caused “Lake Alexandrina and Lake Albert to fall to unprecedented levels” as a result this has caused reductions in “vegetation, reductions in threatened fish species numbers and significant decreases in shorebird numbers world” (*The Ramsar Convention on Wetlands*. Date accessed 03/06/2019). From a First Nations perspective the Ngarrindjeri people have a continuing spiritual connection to the Coorong area that is maintained through meeting places and ceremonial sites. As for other First Nations across Australia the wetlands are important for practising and maintaining culture within their own cultural context.

Key legislation supporting the convention and wise use of Australian wetlands are the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the *Water Act 2007* and state or territory based land and water planning legislation. The purpose of the Convention is to halt and, where possible, reverse, the worldwide loss of wetlands and to conserve those that remain through wise use and management of world's environment and biodiversity (*Australia's obligations under the Ramsar Convention: Legislative support for wetlands*. Date accessed 13/06/2019).

The *Ramsar Convention* is managed and implemented by the Australian Government Department of Sustainability, Environment, Water, Population and Communities and the various states and territories departments for the environment, natural resources, and land management functions. Within the *Environment Protection and Biodiversity Conservation Act* (1999) (EPBC Act), Ramsar wetlands are a matter of national environmental significance that are protected under the EPBC Act. Further to the EPBC Act 1999, Australian *Ramsar* wetlands are also controlled by the *Water Act* (2007); this Act established the Murray-Darling Basin Authority "to ensure that Basin water resources are managed in an integrated and sustainable way" (*The Ramsar Convention on Wetlands*. Date accessed 03/06/2020). The *Water Act* (2007), gives control of water to the Commonwealth environmental water holder to manage the Commonwealth's environmental water holdings, to protect or restore environmental assets, including wetlands listed under the *Ramsar* convention (*The Ramsar Convention on Wetlands*. Date accessed 13/06/2019).

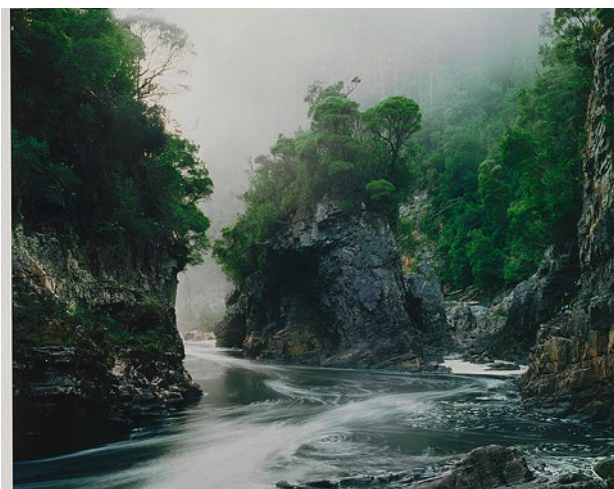


Illustration 17. *Morning mist*, Rock Island Bend photo by Peter Dombrovskis 1981 'Could you vote for a party that would destroy this?' was the question that captioned Peter Dombrovskis' now iconic photograph of the Franklin River in Tasmania. Date accessed 11/05/2020.

In Australia the emerging forms of discourse for conservation, conservation practice and environmental issues began with the fight for protection of the Franklin River in Tasmania from a dam being built. Tasmania's Hydro-Electricity Commission in 1979 released a proposal to dam the Franklin River and inundate the Gordon River. This caused a nation wide public outcry against the dam and a photograph by

Peter Dombrovski was used in the campaign (see Illustration 17). The World Heritage Committee meeting in Paris in December 1981 declared the Franklin River region a Tasmanian Wilderness World Heritage Area (*'Franklin River flows free'*. Date accessed 16/06/2019).

In 1983 at the Federal election Bob Hawke won the election for Labor and became Prime Minister, committing to stop the proposed dam on the Franklin River. Bob Hawke enacted the *World Heritage Properties Conservation* legislation to protect the Franklin River, and a High Court decision ruled 3 to 4 in favour of stopping the dam (*'Franklin River flows free'*. Date accessed 16/06/2019). This was the beginning of the Wild Rivers legislation in Australia. A Wild River is defined as:

The Wild Rivers project defines a wild (or near-pristine) river as a channel, channel network or a connected network of water bodies, of natural origin and exhibiting overland flow in which the biological, hydrological and geomorphological processes associated with river flow; and the biological, hydrological and geomorphological processes in those parts of the catchment with which the river is linked; have not been significantly altered since European settlement. (*Wild Rivers model*. Date accessed 07/06/2019).

In considering the *Wild Rivers Act*, in 1992 the then Prime Minister, Paul Keating (Labor) in his 'Environment Statement Launch' speech, stated that "the environment is a central, main game issue in which all Australians are involved" (Keating Paul, 1992, (in) Guest, Chris. (2016). p.viii.). This speech led to the establishment of an Australian Heritage Commission Wild Rivers Project. Since the days of the Franklin River protection in Tasmania, wild rivers galvanised the Australian public's attention to environmental and water issues. However, from a First Nations perspective this *Wild Rivers Act* (Cwth) is seen as environmental racism, because all rivers in Australia have been acculturated by Aboriginal peoples. The First Nations have a disproportionate burden with environmental issues compared to the new Australians. Aboriginal people see the concept of 'Wild Rivers' as culturally incorrect as it infers that Country where these waters are was uninhabited and had no human activity. This concept refuses to see a First Nations perspective with the past and continued use of Country and water. This does not recognise Aboriginal land management practices and roles the First Nations play in preserving the biodiversity within regions. Mulvaney (1989) writes about Australia's history during the contact period. The point Mulvaney makes is in regards to disenfranchising Aboriginal people of their economic rights. This is what was considered by the First Nations with the *'Wild Rivers Act'*, disenfranchising people of Country and economic rights. We can see in the *Native Title Act* "there is no right to veto development" (Queensland State Government submission 2011, p. 6).

However when considering the First Nations ownership of land, Stanner (1968) saw Aboriginal land as 'Estates' (Aboriginal semantics "Country") whereby custodial arrangements were given to Elders from the Dreamtime (Stanner 1968, p. 2). Ancestral Beings were incised on the land such as a river, a hill, the ridge lines of a mountain, also the flora and fauna. Jon Altman (2010), in his submission to the *Inquiry into Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*, states that today the "Indigenous estate that now covers 1.5 million sq kms, over 20 per cent of Australia" in regards to contestations of Country and environment issues for cultural maintenance and economic development (Jon Altman 2010, p.6). Murrandoo Yanner stated that:

Rivers are important physically and spiritually to Traditional Owners. Cultural links to waterways include ancestral travel ways, birthing places, ceremonial sites, occupational sites, traditional laws and customs and knowledge, such as seasonal changes and food supplies. To be fully valued, these aspects, which are often further culturally inscribed in song, dance, language and design, need to be considered within the total landscape context (Queensland State Government submission 2011, p.2-3. Date accessed 07/06/2019).

To further provide evidence of Aboriginal spirituality to the river systems, the submission made to the proposed *Wild Rivers* declaration proposal for the Wenlock River by the Chulangun Aboriginal Corporation stated:

the Wenlock River basin hold significant cultural values for its Traditional Owners. It features many significant story places as well as sacred ceremonial grounds (Ngaachi Kuu'ul Kincha), totemic sites and areas of rock carvings and paintings. The whole Wenlock and its tributaries have enormous cultural significance as the Creator of all Kuuku I'yu Ngaachi under the umbrella of Pianamu (Rainbow Serpent). We are obliged under Kaanju law and custom to look after our Ngaachi in a sustainable manner. In turn, our stories which are the land will look after us physically, culturally and spiritually (Chulangun Aboriginal Corporation (in) Queensland State Government submission 2011, p.3. Date accessed 07/06/2019).

Aboriginal people see the "protection of the rivers and waterways and the inclusions of rights for aquatic and riparian habitats, as integral to the maintenance of traditional laws and customs" for socio-cultural economic rights (Queensland State Government submission 2011, p.6). Altman (2010) states, that "land rights and Native Title deprive Aboriginal title holders of ownership of commercially valuable resources such as minerals, fisheries and fresh water" (Altman 2010, p.11). This places the First Nations in the position of "outside the market system" and termed "customary non-market use rights" (Altman 2010, p. 11).

In considering the *Wild Rivers* Bill (Qld) and environmental protection, a submission by the Queensland State Government (2011), to the *House of Representatives Inquiry into issues affecting Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*, highlights that "there is no express power in the Commonwealth Constitution for the Commonwealth Government to legislate in respect of environmental protection" (Queensland State Government submission 2011, p.2. Date accessed 07/06/2019). However, the Federal Government has used the external affairs power built within the constitution to legislate for environmental regulation and protection such as the *Environment Protection Biodiversity Conservation Act 1999 (Cwth)* (EPBD Act), (Queensland State Government submission 2011, p.2. Date accessed 07/06/2019). This federal jurisdiction is known as 'cooperative federalism', whereby the Federal Government and the States work on bilateral agreements for environment and conservation issues within States jurisdictions (Queensland State Government submission 2011, p.2. Date accessed 07/06/2019).

At another level, the Queensland *Wild Rivers* Bill 2010 was supported by several Traditional Owners of Country in Cape York. If passed it provided "a group of persons the right to veto the application of environmental protection legislation" (Queensland State Government submission 2011, p.1. Date accessed 07/06/2019). This is the first time in white Australia's 230 odd year history that the First Nations people had veto rights, however it was short lived. These rights were seen to provide more title to Country than the *Native Title Act* for land in the wild rivers areas. "It appears to offer protection beyond what is understood as native title rights or even traditional rights.....such a power is not available to any other Australian citizen or community in a wild river area or in any other part of our nation" (Queensland State Government submission 2011, p.1-2. Date accessed 07/06/2019). Jon Altman (2010) agrees with the Queensland State Government submission (2011), that Aboriginal landholders in Queensland will be empowered with a "special form of property that is not available to any native title interest (or non-indigenous landowner) anywhere else in Australia" (Altman 2010, p.4). Nevertheless, for Aboriginal estates, whether owned through Native Title or Land Rights, Jon Altman (2010) points out that the Aboriginal interests "can be overruled by national interest provisions, and compulsory acquisition" (Altman 2010, p. 4). We can see in the *Native Title Act* that "there is no right to veto development" (Queensland State Government submission 2011, p. 6. Date accessed 07/06/2019). The Queensland *Wild Rivers Act* 2005 was overturned and axed by the Queensland Premier Campbell Newman (Liberal National Party) when elected in 2012.

In summary, the discourses for conservation, water and the Murray Darling Basin led to 'the Wild Rivers' regulation and the EPBC Act 1999 (Cwth). The environmental and economic damage, as experienced in the Murray Darling Basin, has drawn public interest for water protection. The political discourse for the national interest still provides a vehicle that stops the First Nations rights' to socio-cultural economic rights in land and keeps Aboriginal peoples "outside the market system" and in the "customary non-market use rights". The regimes for the First peoples ownership of land does not allow the ability to develop natural resource management strategies that best suit Aboriginal peoples concepts and priorities that would benefit Aboriginal communities. These regimes also do not let the First Nations manage Aboriginal estates according to Aboriginal land management practices, customs, natural and cultural values. If all is considered, the unsustainable practices of development and environmental damage to the waterway and rivers are caused by non-Indigenous practices. In the National interest it is the Federal government that needs to consider the First Nations cultural practices for managing water and environment issues and not consider State sovereign rights to environment. Further both the Federal and State Governments need to enact the various international treaties for the protection of rivers similar to the *Ramsar Convention*. Water as water flows, ecosystems and endangered flora and fauna do not adhere to state borders. In the national interest, the Franklin River was protected from development when the Federal Government considered international responsibilities so as to prevent irreversible harm to the environment.

#### **4.5 Property Rights**

For the First Nations, "to claim land under Australian western laws Indigenous claimants need to legally demonstrate tradition, continuity and connection to country" (Altman 2010, p.6). Written into the *Objects of the Native Title Act (1993)*, the *Preamble* states that; "The Parliament of Australia intends that the following law will take effect according to its terms and be a special law for the descendents of the original inhabitants of Australia" (*Native Title Act 1993*, p. 3). In the summary the "Act extends to each external Territories, coastal sea and other waters over which Australia asserts sovereign rights under the *Seas and Submerged Lands Act 1973*" (*Native Title Act 1993*, p.7). Highlighted in the 'Criteria for making determinations', is the provision for "(v) any area or site, on the land or waters concerned, of particular significance to the native title parties and (vi) the natural environment of the land or waters concerned" in accordance with their traditions (*Native Title Act Cwth (1993)*, p. 23). The definitions provided by the *Native Title Act (1993)* for 'Land and Water' - "Aboriginal/Torres Strait Islander Land or

Waters means land or waters held by or for the benefit of Aboriginal peoples or Torres Strait Islanders” (*Native Title Act Cwth (1993)*, p. 122). The Act also defines "(a) waters include- sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters: or (b) the bed or subsoil under, or airspace over, any waters” (including waters mentioned in paragraph (a) *Native Title Act Cwth (1993)*, p. 126).

*Butterworths Australian Legal Dictionary* (1997), defines: National waters as "Segments of water lying within the baselines from which the territorial sea is measured. National waters include interior or inland waters such as ports, harbours, lakes, straits, rivers, bays, canals and gulfs” (*Butterworths Australian Legal Dictionary* 1997, p. 775).

The High Court of Australia in 2008, granted the Yolngu people (Traditional Owners) exclusive access rights to waters to an intertidal zone of a stretch of coast known as 'Blue Mud Bay' which their lands cover. Intertidal zone is defined as the area between the high-tide and the low-tide mark (Avani Dias. Date accessed 23/09/2018). The High Court of Australia in 2008 provided the Yolngu people with exclusive access to waters which fell within the boundaries of their traditional lands. To interpret the High Court of Australia decision means that from 2018, recreational fishermen, commercial fishermen, tourist operators and such will need to pay for permits and licences from Traditional Owners along the 6,000 kilometres of Northern Territory. This represents about 84 per cent of the Northern Territory coastline. This could further be applied to rivers and inland waterways on Traditional Aboriginal lands recognised in Land Rights and Native Title (Avani Dias. Date accessed 23/09/2018).



Illustration 18. The flag celebrates the High Court decision for the Blue Mud Bay and Yilpara recognition of sea rights in the Northern Territory. White symbolises the clouds; blue symbolises the sea; black symbolises the landowners, and red represents their blood; the yellow disc symbolises the sand on the beaches (Avani Dias. Date accessed 23/09/2018).

However, political concerns towards commercial interests and the public interest have been raised, in the sense that exclusive access to waters which fell within the boundaries of Aboriginal traditional lands will limit economic development within these areas. The Yolngu people designed a flag to assert their sovereign rights over Blue Mud Bay (see Illustration 18).

The Australia Human Rights Commission in a report on "Commercial fishing: A Native Title Right" and Blue Mud Bay in Northern Territory details these concerns:

That commercial rights and interests are not traditional rights and interests as required by the definition of native title in Section 223. That granting native title rights of a commercial nature would require the rights to be exclusive, and over sea country, exclusive native title rights have been held not to exist (Commercial fishing: A native title right? Date accessed 23/09/2018).

The High Court of Australia in a 2008 decision which found in favour of the Yolngu people land rights claim, is a land mark case that provides freehold property rights to Traditional Owners. It stated "that a person cannot enter and remain on Aboriginal land unless authorised, and that intertidal land is Aboriginal land including the covering waters" (*The Blue Mud Bay Case- Aboriginal Property Rights in the Northern Territory*. Date accessed 23/09/2018).

Justice Kirby in The High Court of Australia decision for the 'Blue Mud Bay' case in 2008, commented on the principles that the case was associated with Native Title rights and in his opinion "the claim was linked to principles such as preserving Aboriginal interests as a "species of property rights" (*The Blue Mud Bay Case- Aboriginal Property Rights in the Northern Territory*. Date accessed 23/09/2018. The *Native Title Act (Cwth) (1993)* provides cultural heritage protection, through the requirements of the Act for Aboriginal and Torres Strait Islander peoples, who can provide evidence of connection to Country and of traditional laws and customs. However, the *Native Title Act (1993) (Cwth)*, is deficient in providing recognition of Aboriginal and Torres Strait Islander socio-cultural economic rights. This deficiency is based on Eurocentric notions and paradigms of socio-cultural economic activities. This is called by the First Nations economic nullius. Jon Altman (2010), makes the point that "there still seems to be an antipathy to acknowledging that customary or non-market activity and kin-based relations of production might make important contributions to livelihood" (Altman 2010, p.6). Altman sees this as an ongoing tension between Western concepts of "individualistic market-focused economic norms" and those of the First Nations concepts of "community-focused kin-based economic norms" (Altman 2010, p.6).

Richard Bartlett (2000) provides a comprehensive review of the *Law of Native Title* in Australia. Bartlett writes that "the concept of native title delineates the land rights of Indigenous people that a colonising power is prepared to give effect to in its courts" (Bartlett 2000, p. 73).



Bartlett (2000), also states, "what rights should a colonising legal system give effect to where the rights are founded upon immemorial occupation of, residence on or connection to traditional lands by Indigenous people?" (Bartlett 2000, p. 73). Bartlett (2000) defines the jurisprudence for 'Water' in Native Title as "rights to use water for hunting and fishing" (Bartlett 2000, p.170). Bartlett also notes that within 'water legislation' there is "no express provision for the First Nation peoples or native title holders... More over, the prohibition of diversions and the taking of water without a licence are inappropriate to the restriction of native title rights for traditional purposes" (Bartlett 2000, p. 254). Bartlett also emphasises that section 212 (1) (b) of the *Native Title Act* confirms and empowers the States and Territories and the rights of the Crown "to use, control and regulate the flow of water, however this does not effect native title rights" (Bartlett 2000, p. 471).

Australia is the driest inhabited continent in the world, so it would be considered in the National interest that the Murray Darling Basin, Australian major rivers systems and the Great Artesian Basin would be important. Therefore, it stands to reason that in the National interest the integrity of the flows and environment for these river systems would be maintained. It is also in the National interest that Aboriginal Native Title is recognised, and legislation for the control of water management be recognised. Since 1897, there have been regulatory boards managing the Murray Darling Rivers, and these boards continue today, but it has only been in recent history that the First Nations people have been included in these regulatory boards (these will be reviewed in the next chapter).

#### **4.6 Wilderness or an Acculturated Landscape**

A wilderness is an area "where one or several ecosystems are not materially altered by human exploitation and occupation ((in) Nash 1982, p.186)". Therefore wilderness is essentially an uninhabited space where evolution can occur without human disruption. Historically, Europeans considered wilderness areas to be wastelands ripe for development. Aboriginal perspectives regarding wildernesses have not been considered or included, and Aboriginal peoples view this perspective in terms of an extension of the concept of *Terra Nullius*, another colonising construct. The eurocentrism of wilderness is evident in the MDB as it is a highly industrialised system, it is based on neo-Liberal Western constructs for social-cultural economic development. These provide identifiable disadvantages for the First Nations People along the waterways this eurocentrism of wilderness is pervasive in the MDB. Eurocentric knowledge valuing of Australian water and environment is limited and based on geographical and cultural specific

natural resource management “such approaches emerge from northern temperate landscapes and experiences of nature, and marginalise other ways of knowing the world and thinking about nature and value” (Gibb, Date accessed 12/10/2020).

Leah Gibb (2010) describes this Eurocentric valuing of water and environment as a product that has value and variability for pricing and is a neoliberalisation of nature (Gibb, Date accessed 12/10/2020). The only river in the MDB that does not have this Eurocentric neoliberal approach is the Paroo River which is Ramsar listed and the only free flowing River in the MDB. The catchment of the Paroo Rivers has three important wetlands these are Currawinya Lakes (Ramsar listed) Nocolche Nature Reserve (has significance Aboriginal sites) and Peery Lake (Ramsar listed). Paroo River flow is important to biological diversity and waterbirds and along the river are significant Aboriginal sites and as a river is unmodified by intrusive industrial and agriculture (Paroo River. Date accessed 12/10/2020).

The notion that Australia was a wilderness is essentially a cultural myopia and is not borne out by the past. Lieutenant James Cook explored the East Coast of Australia at Botany Bay and described a well-managed landscape that could be transformed into English farmlands. When he led a party onto shore on 1 May 1770, he observed:

We found deversified with woods, Lawns and Marshes; the woods are free from underwood of every kind and the trees are such a distance from one another that the whole country or at least great part of it might be cultivated without being oblig'd to cut down a single tree [in sic]. ((in) Willey 1979, p.34).

Again on 3 May 1770,

I foun(d) in many places a deep black soil which we thought was capable of producing any kind of grain, at present it produceth besides timber as fine meadow as ever was seen [sic]. ((in) Willey 1979, p.34).

The ‘fine meadows’ had not evolved without intervention. Aboriginal societies managed the landscape by various means including fire stick farming, fish traps, and the clearance of pathways.

The Dreaming taught why the world must be maintained; the land taught how. One made land care compulsory, the other made it rewarding. One spiritual and universal, the other practical and local. Songlines distributed land spiritually; 'country' distributed it geographically (Gammage 2011, p.139).

Over the past half century public campaigns by environmental groups to save wilderness areas such as Lake Pedder in the 1970s which was lost leading to formation of the Wilderness Society in 1981. The Wilderness Society fought to save the Franklin Dam in the 1980s, have led to a growing public awareness of the need to protect large areas from deforestation. Nonetheless, the public still deems the wilderness to be ‘vacant land’ ((in) Thompson (ed) 1989, p.198). Aboriginal people reject such concepts of wilderness, and have seen government agencies and environmental groups trying to coin terminologies such as ‘Indigenous wilderness’ which acknowledge Aboriginal ownership of, and management rights in environmental areas. The term ‘wilderness’, as Australians use it, dehumanises Aboriginal people. ‘Wilderness’ has a Eurocentric definition, and in the Australian context was used to promote the concept of *Terra Nullius*. British colonists used the term *Terra Nullius* to deny the existence of Australian Aboriginal people, Aboriginal laws and government (*Butterworths Australian Legal Dictionary* 1997, p.1160). Accordingly, wilderness is land that contains plant and animal life that have not been substantially modified by the influences of European industrial development and settlement, which it remains remote from. Furthermore it provides opportunities for solitude and self-reliant recreational activities (*Butterworths Australian Legal Dictionary* 1997, p.1268).

In some ways wilderness is seen as almost sacred, something that should be revered; it is landscape complete with its own civilisation, but devoid of human beings (Griffiths 1996, p.262). European colonisers thought of the wilderness as a wasteland waiting for intervention from the civilised world. Western colonised countries such as Australia, Canada, and the United States of America all adopted this perspective. Wilderness is also defined as one or several ecosystems that are not materially altered by human exploitation and occupation, and in which the competent authority of the Country has taken steps to prevent (or eliminate) exploitation or occupation of the whole area. Accordingly, the competent authority is the state, and the state seeks to preserve and restore the landscape to how it was before colonisation (Griffiths 1996, p.262). Again, this definition is framed around European spatial awareness, and relates to boundaries and lines of sight. In 1921, Aldo Leopold described a wilderness area as, “a continuous stretch of country preserved in its natural state, open to lawful hunting and fishing, big enough to absorb a two weeks’ pack trip, and kept devoid of roads, artificial trails, cottages, or other works of man” ((in) Nash 1982, p.186).

Myles Dunphy, the father of wilderness protection in Australia, maintains that in the wilderness “one may travel on foot in any direction for at least a full day without meeting a road or a

highway” ((in) Thompson (ed) 1989, p.198). These are Eurocentric notions, and are primarily concerned with remoteness, absence, and isolation.



Illustration 19. Painting Hermannsburg 1955 by Albert Namatjira (MITJIRS Arrernte). Date accessed 2018).

In the painting *Hermannsburg Northern Territory*, painter Albert Namatjira (MITJIRS Arrernte), 1955, painted in a medium that non-indigenous people could understand and appreciate. Albert Namatjira, as a traditional owner of land and a custodian of stories, associated with the land recorded his ownership through artistic expression (see Illustration 19). These landscape paintings are not just paintings of a scenic landscape or of a wilderness, but a recording of his Country. He recorded his obligation to his Country in a contemporary medium, using watercolours and paint board. His watercolours of the Australian landscape speak of the Aboriginal Dreaming, where the song of Yamma-coona – the thread that binds all things – can be heard. It can be heard as a whisper sung across the landscape; it can be heard blowing through the trees, and skipping invisibly across billabongs forming little ripples. Richard Percy from the Kalkadoon Tribal Council at Mount Isa stated that “Yamma-coona is the woman of the bush who alluringly sings a nameless tune” (Richard Percy pers. comm. 10 July 2002).

A resolution was passed at an Ecopolitics conference in 1994 in regards to the term ‘wilderness’, which read that, “the term has connotations of *Terra Nullius* and as such all concerned people and organisations should look for alternative terminology, which does not exclude Indigenous history and meaning” (Ecopolitics IX Conference, Darwin 1994). The common definition of wilderness has been thoroughly rejected by the First Nations because it has connotations of ‘vacant land’ (Ecopolitics IX Conference, Darwin 1994). In June 1996, participants at an Indigenous Workshop on Wilderness funded by the Australian Heritage Commission wrote a policy statement on 'Wilderness' from an Aboriginal perspective: The Guiding Principle is that Aboriginal and Torres Strait Islander peoples have the continuing right to use, protect, maintain and manage Country. The Australian Heritage Commission policy statement stated that: “to

Aboriginal and Torres Strait Islander peoples, Australia is an Indigenous cultural landscape in which they have lived since time immemorial” (Rose 1996, p.1). Aboriginal people have developed rich cultures based on intimate and dynamic relationships with land and sea. Under Indigenous law communities and individuals have custodial responsibilities for land and sea. Wilderness areas are Country to Indigenous communities, where the practices of the First Nations people enhance the beauty, stability and resilience of ecosystems.

The wilderness of Aboriginal and Islander Australians is a living story based on up to 40-60,000 years of belonging to the country – a land of spirits, dreaming paths, myths and ceremony that create a framework of Indigenous responsibilities for country (Muir. (n.d). Date accessed 15/05/2020).

Aboriginal people have managed and occupied the landscape of Australia for a very long time and through this occupation have developed cultural and spiritual association with the Country. Cultural Landscapes are places that display Aboriginal peoples as cultures through interaction with the physical environment. This includes landscapes that have had their appearance changed by human modifications and human impact. It is the idea and concept that all human landscapes have cultural meaning. This includes the concept that culture has influenced the form of the landscape over time, and the ability to read the landscape to enrich our understanding of particular cultures. This sees all cultural landscapes as a reflection of culture and a cultural response to place (*Understanding Cultural Landscapes*. (brochure). Australia ICOMOS National Scientific Committee on Cultural Landscapes and Route. Date Accessed 15/05/2020). The *Australian Burra Charter* was first adopted in 1979 and at section 3.2 provides 11 guidelines for qualities of cultural landscapes, "a) the development sequence of the place and its relationship to the surviving fabric (settlement history to present day, how this relates to the surviving social and physical fabric)" (*Burra Charter*. Date accessed 05/07/2018).

Today, thanks in part to Eurocentric views of the wilderness, only about 33 per cent of flora are remnant native species, whereas the other 77 per cent have been introduced. In terms of authoring the landscape there is even less of the Country inscribed with a traditional Australian name. In Queensland, only about one per cent of place names and natural features have a First Nations name. Furthermore, there is now recognition of Aboriginal people in Australian history that is being taught. Aboriginal culture is cast as custodians temporised to a fixed point in time. By way of contrast, First Nations people are a significant demographic group in Northern Territory (NT) and represent about 25% of the Northern Territory population with approximately 50 percent of land controlled by First Nations people. Around the same time that native title was

recognised in 1992 by the High Court of Australia, reforms (known as the National Water Initiative) were being pursued to increase the environmental sustainability of the Murray Darling Basin (*Water in northern Australia: a history of Aboriginal exclusion*. Date accessed: 09/10/2018).

#### **4.7 Water Rights a History of Exclusion - Aqua Nullius**

The Indigenous worldview does not generally separate land and water in terms of rights and responsibilities. The legal recognition of the Indigenous relationship to country including water in Australian law fragments that worldview. The traditional rights and interests of Indigenous peoples including in relation to water are not universally legally recognised in Australian law and when recognised at law it is of a limited nature. (*Indigenous Rights to Water in Northern Australia- a joint NAILSMA- Tropical Rivers and Coastal Knowledge (TRaCK)*. Date accessed: 22/09/2018).

If we dig down through the historic layers of ownership of water, it was not owned like laws for 'real or personal property', water was viewed 'as a public asset or property in common' but a right to access water was sometimes allowed. This allowed the extraction of water to the point of exhaustion of the water supply within riparian ownership (Briese, Kingsland and Orr, 2009). To interpret when Riparian water rights were cast over the Australian continent like a net we know it begins when the British planted themselves on the continent and acquired sovereignty and introduced riparian rights which regulated water use. This came with self government of the eastern colonies of Australia in 1856 and also built into the Australian and state constitutions, Nicole Graham (2003) argues that property law “prescribes a particular ontological structure of the world within the legal discourse for Nature and Culture” (Graham 2003, p. vi). The legal discourse for “this paradigm is paralleled by the framework of 'persons' and 'things'” (Graham 2003, p. vi). Australian property law as a “paradigm of modern European property relations is anthropocentric” (Graham 2003, p.3-4). Graham’s view is that the “anthropocentric model of the world insists that people are Culture and everything else, is Nature;” this has dominated western tradition whereby “human-centred views of the cosmos” is entrenched in our governance (Graham 2003, p. 3-4). With this paradigm the view that nature is “ever more distant from human culture” and that the First Nations people “have very little idea of what a non-human-centred cosmos looks like” (Graham 2003, p. 3-4).

This legal concept gave rights to whoever owned the land under British law and to use water for purposes such as farming. This legal right for water use remained in place until the late 20th

century (*Water in northern Australia: a history of Aboriginal exclusion*; August 2, 2016).

'Riparian water rights' or riparian rights (*Lat-riparius*), belonging to a river gave:

a common law right of the owner of land fronting a river or stream or through which a river or streams flows, to enjoy and use the water naturally flowing through the bed of the river or stream. The entitlement only extends to the ordinary uses of the particular tenement and does not confer rights to use water for unrelated purposes (*Butterworths Australian Legal Dictionary* 1997, p.1035).

'Riparian water rights' in Australia is a mixture of the English and colonial Indian system of law for allocating water, within state ownership of rights and private individual use, known as a 'right of primary access' and an instrumentality of the Crown (Briese, Kingsland and Orr, date accessed 26/09/2018). Alfred Deakin in 1884 was Minister for Water Supply in the Colony of Victoria, and chair of a Royal Commission in Victoria investigating the collapse of private irrigation schemes after the drought of 1870s. Deakin recognised that water was a 'life giver' and started the large scale irrigation system at Mildura with the Chaffey brothers in 1887, at the Junction of the Murray and Darling Rivers. As chair of a Royal Commission he recommended that at Federation in 1901 the Crown should hold ownership of "the right to divert and control the flow" of water across the commonwealth of Australia but not a property right" (*PROPERTY: An Analysis of Rights and Obligations in Property, Focused on Fresh Waters*. Date accessed 10/09/18. p.11). Deakin also recommended that a water control authority be established. After Federation in 1901 statutory controls were extended over "watercourse and underground water". These have now been extended to "farm dams and overland flows" (*PROPERTY: An Analysis of Rights and Obligations in Property, Focused on Fresh Waters*. Date accessed 10/09/18. p.11). Over the years ownership of water in common law regimes have been replaced with statutory enactments. It also needs to be stated here that Deakin also as Attorney-General in the Edmund Barton Government of 1901 was instrumental in drafting the *Immigration Restriction Act* 1901 known the 'White Australian policy'.

Across Australia, States and Territories took this principle up in their legislative mechanisms for the control of water. This provided a third framework for the control and ownership of water for flows but not property in Australian law. This gave the provision for States to allocate water rights to individuals, economic enterprises, and 'water authorities' similar to States rights to providing land to selectors (*PROPERTY: An Analysis of Rights and Obligations in Property, Focused on Fresh Waters*. Date accessed 10/09/18). Further to this the fourth concept to water rights, within these frameworks is Native Title rights for water rights "possessed under the

traditional laws and customs of Australia's Indigenous peoples, they have a connection with waters which are recognised by Australian law" (*Riparian Rights and Duties*. Date accessed 9/08/2018).

Since Federation in 1901, and to contemporary times, common law rights and legal presumption for water have been affected by State and Territories legislation in providing management and the rights for use of water, to take and control water resources (Briese, Kingsland and Orr, 2009. Date accessed 26/09/2018). The paradigm of the State ownership and responsibility of water indicates the concept for State regulation and ownership for the bundle of individual rights for usage. These bundles of rights were created for the National interest in "economic, environmental and social policy objectives" (*Riparian Rights and Duties*. Date accessed 9/08/2018).

In reviewing the First Peoples rights to water ownership in laws within the Federal, States and Territories jurisdictions, they are ambiguous and based on Eurocentric notions of riparian rights of owners. Within the *Native Title Act Cwth* (1993), there is the provision for the extinguishment by valid legislative and executive actions toward any exclusive Native Title rights to inland waters. Robyn Briese, Alice Kingsland and Robert Orr provide examples of legal cases in which this has occurred:

*Western Australia v Ward* (2002) 213 CLR 1 at [263]; *Daniel v Western Australia* [2003] FCA 666 at [819]–[820], [853]–[858], [867]–[870]; *King v Northern Territory* [2007] FCA 944 at [71]–[78]) (Briese, Kingsland and Orr, 2009), (Briese, Kingsland and Robert, 2009. Date accessed 26/09/2018).

Within the *Native Title Act (1993)* there are provisions to affect Aboriginal rights to water: these are "the provisions in Part 2, Division 3, Subdivisions B, C, D and E (Indigenous Land Use Agreements), Subdivision H (management of water and airspace), Subdivision M (freehold test) and Subdivision N (acts affecting offshore places)" (Briese, Kingsland and Orr, 2009. Date accessed 26/09/2018). There are also provisions within the *Native Title Act (1993)*, that provides for non- exclusive and exclusive rights to water, which have not been extinguished by legislation or executive act (Briese, Kingsland and Orr, 2009. Date accessed 26/09/2018). The exclusive provision provides tautology whereby Native Title holders have access and control of their Country, whereas the non-exclusive provision does not allow Native Title holders to control access to their Country within the *Native Title Act (1993)*.



In the Australian Constitution it states that “compensation is payable by the state under sections 24HA(5) and 24HA(6) for either extinguishment or diminution through the grant or issue of an inconsistent right” (Christina Son. Date accessed 20/04/2020. p.7). However there is still no recognition or legal aspect for the loss of “the right and loss of the spiritual and cultural connection to the land or water” (Christina Son. Date accessed 20/04/2020. p.7). For the First Nations people of USA, Canada and New Zealand these rights are recognised and seen as a commercial right to water (Christina Son. Date accessed 20/04/2020. p.7-8). There is a statutory duty built within the NTA for engagement of Traditional Owners of Country or the native title holders for compensation for any future acts known as Indigenous Land Use Agreements (‘ILUA’). Son points out that the Yorta Yorta nation signed a cooperative land management agreement with the government that included the "Yorta Yorta people in the planning, management and protection of the environment” (Christina Son. Date accessed 20/04/2020. p.8).

In Federal, States and Territories, jurisdictions for water management and control recognise non-exclusive Native Title rights. This allows entitlements to access water without a license, "water supply work approval or water use approval, to take and use water in the exercise of native title rights" (Briese, Kingsland and Orr, 2009. Date accessed 26/09/2018). Further, Briese, Kingsland and Orr (2009) states that Native Title rights:

are rights which, although derived from neither the common law nor legislation (Wik Peoples v Queensland (1996) 187 CLR 1, 213–214; Commonwealth v Yarmirr (2001) 208 CLR 1, [38]), can be enforced and protected by the Australian legal system; for example, by injunctive or declaratory relief (Briese, Kingsland and Orr 2009. Date accessed 26/09/2018).

Interest in both Aboriginal rights to land and water through Native Title is alive and well however, Aqua Nullius still prevails in the political landscape. Water reforms known as the National Water Initiative began in 1992. This saw the Federal and State governments embark on legislative reform regarding water and defining private rights. The States redefined what these rights were for water supply and management that altered their legislative/statutory licensing agendas, consideration for environmental concerns and to allocate water for the environment. In Australia water rights are defined by classes of use:

some rights are for fixed quantities, some are for rights in a share of available water, and tradeable and non-tradeable allocations may be made. Former statutory riparian rights are curtailed (Lane. Date accessed 10/09/2018).

Fixed qualities for water is a charge that the water user pays each month and is seen as a tariff structure. In State and Territory regimes they have their own rules that govern the rights for the water markets. Within these rules there are water sharing rights which are a legal entitlement that specifies the maximum volume of a seasonal allocation to a share of water from a defined water system. These systems can be a dam or a river where water sharing is specified. Surface water and groundwater in the Murray-Darling Basin can be bought and sold, that is traded, according to the individual's needs. Within the rules for water trading there are water entitlements that are an ongoing right to a share of a water system; however the allocation of water from the system is dependent on climatic conditions.

Through this initiative there was very little inclusion of the First Nations rights to water or very little engagement in policy making. Still 25 years after the High Court of Australia's decision for Native Title Aboriginal people only have "0.01% of water entitlements" (*Water in northern Australia: a history of Aboriginal exclusion*. Date accessed: 09/10/2018).

Australia as a continent and the First peoples estate, has a unique biodiversity for 'terrestrial and aquatic environments' this includes "intact and nationally important wetlands, riparian zones, forest, reefs, rivers and waterways (*Indigenous Peoples and Water*, 2008. Date accessed 22/09/2018, p.169).

However as evidenced in the national water policy, water management and planning to recognise the First Nations land and water interests is underway under the current national water policy but progress is problematic as is discussed in chapter 5. For the First Nations water use, water plans rarely specifically address the First Nations requirements. Further evidence has also shown that Aboriginal people are sedentary, and that some groups developed harvesting techniques and resource management, with a degree of regional variance in terms of the manufacture of certain types of equipment.

#### **4.8 Conclusion**

There has been historic denial of the First Nations people's rights to spiritual rights, land, water for socio-cultural economics, customary and environment practices within the frameworks of Aqua nullius, Economic nullius and environmental racism. Sovereign rights for both the Commonwealth and States are used for enacting jurisdictional boundaries for land tenure and water and the narratives for the Australian First Nations which centre around '*Native Title*' and '*Land Rights*' (which predate the *Native Title Act*, Cwth). '*Land Rights*' as enacted in the States and Territory potentially provides inalienable freehold title to Traditional Owners of Country as

is evidenced by the High Court of Australia in 2008, when the Yolngu people were granted positive water rights to intertidal zone rights of a stretch of coast known as 'Blue Mud Bay'.

The First Nations people's participation in resource management has been hindered by legal and administrative approaches to Native Title and Land Rights, and the Euro-centric perspective to land, water and the environment. This is witnessed in Queensland with the *Wild Rivers Act 2008*, whereby the First Nations people were given sovereign rights to veto mining and development, but this was then repealed by the Newman Government.

For Aboriginal societies the spiritual, cosmology and social structures formed systems of social relationships between persons and groups, with which to manage the whole of 'human society' and the non human world. Aboriginal people acculturated, traversed and managed the land and waterways. The First Nations people used the waterways to barter, trade, travel, and govern countries, they built dwellings to support their communities and achieve a better standard of living.

The common law and statute deny any resource management for the First Nations people: this was achieved through the amendments made to the *Native Title Act 1993*, which created certainty for State jurisdictions. As it has been pointed out, future acts and past extinguishments articulated in common law inhibit the First Nations rights to water control. What is allowed for water is seen as limited, non-exclusive and non-commercial. This water right is based on Native Title concepts of traditional cultural purposes. The First Nations people have also criticised the statutory frameworks as Eurocentric jurisprudence with the definitions for land, water, environment, and cultural heritage. Such definitions have had enormous implications for resource ownership and management for the First Nations which are consistently presented as false conclusions based on shaky assumptions.

However, there is some partial recognition to the First Nations people's rights to land and water where water is not reserved: these are mainly in areas in North Queensland and Northern Territory where population density, industry and farming practices are minimal. However where water is overused by population density, industry and farming practices, such as New South Wales, water management strategies do not consider the First Nations peoples requirements. The next chapter will engage in the history for when the First Nations people were involved in water planning. The First Nations are now challenging Australian land and water management regimes,

similar to the Blue Mud Bay High Court challenge in Northern Territory, which addressed Indigenous claims and expectations for economic prosperity and spiritual and cultural wellbeing. Finally, water is the most basic of human requirements, and rights to water are particularly important in a dry continent such as Australia. Moreover, water and the creatures that live in it have significant spiritual significance for Australia's First Nations people.

## **Chapter 5 Historical Engagement of the First Nations People for Water- *Commonwealth of Australia Constitution Act s 100, Nor abridge right to use water***

### **5.0 Introduction**

This chapter will provide an analysis of the historical engagement of Aboriginal people in water management, when the First Nations were included in water reform and water planning, and how they relate to the concept of the National Interest when it comes to the Murray-Darling Basin. The objectives of the *Water Act 20007 (Cwth)*, include managing the Marry Darling Basin in the national interest. In the national interest the functions and objectives of the *Water Act 2007 (Cwth)*, manages "economic, social and environmental outcomes for the Marry Darling Basin" (Environmental Justice. 20/11/2014, date accessed 19/07/2020). In this view the First Nations socio-cultural economics and environmental interest should be included in all water plans and be seen as being in the national interest. In managing the Marry Darling Basin in the national interest various international agreements come into effect such as the *Convention on Biological Diversity* ('Biodiversity Convention') which advances the First Nations interest for socio-cultural economics and environmental management (Environmental Justice. 20/11/2014, date accessed 19/07/2020).

However, to date there is no recognition of Cultural Flows in the Australian Law but State and Territory water planning does acknowledge "careful consideration of the appropriate processes and vehicles that would allow integration of these dimensions" (Environmental Justice. 20/11/2014, date accessed 19/07/2020). It is evident that past water management and planning carries with it the power relations of the colonial era. A non-Indigenous mentality still perpetuates colonial "values and endorse power relations" (Clark, Hercus, Kostanski,. Date accessed 08/05/2020).

One needs only to consider the political voice of the many First Nations people around Australia who have lobbied the Federal, State and Territory governments to have their voices heard and expectations for Onshore and Offshore Water Rights and to be engaged in water reform and water planning. These have been articulated in numerous statements, declarations, and policy documents about water in Australia. Further to the First Nations voice many new Australians (and environmental NGOs) also support giving Aboriginal people a direct role in water policy. There is also an historical movement by Indigenous peoples from around the world who are also seeking their water rights to be recognised. All are referring to "international agreements reiterate that access to water is a basic human right" (*What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020). This chapter will not only

engage in the historical engagement of the First Nations in water management, international agreements for basic human rights but also Aboriginal Legal rights to water within the *Commonwealth Water Act* and State and Territory governments water legislation.

The political voice of the many First Nations around Australia who have lobbied the Federal, State and Territory governments raised sovereign issues for socio-cultural economics these included "cultural significance of water and the impacts of water management on river health and cultural values" (*What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020) for the environment within the legal system. This marked the beginning of Aboriginal voices to be heard for rights to water in Australian law.

### **5.1 Understanding the History of the First Nations Peoples Voices for Rights to Water**

In a module written by TRaCK and NAILSMA: *What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning* provides a snapshot of this historical voice to be heard for Onshore and Offshore Water Rights. The module provides an overview of the first report for the First Nations rights for water in 2002 by the Lingiari Foundation. Marcia Langton wrote a background briefing paper for the Lingiari Foundation which they published. The briefing paper provided details on important issues such as impacts of colonial management of water and the cultural significance of water to the First Nations. In 2002 the Booroongen Djugun a multi faceted Aboriginal owned and operated organisation at Kempsey NSW brought together First Nations people from across NSW for a two day meeting on Aboriginal involvement in natural resource management. From this forum the *Boonamulla Statement* was formulated which gives rise to water rights. Mick Leon (pers.comm. 01/07/2020) stated that he joined a convoy of NSW First Nations people who drove to Canberra and presented the *Boonamulla Statement* to the Federal Government. The Statement sets the principles and expectations of First Nations for involvement in planning process for water and the environment.

In 2003 Indigenous people from around the world attended the third world water forum at Kyoto Japan. The forum focused on aspects of the world Indigenous people's views and their spiritual philosophy regarding water, water rights and management of waterways. The focus was on Indigenous involvement and integration into state jurisdiction of water policy development and decision-making processes that directly impact upon their socio-cultural economic development. At this meeting Herb Wharton (pers. com. 17 June 2020), said his brother Jim Wharton presented a

paper on Water and Kooma peoples. From this meeting of Indigenous peoples from around the world the *Kyoto Water Declaration* was formulated which set out a number of principles that affirm Indigenous peoples rights to a permanent sovereignty over natural resources and water. In 2006 the Indigenous Water Policy Group (IWPG) was created by the North Australian Indigenous Land and Sea Management Alliance Ltd (NAILSMA). NAILSMA's approach is based on a principle of a First Nations culture-based economy which aims to build resilience for culture-based economies of the First Nations of northern Australia. The purpose of IWPG is to give and articulate a First Nations voice to be incorporated in new water policies being developed across Australian governments. IWPG works with First Nations people to research, to conduct consultations to negotiate with Australian governments to inform water issues for policy development and decision making. As articulated in Chapter 4 there is a history of the First Nations people coming together to develop declarations and statements that assert Aboriginal peoples sovereign rights to be included as stake holders at negotiating tables and to influence the development of water policies geared for national water policy frameworks. NAILSMA asserts that there needs to be fundamental changes to Australian government's policies that increase the First Nations access to water based on cultural values and socio-cultural economics.

In 2004 Australian State and Territory Governments signed an Intergovernmental Agreement to a National Water Initiative (NWI). It was the first intergovernmental water agreement that recognised Aboriginal peoples needs to be included in the national water policy for water planning and management. (*Module to the National Water Initiative (NWI) Policy Guidelines for Water Planning and Management: Engaging Indigenous People in Water Planning and Management*. (2017). Date accessed 19/07/2020).

In 2007, the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) provided, the framework for recognition of the First Nations water rights within national water governance policies. Australia endorsed the UNDRIP in 2009. "Under the UNDRIP, Indigenous peoples have the inherent rights to self-determination and the right to maintain a spiritual relationship with their waters (and lands). Indigenous peoples have the right to own, use, develop and control their waters" (Katherine Taylor 2017. Date accessed 23/07/2020). The NBAN submission to the review of the *Water* act (Cwth) 2007 makes the point that 'Cultural flows' deliver on international commitments; Cheryl Buchanan (2014) emphasises the point that "we have a human right to our continuing cultural relationship with water which is recognised in a number of International Treaties, including those 'relevant international agreements required to be given effect to by the

*Water Act 2007 (Cwth)*” (Buchanan 2014 p.10). The *United Nations Declaration of the Rights of Indigenous Peoples* (‘UNDRIP’) acknowledges these rights although they are non-binding declaration. The *Biodiversity Convention* (Article 8(j)) is another example of a non-binding agreement. NBAN in their submission to the review of the *Water Act 2007 (Cwth)* noted that section 21 of the *Water Act* be amended “to ensure consistency with how the biodiversity elements of the convention are treated within the *Water Act* and how the *Water Act* treats the cultural rights of Aboriginal Peoples” (Environmental Justice. 20/11/2014. Date accessed 19/07/2020). This requires the amendment to the *Water Act 2007 (Cwth)* to adopt international instruments, principles and measures that are beneficial for the First Nations people. The Federal Government’s power to enforce laws for water is provided in the Constitution through the external affairs power. In the external affairs power the *Water Act 2007 (Cwth)* provides for certain international obligations that are important to the Murray Darling Basin management and water use. These international agreements are environmental treaties “including the Ramsar Convention, the Biodiversity Convention, bilateral migratory bird agreements and the Climate Change Convention” (Environmental Justice. 20/11/2014. Date accessed 19/07/2020). These international agreements can effectively address the First Nations sovereign rights in the face of the historic oppression and continued colonisation in contemporary times.

Chapter 6 provides an account of the *Echuca Declaration* made in November 2007 where the First Nations people from the Murray and Lower Darling River regions met in Echuca at a forum to form an agreement on a definition of 'cultural flows'. That forum also focused on the socio-cultural economic impacts and benefits of water rights to Traditional Owners along the Murray and Darling River regions. At a joint meeting on 19 May 2010 of the First Nations people for the Murray Darling Basin (NBAN and MLDRIN) adopted the *Echuca Declaration*, so the definition for cultural flows is now entrenched in the Murray-Darling Basin and the concept is used in Australian government policies and negotiations with First Nations people along the waterways.

In August 2008, the Garma Festival in north east Arnhem Land, N.T. a group of First Nations people from around the world met. The meeting was arranged by “the North Australian Indigenous Land and Sea Management Alliance’s Indigenous Water Policy Group and the United Nations University – Instituted of Advanced Studies Traditional Knowledge Institute” (*Garma International Indigenous Water Declaration*, 2008. Date accessed 08/08/2020). The meeting discussed trends in dominate mainstream management and decision-making for water on their estates/Country. The purpose of the meeting was to learn, from First Nations people from around



the world with their international experience for protection of Indigenous interests in water and Indigenous knowledge can be recognised. *The Garma International Indigenous Water Declaration (2008)* (see Appendix 2.), was written to provide for protection of the First Nations people's interests in water and how the First Nations people's knowledge for water management can be recognised as expert knowledge along side western scientific knowledge for water trading and water property rights regimes (*Garma International Indigenous Water Declaration*, 2008. Date accessed 08/08/2020).

On 19 and 20 February 2009, the first National Indigenous Water Planning Forum was held over two days it was convened by the National Water Commission (NWC). This was the first time at a national level that Aboriginal people from across the Country were able to address the lack of participation in water allocation planning. The purpose of the forum was to bring together First Nations community members and State and Territory bureaucratic water planners whereby examples of consultations and engagement and participation of Aboriginal people in water planning processes were reviewed.

In August 2009, NAILSMA convened a meeting at Mary River Park in the Northern Territory of over 80 First Nations people from northern Australia, to discuss idea, issues, and concerns for socio-cultural economic interests in regards to their waterways. The forum provided a platform to present the First Nations people of northern Australia to the Northern Land and Water Taskforce. The forum also provided a vehicle to articulate issues on governance and institutional instruments that affect the socio-cultural economic development of First Nations people in northern Australia. From this forum the *Mary River Statement* was written that included eight principles to guide development of Indigenous Water Policy and "recommendations for policy reform, that included the establishment of an Indigenous Water Commission and changes to Native Title legislation. The statement was adopted by the delegates at the forum" (*What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020).

The Policy Statement on North Australian Indigenous Water Rights built on the Mary River Statement to call for all water plans to recognise Traditional Ownership, allocate a cultural flow entity, and provide Indigenous people with a share of water for commercial purposes (*What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020).

In 2009, the Council of Australian Governments' (COAG) as an initiative in response to the 2009 Biennial Assessment Report (NWC, 2009) developed a module, Engaging Indigenous peoples in

water planning and management (the module). COAG ministers all agreed upon a national reform for water now known as the “National Water Initiative (NWI) where governments across Australia agreed on actions to achieve a more cohesive national approach to the way Australia manages, measures, plans for prices, and trades water” (*Module to the National Water Initiative (NWI) Policy Guidelines for Water Planning and Management: Engaging Indigenous People in Water Planning and Management*. (2017). Date accessed 19/07/2020).

The following year the Indigenous Water Policy Group (IWPG) published the Indigenous Water Policy Statement (IWPS) based on Indigenous water rights internationally. The IWPS key declaration falls into four areas:

Traditional Ownership must be fully recognised in Australian law; Water legislation and government policies must allocate cultural flows owned by Indigenous peoples to ensure equity and Indigenous cultural rights. The consumptive pool in all water plans must include an equitable Indigenous allocation for commercial purposes. Governments and water agencies must join with Indigenous Traditional Owners and native title groups to develop water plans and management (*What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020).

In 2010, the First People’s Water Engagement Council (FPWEC) was established and their first meeting was in June 2010. FPWEC aims and objectives are to provide advice to the National Water Commission on national water issues from a First Nations perspective as a priority envisaged under the National Water Initiative (NWI). These cover aspects of consultation and engagement for water planning. The First Nations "aspirations for cultural water requirements, economic, commercial aspirations, cultural heritage and the relationship between native title and water” must be recognised in Government water planning (*What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020). FPWEC was abolished in 2014 by the Abbott Liberal Government prior to the “National Water Commission’s legislative sunset in 2014” (The Conversation. Aboriginal voices are missing from the Murray-Darling Basin crisis. Date accessed 21/07/2020). In a post I made in August 2020 to the First Peoples Engagement Council facebook page inquiring if the First Peoples Engagement Council was reappointed the response was;

No it wasn't re-established as FPWEC, for a short time it rolled over into the Federal Environmental Department as the Indigenous Water Advisory Committee in 2012. This was nothing more than tokenism no say no voice very controlled. PM Abbott and Sen. Birmingham deleted IWAC 30 June 2014. (From: <https://www.facebook.com/First-Peoples-Water-Engagement-Council-208221789268566/>. Date accessed 14/09/2020).

However, the FPWEC was replaced by the Basin Community Committee that is a voice for communities across the Murray–Darling to the MDBA and Basin governments. On 1st January 2020 Mr. Phil Duncan was appointed Chair of the Basin Community Committee this is the first time an Aboriginal person has been appointed Chair of this independent advisory group (‘First Aboriginal chair appointed to Basin Community Committee’. Date accessed 14/09/2020).

In March 2011, the National Cultural Flows Planning and Research Committee (NCFPRC), was established and the National Native Title Council (NNTC) was given the position to manage and deliver the research project for cultural flows. The research committee members were representatives of the First Nations from; NBAN, MLDRIN, NAILSMA, NNTC and State and Territory government agencies from; SA, Vic, ACT, NSW, Qld, and CEWH. These members reported back to their organisations (National Cultural Flows Research Project. Date accessed 21/07/2018). The project for cultural flows was piloted and managed for and by Aboriginal people so that a national framework for cultural flows was to be established. The framework for cultural flows was released in 2018; it provides a "guide and method for future planning, delivery, and assessment of cultural flows" (National Cultural Flows Research Project. Date accessed 21/07/2018). Thus providing a national approach for accessing and delivering cultural flows that is clear, a consistent method determining what cultural flows are. It is considered to be "the first robust legislative and policy framework for cultural flows anywhere in the world" (National Cultural Flows Research Project. Date accessed 21/07/2018).

The objectives and purpose of the National Cultural Flows project was to embed in water allocations across different jurisdictions the First Nations people's rights in "Australia's water planning and management regimes, to deliver cultural, spiritual and social benefits as well as environmental and economic benefits, to Aboriginal communities in the Murray-Darling Basin and beyond" (National Cultural Flows Research Project. Date accessed 21/07/2018).

On 29-30 March, 2012 the First Peoples' National Water Summit in Adelaide was held, and over 70 First Nations delegates attended the summit. The purpose of the summit was to examine how "Indigenous water should be managed". The delegates devised five key recommendations in which two of the main recommendation state that: "The Council of Australian Governments establish and implement a National Aboriginal Water Strategy and that an Aboriginal Economic Water Fund, or funds be established to facilitate the National Aboriginal Water Strategy" (*What Indigenous*

*Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020).

Aboriginal peoples water rights are broader than mainstream concepts for fresh water management. "The term 'water rights' can refer to the legal authority to take water, for example, a licence to take a volume of water from a stream (Taylor 2017. Date accessed 23/07/2020)". Katherine, Taylor (2017) points out that the First Nations peoples water rights "can be thought of as a web of interests" (Taylor 2017. Date accessed 23/07/2020).

On November 2012, in the National Interest the Murray-Darling Basin Plan was signed into law it was the first time in Australian history a national plan for the area was signed off. "Clause 10.54 of the Plan provides that a Water Resource Plan must be prepared having regard to the views of Indigenous people regarding cultural flows" (National Cultural Flows Research Project. Date accessed 21/07/2018). Tony Burke the then Minister for Sustainability, Environment, Water, Planning and Communities stated: "that cultural flows are part of how environmental water is used and managed...the first step - the most important step is to fund the work so that the identification of the principles of cultural flows can be locked down" (National Cultural Flows Research Project. Date accessed 21/07/2018).

In May 2014, as a requirement of the *Water Act 2007 (Cwth)*, an independent review of the *Water Act* was announced. The review was undertaken by an Expert Panel and the report was tabled by the Parliamentary Secretary to the Minister for Environment (Environmental Justice. 20/11/2014. Date accessed 23/07/2020). The Environmental Justice (20/11/2014) paper reviewed the submission and found a common sentiment in these submissions that "current water law does not adequately recognise and protect Indigenous water interests" (Environmental Justice. 20/11/2014. Date accessed 23/07/2020. p.1). Further submissions to the review raised concerns with regards to "issues of Indigenous recognition and participation in water resources management and how these issues are (or more significantly, are not) reflected in the *Water Act*" (Environmental Justice. 20/11/2014. Date accessed 23/07/2020. p.1).

The National Native Title Council submission 2014, found that the *Water Act* made little reference to the First Nations people and poor provisions that provide a continued engagement with the First Nations people by States and Territories who signed onto the Basin Plan. They found that the First Nations people's participation in water management decision-making continues to vary across

States and Territories (National Native Title Council 2014. p.7). The submission recommended that Federal Law should be enacted that clearly provides for Aboriginal peoples involvement in all levels of water planning and management (National Native Title Council 2014. p.10). Further they identified that there are gaps in the provision of water to First Nations people and that Aboriginal people's knowledge of the waterways be incorporated into water planning (National Native Title Council 2014. p7). The submission identified that all water resource plans must include "Indigenous values" and "Indigenous uses" for water through consultations with the First Nations people along the waterways as inherent rights to water (National Native Title Council 2014. p.8-9). The submission concludes by stating that socio-cultural economics must be defined in principles for cultural flows that benefit the First Nations (National Native Title Council 2014. p.11). Also that statutory recognition of First Nations people is inadequate and that the NWI and the final Murray Darling Basin Plan did not meet obligations to recognise and protect the First Nations water interests (National Native Title Council 2014. p.13).

The National Native Title Council 2014 submission to the review of the *Water Act* (Cwth) 2007 raised concerns with regards to issues for First Nations people's socio-cultural economics recognition and participation in water resources management which are not reflected in the *Water Act*. "Water is a sacred and elemental source and symbol of life and aquatic resources constitute a vital part of the Indigenous customary economy" (National Native Title Council 2014. p.6). The submission noted that State and Territory governments must consult with Aboriginal communities for the management objectives and outcomes of the Basin Plan (Part 14) and Section 63(3)(b) of the *Water Act*. The submission states that they, "will consult with relevant Indigenous organisations in relation to whether the requirements of this Part (the Act) have been met" by Basin States for accreditation by the Federal Minister (National Native Title Council 2014. p. 6). They noted that some progress has been made in recognising the need to address Indigenous water issues and engagement in water planning and management processes. The submission states that the *Water Act* is "failing in its management objectives for Aboriginal people and should be amended" because "little progress has been made in the allocation or licensing of water for Indigenous social, economic, spiritual or cultural purposes" (National Native Title Council 2014. p.6). A statutory requirement in the *Water Act 2007* in ss. 21(4) (v) is to have 'regard' to First Nations people.

In 2016 the *Fitzroy Declaration*, was written by Fitzroy River traditional owners of Mardoowarra (Fitzroy River, Kimberley). The declaration is based on the First Nations law for water that

“comprise a set of guiding principles for river governance” (Taylor 2017. Date accessed 23/07/2020). Two of the key policy strategies for water governance are “Strategic Indigenous Reserves (SIR)’ and an ‘Indigenous Economic Water Fund” (Taylor 2017. Date accessed 23/07/2020). Further to these “practical policy solutions” is the incorporation and establishing of river management authorities based on cultural governance for Mardoowarra. Katherine, Taylor (2017), notes that these strategies and proposals, “to date...have received limited government support” (Taylor 2017. Date accessed 23/07/2020).

In conclusion over a twenty year period, First Nations people have been lobbying for an environmental, socio-cultural economic share in the water market, but with little success. Aboriginal people have made submissions to all levels of Australian governments and to the review of the *Commonwealth Water Act*. These submissions relating to the First Nations rights and interests in water governance has informed legislators for water governance in Australia. The submissions raise a wide range of issues for socio-cultural economics and environmental management for the waterways that propose amendments to the *Commonwealth Water Act*. These proposed amendments would provide wider recognition of First Nations people’s rights and interests in water through constitutional legal realities and political realities thus providing indirect statute recognition. This recognition would provide beneficial outcomes to the First Nations people for Onshore and Offshore Water Rights and to the First Nations in the Murray- Darling Basin.

## **5.2 Environmental Water and Cultural Water**

The river is part of who we are. It is about respecting that traditional knowledge, to bring it into the twenty-first century, and to put it as two words: Cultural Flows.’ - Cheryl Buchanan, Kooma (Gwama) Nation (National Cultural Flows Research Project. Date accessed 21/07/2018).

Over the twenty year period, where First Nations people have been lobbying for an environmental, socio-cultural economic share in the water market, there has been opposition to the rights to cultural flows. This saw much debate to the First Nations people call for cultural water and debates to definitions for environmental water and cultural water. As was seen with the debates in 1990's for Native Title and traditional rights to hunt and gather flora and fauna whereby these debates focused on First Nations people over hunting and gathering of native flora and fauna leading to extinction of native flora and fauna. We can see this with the historic evolution of laws for human rights (see chapter 8) and now cultural water.

Many different policies and statements have been developed to help improve the way that Indigenous rights are considered in water reform. All of these statements recognise that Indigenous culture and values must be identified, respected and incorporated in natural resource planning and implementation, particularly with respect to the distinct connections maintained by Indigenous people to those resources. Indigenous people must be recognised as a unique class of stakeholders in water management, due to the inextricable connectivity between identity, spirituality and water (*What Indigenous Groups say about Water Reform: Indigenous Involvement in Water Planning*. Date accessed 19/07/2020).

The Environmental Justice paper on Aboriginal water rights provides an analysis of submissions made to the review of the Commonwealth Water Act. The themes that the submissions focused on were "water allocations for Indigenous peoples, engagement in water planning and management; Environmental water; and International agreements and conventions" (Environmental Justice. (20/11/2014). Date accessed 19/07/2020). All of the submissions propose that the First Nations people's rights to water entitlements and allocations be established and recognised as Indigenous water ownership. The submissions also stated that cultural flows are to be established and that there be a clear definition that provides a distinction between 'Cultural Environmental Water' and 'Cultural Commercial Water'. The submissions also saw "water law, including the Commonwealth Water Act, should not be seen in isolation from processes of colonisation" (Environmental Justice. (20/11/2014). Date accessed 19/07/2020).

For Cultural Flows both the NBAN's and MLDRIN (which are 46 Sovereign First Nations of the Murray Darling Basin) have lobbied Federal and State Governments to be allocated to the First Nations. The NBAN and the MLDRIN have created this new paradigm in water planning, management and policy with the concept of cultural flows. Cheryl Buchanan, Chairperson: Northern Basin Aboriginal Nations (NBAN) submission to the review of the *Water Act 2007 (Cwth)* in 2014, detailed the development and endorsing of the definition for cultural flows at their joint meeting at Echuca in 2010. Cheryl Buchanan is a Guwamu (Kooma) woman from southwest Queensland; the Kooma nation is one of the 22 Sovereign First Nations. Cheryl Buchanan is also a founding member of the National Cultural Flows Planning and Research Committee and was the Deputy Chair of the First Peoples Water Engagement Council.

It is seen by NBAN's and MLDRIN that the definition "picks up economic as well as environmental, social and spiritual values and importantly, it says why the flow is needed, to maintain Aboriginal People's cultural connection to water and water dependent ecosystems"

(Buchanan 2014). The submission states that "Cultural flows" will deliver equity and justice to the First Nations through the 220 odd years of colonial rule by the colonisers. The NBAN submission also promotes that research be undertaken over the entire Murray Darling Basin to define what cultural flows mean and cultural flows to be established on First Nations Country whose country is located on this waterways and water resource area.

The NBAN submission also details the old colonial laws used in Australia for riparian rights that gave rights to land holders to access water whether it was ground water, or an irrigation scheme they were able to have a water licence. If a person's land was not near any of these they were unable to have a water licence. Under the new water management laws that were reformed by COAG and enacted in each state and territory, "unless a person held a prior water licence or entitlement, they were excluded from owning a new licence under the new water management regime unless they purchased it" (Buchanan 2014). This denied the First Nations people from "owning the new form of water entitlements, or shares and accessing their water dependent cultural places" (Buchanan 2014). The submission makes the point that an important component for cultural flows is "intergenerational equity" for it is a right for Aboriginal people to enjoy their spiritual, cultural and physical relationships with land as recognised in international treaties (Buchanan 2014).

Environmental Justice (20/11/2014), analysis of submissions to the *Review of the Commonwealth Water Act* provides that there is a specific obligation on State and Territory authorities and water planners to take into account the First Nations interests for water planning and give "effect to cultural flows...it is seen as an important legal measure" (Environmental Justice, 20/11/2014).

In providing a definition to environmental water part 6 of the *Water Act (Cwth)* relates to 'environmental water' and what can be done with environmental water. It is considered that the First Nations proposals for cultural flows will impact on the environmental water holdings held by the Commonwealth Environmental Water Holder (CEWH). CEWH is an independent statutory authority with powers and responsibilities to handle and manage environmental water within the framework of the *Water Act (Cwth)*. CEWH is "limited to protecting or restoring environmental assets (principally of the Basin) and to give effect to international agreements" (Environmental Justice, 20/11/2014. Date accessed 19/07/2020). The *Water Act (Cwth)* does not provide clarity for environmental water and the functions of the CEWH to work with the First Nations people for socio-cultural economic purposes and Aboriginal people's needs and aspiration for water



ownership. The problem with development of laws that would benefit the First Nations people is that the Australian Constitution in section 100 prohibits the Commonwealth from writing legislation that takes away States and Territory governments or "their residents to the reasonable use of waters of rivers for conservation or irrigation" (Environmental Justice, 20/11/2014. Date accessed 19/07/2020). The *Commonwealth of Australia Constitution Act s 100, Nor abridge right to use water* states that "The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation" (*Commonwealth of Australia Constitution Act* - sect 100. Date accessed 09/09/2020).

In conclusion it is recognised that amendments to the *Commonwealth Water Act* required the State and Territory governments to develop Water Plans. These are to include in water allocations the concept of 'Cultural Flows'. These changes to State and Territory governments' water laws would be legal tender and cause no legal challenge by States and Territory governments to the Federal water governance within the Australian Constitution. The Murray Darling Basin Plan, has worked on fixing the balance between community consumptive needs and environmental water uses in the Murray Darling Basin. But as the reviews have pointed out, it does not address the issues of recovery of water flows to, support, and promote the First Nations values in the basin.

### **5.3 The First Nations People Legal Rights to Water**

In 2018 the National Cultural Flows Research Project released a report, the report recognised the First Nations "strong spiritual obligation to care for country" therefore "healthy waterways enable First Nations to continue their cultural and economic activities, including fishing, hunting, practising ceremonies, following songlines, and harvesting medicinal plants and herbs" (National Cultural Flows Research Project. Date accessed 21/07/2018).

National, State and Territory legislation for water require Water Resource Plans (WRPs) which had to be accredited by 30 June 2019. The following discussion reviews water plans for cultural water for the states of Queensland, New South Wales, Victoria, and South Australia. For these States WRPs had to be accredited under the Murray-Darling Basin Plan 2012. Water planning is the "process for transparently determining the distribution of water resources over time. It is the central mechanism used by governments and communities in making water management and allocation decisions to meet specific productive, environmental and social objectives" (National Water Commission 2011, p. 2). State water plans therefore form part of the WRPs and Queensland

WRP has to conform to its Queensland *Water Act* 2000. Similar to other states "a water plan is a legal document that deals with how water flowing down the system or existing under the ground is shared and managed in a river catchment" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p 15).

Queensland's water plans cover the catchments for the Murray-Darling Basin these are the Condamine and Balonne Rivers, and the other covers the Border Rivers and Moonie catchments. For Queensland the *Environmental Protection (Water) Policy 2009* manages and develops plans for Healthy waters; these plans identify ways to improve the quality of water within a river catchment. "There are three healthy waters management plans, one for each of the Condamine–Balonne, Border–Moonie and Maranoa–Balonne catchments" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin* April, 2019, p 15). The Healthy waters management plans have now included Aboriginal Waterways Assessment.

In reviewing the Queensland *Water Act* 2000 it states "that sustainable water management recognises the interests of Aboriginal people and their connection to water" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p.18). Amendments were made to the Act in 2013 "to acknowledge Aboriginal rights and uses of water as being distinct from those of the general community" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p.18). To provide a distinct purpose and to clarify rights held in the *Native Title (Queensland) Act* 1993 and the *Aboriginal Cultural Heritage Act* 2003, a new section 95 was inserted in the *Queensland Water Act*; which "enables an Aboriginal party or Torres Strait Islander party to take or interfere with water for traditional activities or cultural purposes" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p.18). The Queensland *Water Act* 2000 was again reviewed in 2018 "to require the state's water plans to specifically state cultural outcomes separately from social, economic and environmental outcomes and the Queensland *Water Act* 2000 amended to reflect these" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p.19). Changes made through engagement of First Nations of the Condamine, Balonne, Border Rivers and Moonie water plans are now supported in legislation under the *Queensland Water Act* 2000. "This means that the changes made to the water plans as a result of Aboriginal people's involvement are now law" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p.74).

#### 5.4 Queensland Water Plans

The Queensland Government has reviewed plans to better manage the rivers and groundwater for Condamine–Balonne, Moonie and Border Rivers; these plans are to include cultural outcomes from negotiations with First Nations of the Murray-Darling Basin catchment areas on “cultural values and uses of water, and objectives and outcomes management” (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p 12).

In July 2018, the Queensland Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts Leeanne Enoch announced that two Aboriginal Waterways Assessment, have been completed in Queensland. These were done as “an initiative to increase the Traditional Owners participation in water planning and management” (Leeanne Enoch, Media Statement 2018). “These Aboriginal Waterways Assessments (AWA) allow river and wetland ecosystems to be assessed on their health from the perspective of Traditional Owners” (Leeanne Enoch, Media Statement 2018). Leeanne Enoch is a First Nations person from the Quandamooka people North Stradbroke Island Qld.

These two Aboriginal Waterways Assessment (AWA), are the first of six Aboriginal Waterways Assessment to be completed for Queensland. The Aboriginal Waterways Assessments were undertaken on the First Nations Country of the Githabul peoples and the Kunja peoples of Queensland and supported by the Northern Basin Aboriginal Nations, the Department of Natural Resources Mines and Energy (NRM), the Department of Environment and Science (DES) and the Murray-Darling Basin Authority. The AWA have the potential to provide advocacy by the First Nations along the waterways for better management of the waterways. Maureen McKellar and Jackie McKellar-Garrett of the Kunja nation said “The health of our waterways is important not only for the overall environment, but also for the cultural, spiritual and ceremonial practices of Traditional Owners” (Leeanne Enoch, Media Statement 2018). The AWA documents evidence of the cultural continuum of passing on knowledge of the use of the waterways to future generations.

Constable, J. and Love, K. (2015), in their report on Aboriginal water values Maranoa-Balonne-Condamine subregion, identified the First Nations along the Border Rivers, Maranoa-Balonne and Condamine of the Surat and Clarence-Moreton geological basins (Constable and Love 2015, p.9). These First Nations “whose traditional lands exist within the Maranoa-Balonne-Condamine subregion include Kooma, Gunggari, Barrunggam, Bigambul, Githabul, Jarowair, Mandandanji, Kambuwai, Wakka Wakka and Kamilaroi peoples” (Constable and Love 2015, p.10). The First

Nations whose traditional lands are along the Maranoa River are “the Gunggari, Mandandanji, Bidjara, Nguri, Kooma and Bigambul nations” (Constable and Love 2015, p.13). The Murrawarri Nation whose traditional lands extended to the border indicated they had no need to engage in the review and consultations for the Queensland side of the border” (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p 32).

The Maranoa River starts in the Carnarvon National Park and flows south west to St George and onto the border rivers which includes its tributaries of the Maranoa River, Nebine Creek, and the Culgoa River in northern New South Wales” (Constable and Love 2015, p.13-14). The First Nations traditional lands along the “Balonne River (Queensland side) are the Bigambul, Kooma and Mandandanji peoples” (Constable and Love 2015, p 14).

Weir River is on the First Nations people’s traditional lands of the Bigambul people it is a Women's place and a birthing site (p. 18). The Gunggari people’s name for the Maranoa River is “Illmargan/Mundaggatta which is the creation story for the river. Mundagatta is the rainbow serpent who is the creator of all things and protector of water/Illmargan” (Constable and Love 2015, p.19). The Balonne is the First Nations word of the Bigambul people meaning “Pelican” (Constable and Love 2015, p. 23).

Consultations with the First Nations people for the water plans in April 2019 found that;

many stories connect major waterways or aquifers to spiritual pathways associated with Mundagatta, and this highlights the need to preserve connectivity through the landscape to maintain these spiritual pathways. Waterways were also often described as the lifeblood of the landscape, and compared to the bloodstream in the human body (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p. 51).

"The Mundagatta is a snake that made all the water holes and lives in the rivers. He is the protector of our rivers. Our old people would say to us, if you don't behave yourself, the Mundagatta will come and get you. So we knew that the Mundagatta lived in the rivers where we would go to play all the time, and we would always be well behaved and not do anything that was dangerous or we might get dragged under water” (Aunty Irene Ryder (in) Constable and Love 2015, p. 29).

Further to Aunty Irene Ryder's story of the Mundagatta as a cultural continuum of the storying of the waterways "Uncle Teddy Martin a Gunggari man from Mitchell" tells a story related to the Maranoa River of the Emu sisters and how the emu lost the power to fly.

The Emu sisters were being chased by the Dingo Men who wanted to marry them. The sisters hid amongst the boulders and caves along the Maranoa River to hide from the Dingo Men. The Dingo Men tried to coax them out by lighting a fire. The smoke drove the Emu sisters out, but the fire burned their wings so they could not fly. However, with their long legs the Emu sisters were able to run fast, and ran through the fire to safety (Uncle Teddy Martin (in) Constable and Love 2015, p. 29).

As stated above Illmargan is the creation story for the Maranoa River the river has cultural significances for the Gunggari people for along the "riverbanks of the Maranoa are important spiritual places for women's business". Aunty Irene Ryder Gunggari Elder states that "the water is healing, this river water cleanses the soul ... Illmargan is the big bar-roo (river), Bucka is still standing in the middle of Illmargan, We must never pull bucka out" (Aunty Irene Ryder, (in) Constable and Love 2015, p.33-34). The Maranoa River provides a cultural continuum today. Constable, J. and Love, K. 2015, states that the "local Gunggari women in particular, continue to use healing places and birthing spots" (Constable and Love 2015, p.34).

On Bigambul Country "is a series of Artesian rock wells from the Balonne River across country to Toowoomba/Bunya mountains" (Constable and Love 2015, p.23). The rock wells are important in social-cultural economics as they are water resources for Aboriginal people who travelled to the Bunya Mountains festivals they are recorded in the songlines for trading routes (Constable and Love 2015, p. 23). The cultural continuum First Nations people have for water is grounded firmly in spiritual beliefs.

...water spirit who freely travels around the countryside in the underground rivers. There needs to be sufficient water for this spirit to live and travel to the numerous water sites that make up the catchments in south west Queensland (Constable and Love 2015, p. 23).

Some of these rock wells are hand made with grinding grooves scarred on the rocks from grinding stone axes and spears. From there starting on the Balonne and on to Toowoomba the wells are spaced "15 to 20 kilometres apart" and form "part of the trade and walking route" to the Bunya Mountains. These are listed on the "Queensland cultural heritage register" (Constable and Love 2015, p. 30). Rock wells:

.... are located along Dreaming paths and at other sites of mythological significance. Many of the wells and rock holes are associated with other

evidence of human occupation, including artefact scatters, scarred trees, grinding grooves and quarries. The wells represented significant quantities of water, especially for small groups, which may have stayed in any one location for only short periods. Water supplies were often protected by placing a rock or branches over the opening. People in the Charleville area said Aboriginal people used to walk from Charleville to Maranoa Downs, sinking wells along the tracks they made (Constable and Love 2015, p. 30).

The consultation report also identified that within Aboriginal people's connection to Country, the environment, land and waterways there is also a range of values for flora and fauna. For example the freshwater fish Yellowbelly is a spiritual Totem for some First Nations people. The Yellowbelly is also included in ceremonies, storytelling and other activities (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p. 52).

The report by Constable and Love (2015) exemplifies the cultural continuum of the Jarowair, Bigambul and Gunggari First Nation people have with the waterways and their Country and the continuing connection to environment, land, and waterways. The report also provides the ongoing importance of the creation stories of Mundagatta, Ilmargen and the Emu sisters have to the Jarowair, Bigambul and Gunggari First Nation people as an intrinsic part of their spirituality. Aunty Lynette Nixon, Gunggari Elder writes "We come from the rivers, and the creeks, for our grandparents and their parents have been there and left their spirit there. They speak, we must listen" (Aunty Lynette Nixon, Gunggari Elder, (in) Constable and Love 2015, p.40).

The Condamine–Balonne catchment begins at the headwaters of the Condamine River, near Killarney. The Condamine River travels north-west, then south-west to become the Balonne River near Surat. It is joined by the Maranoa River at Beardmore Dam (Lake Kajarabie). The river itself splits into multiple rivers and streams that flow over the Queensland – New South Wales border to join into the Darling River upstream of Bourke (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p 15).

*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin* (2019) notes that "the Condamine–Balonne, Moonie and Border Rivers catchments are the traditional lands and waters of Aboriginal people from 14 Aboriginal nations" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, 2019, p. 12). Today, the First Nations people are claiming the "right to maintain a responsibility, as well as laws and customs, to look after and care for the rivers, creeks, waterholes, lakes, wetlands, springs and groundwater across their traditional lands" (*Water Connections: Aboriginal People's Water needs in the Queensland Murray-Darling Basin*, April 2019, p. 12).

In an earlier 2015 report Constable and Love (Bioregional Assessment Programme, Aboriginal water values Galilee subregion (Qld)) state that for the Galilee subregion there are a number of First Nations in this region. These First Nations are “the Yirendali, Wangan-Jagalingou, Bidjara and the Iningai peoples” (Constable and Love 2015, p.7). At the time of the report; “none of the groups in the Galilee subregion have Native Title over any of their lands. Nor are there any Indigenous Land Use Agreements in place in the Galilee subregion (Constable and Love 2015, p.8). In their report they identified customary and spiritual associations relating socio-cultural economic values to the waterways and ecological water assets. Constable and Love (2015) also recorded stories and narratives that are a cultural continuum for the waterways and healthy waters of the Galilee subregion. These narratives describe the songlines and trading ways.

Jim Hill (Yirendali Elder) tells the Dreamtime story of Moonda Nurra;

One example of water and dreamtime is the story of Moonda Nurra. This story comes from the female rainbow serpent aka Moonda Nurra who created the Yirendali landscape. Moonda Nurra used her breath to blow the winds, the Barrookka, which spewed up the fish, animals, insects, plants and everything that belong to country. Her tongue is the lightning that we see, flashing in anger as her tears, flow down her face and onto country, and her tear drops are the rain water or Kooma, and her colours are seen in the Woggurree rainbow (Jim Hill (in) Constable and Love 2015, p.14).

J. Constable, and K. Love (2015) document an “exemplary relationship the Yirendali, Wangan Jagalingou and Bidjara people have with water, in what is mostly an arid environment” (Constable and Love 2015, p.14). This cultural continuum for the waterways is recorded as “water is an intrinsic part of creation”, through spiritual and cultural practices. One such spiritual story is that of “Lake Nuga Nuga as the resting place of the rainbow serpent ‘Moondagadda’ who created Yirendali country” (Constable, and Love 2015, p.15). Other stories relating to the “three main rivers of the Galilee basin – the Landsborough, Tower Hill and Torrens Creek (and their tributaries) come together as a part of the ‘Kuttaborra story’, or ‘Duck story’” (Constable, and Love 2015, p. 15-17). The report provides that the “stories and songlines, run on top of the ground, then disappear underground, then come back up from under the ground via springs to feed into Kati Thanda /Lake Eyre. The story originates from the big dreamtime story out of Kati Thanda/Lake Eyre and travels north to Yirendali Country and into Finke River Country. The stories and songlines also connect First Nations across Country as “Moonda Nurra” travelled across Country, down the Flinders River and down the Gilliat Channels, to the Burke River. “Moonda Nurra” laid her eggs along the way

home - these eggs are the big round rocks we see along country from Julia creek, Richmond and Hughenden country” (Constable and Love 2015, p.14-15).

It is noted in the report that “there is an overarching value based on the principle that healthy water translates to overall wellbeing for everything – people, animals, plants, earth and air” (Constable and Love 2015, p.5). It is through this sense of Aboriginality and “belonging that any adversity or stress to any creatures, land and sea country is felt by Aboriginal people causing social and emotional un-wellness” (Constable and Love 2015, p.5). In this sense of Aboriginality being one with the land and water and as custodians, develop ways to conserve and protect important assets such as water (Constable and Love 2015, p.5).

A First Nations lens for the waterways broadens the argument beyond water to a full understanding of the environment as a being with a whole functioning system that is linked and does not see any division between environment, land and water. In 2014 the review of the *Commonwealth Water Act (2007)* recommended that the use of the *Convention on Biological- Akwe: Kon* guidelines be used for any research must include the First Nations peoples knowledge of water. Akwe: Kon is a Mohawk term meaning "everything in creation" which ensures the full involvement of First Nations people in water planning. The 'Akwe: Kon' guidelines originated in Canada and this methodology was used for the northern Murray Darling Basin consultation in Queensland (*Aboriginal Waterways Assessment Program* 2015, p.39). The *Aboriginal Waterways Assessment Program* (2015) details the history of inclusion of the First Nations participation in water planning and management for the Murray-Darling Basin.

First Nations participation in water and natural resources, planning and management has historically been neglected. It is not until recently that First Nations peoples knowledge of waterways has been included in the National, State and Territory planning and management of the waterways. The Mabo decision 1992, paved the way for Common Law recognition of Native Title (1993). In 2004 the Council of Australian Governments Intergovernmental Agreement on a National Water Initiative included First Nations interests and knowledge for water into Commonwealth legislation. The *Aboriginal Waterways Assessment Program* (2015), noted that "between 1996-2005 Aboriginal participation was limited to 3% in the Nation's total natural resource management" through the National Heritage Trust (*Aboriginal Waterways Assessment Program* 2015, p. 38-39). The Aboriginal Waterways Assessment (AWA) project of the lower Murray- Darling Basin also used and adapted a Maori water assessment tool for consultation with



the First Nations of Dhudhuroa, Waywurru, Gamilaraay, Wemba Wemba and Barapa Barapa in New South Wales (*Aboriginal Waterways Assessment Program* 2015, p.5-6).

### **5.5 New South Wales Water Plans**

“The Murray Lower Darling Rivers Indigenous Nations (MLDRIN), Northern Basin Aboriginal Nations (NBAN) and the Murray–Darling Basin Authority (MDBA) collaborated with Maori researcher” developed a Cultural Health Index (*Aboriginal Waterways Assessment Program* 2015, p.11). The Cultural Health Index is based on the Maori “understanding of streams and waterways” model for the “arresting further mismanagement of customary resources” (*Aboriginal Waterways Assessment Program* 2015, p. 12). This is used in the “Kakaunui Catchment of the South Island of New Zealand” (*Aboriginal Waterways Assessment Program* 2015, p. 55). This provided the mechanisms for First Nations peoples with the means to insist on using Aboriginal culturally-appropriate frameworks to participate in water planning within the principles of “free, prior and informed consent” (*Aboriginal Waterways Assessment Program* 2015, p. 12). This approach brings the First Nations peoples knowledge of environmental management into a two way relationship between people and land that acknowledges a river as a river (*Aboriginal Waterways Assessment Program* 2015, p. 47). This promotes a First Nations concept of a river that includes the natural environment whereby the “land, water, biodiversity, culture and people” are interrelated (*Aboriginal Waterways Assessment Program* 2015, p.58).

The *Aboriginal Waterways Assessment Program* 2015, asserted that different Indigenous knowledge systems from around the world despite distances had strong similarities, whereby their knowledge of the natural environment is drawn from “direct observation and interaction with the ecosystem and also affords intuitive knowledge: a knowledge of spatial and seasonal distribution of plant and animal species, a knowledge of sustainable harvesting so as not to destroy the regenerative balance capabilities of a habitat, a knowledge of habitat maintenance to restore and keep such a balance” (*Aboriginal Waterways Assessment Program* 2015, p.58).

The *Aboriginal Waterways Assessment Program* 2015, also asserted that cultural flow assessment be driven by cultural ‘imperatives’. Participation had to be grounded in cultural beliefs, values and practices; the process had to explicitly enable the examination of flow related issues and the identification of satisfactory flows in reference to their range of cultural interests. There also had to be an understanding of culturally-safe practices and be defensible as there are contentious issues for environmental flows (Tipa and Associates, 2012, p. 5). At the Yarkuwa Indigenous Knowledge

Centre Deniliquin NSW it was proposed that 'Tradition' Owner knowledge of the waterways be cared for and passed on to younger generation as a cultural continuum (*Aboriginal Waterways Assessment Program* 2015. p. 36).

Jessica Weir (2009), points out that the First Nations people of the Murray-Darling Basin's have experienced over two hundred years of colonial authoritarian rule and destruction of the waterways. But today the First Nations people of the Murray-Darling Basin's connection to Country survived and remains and is being passed on through a cultural continuum.

These traditional identities have been transformed by the disruption and influence of colonialism, and today an important part of being a contemporary traditional owner involves building on and reviving cultural practices from earlier generations, such as teaching the local traditional languages and the performance of welcome ceremonies (Weir 2009, p. 183).

Further at the Yarkuwa Indigenous Knowledge Centre Deniliquin NSW, the meeting also developed principles that provided a greater First Nations context and definition for cultural flows. "These principles are: Country as a meaningful framework for water, Indigenous Nations as an essential part of cultural flows, recognition of Indigenous ecological knowledge as science and capacity building as central to Indigenous Nations' full and meaningful participation" (*Aboriginal Waterways Assessment Program* 2015, p. 63). The Yarkuwa board provides the following definition for cultural flows which was also endorsed by the NBAN to incorporate participation and Traditional Owner perspectives for Country.

cultural flows' are water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations; cultural flows involve the full and meaningful participation of Indigenous Nations, using 'free, prior and informed consent' processes in all water management, including, but not limited to, environmental flows and cultural water licenses (*Aboriginal Waterways Assessment Program* 2015, p.63).

In a project to identify First Nations views on cultural water a partnership was formed in 2013 between Yarkuwa Indigenous Knowledge Centre Aboriginal Corporation (Yarkuwa) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). J.K. Weir, et al undertook the research and published the finding of the research project from working with the First Nations of Dhudhuroa, Waywurru, Gamilaraay, Wamba Wamba and Barapa Barapa of New South Wales. To promote their knowledge's for the waterways of this region (Weir, et al. 2013, p. 5). J.K. Weir, et al. (2013) identified that,

The Edward/Kolety and Wakool rivers form an anabranch and floodplain of the Murray River, north of the Murray in southern New South Wales. The Wamba Wamba and Perrepa Perrepa... Their country is directly downstream... where the Edward/Kolety River starts. Wamba Wamba and Perrepa Perrepa have the same language, and their name for the Edward River is the Kolety (pronounced Kol-etch). Kolety is now gazetted as a dual name for the Edward River (NSW Government Gazette 2006). Wakool (pronounced War-kool) is the Wamba Wamba and Perrepa Perrepa name, and their name for the Murray is Mile (pronounced Milly). Traditional knowledge contains a creation story relating to the formation of the Edward/Kolety and Murray system by the creation snake, who was cut into pieces by the crow that was disturbed at Kyalite, where the Edward/Kolety and Wakool rivers meet (Weir, et al. 2013, p. 5).

In 2012, the Department of Industry Water began engaging the First Nations people of NSW “in water management and planning” for the NSW Aboriginal Water Initiative until it was disbanded in 2017. The Murray-Darling Basin Authority in its 2018 progress report described NSW as “well behind on water sharing plans” (Aboriginal voices are missing from the Murray-Darling Basin crisis. Date accessed 19/07/2020).

In the Marsden Jacob Report (2019), it provides that NSW enacted the *NSW Water Management Act* (2000). In this Act it provides a cultural access licence for NSW First Nations “to access the water for personal, domestic, cultural and spiritual purpose across all water sources where a water sharing plan is active” (Marsden Jacob Report 2019, p. 13). The report points out that the cultural access licences are conditional, they are limited to 10 megalitres, and the onus is on the First Nations to clarify and define what the cultural purposes are. Lorena Allam, the *Guardian's* Indigenous affairs editor, is descended from the Gamilaraay and Yawalaraay nations of North West NSW. In her online article for the *Guardian* she states: that “Aboriginal water entitlements in the New South Wales portion of the basin covered 0.2% of all available surface water, in a region where Aboriginal people comprise about 10% of the population” (Lorena. Date accessed 26/07/2020).

## **5.6 Victoria Water Plans**

In 2016, Victoria released Water Plans in *Water for Victoria* in these plans there is a provision for an ‘Aboriginal Water Program’ which provides a role for the First Nations of Victoria in the planning and management of Onshore and Offshore water (*Water for Victoria*. Date accessed 30/07/2020). The program states that, “the Victorian Aboriginal water program aims to better include Aboriginal people in the way water is managed in Victoria and to reconnect communities to water for cultural, economic, customary and spiritual purposes” (The Aboriginal water program.

Date accessed 30/07/2020). Then in 2019 the *Water and Catchment Legislation Amendment Bill* (Vic) was passed into law. The amendments in this Act provide socio-cultural economics for “Indigenous cultural uses of water and underpin opportunities to use water for economic development for Traditional Owners and Indigenous Victorians” (Marsden Jacob Report 2019, p. 13-15). This piece of legislation provides active and meaningful opportunities for the First Nations of Victoria to self-determination for their water management and requirements (Marsden Jacob Report 2019, p.13-15).

## **5.7 South Australia Water Plans**

The South Australian Government submitted their water resource plan to the MDBA 28 February 2019. It took two years to write. It was developed by the SA Department for Environment and Water. In the SA WRP it demonstrates and provides objectives in engaging the First Nations people for outcomes that enhance management of water from a First Nations perspective (Department for Environment and Water, 2020. Date accessed 30/07/2020). South Australia as a commitment to MDB plans engaged in the Aboriginal Partnerships Program to work with the First Nations of the lower basin in SA. The South Australian government also established “working groups such as the First Peoples NRM Working Group and the Ngarrindjeri Regional Authority, Ngopamuldi Aboriginal Corporation and the Natural Resources Working Group” (Marsden Jacob Report 2019. p.13-15). Through these consultations with the First Nations people of SA to improve “the cultural context in the Water Allocation Plan that operates in the area, and to identify objectives and outcomes for water resource management in the South Australian River Murray WRP area” (Water Resource Plan (Feb 2019): South Australian River Murray. Date accessed 30/07/2020).

The SA water resource plan is the only water management plan for the Murray River surface water resources in SA, the plan was accredited and commenced on 16 November 2019. It was seen as “being consistent with the Basin Plan” (South Australian River Murray water resource plan. Date accessed 30/07/2020). The South Australian Government as a commitment to MDB water resource plans is developing three water resource plans. These are developed for South Australian Murray-Darling Basin and are,

The South Australian River Murray – includes the surface waters and floodplain of the River Murray and Lakes Alexandrina and Albert. The Eastern Mount Lofty Ranges – includes the groundwater and surface waters of the Eastern Mount Lofty Ranges and the Marne Saunders Prescribed Water Resources Area and The Murray Region – includes the surface and groundwater resources of the remainder of the South Australian Murray-Darling Basin and the Coorong and

Murray Mouth (Department for Environment and Water, 2020. Date accessed 30/07/2020).

The Marsden Jacob Report (2019), has identified that Basin States have “generally failed to incorporate effective strategies for achieving Indigenous objectives in water planning arrangements” (Marsden Jacob Report. 2019. Date accessed 19/07/2020, p.22). However, the tangible and intangible values that First Nations people promote for the waterways are essential to their Aboriginality. To identify culturally informed water requirements for First Nations people is of "national significance given the imperatives established by current Australian water policy to improve Indigenous access to water and protect Indigenous water cultures and traditions” (Bark, et al. 2015, p. 3). The difficulties for when non Aboriginal valuation techniques are used and in the way they are interpreted for "cultural and customary management practices, spiritual beliefs, and livelihoods, are difficult to quantify and, for this and other reasons, can be overlooked when other water users are competing for clearly defined amounts of water” (Bark, et al. 2015, p. 241). In considering biodiversity, heritage and culture for the waterways the First Nations people include the natural environment, heritage and culture within the description and connectivity more broadly.

In the *MDBA Strengthening Connections Reconciliation Action Plan 2015-18*, it states that;

Our vision is to increase our knowledge and respect of Aboriginal values, which will help strengthen our connections with the Traditional Owners of the Murray–Darling Basin. We believe the health of the Basin will benefit from meaningful partnerships with Traditional Owners (*MDBA Strengthening Connections Reconciliation Action Plan 2015-18*, p.6).

## **5.8 Conclusion**

In conclusion the chapter has provided an overview of the consultation and engagement of the First Nations of the Murray-Darling basin and identified the cultural, ceremonial, and spiritual values the First Nations people apply to surface water and groundwater in the Murray Darling Basin. The chapter also detailed possible outcomes for the embedding of the First Nations peoples knowledge in legislative changes for environmental, cultural and social and economic values and uses of water. These also include a continuing say in water resource management, and the provisions for water availability to the First Nations for social-cultural economic benefit; and to reflect the First Nations peoples lore/law to protect animals, plants and waterways that they value and use.

The chapter highlighted the historic lack of engagement prior to the twenty-first century and a corresponding lack of legislative rights for Indigenous people’s waterways, environment and

cultural heritage. Following intensive interaction in the past two decades new legislative arrangements provide and protect cultural flows that are important to the First Nations people. It gives a commitment for continued engagement and understanding of cultural values and water to be set aside for First Nations use. The cultural outcome is the continuous flows of water that support water-related environmental, cultural, spiritual and social values of the First Nations people of the Murray-Darling Basin. Further to the cultural there are also social-cultural economic outcomes from the inclusion of the First Nations aspiration to maintain culture rights for economics aspiration with water to support such activities.

## Chapter 6 Oral Histories the Storyways

### 6.0 Introduction

These stories speak the country, reveal it to be not a wilderness, but a humanised world, partaking of the spirit of the ancestors, their blood, their bones, their story, ever-present in the land and its creatures. Just as a map serves to orient its reader, these Stories celebrating the topography serve as an aid to orientation, not just the lie of the land, but as to its socially derived meaning and significance. Yet the land is more than symbolic, does not merely point to something beyond itself. That's the water talking Bulurru ((in) Bottoms 1999, p.3).

This chapter articulates and traces Aboriginal sacredness for Country and waterways, not as an "archaic residue of the primitive past", but as a bond that binds the iconography, cartography and geology of the nation of Australia (Pritchard 2008, p.165-168). The chapter follows and retells episodes of First Nations history, like a traveller following the waterways from Goolwa to the Gulf of Carpentaria, with a view to reinstate knowledge that has been submerged into the narratives and discourses of the non-Indigenous population. These revived historiography, narratives and archaeological evidence bring Aboriginal oral history, memory and the 'unvoiced' into the Australian public domain, so that they can be remembered as part of Australia's heritage, environment and geography. The First Nations people developed complex cultural, economic and social systems expressed through spiritual, songlines/storyways, for the natural world, so as to orient like a compass, cosmologically and geographically.

When we view folklore, all cultures around the world, whether Indigenous or non-Indigenous, tell stories, perform dance and sing songs, to pass on knowledge. Hans-Peter Gehring (2012) articulates that:

On first instance, cultural memory and oral history adopt important roles as vehicles of cultural continuity .... As narrative forms, they transmit cultural references from the past across generations. This knowledge is not passive, however. As a form of relational practice, social memory actively participates in the production of identity and place. It is then possible to speak of a dialogical production of knowledge based on the transmission and reinterpretation of ancient meanings (Gehring 2012, p.34).

The paucity of recordings about Aboriginal participation in historical processes has not gone unnoticed. Historian Raymond Evans' (1992) research on the 'colonial intrusion' of Moreton Bay by Europeans found that when viewing "the official archival and manuscript sources...on Moreton

Bay penal settlement one could not help but notice the comparatively sparse and tentative nature of relevant race relations data” (Evans 1992, p.9).

This is markedly the case with respect to the records regarding the settlement processes between 1788 and 1967 in Australian history. Nonetheless, in a few instances historical information was collected to provide evidence to support Aboriginal oral histories and storytelling about the creation of the environment and knowledge for the management of land and waterways for their countries. Aboriginal law/lore people remember the stories of creation of the environment and knowledges for the management of land and waterways for their countries, which is now being recognised and immortalised in Australian history. Aboriginal law/lore people have shared language and are now writing books, performing corroborees and painting the stories of creation for their countries so that non- Indigenous Australians can understand the Aboriginal relationship to Australia. Taya Biggs painting that was on exhibition at the Broken Hill City Art Gallery is an example of this cultural continuum by using art to tell the story of her knowledge of the Baaka (Darling) river (see Illustration 20).



Illustration 20. *River Dreaming* by Taya Biggs. Broken Hill City Art Gallery sponsored by the Broken Hill City Council- May 2018. Photography by Dale Kerwin.

When we view the First Nations first contact and past history pre 1967, it was a situation like a bookshelf that seemed empty, but which is filled with volumes of information that needed to be re-catalogued and re-authored. The accommodation of the histories of Aboriginal people needs to be examined in order to understand the "sophistication and achievements of Aboriginal people as guardians of the country” (Davis 2009, p.148).

Australian Aboriginal people’s ontology, axiology, epistemology and worldviews of Australian history is developed and maintained through narratives (oral histories, corroborees, iconographies, storytelling and songlines). Hans-Peter Gehring (2012) in his Masters Thesis ‘submitted in the discipline of archaeology’ investigated social and cultural history in southern Mexico where religion is transferred through stories and cultural landscapes. Gehring (2012) explains that, "cultural memory and oral history adopt important roles as vehicles of cultural continuity”



(Gehring 2012, p.34). Within the dominant history, Aboriginal histories have been neglected and almost forgotten by mainstream Australia. Aboriginal oral histories tend to question the one-dimensional accounts of settlement history and Australia as a nation. In addition, Aboriginal oral histories and stories in the past were mostly non-accessible to the majority of Australians: but today more is being taught and expressed through various forms of literature, education and the creative arts. So in Australia too Aboriginal "social memory actively participates in the production of identity and place" (Gehring 2012, p. 34).

To some Australians, these narratives and social memories are seen as works of fiction with no basis in reality. An alternative perspective might postulate that Aboriginal oral histories are counter narratives and as such provide insight into the conflict and confusion of post-racial contact with the new Australians and their attitude of indifference. Aboriginal oral histories constitute a crucial cultural element in the telling of the clash of cultures, and provide a different dimension to the telling of the environment, geography, and human occupation of Australian. For example Richard Quayle in his painting (on display at the Broken Hill City Art Gallery May 2018) tells the story of Ngatyi who to the Paakintji people and the Barkindji people is one of the Rainbow Serpents, the creator of the environment from the corner Country of Queensland, South Australia, and New South Wales. Richard Quayle's painting tells the story of how the Baaka and environment is dying (see Illustration 21).

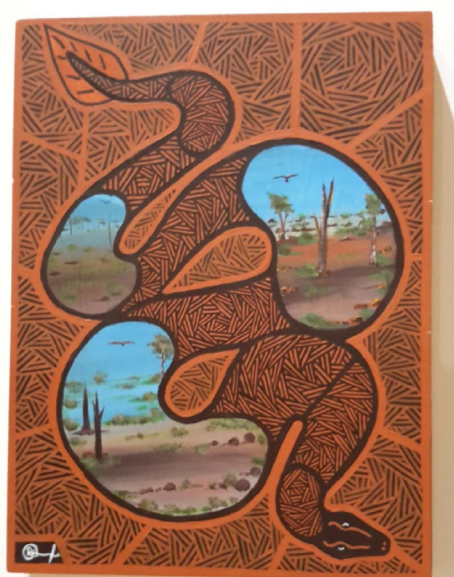
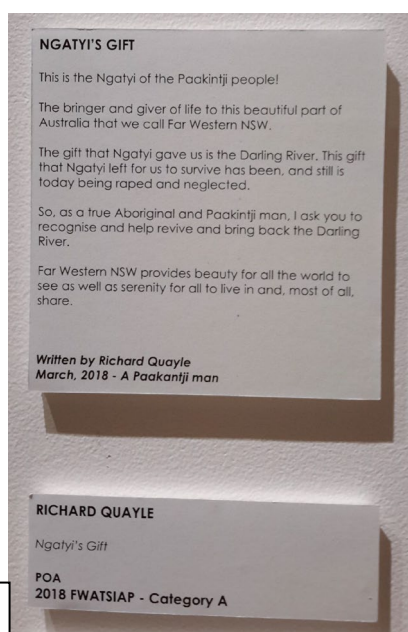


Illustration 21. *NGAITYS Gift* by Richard Quayle Broken Hill City Art Gallery sponsored by the Broken Hill City Council-May 2018. Photography by Dale Kerwin.



The mura, ancestral beings, crisscrossed the landscape with tracks and named the country as they travelled, linking people to place and place to language by way of storyways and songlines. Two Ngatyi's travelled from the Paroo to the Flinders Ranges and back as far as Yancannia Creek, where their deep underground channels linked them back to the Paroo. Ngatyi, to us Barkindji people, is one of the creators. And when they created the landscape, they left us a lot of things such as the Baaka (Darling River) (Badger Bates pers.comm 2018).

## 6.1 Identity - Baaka Wimpajas (The Darling River Black People)

I'm a black person from the Baaka we don't call ourselves Koories we are Baaka people- "Baaka" means river (Badger Bates pers.comm. 2018).

"Australian" - what is the meaning of this word, or construct? Where did the term come from? It is not a First Nations people's word or term: the dictionary describes Australian as meaning "a native or national of Australia, or being of Australian descent". Australia is a Latin word: *australis* meaning *southern*. Australia was known in the early histories before colonisation as *Terra Australis*- South Land the southern continent. In 1569, the Flemish geographer Gerardus Mercator designed and published a world chart with *Terra Australis* positioned and depicted on the map as the southern land (Oxford Reference. Date accessed 18/07/2019).

In 1606, Australia was called *Australia del Espiritu Santo*- the South Land of the Holy Spirit by the Portuguese navigator Pedro Fernandez de Quiros while navigating around the New Hebrides. From 1642, Australia was known as *Nova Hollandia*- New Holland, when the Dutch navigator Abel Janszoon Tasman sighted the coast of Tasmania and considered this to be part of the southern continent. The first time the term Australia was used was in 1770 by Alexander Dalrymple's collection of *Voyages of the Southern Seas*. We know Captain James Cook in 1770 referred to Australia as New Holland, (though in 1770 Cook claimed the Eastern Coast of the Australian continent in the name of New South Wales). Arthur Phillip was commissioned in 1786 to be the first Governor of New South Wales. Matthew Flinders stated in his preface of his journal 1814, *Voyage to Terra Australis*, that his preference was to change the name to 'Australia' instead of *Terra Australis* (State Library of NSW. 2020. Date accessed 18/08/2020). Flinders, in his charts of this voyage, used the terms Australia and the Great Australian Bight. After 1817, the then Governor of New South Wales, Lachlan Macquarie began using the name Australia in official documents and correspondence. By 1824, the term Australia was gaining popular use by the colonists of New South Wales (State Library of NSW. 2020. Date accessed 18/08/2020). However, the British Government still used the term New South Wales in official documents and

correspondence. As we know it- the new Australians have a contemporary history of 230 odd years of settlement (State Library of NSW. 2020. Date accessed 18/08/2020).

When considering the naming of Australian Rivers and waterways Katharine Massam (2012), notes that "naming the Australian waterways as «river» brought echoes of England's permanent, full-flowing water courses" (Massam 2012, p.271). Australian waterways and river systems are not like the European rivers that flowed out to the sea, Australian rivers dried up periodically.

Within this discursive space- what does it mean to be Australian? As we can see with the influx of migrants to Australia who call themselves Greek Australian, Chinese Australian, Lebanese Australian they come from many nations. We can compare this with what it means to be an Aboriginal or Torres Strait Islander person. We know that Aboriginal people call themselves Koories, Goories, Murries, Nyoongahs, Baaka, Bama, Nyungars, Yolngu, and Sovereign First Nations.

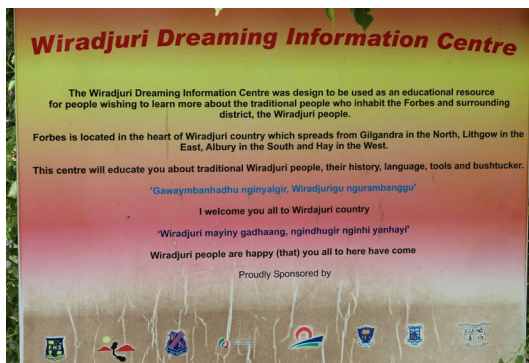
Within the discourses for who is a First Nations person, many Aboriginal people call their home land, 'Country'. This comes from a long connection and relationship to the land and environment. "Country in Aboriginal English is not only a common noun but also a proper noun" (Hill, et al 2013, p. 12). The Commonwealth *Native Title* Act 1993, provides the legal context for the issues of who is an Aboriginal and Torres Strait Islander person. This question has plagued policy makers since settlement, and continues into today's Australian society. This also relates to the legal issues of environmental degradation, and water flows for the Murray Darling Rivers since colonisation in the sense of environmental, economics and political rights at the exclusion of Aboriginal peoples (aqua nullius) until recent times.

Mick Leon an archaeologist and a First Nations person in a conversation I had with him said he comes from "Worimi Country, he is a Worimi person" (Mick Leon pers. comm. 2018). This relationship to Country has been passed down from generation to generation. "Country is not a generalised or undifferentiated type of place, such as one might indicate with terms like 'spending a day in the country'" (Hill, et al 2013, p. 12). Mick Leon also sees himself as a Traditional Owner, as do many Aboriginal people, who are defined as an Aboriginal person, being a member of a local descent group, having certain rights and responsibilities in relation to a particular area of land, water or sea/Country. "Because of the richness country is home, and peace; nourishment for body mind and spirit; hearts ease" (Hill, et al 2013, p. 12).

The First Nation peoples developed tangible and intangible knowledges and resources from the environment, thus showing a distinct relationship to Country.

Resources from the Australian environment play an important role in religious practices and beliefs, connecting people to country in a variety of ways. The Australian environment is diverse, and therefore the relationships that Indigenous Australians have with these environments also differ across the country. So, too, the relationships to country differ (Relationships to country: Aboriginal people and Torres Strait Islander people- *Indigenous Perspective Resource*. Res005 Marc 2008).

There is a long history of mainstream dominant society coming to terms with what it means to be an Aboriginal or Torres Strait Islander person of Australia. Gaynor Macdonald (1998), questions the dominant position of Country and providing an Aboriginal meaning to place, in her work with



the Wiradjuri people of the Murray River region. The Wiradjuri Dreaming Information Centre Forbes NSW (Illustration 22), is designed as an educational resource for educating people about the traditional owners of Country the Wiradjuri people. In the information board it simply states “Gawaymbanhadhu nginyalgi, Wiradjurigu ngurambanggu (I welcome you to all Wiradjuri country)”.

Illustration 22. Wiradjuri Dreaming Information Centre Forbes Newell Highway NSW 2018. Photograph by Dale Kerwin

Gaynor Macdonald (1998) provides a "political and theoretical context" within contemporary debates and issues of identity for Aboriginality/indigeneity, authenticity and entitlements (Macdonald 1998, p. 1). Gaynor Macdonald (1998) discusses the historic significance and fixation of the Australian political machinery regarding who is or is not an Aboriginal person. The debates have gained more significance since the passing of the *Commonwealth Native Title Act Cwth 1993*. This can be viewed historically, as over the last 119 odd years since the Commonwealth of Australia was created, with the official changes made by policy makers to Australian laws. Some are more palatable than others in regards to what constitutes whether a person is an Australian Aboriginal person, and the rights and benefits the First Nations have within Australian society. Historically, the definitions of what constitutes a person to claim being an Aboriginal have been used to exclude Aboriginal people from the benefits and policies of the day (Macdonald 1998, p.1). We can see this historically to a time before the passing of the *Commonwealth Native Title Act 1993* decision. Before the Mabo 2 decision, "Australian governments engaged in land and

resource management processes as if Aboriginal people had not existed or held any rights before the arrival of the British" (Maddison 2009, p.6). Terra Nullius persisted until the *Commonwealth Native Title Act 1993* decision, and even today ethnocentric values determine the management of water policy, land and cultural heritage values in Australia.

This is evident with the various states parochialism, over water rights to the Murray Darling Rivers Basin. Historically Aboriginal people have been excluded from any discussions or decision making regarding the water flows of these rivers. However, during NAIDOC week 2018 traditional owners of the Baaka (Darling River) and environment at an exhibition held by the Broken Hill City Art Gallery and sponsored by the Broken Hill City Council, Traditional owners expressed their concerns about the damage that was occurring on the river, environment, and cultural sites by using visual cultural expression (painting and sculptures).

## **6.2 History of Occupation and use of the Waterways**

Chris Guest (2016), provides an historical overview of the non-Indigenous politics and water management of the Murray Darling Basin. Guest (2016) outlines why South Australia was the first colony to be interested in the Murray River for economic purposes, with paddle-steamers navigating up the Murray Darling River (Guest 2016, p.8). The Murray River proved cost effective in time and reliability for carrying merchandise across vast distances inland. The paddle steamer is noted as being responsible for opening up large tracks of land for occupation before rail and mechanised machinery. In 1836, South Australia became a colony of the British Empire and in 1850 offered two thousand pounds as an incentive for an iron steamer to navigate from Goolwa (Aboriginal word for bend/elbow) up the Murray to the junction with the Darling. An information sign at the Marry Ann Reserve Mannum on the banks of Murray River states that the *Mary-Ann* was the first paddle steamer to leave Goolwa and sail up to the Darling in 1853 (see Illustration 23).

Similar to information signage at historical locations for the non-Indigenous Australians, Aboriginal nations along the Marry Darling River Basin are providing information signage showing their occupation, using both written and artistic expression. The purpose is to establish links to past and present through ritual performances such as art, storytelling, iconography, song and dance and other tangible objects like scarred trees, for occupation of Country and their relationship to Country. These rituals re-actualise cultural values towards the historical context and

human actions in a meaningful way for the sacred landscape, and how the sacred relates to Aboriginal experiences and perception of time and space.

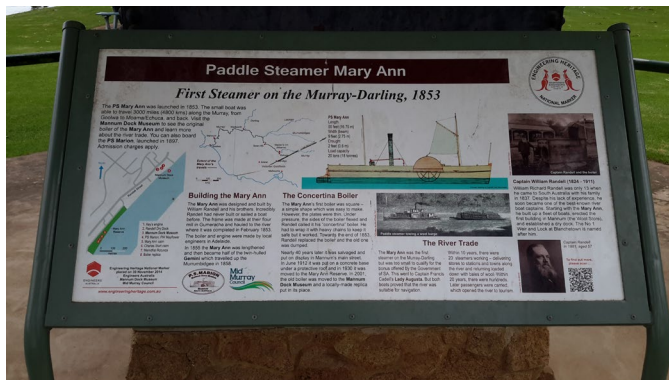


Illustration 23. Information signage of the Marry Ann on the banks of Murray River at the Marry Ann Reserve Mannum South Australia. Photography by Dale Kerwin 2018.

South Australia wanted the Murray River to provide an economic hub for Adelaide with wool paddle-steamed from Western NSW and

Victoria, and merchandise ferried up the river to various ports along the rivers. However, in 1855, Victoria became its own colony; using the *Imperial Act 1855*, and was separated from New South Wales; the border of these two states "followed the southern bank of the Murray River. The Murray River watercourse was mainly in New South Wales" (Guest 2016, p.10).

This discursive space of economic use cannot be more evident than with an examination of the Murray Darling Rivers during the colonisation of the Australian environment. This can be viewed through a shared historical lens. When we view water craft in 1853, a medal was struck by the South Australian Government and awarded to the first paddle steamer to steam up to Swan Hill from Goolwa in South Australia. This iron steamer, *Lady Augusta* beat the *Mary Ann* but the *Mary-Ann* continued up the junction of the Murray and Darling Rivers to Maiden's Punt (Moama) in New South Wales (Guest 2016, p.9). Captain Randell of the *Mary-Ann* was awarded £300 by the South Australian Government for his feat a further £400 was given to Captain Randell from the citizens of Moama and Echua NSW as this started a booming trade in goods up and down the Murray Darling Rivers.



Illustration 24. Indigenous Bark Canoe from New South Wales. Date accessed 20/03/2017.

George Augustus Robinson, Aboriginal Protector in Victoria, observed night fleets of Aboriginal canoes on the Murray River fishing (Pascoe 2014, p. 70). Davidson 1935: 140-175, Thomson 1957, Baker 1988:179, Ellis 1994:96-97 noted several of these



rafts or canoes were lashed together as a floating platform that were able to carry six to eight people. They also noted seeing houses constructed on the rafts and fires lit on them at night. The fire would be constructed in the middle of the houseboats and mud used as a base to protect the raft from burning. The fire had several purposes: to cook food, to act as a lantern to guide movement, to keep warm on cold nights, and for security. These rafts were steered and propelled by a person using a pole.

The First Nations' watercraft are Australia's original boats; they were built by Aboriginal communities nation wide using materials that were locally sourced (see Illustration 24 and 25). They were unique to local areas as the shape and use of the craft were dependent on the materials used and the environmental conditions of the Country. Water craft were used by Aboriginal people around the coastline, rivers and lakes from Tasmania across to Victoria up to Queensland and across the top end to Kimberley and north-west coast line by the salt water First Nations peoples. All of the First Nations people of the Murray Darling Basin major waterways acculturated the rivers and lakes by using water crafts.

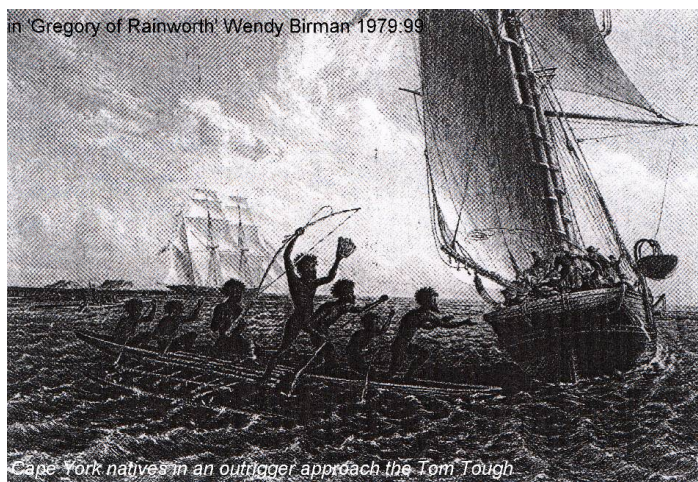
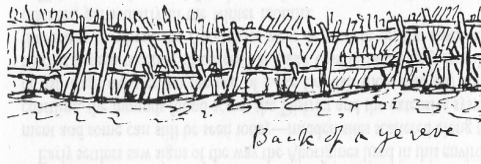


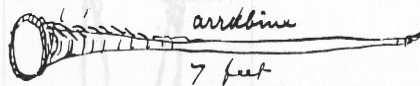
Illustration 25. August 28. A canoe came from the Prince of Wales Island and bartered several articles with the Schooner, and came alongside the *Monarch* ((in) Gregory 1859:7-8).

Within these discursive spaces for the economic colonisation of the Australian landscape, the Victoria Archaeological Survey, a section of the Victorian Department of Conservation and Environment, produced a booklet: *Aborigines in the Environment* (1990), edited by Anne Brown, describing Aboriginal use of the Murray River through archaeological evidence found along the water course.

The river and its anabranches were potentially the most productive environments, providing Aboriginals with fish, birds, shellfish, crayfish, and a range of plant foods. Birds, possums, snakes, lizards and plant foods were found along the margins of the river which were often colonised by red gums (Brown (ed) 1990, p. 6).



Robinson's sketch of the back of a yereroc or weir showing that the structure has been carefully erected to last: the holes in which eel pots were placed are to be seen across the base of the weir. The weir and eel pot below were sketched by Robinson at Tarrone, 30 April 1841.



The arrabine or eel pot was made of 'bark or plaited rushes ... having a small end to prevent the eel from rapidly getting away'. Those fishing stood behind the weir and near the small end of the eel pot. As each eel was caught, it was bitten on the head and put on a stick with a knob on one end (lingerer).

Illustration 26. *Bunjilaka Gallery* display Melbourne Museum 2004. Eel trap from Lake Condah and Hopkins River that provided a stable food supply all year round.

There is evidence of Aboriginal people of the Murray and Darling Rivers using complex technology for economics such as;

"the construction of canals and earthworks for the purpose of capturing eels and other fish. .... these structures were associated with large eel nets and in some instances with stone houses" (Anne Brown (ed) 1990, p. 6).

Illustration 27, was sketched by Robinson on his survey of Mt. Napier and Mt. Sturgeon in 1841. He recorded 13 large huts, and one in particular was 3.5 metres in diameter and 1.5 meters high, with two entrances. He maintained that these huts accommodated at least seven to eight adults. The drawing highlights that there is plenty of running water and weirs and dams and was the site of an 1842 massacre by settlers wanting to occupy the land ((in) Critchett 1990, p.66).

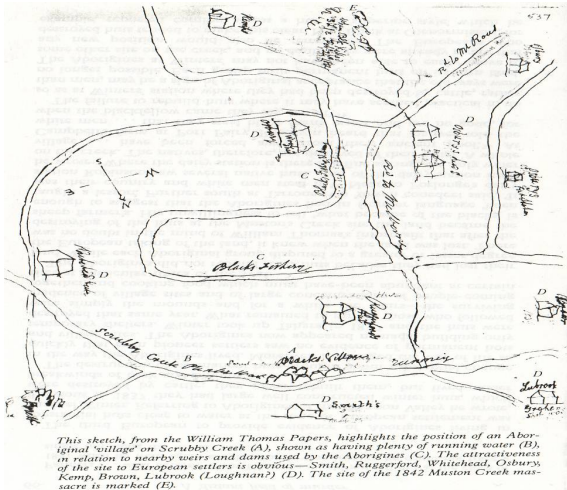


Illustration 27. In papers by Assistant Protector William Thomas he details the existence of an Aboriginal village ((in) Critchett 1990, p.66).

To pursue these economic activities Aboriginal people along the Murray Darling River lived in permanent settlements and built rafts and houseboats.

There are considerable accounts of well-constructed houses, as well as drawings of them

by George French Angas, Thomas Mitchell, George Augustus Robinson and writer William Thomas. Henry Fyshe Gisborne; reported on his journey of 1839 across the southern area of Victoria, that he sighted Aboriginal dwellings/houses, and that the huts were 'substantial' ((in) Critchett 1990, p. 59).



Josephine Flood (1990) proved that Aboriginal people lived sedentary lifestyles. Flood provides evidence of permanent villages with stone houses at Lake Condah in Victoria:

Stone houses with semi-circular bases and doorways all facing the same way are visible at Lake Condah, and the finding of stone tools in some of these indicates their uses goes back to prehistoric times. Their walls stood about a metre high and the roofs were of bark rushes supported on a wooden frame. The remains of more than 175 houses have been identified, and 146 have been found in a paddock, clear evidence that Aborigines here were living in large, reasonable permanent village (Flood 1990, p. 219).

The Gunditjmara people of Budj Bim (Mt Eeles), Victoria near Lake Condah were engineers of aquaculture, possum skin cloak makers, builders of fish traps, builders of stone houses for their settlements. The Gunditjmara people write that,

In the Dreamings, the ancestral creators gave the Gunditjmara people the resources to live a settled lifestyle. They diverted the waterways, and gave us the stones and rocks to help us build aquacultural systems. They gave us the wetlands where reeds grew so that we could make the eel baskets, and they gave us the food-enriched landscape for us to survive (Gunditjmara people and Wettenhall, 2010, p.7).

Within the discursive space of economics Europeans were not the first people to use the Murray Darling Rivers as an economic resource with the use of ferries, irrigation, agriculture, husbandry and sedentary life styles (permanent villages). Bruce Pascoe (2014) writes "the early history of Australia is crowded with references to Aboriginal watercraft and fishing techniques" (Pascoe 2014, p.70). Yet Australians remain strangely impervious to this knowledge and Aboriginal economics in general. There is ample written material and signage to attest to Aboriginal economics using the Murray Darling River and the anabranches. This evidence also provides the narrative to territorial ownership of the Country and waterways. Illustration 28 provides information of socio-cultural economics for the Wadiwadi, Wembawemba, and Barababaraba First Nations people of the Kerang Lakes area SA. The information board also states that,

various clans from across Australia, and Victoria, visited the area seasonally...Trade along the Murray River was common between other clans such as the Djadja Wurrung, Narinari, and Watha Wurrung Nations. These Nations traded for stone axes, grinding stones, fishing spears, and shields (Information board at Kerang on the Murray Valley Highway, see Illustration 28).

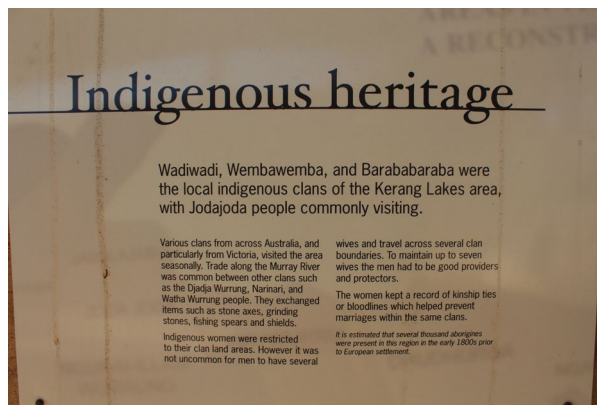


Illustration 28. Information board at Kerang on the Murray Valley Highway. Photography by Dale Kerwin 2018.

### 6.3 Socio-Cultural Economics

To further examine the economic use of the Murray Darling Rivers, Aboriginal Nations along the Murray River, like the Wadda Wurrung People of the Kulin Aboriginal Nation, would gather to play sport such as marngrook, (which today Australians know as Aussie Rules) (Sutton 2017, p.6). The whole length of the Murray Darling River was used to trade for tangible and intangible property. Paths also led to gathering places, these paths are known as songlines or storyways and traversed all the way to the Gulf of Carpentaria. G. Blainey (1975), Donald Thomson (1949), W.E. Stanner (1933-4), all describe the existence of the "great ceremonial exchange cycle where the social and economic were lock and key for the social bonds of trade" (Dingle 1988; p.19-20).

When I was very small my grandmother took me past Peery Lake and up to Nocolleche and Yulara Waterhole, on our way to Wanaaring to stay with family. These are all places in the Two *Ngatyi* Story, a story of great significance to the Paakantji people....My linoprint *Ngatyi Yarilana* is about the male and female *Ngatyi* at Yulara waterhole where they started their journey.... it will also help people from other communities and cultures understand how the *Ngatyi* made the landscape and introduce them to our Paakantji culture. (Badger Bates. (in). Beckett and Hercus, 2009, p. ix).

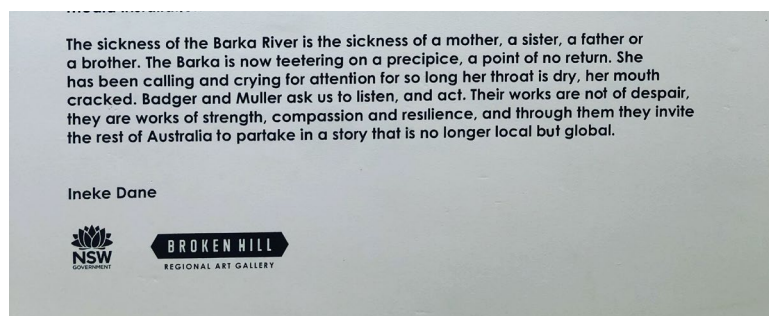


Illustration 29. *The Forgotten River*, an exhibition by the Broken Hill Art Gallery- showcasing the Barka-Darling River and the community that depends on its survival. Date accessed 18/07/2018.

The contemporary Australian landscape, and especially that of the Murray Darling Basin, is one of those discursive spaces that mainstream Australians implicitly interpret it as a European space. However, along the course of the Murray Darling Rivers there are many Aboriginal names for the landscape and Aboriginal economic activities for the use of the

rivers - Dubbo, Cowra, Canowindra, Narrandera and Cootamundra, just to name a few. Even some of the major rivers have Aboriginal names, for example the Paroo and the Barcoo.

The Aboriginal presence is invisible, but in this linguistic space, Aboriginal values and meaning are still being asserted for the waterways. It is lived and remembered for the cultural and spiritual values it brings to the Aboriginal people who still occupy the rivers. Badger Bates, an Elder of the Barkandji Nation, constantly uses the Aboriginal name for the Darling River- 'the Barka' (Baaka). Illustration 29 is an information panel at the entrance of an art exhibition held in June 2018, at the Broken Hill Art gallery that showcased an art exhibition: *The Forgotten River*, showcasing the Barka (Darling River) which was a collaboration between Badger Bates, Justine Muller and the Wilcannia community. The exhibition highlighted the concerns of the communities living on the Barka and the cry for help by the Barka. These concerns became real in December 2018, when it became known nationally as the Barka due to the mass fish kills - the Barkandji Nation call this 'Bukali' - (we will all die).

For First Nations People, water is a sacred source of life. The natural flow of water sustains aquatic ecosystems that are central to our spirituality, our social and cultural economy and wellbeing. The rivers are the veins of Country, carrying water to sustain all parts of our sacred landscape. The wetlands are the kidneys, filtering the water as it passes through the land (*Dhungala Baaka: Rethinking the future of Water management in Australia*, 2017; p.3).

In a Murray Darling Basin Authority report on the large fish deaths for the Lower Darling River in December 2018 and January 2019, which was also reported in major news networks and reports across the nation, it was reported that in a 40 kilometre stretch of the Barka downstream to Menindee Lakes over 100,000 fish died (*Fish deaths in the Lower Darling*; Date accessed 08/04/2019). *The Sydney Morning Herald* called it an "environmental disaster and a national disgrace" ((in) "*Darling River fish deaths a national disgrace 2018*". Date accessed 08/04/2019).

Inevitably when we enter into a discourse about the socio-cultural economics, the First Australian interest loses out, particularly when the economics of capitalism and political interests are at the centre of development. This highlights a viewpoint that values water as a commodity that can be used and abused and sold to the highest bidder. In the First Nations law/lore "water sources in Australia embed a spiritual connection and a responsibility on the part of the Aboriginals to safeguard that sacred connection" (GREENTUMBLE - *Valuable Aboriginal Water Knowledge*. Date accessed 05/07/2018). The Barka nation see this as "*Miwi*, the inner connection to lands, waters and all living things...The primary governing law of the *Miwi* is do not be greedy, don't

take any more than you need, and share with each other” (GREENTUMBLE - *Valuable Aboriginal Water Knowledge*. Date accessed 05/07/2018).

In 2007 the Yorta Yorta Nation called for a meeting of The Murray and Lower Darling Rivers Indigenous Nations (MLDRIN). They met at Echuca in Victoria and drafted the MLDRIN *Echuca Declaration* (2007) statement in regards to cultural flows. Members of the Murrawarri Nation for the NBAN also attended the gathering. At this meeting cultural flows were defined as:

water entitlements that are legally and beneficially owned by the Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social and economic conditions of those Nations. These are our inherent rights (*Echuca Declaration*, 2007. Date accessed 16/01/2018).

The paper *Recognition of Barkandji Water Rights in Australian Settler-Colonial Water Regimes* 2018, co-authored by Lana Hartwig, Sue Jackson and Natalie Osborne defines cultural flows as:

water entitlements that [would be] legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations’ (Hartwig, Jackson and Osborne 2018, p.18).

The theoretical discourses for socio-cultural flows inevitably are based on dominant cultural definitions and concepts:

In this enlightened, science-based world, a monetary value is placed on water as a homogenous, utilitarian good and commodity that can be bought, sold, traded and consumed. When water is stripped of its “culture”, the grand bargain between users, whether industrial or environmental, begins. Water engineers debate the different modes of managing water as supply, as storage and as a spill-over when rains come. The bids for megalitres take place. First Nations communities have always understood, in our day-to-day understanding of a fragile environment, that water is literally life. (*Dhungala Baaka: Rethinking the future of Water management in Australia*. 2017, p.16).

The Sovereign First Nations people’s rights to a secure cultural flows regime is currently under-acknowledged. In *Water injustices and potential remedies in indigenous rural contexts: A water justice analysis* McLean interprets it as a "serious water injustice" (McLean 2007, p. 30). She states that cultural flows are characterised by "sufficient flows in suitable patterns to ensure the maintenance of Aboriginal cultural practices and connections with the rivers and be instituted as essential components of river management" (McLean 2007, p. 30).

A further problem that hinders the acceptance of Aboriginal concepts for cultural flows, is both the "misrepresentation" of Aboriginal rights to water by the political-legal process, by policy makers and bureaucrats regarding how the States and Federal Governments define cultural flows (Hartwig, Jackson and Osborne 2018, p.17). Cultural flows have "been simplistically and restrictively translated by policymakers in essentialized ways to concern only what the state recognizes as 'cultural' water uses" (Hartwig, Jackson and Osborne 2018, p.18).

Hartwig, Jackson and Osborne (2018), explain that the First Nations assertions for "sovereignty, justice and reparations" become embedded in "liberal concepts" within the dominant political-legal process, policy makers, and bureaucrats (Hartwig, Jackson and Osborne 2018, p.18). Theoretically, providing the framework for equality for all, but realistically not based on the First Nations rights and concepts of cultural flows.

Deborah Bird Rose (2016), in her paper on Love at the edge of extinction – Lively Water, provides a question "If water is living, can it also die? Is water caught up in precarity, is it vulnerable? Is water, like life, variable and diverse; in this time of ecological loss, is it threatened?" (Rose 2016. Date accessed 31/01/2018). Rose draws on an Indigenous sense of water as life "Jila is a place of living water", as we know today living on the driest inhabited continent that "living water can truly make the difference between life and death" as experienced through the 2018 to 2020 drought (Rose 2016. Date accessed 31/01/2018). In regard to life and death without water Rose draws on an Indigenous sense for water states that "Jila, commands respect and care; it gives life and thus is a source of life" (Rose 2016. Date accessed 31/01/2018).

Deborah Bird Rose (2016) uses the construct of "eco-cosmology" where the First Nations people are 'living beings' and expressions of the creators "power for on-going life-shaping" powers of creation (Rose 2016. Date accessed 31/01/2018). The First Nations 'eco-cosmology' is expressed through Kinship relationships to flora, fauna, and seasons in which there is a cultural continuum and connectivity to the environment. This connection to water and all life voices in Aboriginal beliefs is an ethical response to the creator to care for and defend water as a living being as all creatures depend on water. Water is a giver of life all things in the environment, flora and fauna and human beings are witness to water as a giver for life. The Nari Nari people's relation with the Toogimbie Wetlands is based on this cultural connectivity and beliefs in 'eco-cosmology' (as discussed below) as do other First Nations people.

Deborah Bird Rose (2016) reminded us that all too often we take for granted this glorious, life-giving flow; we forget its individuality, its relationships with place, its flowing nature. Where as the language for water by the political-legal processes, policy makers, bureaucrats and academics have also engaged in discourses concerning the science of environmental flows and natural flows, (the definitions for environmental flows didn't gain any recognition until the 1990's). The natural flows have been impacted on, by and are defined by anthropogenic pressures for now and into the future, on waterways and rivers. These flows are controlled by humans.

Environmental flows are the quantity and timing of water flows required to maintain the components, functions, processes and resilience of aquatic ecosystems and the goods and services they provide to people. Unlike the natural flow regime, the environmental flow regime allows for some degree of hydrologic alteration. However, environmental flows are intended to mimic the patterns and ecological outcomes of the natural flow regime (*Environmental Flows Concepts*. Date accessed 06/05/2019).

Natural flows is also a term and definition that is contradictory, because since the 1800's the Murray Darling Rivers have had "anthropogenic processes" that have altered the natural flows by having dams, flows diverted, water extraction units implemented, and levees built (*Alteration to the natural flow regimes of rivers, streams, floodplains & wetlands - key threatening process listing*. Date accessed 06/05/2019).

The Murray Darling Rivers were a natural flowing watercourse, flowing from the head waters to the ocean or mouth. This has also impacted the Traditional Owners rights to access cultural flows for socio-cultural economics. In 1997, the Barkandji Aboriginal People submitted their Native Title application for their traditional home lands. It took 18 years of legal battle for the Barkandji Aboriginal People to be recognised as the Traditional owners in 2015. Illustration 30 is an information board at Fotherby Park Wentworth NSW that was erected by the Wentworth Shire Council in recognition of the Barkandji people's native title determination. Following the Federal Court of Australia's determination according the Barkandji People Native Title rights over the Barka, as the "Barka is central to their existence" (Hartwig, Jackson and Osborne 2018, p.1). However, due to Australian water governance regimes, the Barkandji are still fighting for their common law rights for water (Hartwig, Jackson and Osborne 2018, p.1).

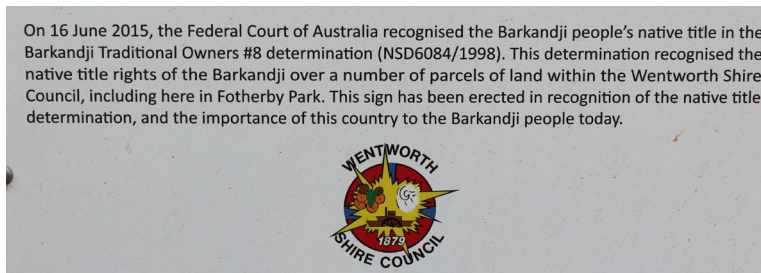


Illustration 30. Information board at Fotherby Park Wentworth NSW. Photography by Dale Kerwin 2018.

In Native Title determinations, Traditional owners to Country are accorded rights within common law, however, today in the dominant culture of Australia there are still "manifestations of colonial power relations, whether intended or not, (which) undermine their legitimacy" (Hartwig, Jackson and Osborne 2018, p.1). This effectively limits and undermines non-recognition, whether for cultural heritage, land, water rights, and economic rights.

In 2010, an article produced by *ABC Rural News* reported that,

Some Indigenous water users are angry that the plan to take more water for the environment won't help them do the cultural and wetland work they've already begun (Locke. Date accessed 09/05/2019).

The article focused on the Toogimbie Wetlands which is an Indigenous Protected Area (IPA) and managed by the Nari Nari Tribal Council at Hay, in southern NSW. 'Toogimbie' Wetland covers an area of 1,000 hectares and is located approximately 45 kilometres west of Hay in the NSW Riverina area. The wetland is highly significant to the cultural, spiritual, social and heritage values of the local Indigenous communities, and as such, is part of the 5,000 hectare Indigenous Protected Area, which adjoins the Murrumbidgee River (Booth, et al. 2016, *Toogimbie, The Riverina, New South Wales*. 'Pamphlet').

National Rural Reporter, Sarina Locke (2010), states that the Nari Nari Tribal Council "owns water licences in the Murrumbidgee" but has to pay for any "Cultural Access Water" (Locke 2010). Locke interviewed the Nari Nari Tribal Council Chairman Ian Woods who stated "it's expensive" ((in) Locke 2010). The Nari Nari Tribal Council pays "\$16,000 for 2150 mega litres, and \$30 a mega litre for pumping" (Locke 2010). A contradiction pointed out by Chairman Ian Woods is that the environment water, sent onto farmland and spilled out at no cost, is bought by the NSW Department of Environment, Climate Change and Water. Chairman, Ian Woods "says it's an equity

issue ..... We pay for that as Aboriginal people. They put that onto non Aboriginal properties in the catchment, and they get that water for nothing. They also get an environmental outcome but also the farmer gets an economic outcome as well” ((in) Locke 2010).

Nari Nari Tribal Council Chairman, Ian Woods further stated that

With the Cultural Access Water, we can't make economic gain." "We've been fighting (for seven or eight years) with State Government for a few years now, trying to get that waived, our fee, but at this stage that hasn't happened (Locke 2010).

Ian Woods explains that "under the Murray-Darling Basin Plan", the Nari Nari Tribal Council will "lose some of their general security water allocations", the Nari Nari Tribal Council will "get less revenue and won't be able to buy Cultural Access Water” (Locke 2010). Ian Woods points out that there are no economic outcomes for cultural flows.

Toogimbie was declared an Indigenous Protected Area in March 2004; this protection recognised that it was a unique cultural landscape with flora and fauna that needed to be protected for future generations of Australians. This declaration was made under the

World Conservation Union (IUCN) *Category IV – Habitat/ Species Management Area: Protected Area managed mainly for conservation through management intervention (Toogimbie, The Riverina, New South Wales. 'Pamphlet').*

In 2004, a joint media release by Greg Hunt, Parliamentary Secretary to the Minister for the Environment and Heritage, and Kay Hull, Federal Member for Riverina, stated that the focus “has been on improving the health of the wetlands within the Toogimbie IPA” (*Joint Media Release* 2004). This included protecting the remaining species of the "River Red Gums and Lignum wetlands” (*Joint Media Release* 2004). "Culturally, the traditional life of Aboriginal people in the region revolves around the wetlands-totem animals, medicine plants, cultural practices, hunting and gathering, and burials” (*Joint Media Release* 2004). The media release identifies with Indigenous beliefs in ‘eco-cosmology’ where there is a cultural continuum and connectivity to the environment and spiritual beliefs for the wetlands.

In reviewing studies on springs, soaks and claypans Owen Powell, Jennifer Silcock, and Rod Fensham (2015), in their paper on the loss of water in the 'Artesian Basin', used research based on archaeology, historiography and Aboriginal peoples oral history. They found that these springs and



claypans are 'vehicles of cultural continuity' as they are "places of intense economic and cultural activity....springs are rich sites of Indigenous material culture" (Powell et al 2015, p.73). The archaeological evidence consists of stone scatters such as "stone flakes, cores, grindstones, axes, and hearths" (Powell et al 2015, p.73). These are places of significant cultural heritage that supported "settlements along ancient trade" routes; these springs are also embodied in "traditional folk-lore, and mythology" (Powell et al 2015, p.71).

Following the rivers and overflow areas are the iconic river red gums; they have a deep spiritual significance to Aboriginal people who lived along the rivers; they also provide evidence of socio-cultural economics activities - as do the wet lands, springs, soaks and claypans. They reflect the spiritual and material culture of the First Nations people, as well as the history of the new Australians and their treatment of the waterways and the natural environment.

#### 6.4 River Red Gums: *Eucalyptus Camaldelensis*

The importance of the river red gums to the river and environment ecosystems has become a key focal point in conservation; there are tensions in Australian society's views towards cultural, social, environment and economics of the red gums. Matthew Colloff (2014), asserts that there is a change in Australians attitudes as "maturing values" to a "species as a reflection of broader societal values" (Colloff 2014, p. iii). The paddle steamers were used to open up the interior for economic purposes with the trade of goods along the Murray Darling Rivers. The river red gums were also used as fuel for the boilers in paddle steamers. Illustration 31 is an information signage about the River Red Gum located at Wentworth Interpretative Walk; the information signage provides the visitor information in regards to the non- Indigenous uses for the River Red Gum, its habitat and environment and what the Red gums were used for. The wood was used for timber sleepers on railway lines to further advance settlement in Australia, with the movement of people and goods. Further the wood was also used for the construction of culverts, bridges, wharfs, house framing, and fencing posts.



Illustration 31. "The wood has been used for railways sleepers, flooring, house framing, fencing, wood turning, and charcoal production" Wentworth interpretative Walk information signage River Red Gum.. Photography by Dale Kerwin 2019.

The river red gums grow to a great age, Aboriginal nations admire the tree, as they grow to massive size and live a long time; the age of the tree signifies the concept of strength and age as a balance. Many scarred trees and canoe trees can be found along the Murray Darling Rivers.

River red gum forests are the ancestral lands of Aboriginal people, the cultural and spiritual homes of riverland people along the Lachlan, the Murrumbidgee, the Murray and its tributaries. The plants and animals of the forests and woodlands are their totems, their law and culture (Colloff 2014, p.xiv).

Following the Murray Darling Rivers north from Goolwa; the red gums span three Australian States. They are extremely important in sustaining the ecology of these river systems. A survey by the *Australian Geographic*, discovered that nearly 80 percent of the river red gums along the Murray River in South Australia are "dead, dying or severely stressed by lack of flooding and rising saline groundwater" (Middleton 2010. Date accessed 15/05/2019).

In South Australia, the Kaurna people live along the River Torrens (of the Adelaide plains); it was known by the Kaurna people as *Karra-wirra- Pari* (River of the Red Gum forest). The Kaurna peoples Dreaming 'Tjilbruki' "is a complex and multi layered story" that provides a spiritual dimension to the creation of the environment, the law/lore and humanity. In the Dreaming story where 'Tjilbruki' cried his "luki (tears) formed the freshwater springs", the Kaurna people carved the Karra (River Red Gums), with circles around the tree trunk that symbolise fresh water, symbols for place and events, and incised in the tree flow paths that symbolise the flow of the river and life for *Karra-wirra- Pari* (Warriparinga. Date accessed 16/05/2019).

The Yorta Yorta Aboriginal Nation lodged their Native Title claim in 1994, for the river red gum forests of Barmah-Millewa - it was rejected in the Federal Court in 1997. The "Victorian, NSW, SA Governments, National Farmers Federation, Murray Darling Basin Commission" all opposed the application for Native Title (*Dhungala Baaka: Rethinking the future of Water management in Australia*. 2017; p.11-12). The Yorta Yorta people's Country includes the Murray-Goulburn region, and *Paama* (Barmah Forest). The Yorta Yorta people's Dreaming story of the creation of the *Dhungalla* (River Murray) and *bala* (river red gums) that line the river show that "their ancestor spirits link them inseparably and eternally to Country" (Colloff 2014, p.199-200). The Creator spirit 'Baiami', the great one, sent his women and a snake, the woman using a yamstick, to draw the line in the Country for the snake to create the path for the Murray River. 'Baiami' thundered and flashed lightning across the sky and sent rain to the earth where the woman and the snake carved a course for the Murray River and it filled up and flowed (Colloff 2014, p.199-200).



Illustration 32. Scarred tree  
Coorong South Australia.  
photography by Dale Kerwin  
2017.

There are many examples of Aboriginal nations along the Murray Darling Rivers carving the red gums, as an example see Illustration 32 located at Coorong SA. Not only the Kaurna and Yorta Yorta people, but also the "Wailwan people of the Macquarie Marshes, the Wiradjuri people of the Murrumbidgee and Lachlan and the Kamilaroi people of the Namoi and Gwydir" carved distinctive, intricate patterns into the heartwood of river red gum trunks (Colloff 2014, p.xiv). The uses, as noted earlier, were for rafts, markers for burial sites, boundaries for Country, markers for the storylines and songlines and cultural markers (Colloff 2014, p. xiv).

For Aboriginal people, the Country is imbued with a spirit, the Country speaks to the very conscience, the red gum trees are a rich tapestry of the creators work and as an example of the storylines/songlines, and power of the creator. For an example of the storyways the First Nations people of the Todd River area have the caterpillar dreaming; and the ancestral beings of 'Mparntwe' (Alice Springs). Further the red gum tree is associated with the story of the *Kwekatye* (uninitiated boys and young men), it is a songline journey from "Port Augusta through desert Country and across the Centre, ending on the north coast of Australia. Ancient river red gums in and around Alice Springs stand for the *Kwekatye* youths" (Colloff 2014, p.199). The songlines follow the mound springs and lakes and link the trading ways and socio-cultural economic relationships across the Country.

These socio-cultural economic relationships of the First Nations people across vast distances can be read in stories like that of *Meralte* (canoe). *Meralte* is a story from the Dreamtime for the Arranta people of Lake Eyre region; it is a story on how the knowledge of canoe (*Meralte*) making came to the Arranta people. The story is based on the storyways/songlines following the stars constellation, when two children walked from Kopperamana (Arranta Country) to Ngarrindjeri Country on the Murray River to take back to their people the knowledge on how to build canoes. *Meralte* is a 10,000 year old story about "fear and friendship, cruelty and compassion, being more important than material possessions" (Graham Jenkin 2003, back cover). This story maps out the Great Central Trade Routes from the Cape York through central Australia to Ngarrindjeri Country on the Murray River where tangible goods and intangible knowledge was traded; this is evidenced by the scarring on river red gums for canoe making.

The river red gums link people to Country and socio-cultural economics, in which the creator provided the red gum trees as indicators where water was to be found, as a resource to provide everyone with the basics of life: tool making, water crafts, ornaments and magic, and strength through aging and passing of knowledge from Elders to the next generation. We can see this with I.P.A areas where the river red gums are being protected and the whole of the Country is again breathing with life.

Similar to the Yorta Yorta Aboriginal Nation Native Title claim in 1994, for the river red gum forests of Barmah-Millewa, is the fight by the Ngarrindjeri peoples of South Australia to protect a sacred place - Hindmarsh Island (1990-1995) from a bridge being built from Goolwa to the island. The fight was between the Ngarrindjeri people and developers. It divided the Ngarrindjeri and non-Indigenous people where there were questions over secret women's business, bureaucratic interference and fraudulent claims over the commercial venture. There were also questions raised about the Ngarrindjeri people's cultural continuum with the story of Ngurunderi story. The Ngurunderi Dreaming "begins where the Darling River joins the Murray", Ngarrindjeri means people of the Ngurunderi, the "Ngurunderi story covers all of Ngarrindjeri" peoples Country (Simons 2003, p. 23-25). "It includes the origin of the Ngarrindjeri belief that the dead travel west, and from there to the sky world" (Simons 2003, p. 23-25). The Ngarrindjeri people provided a comprehension story of Country, spirituality and emotional qualities for protecting Country and belief systems within the environment. The link to Country continues for Ngarrindjeri people through their spiritual connection with the land they cherish, with their management of the environment. However, the fight by the Ngarrindjeri to protect a sacred place, Hindmarsh Island (1990-1995) caused conflict and questions about Aboriginal spirituality, particularly emotional qualities for protecting Country and belief systems for the environment.

An Aboriginal cosmology story that traverses the Country 'the Seven Sisters constellation - the Pleiades' (Tjukurpa) was told by the Ngarrindjeri women and subsequently was discounted by non-Indigenous Australians as a work of fiction. An anthropologist with the South Australian Museum who appeared at the Royal Commission said that "the museum's written records, dating from Taplin onwards, had a more effective way of preserving information about Aboriginal culture than the oral traditions of the people themselves" (Simons 2003, p.143). Aboriginal people see this as cultural arrogance in our belief systems where our etching, scarring and geographical features forms our cultural continuum in passing on knowledge for 'eco-cosmology' by storytelling. These to Aboriginal people are forms of pictorial written expression.

The story is about Aboriginal women's beliefs and the relationship of people to their Country and the sky world (Simons 2003, p.141, 209, 318). The story of Tjukurpa the creation spirit of the Seven Sisters constellation - the Pleiades, the songlines was told in a major exhibition at the National Australian Museum in 15 August 2017. Margo Neale was the lead curator, and editor of the book *Songlines Tracking the Seven Sisters* (2017) was published for the exhibition, complete with art works and photos of Country. The Seven Sisters songlines dreaming tracks are amongst the most extensive dreaming tracks created by the ancestral spirits/beings that traverse the continent of Australia, and is told in many languages from North, South, East and West of Australia. The Seven Sisters songlines dreaming tracks are carved in rock art. This cultural expression is evidenced at GraveVale Station Barcaldine Qld. As part of First Nations cultural continuum Aboriginal children are taught the names and meanings of the stars and constellations and how the songlines and storyways follow these. The river red gums are also part of these songlines, storyways as told in the story of *Meralte* (canoe) and they are told in story and continue today as a cultural continuum in ceremonial rituals of the First peoples of Australia.

The story of place is important to the spiritual connection to Country, and the mental and physical being of First Nations people. "Dreaming strings fix country and people, demarcating human and geographical identity. Some Dreaming stories belong to a particular locality while others travelled through areas establishing connections between them" (Rose 1992, p. 52-56). Dreaming stories, the songline/storyways, relate to socio-cultural economics activities of the First Nations people and can be mapped.

## 6.5 Water Spirits



Illustration 33. The Mulyawonk (Bunyip) information centre at Mary Ann Reserve Mannum South Australia. Photography by Dale Kerwin 2018.

"There is an abundance of early records concerning Aboriginal beliefs in the existence of water spirits" in Australia and South Eastern Australia (Clark 2007, p.142). One of these is the Mulyawonk (Bunyip); this water spirit from the dreaming traverses the continent of Australia and takes on many forms and story variations. The First Nations people in Western Australia also have a story of the

Bunyip water spirit called 'Marghet', "a male with short feet, large head, and a big mouth with many teeth" as he pulled children underwater by their feet whenever he could (Clark 2007, p.142). These spirit beings have also been shared with the new Australians since first contact and recorded in literature.

Illustration 33 is an attraction that tells visitors the story about Mulyawonk (Bunyip) traditionally the Bunyip story is passed on by the Elders, it is a story of a greedy man (Ko: mi) long ago who caught too many fish, more than he needed. The Elders were so angry with his selfish act and him not respecting traditional law of not taking too many fish. So as punishment they turned him into the Mulyawonk (Bunyip), a creature that is half man and banished him to the river forever. Children are told never to swim alone or take more fish than you can eat from the rivers, lakes and pools. Mulyawonk would pull children underwater by their feet whenever he could. The Bunyip story is known along the waterways from South Australia through Victoria, New South Wales and to the border regions of Queensland and Northern Territory (Clarke 2007, p. 141 - 161).

We can see this with nursery rhymes such as *Ring a ring a rosie*, and mythologies such as the *Loch Ness Monster* and the *Phoenix*; the importance of Aboriginal and non-Aboriginal folklores promotes cultural exchanges, and helps in maintaining cultural information across generations.

[I]n order to establish continuity between past and present, ritual performances rely on formal acts and utterances as they re-enact a particular narrative of events. Ritual thus has the potential of re-actualizing fundamental cultural values, both in different historical contexts and through meaningful human action.....becomes fully meaningful at the moment it can be related to the human experience and perception of space and time (Hans-Peter, Gehring 2012, p.91).

When looking at the First Nations spiritual beliefs, main-stream Australians, since the time of invasion and colonisation, have viewed these spiritual beliefs as myths; however, myths are a universal human invention. Myths are a deep source of story in the human psyche and portray a richness of incident and description through song, dance, storytelling, painting and the physical natural environment. The ancient carvings and paintings of man beasts can be found in caves of countries like France, Canada and China. Myths generally explain a belief or an event in nature.

In Australia there are many different creation stories that exist between the 350 First Nations, however, because of the diversity among Aboriginal communities in Australia the Dreaming is eclectic, dynamic and alive. To the First People of Australia the Dreaming is a time when the spirit

gods or beings were being formed. It is a time when the cultural heroes (gods) travelled across the land creating Country, creating sacred sites and other significant places. It was a time when language was given to people, a time that is antecedent to our own time. It is also a time when the spirit gods created the rivers, lakes, hills, mountains and lore/law (April Holloway. Date accessed 05/07/2018).

## **6.6 Stone Arrangements**

The First Nations people created places that are significant in that they have spiritual, historical, social, educational, and natural resource use; these places range from small ceremonial sites, sacred sites to mountains and lagoons. These places contain evidence of Aboriginal cultural activities where key cultural traditions are undertaken on Country which relates to important cultural events or Dreamtime events where the mythological stories are represented in ceremony. These ceremonial sites are usually recorded in songs and stories. Also the ceremonial sites would be marked by stone arrangements as Totems and pathways would lead them along the songlines/storyways. These represent a tangible manifestation of First Nations people's beliefs both religious and ideological, in physical form as stone markers/totems and bora rings. These ceremonial sites would be located near water and are a visual remains of an important ceremonial site.

For an example the 'Gummingurru Aboriginal stone arrangement site complex north of Toowoomba on the Darling Downs, Queensland. The Jarowair people are the Traditional Custodians of the stone arrangement site. The Jarowair people have established an educational centre at the site to pass on cultural knowledge to younger generations and it is also a tourist site.

In Southern Queensland the head waters for the Darling River are located and flow south westerly into the Murray River. One of these is the Condamine river it located on the Darling Downs. The Darling Downs extends to the alluvial flood plains of the Condamine River which flows south west and under goes several name changes in which it becomes the Balonne then the Culgoa before it flows into New South Wales and the Darling river (*Discover Australia* 1991, p.194-195).

Jane Lavers (2010), uses a cultural heritage methodology to interpret Aboriginal stone arrangement sites of the Jarowair people of Queensland. Lavers provides evidence to the intangible and tangible by using iconography, cartography and geology to determine the historic identity of Aboriginal communities. The landscape presents archaeological symbolic significance to interpret places of

living heritage for connection to Country, and cultural memory. The site provides evidence of tangible heritage of long term ritual significance that has shaped the historical identity of the Jarowair peoples (Lavers 2010).

The past and present-day activities of creator and ancestral beings connect present-day people through stories, experiences, and memories and give the landscape and its elements a dynamic spirituality ( Lavers 2010, p.3).

The Gummingurru stone arrangements are evidence of the songlines and storyways of Aboriginal people from the New England plateau New South Wales, southwest Queensland, Carnarvon Gorge, and the Dawson-Burnett region. They travelled by walking from as far away as New South Wales to enjoy the bunya feast at the Bunya Mountains (Piotto 2012, p.1). The Bunya Mountain Gatherings were held annually and involved feasting on the ripe nuts of the Bunya Trees (*Araucaria bidwillii*), the performance of ceremonies, and activities that established alliances between groups.

Acculturated paths located at the Murray and Darling River junction in NSW, are known in the Traditional owners language of the Barjindji and Kureinji people, as Katha-Thumpi meaning 'deep waterhole'. The junction was also the boundary of the Barjindji and Kureinji people; it is an important meeting place where trade for both tangible and intangible property was traded (*Welcome to Australia's Great Rivers Murray Darling Confluence: Where the Murray and the Darling Meet*). "The routes of exchange appear to correspond to the sacred paths of the Dreamtime.... On the western shore of the Bulloo Overflow" is a stone pathway the rocks are marked with specific patterns and have been quarried (Mullins et al, 1988, p.14-15).

Aboriginal stone arrangements are a common feature in the archaeological landscape of Australia. Stone arrangements are purpose built structures. Stone arrangements are usually classified as being used in one of two ways: for ritual and ceremonial purposes with the patterns often described as pathways, cairns, circles, and geometric forms; or for secular purposes, such as fish traps, hut bases, and hunting hides (Piotto 2012, p.1).

## **6.7 Creation of the Murray River**

Aboriginal nations had Dreaming stories that were passed orally down through the generations about the seas, rivers, creeks and physical features of the landscape. One story that travels the geography of the Australian continent is that of the 'Milky Way'; it is seen by many Aboriginal nations as the great river; Aboriginal nations from desert Country call it the Rainbow Serpent,



central desert nations say it is the footprint of the Eagle (Norris 2009, p.4-6). The Kaurna people of Adelaide South Australia called the Milky Way 'Wodili parri' (Groome, and Irvine 1981, p.25). To many Aboriginal nations the coal sack in the Milky Way is called the Emu.

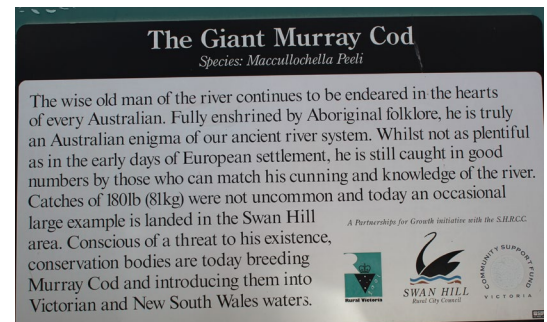


Illustration 34. Murray Cod at Swan Hill and interpretative signage. Photography by Dale Kerwin 2018.

Illustration 34 is a physical attraction and interpretative signage of the Murray Cod (species: *Maccullochella Peeli*) that tells the story of “the wise old man of the river” and how the Murray Cod is “enshrined by Aboriginal folklore” (*The Dreaming and the Environment* 1988; p.41-42). The creation of the Murray River is a Dreamtime story as told by the Ngarrindjeri people of South Australia and the great river in the night sky. Long ago, the River Murray was only a small creek. The Spirit Ancestor, Ngurunderi, chased a giant cod, Poni, down the River Darling and into the Murray. As he was chased, Poni thrashed his tail from side to side, carving a deep, wide channel. Each time he dodged the hunter’s spear, Poni’s tail created bays along the banks. When he reached the place we call Morgan now, he turned very sharply to the south and raced on. At Kabuthut (now called Mason) Ngurunderi made a mighty throw of his spear and the spear struck Poni’s tail, and he charged straight ahead and sank beneath the waters of Lake Alexandrina. Ngurunderi made two rafts which he later pulled up on shore; they can be seen as two hills at Mount Misery. He finally caught Poni and cut him into seven pieces which become the seven kinds of fish still found in the river now (*The Dreaming and the Environment* 1988; p.41-42).

Ngurunderi, the Great Spirit, after killing the biggest fish in the universe rested. After recuperating he went looking for his wives, but knowing that he had to travel far over land decided to leave his magic canoe that he used to travel around the waterways that Poni created in a safe place. Ngurunderi climbed the two hills at Mount Misery and lifted his canoe into the night sky where there was a dark empty space - the Ngarrindjeri people of South Australia call this Ngurunderi Juki (the Milky Way) (Burra, 2001; p.8).

## 6.8 The Creation of the Darling River

It is known that a large Aboriginal population occupied and lived along the Darling River and its tributaries (Darling Basin). For example the Malyangaba and the Wadigali nations sup-groups of the Malangaba Nation occupied the Bulloo Overflow region, they interacted and traded with the nations of the Lake Eyre Basin. The nations that lived along the Darling and further west were Bagundji nations, the Bagundi, Danggali, Wilyagali, Bandjigali, Wanywalgu and the Barundji nations. The nations that lived on the plains of the Darling (north-western NSW) were Euahlayi, Wiradhuri, Wongaibon and the Ngemba who interacted and traded with the Kamilaroi nation. (note historically due to the anglicised spelling of Aboriginal nations it has changed over time some are still being spelt differently today).

In 2008, the then Murray–Darling Basin Commission, purchased 10,423 mega litres of water from a private storage facility in Queensland to provide water across the border to the Dharriwaa (Narran Lakes) in northern NSW.

The Narran Lakes water purchase was the first of its kind in Australia. A substantial volume of physical water was purchased at market prices for immediate environmental use (*Murray–Darling Basin Authority. (2009). Date accessed 25/04/2019 p.5).*

The Dharriwaa (Narran Lakes) has significant cultural values for the Yuwaalayaay/ Gamilaraay First Nations, who have established an Aboriginal youth and Elder's camp at the reserve. Located in the reserve are important cultural sites - shell middens, hearth sites with clay ovens, quarries, rock wells, scarred trees and burial sites. The Reserve is where storyways and songlines follow the natural springs, waterholes along the Narran River where people come together for socio-cultural economic gatherings. One of these is these storyways is the Dreaming path of Baayami/ Baiame. Who shaped the landscape and handed down laws/lore and traditions. Narran Lakes fills up with summer rainfall from the upper catchments of the Condamine -Balonne, Warrego and Paroo rivers (*Murray–Darling Basin Authority. (2009). Date accessed 25/04/2019 p10-11).*

The Ngemba, Murrawri, Ualarai/Yuwalaraay, Euahlayi, Weilwan, Barabinja/Baranbinja, and Kamilaroi nations met at Dharriwaa (Narran Lakes) near Walgett for socio-cultural economics; they held corroborees, traded fur, stone implements, intangible knowledge and medicines (*Dreamtime Water creation stories. Date accessed 05/07/2018).*

A Dreaming story that these nations have in common is that of Baiame (the Great Spirit father) and his two wives Birrahgnooloo and Cunnunbeille who created Dharriwaa (Narran Lakes) (*Dreamtime Water creation stories*. Date accessed 05/07/2018). It is recognised that Baiame is an ancient sky god and 'father of all things'; he was master of life and death and answered the rain makers call for rain. Birrahgnooloo (goddess of fertility) also answered the rain makers call for floods (*Aboriginal Mythology*, Date accessed 05/07/2018).

Baiame came down from the sky to the land, and created rivers, mountains, and forests. He then gave the people their laws of life, traditions, songs, and culture. He also created the first initiation site (*Baiame*. Date accessed 22/07/2019).

At Brewarrina in the Dreamtime, the ancestral creation being Baiame and his two sons Booma-ooma-nowi and Ghinda-inda-mui built fish traps (Ngunnhu) to his design by throwing his net over the river at the Junction of the Darling River and the Barwon River, at Brewarrina on the Darling River, New South Wales. The Nagemba nation are the Traditional owners of the area and are custodians of the Ngunnhu (fishtraps). Illustration 35 information signage state that “The Brewarrina fish traps are the oldest known man made structure” and are protected as such.

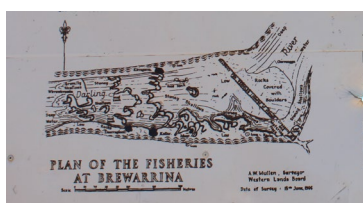
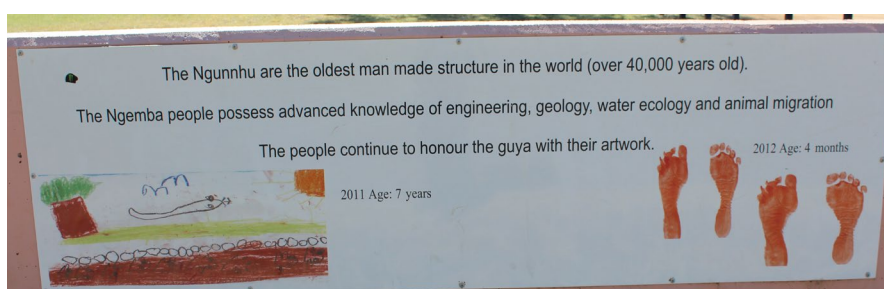


Illustration 35. Brewarrina fish traps (Located on the Barwon River and the Darling River junction) signage at Brewarrina. Oldest man made structure in the world. Photography by Dale Kerwin 2018.



In the Dreamtime, 'Baiame', after constructing the Ngunnhu (fishtraps), allocated particular traps to each family group who were responsible for their use and maintenance. The Nagemba people had advanced knowledge of river hydrology and fish ecology: during spring the fish would migrate up the Darling and into the fish traps. The Nagemba people would invite surrounding nations to a festival to trade, settle disputes, trade intangible knowledge, perform corroborees. These First Nations are the Morowari, Paarkinji, Weilwan, Barabinja, Ualarai and Kamilaroi. Today these nations still have a strong social, cultural, economic and spiritual connection to the Ngunnhu and

the area (National Heritage Places - *Brewarrina Aboriginal Fish Traps* (Baiaime's Ngunnhu). Date accessed 05/07/2018 and Mullins et al 1987, p.18).

A.W. Reed (1999), In his works on *Aboriginal Myths, Legends and Fables*, gave a biblical description to Baiaime, "Having made a world in which man and the animal could live, Baiaime looked at it and, in the majestic words of the first chapter in the Genesis, he saw everything he made, and behold, it is good" (Reed 1999, p. 20).

## **6.9 Conclusion**

Aboriginal people say that they have been here on the continent of Australia since time began, and the ethos of the creation spirits survives in the work of Indigenous activism and land rights. Indigenous national identities and connection to country have remained intact and are imbued with spiritual significance. This spirituality was maintained through cultural practices lore/law, language, rites and religious practices in many Aboriginal communities and has not been successfully suppressed despite over two hundred and 30 years of colonialism (Sutherland 2011, p. 94).

Rites, tangible and intangible knowledge such as songs, iconography, and the stories themselves are passed on from generation to generation. These are linked with the storyways that travel the length of the Murray Darling Rivers, and the many sacred sites along the water course; such as the Brewarrina fish traps or the beliefs in the spirit ancestors of Baiami, Ngurunderi, Mundaguddah (Murrawarri Rainbow Serpent) and Bunyip. It is an ethos of deep connections between one's Ancestors, and land or country. These connections are traced back to ancestral beings who formed the land, created lore/law, language through their deeds in the Dreaming. The ability of the First Nations people to plot and map the Murray Darling waterways for the purposes of socio-cultural economics has largely been unrecognised. When considering that through ritual activities of song, dance, drawings, etchings of tangible and intangible knowledge, it can easily be understood that the Australian continent was crossed with storyways and songlines which followed the waterways and laid down in the Dreaming. The creation of the systems for life, the land, environment and landscape by the great being and other ancestral entities is remembered through celebrations that were in tune with the seasonal patterning of the waterways. This celebration of life is seen through and relived, by hunting, agricultural and life necessities.

As we have seen in this chapter, the First Nations people have a tradition of socio-cultural economics: Aboriginal nations along the waterways used directional aids such as songs, sacred trees, message sticks and the Dreaming stories to navigate the physical features of the environment. Today there is an awareness of the First Nations socio-cultural economics through the advocacies of the Murray Lower Darling Rivers Indigenous Nations (MLDRIN), Northern Basin Aboriginal Nations (NBAN) and North Australian Indigenous Land and Sea Management Alliance (NAILSMA) committees which began with the Yorta Yorta peoples call in 2007.

The next chapter will explore the shared histories of the waterways by following the footsteps of the explorers, settlers, shearers, and occupation of the land along the banks of the Murray Darling Rivers. The chapter will also explore the western and Aboriginal constructs of the meetings of the two worlds and the assimilation of the First people's knowledge of the waterways into the new Australians sphere of knowledge and use.

## Chapter 7 Shared Histories: The Footprints in Sand

### 7.0 Introduction

Nationalism has led to the institutionalisation of history and social memory whereby it "elicits social imagination and desires" for the community and is therefore "remade, both literally and figuratively" (Healy 1994, p. 36). Aboriginal Australians can experience this 'social imagination' with the history of the invasion of Aboriginal soil, and the beginning of the whitefella 'water dreaming' following the invasion. Australian history became "rational and heroic civilising; it formed an historical sensibility" (Healy 1994, p. 39). In this sense, history fashioned the conquest of the soil.

As I said, it might help us if we non-Aboriginal Australians imagined ourselves dispossessed of land we had lived on for fifty thousand years - and then imagined ourselves told that it had never been ours. Imagine if ours was the oldest culture in the world and we were told that it was worthless. Imagine if we had resisted this settlement, suffered and died in the defence of our land, and then were told in history books that we had given up without a fight (Paul Keating 1992, *Redfern Speech*).

However, very little is mentioned in the Australian public history about the contribution Aboriginal society made during the settlement history of the country. Traditional Australian history for popular consumption generally represents the triumphant white explorers and celebrates the gallant heroic British taming of a wilderness, consequently any Aboriginal contribution is marginalised. Aboriginal society contributed well-maintained land resources, but it also contributed significantly in cultural and social terms. It can be argued that Aboriginal society has provided significant reference points for an Australian national identity. For example, Aboriginal people have provided words to the Australian lexicon and Albert Namatjira arguably showed Australians how to paint the Australian landscape. The representation of images from the past imbues a 'collective consciousness' and symbolises a national identity by commemorating the person and events from the past (Horne 1984, p. 27).

This chapter describes and provides a historiographical reflection to the overwhelming evidence to the historic meeting of the First Nations people and the Colonists. When we view the culture wars a two day forum *Contested Frontiers* convened by the National Museum of Australia in December 2001, "brought together contemporary scholars" to examine the frontier conflict and "the nature of history and memory turning" (Amanda Nettelbeck (on line article), p.190. Date accessed 10/13/2020). It focused on how has this post-colonial and anti-colonial work presented into

popular memory in and memorialisation in an understandable, chronological and meaningful way (Amanda Nettelbeck (on line article) Date accessed 10/13/2020). From this forum Bain Attwood & S.G. Foster edited a book *Frontier conflict: the Australian experience* that had “contributions from Reynolds, Windschuttle and another 13 scholars of Australian frontier history” (Nettelbeck (on line article). Date accessed 10/13/2020).

Scholars, Henry Reynolds (1990), Bain Attwood (2003), Elder Bruce (1998), Raymond Evans (1988), John Maynard (2018), all have explored the past and exhibiting the history and culture of the entire Australian nation and the contribution Aboriginal people made to the settlement history. Through education curriculum, artist expression and reflecting on the contribution Aboriginal people made to the settlement history. Today there is enough evidence- this is oral, anecdotal, official, judicial that is actual and persuasive to the contribution Aboriginal people made to the settlement history of the Murray Darling Basin.

The included narratives bring together sources that until now had been scattered throughout the historical literature and landscape of Australia. The chapter will "commit to the interpretation" of "other texts as bearers of collective memory" to make room for rebirth in a ritual of sacred ceremony (Inglis 1998, p. 7). This is similar, to the age old tradition of Aboriginal people incising on the 'sacred tjuringas' for increase within their community (and connectivity to the land), and also inscribing the First Nations position back into country to continue and share the meaning of the sacredness for country (Inglis 1998, p. 440) as can be read in the many information interpretative boards along the waterways.

These narratives will help define Aboriginal peoples' relationships to country, waterways and the environment through the complex social contribution of rights and responsibilities. These complex relationships are identified by traditional rights of access, use of and distributing resources and the cultural rights to continue to manage these resources for future generations. These narratives will be a ready reference point about cultural contributions and cultural continuation through time. The historical materials and Aboriginal oral histories add the Aboriginal image into the collective memory of Murray Darling Basin. More importantly, the chapter shifts the image of Aboriginal people during the settler era of colonisation from that of the 'savage' or the romantic 'noble savage'. The narratives provide different memories for the imagination of that period of Australian history. They provide a bridge with which to create positive images of Aboriginal culture, as well

as an understanding of the current themes in Australian history for country, water and environment. In so doing, the narratives enhance our understanding of the past (Darian-Smith and Hamilton 1994, p.2). Investigations such as these, which explore Aboriginal social memory, provide an interpretative framework that utilises shared experiences and memory in the construction of history regarding the environment (Darian-Smith and Hamilton 1994, p. 3).

"Historiography is iconoclastic and irreverent...it operates primarily by introducing doubt, by running a knife between the tree of memory and the bark of history" (Hamilton 1994, p. 9). These narratives do the opposite; they stitch the Aboriginal tale to the already known fabric of history so that it becomes a shared history. The narratives tell of the Aboriginal contribution and assistance given to the non-Aboriginals as they planted themselves in the landscape of Australia. It will bring to life the Aboriginal people who played a role in the shaping of Australia. It is hoped that this chapter will provide a fresh approach that will infiltrate popular knowledge about the contribution Aboriginal people have made to Australian history.

The narratives in this chapter contribute to already developed knowledges of the history of colonisation as they reaffirm the First Nations participation in the settlement process for the colonisation of the country and waterways. The study will seek to represent the First Nations people's voices and portray personalities beyond "the few places where Aborigines were remembered on monuments in colonial Australia; they were represented as killers of innocent, as loyal helpers, and as a race doomed to extinction" (Inglis 1998, p.24).

The detailing of cultural memory, provides a remembering process for a broader understanding of the similarities of experience for both Aboriginal and non-Aboriginal people (Hamilton 1994, p. 27). This will help to create a common perception of Australian history for the environment and erase the "blindness of earlier observations" that became fact (Inglis 1998, p. 7).

## 7.1 Power Differentials'



Illustration 36. A wall painting at Wilcannia of an Aboriginal watching a paddle steamer as evidence of 'cultural incomprehension'. Photography by Dale Kerwin 07/05/2018.

Illustration 36 is a painting on a wall at Wilcannia NSW, it depicts an Aboriginal watching a paddle



steaming on the Darling River and the 'cultural incomprehension'.

The accommodation of 'mutual comprehension' and 'power differentials' of the new Australians and Aboriginal people needs to be examined, in order to understand the social relations of the era for 'colonial intrusion', and flag the social outcomes for the Murray Darling Rivers and control of the waterways (Evans 1992, p. 8-9). This chapter examines the First Nations environmental management and social relations along the waterways and what were the consequences of the "colonial intrusion" for environmental management and social relations along the waterways that were manifested through "cultural incomprehension" and mistrust (Evans 1992, p. 9).

The Aboriginal landscape, created and maintained by the practice of fire-stick farming, presented a space that appealed to the eye of the Europeans, and gave the squatter and pastoralist an advantage in terms of the exploitation and claims to Aboriginal resources. Aboriginal space was beginning to be filled not only with livestock but also with the European imagination. Private enterprise capitalised on the knowledge provided by surveyors; it moved into Aboriginal space and occupied it. Entrepreneurs opened up their own communication paths along which they transported goods around the landscape as can be witnessed by the use of barges and ferries up and down the Murray Darling Rivers. Illustration 37 details this trade and is remembered along the waterways with signage and monuments.

"Collective memories are all around us in language, actions and material culture of our everyday life" (Darian-Smith and Hamilton 1994, p. 4). Through the use of monuments, collecting institutions and the educational curriculum, Australians have established a 'ceremonial agenda of obligatory rites' which valorise the vanquishing of the Aboriginal world (Horne 1984, p. 11).

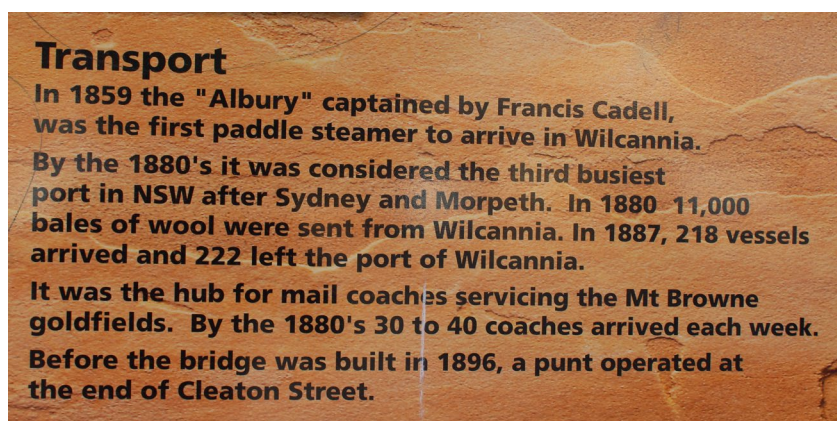


Illustration 37. Information board at Wilcannia. Photography by Dale Kerwin 07/05/2018.

The construction of the gallant surveyor and explorer who were made into an icon, authenticates the dominance of the European over the so-called savage world, and relegates Aboriginal people to the position of silent witnesses to the appropriation of the landscape.



Illustration 38. Monument to Matthew Flinders, Adelaide, South Australia. Photograph by Dale Kerwin, 2007.

Illustration 38 a statue of Matthew Flinders in Adelaide SA is an example of non-Indigenous people commemorating the past. The commemorating of the past honours and valorises people "as great nationalists" for the purposes of inventing a new Australian character (Horne 1984, p. 31). Through the teaching of curriculum, educators have affirmed the legitimacy of European domination by commemorating the feats of these gallant figures through "narratives plotted in terms of British expectations of both themselves and the natives" (Clendinnen 2005, p. 111).



Memorials commemorate "persons and historical events", and in sociological terms are an "institution of collective memory" that play a role in reinforcing culture and politics (Kupferberg 1999, p. 197). They construct their own social status by being privileged and located in "prominent locations" in public spaces where they are visible (Kupferberg 1999, p. 197).

Illustration 39. A tourist map tracing Major Mitchell's incursion into the Aboriginal landscape of Queensland. Photograph by Dale Kerwin, 2006,

Illustration 39 is a map for tourists that details Major Mitchell's incursion into

Queensland so that tourists can follow in Major Mitchell's foot prints.

Historic markers commemorate "national ethnic memory; they are important markers to culture and they are symbols of a national identity that interpret events and create perceptions" (Kupferberg 1999, p. 198). They are political, because they represent the new regime and are erected over the graves of old, past regimes. Every new "authority destroys the monuments of the previous one" (Kupferberg 1999, p. 198). Thus creating a "conflicting version to construct a narrative in which now the survivors of the vanquished society are calling for recognition of contributions made by the silenced and ignored Aboriginal voice" (Clendinnen 2005, p. 115).

There is a proliferation of monuments built for non-Aboriginal historical characters such as Major Mitchell, Sturt, Burke and Wills, and others. There are also numerous cities, shires, streets, historical houses and bridges that stand as a testament to these people. Such monuments are a representation of European power and imagination in which gallant and courageous men and women tamed a wild, unforgiving and un-named country. For Aboriginal people, such forms of recognition are rare. However, there are some, for example: Illustration 40 on Stradbroke Island Qld, details that in 1847, seven Aboriginal men risked their lives to save people from the sinking ship the *Sovereign*. As a reward for their efforts, these seven Aboriginal rescuers were each given a breastplate and a fishing boat to share and use for the rest of their lives. Six of the Aboriginal men are known; but the seventh is not and therefore because of the passage of time is unidentified in the records. The men whose names are known are: Toompani, Poonipum, Woondu, Nu-Ah-Ju, Nuggun and Jackie Jackie (Stone Memorial Amity Point Stradbroke Island).



Illustration 40. Memorial to the seven Aboriginal men who swam out to save people from the wreck of the *Sovereign* at Amity Point, Stradbroke Island. Photograph by Dale Kerwin, 2017.

Monuments play an important role in Australian identity; they generate ideas of valour and mateship. They create icons of people who carved out British space from the wilderness. They provide an image of tough characters, who endured hardship for the betterment and greater good of Australia, and encourage a vision of ethnic supremacy. The Australian character is ritually resurrected through the curriculum, collecting institutions, displays and tourist



pilgrimages to remote townships, following historical figures' footsteps, such as the above map that traces Major Mitchell's fourth incursion of 1846 into the Aboriginal landscape of Australia for tourists to follow (as seen in Illustration 39).

Monuments resurrect the dead to create a dominant ethnic national identity; and by erecting alien monuments and identities destroy the first Australians' 'sacred signs' in prominent locations. The edification of past historic figures and icons is indicative of a conscious agenda to erase names or identifying signs of Aboriginal society. Aboriginal etching and scarring of the landscape has become crushed underfoot (like some of the aspects of the convict past) and wiped from the records. It can be stated that the Australian non-remembering of Aboriginal societies' contributions, relegates Aboriginal society as a relic of the past and as unnamed in the historiography of Australia. From this perspective it is a conspiracy of silence and an attempt at subverting any contribution made by Aboriginal people to the history of Australia.

## **7.2 History as a Diorama**

In 1788, Arthur Phillip established a new colony on Aboriginal soil; he went about constructing a European nation at Sydney Cove. A vision is shown of history and the illusion of a handful of British marines; they have been represented as heroes later scattered across the continent to conquer a hostile environment - pitching tents, raising the Union Jack and firing rifles into the sky. The dream of nation building and silencing (The Great Australian Silence) of the first people in Australian history was taught and worshipped (Stanner 1968, p.18). The historical events are pitched and woven into Australian memory and public heritage, as the unseen audience and spectator witnesses the scene as described by the historian. As the curtains are drawn aside, the characters scurry around, setting the scene for us as consumers within the nation building exercise which is given a political meaning. The scene is staged as a diorama and we peer into it at the convicts, soldiers, surveyors who are all set in time, as they play out their individual roles on stage in a concept of imperial history.

The Aboriginal also becomes a silent witness in this diorama, in its depiction of the nation building exercise, and are marginalised to the flora and fauna perspective, as they peer in through the long grass at the scene unfolding before them. Aboriginal artefacts are scattered around the stage as props to give the scene some authenticity. This scene also constructs an Australian mental image of culture and contextualises things of Aboriginality (Healy 2008, p. 5-11). In this sense our focus is not on the accommodation Aboriginal people had to make, but to the edification of events and to

legitimate these events of nation building. There were no treaties established, no power sharing, or any agreement forged towards the occupation of Aboriginal land, only the imposition of British law and rule. Aboriginal people have fought against the invasion, the annexation of their lands and the whole concept of *Terra Nullius* and the teaching of Aboriginal peoples as peoples with no history.

The events have been cast on a historical stage in a defensive manner, where the fixed and detachable can be rendered and the tangible material became the focal point. It is the temporal that is depicted with the beginning of Australia with its entry into the universal processes of the European. Hence, imperial history, by using flags for dates to mark the beginning of the acculturation of the landscape with the European fix it with points of reference. The chronology of Australian history acts to transfer Australian history from Aboriginal ownership to European - the British. The pushing back of dates of Aboriginal occupation nevertheless reinforces the dominant political control of Australian history. It also gives it a legal and political authority.

It is not only through the detailing of Australian history by providing facts about the settlement processes as orderly and a natural progression of so called discovery, exploitation and taming of the wilderness – that this illegal invasion is defended but also through naming. These performances of remembering and celebrating people and things by the Australian people are a very public theatre, where, for the most part, the Aboriginal has been left out. The life experiences of Aboriginal people dealing with the harsh realities of the clash of culture in Australian history have modestly been told. There are few monuments, few commemorations and no public celebrations to these Aboriginal people. Illustration 41 is an example of the First Nations providing their voice to the identification of country and presence in Australian history.



Illustration 41. Spirit of the Aboriginal family, Adelaide, South Australia. Photograph by Dale Kerwin 2018,

### 7.3 A Wilderness That Needs to be Given a History

The European colonial image of Australia is one of a sunburnt country composed of wide-open spaces devoid of beauty: a living hell. Geoffrey Serle described this nationally-held negative view of the landscape in Australian literature in 1856:

The countryside was too thin and lacking in tradition; there were 'no ancient churches, castles, ruins the memorials of generations departed' and hence there was no hope of a Scott or Balzac or 'a poetry which reflects past glories; Australian life is too lacking in tradition, and confused (Serle 1973, p. 103).

When the British arrived to plant themselves in the Australian environment, they came with a sense of limited space, as their homeland was small and surrounded by sea. For the colonisers Australia seemed endless, and this caused anxiety as well as exuberance. When we pay attention to the "continental metaphors", we hear phrases such as, "a silent country with a dead heart" with boundless plains and in the settler mentality, "the land was there to be taken" (Healy 2008, p. 5-11).

However these 'fine meadows' had not evolved without intervention. Aboriginal societies managed the landscape by various means especially firestick farming, hunting, camping grounds, ceremonial spaces and the construction of pathways. Aboriginal people "civilised all the land without fences, making farm and wilderness one" (Gammage 2012, p. 304). The landscape had boundaries and were named through Aboriginal taxonomy. The new Australians gave no thought to this. The acquisition of Aboriginal Australia by the new Australians began with the naming of parts of the landscape with English names from their own lexicon. This naming of 'Country' (as Aboriginal Australians call it) in English rendered the landscape more readable for them, so it became more like their home world (Carter 1987, p. 163-340). Some examples include all of the major river systems, such as the Darling River, major geographical features such as the Glasshouse Mountains, while others became reference points, such as the Great Dividing Range and the Darling Downs.

In addition, the nomination of Aboriginal cultural property with English words and taxonomies (such as the rare Lumholtz tree-kangaroo), rendered the unknown more identifiable to the European, but simultaneously rendered the Aboriginal an artefact. The process of naming made the transition from Aboriginal to European complete. The overlay of the landscape and material

property with English words made them more visual and cognisant for Europeans, so they were able to be marked on a map or illustrated in a book.

If Aboriginal terms had been used, Europeans would have found it difficult to navigate, describe, and enjoy the Country. The etching of the European over the Aboriginal simplified the processes of owning and occupation. Paul Carter (1987) makes the point that the use of English labels effectively denied Aboriginal people the possession of Country (Carter 1987, p.163-340). The whitefella vision and possession of the Aboriginal spatial, was a 'way of seeing and understanding' based on the traditions of imperialism, inscribing a new history on the spatial (Darian-Smith, and Hamilton. (eds). 1994, p.2-4). Erasing the old was a deliberate process of cultural genocide, through the practices of naming the entire Aboriginal world. This process systematically deleted Aboriginal history and knowledge from the landscape (making it not seen). Australian history was created on a lie, a myth in that it was believed that Australia was the last uninhabited continent, the last unknown land that needed a history. Illustration 42 is another example of this naming of Country - Dogwood Creek, Miles Qld by Ludwig Leichhardt in 1844.



Illustration 42. Signage commemorating Ludwig Leichhardt's naming of Dogwood Creek located at Miles, Queensland. Photograph by Dale Kerwin 2006.

The traditional owners of Dogwood Creek are the Barunggun/ Gomaingguru people (meaning men of the Condamine) whose Country is from the headwaters of the Condamine River near Dalby, Tara, Chinchilla and Jandowae. Dogwood Creek has been renamed as the town of Miles.

The process of shaping Australia into a truly European place continues today. In the political landscape, Aboriginal people are making Native Title claims to Country, and most are forced to use English names to identify natural features in the landscape. In this process, Native title claimants are also reliant for evidence of their occupation of the land on the "memoirs of a colonial settlers history" (Healy 2008, p.5-11). Aboriginal personal histories are never considered because they are seen as oral histories and cannot be reliable (the concept of Chinese whispers comes to mind) because oral memory changes over time. However, when one studies Aboriginal oral histories, it is found that they mirror most historical events and being in history. Furthermore the European geographical place names used for describing boundaries strengthen the idea of cultural *Terra Nullius*; and the use of colonial memoirs authenticates European supremacy of Australian history as the only factual history. Cultural *Terra Nullius* essentially denies Aboriginal people

their position as the first people in the Country. It is based on outdated concepts that negate the fact that Aboriginal peoples have a truly vibrant culture and a history that can contribute in meaningful ways to Australian culture; it precludes the use of Aboriginal culture to reference Australia. The chronological ordering of Australian history also contributes to the political marginalisation of Aboriginal people from history, because it is Europeans who view antiquity as the universal heritage of humans. Aboriginal cultural heritage then becomes classified by the very taxonomy used in the past to disempower Aboriginal people of a history.

This is best described as phenomenology; it was a way of knowing and being for imperialists in bridging a void to the world they left behind. We can see through the variety of ways that Europeans created a place for themselves and deigned Aboriginal history and phenomenology on this stage. It was a perception and intentionally created a British system that remembered their colonial being in Australia, which could not see the original humans as reference points to Australian history. Thus, creating a mental image of Aboriginal peoples, cultures, histories and curios as subjects, and objects, objectified within the natural features of the Australian landscape (Tilley 1994, p. 11-15).

Christopher Tilley (1994) termed this as ‘a spatialization of Being’ as the essences of being human. However, in this sense, the experiences for Australian Aboriginal people have been the Europeanization of their life, world and consciousness. The European epistemology and ontological schemata were transported to this continent along with European language, household goods, flora and fauna and pests. Their topophilia (liking for place) and topophobia (aversion of place described above) provided the very self identity for Australians, by giving a living existence and consciousness (Tilley 1994, p. 11-15).

This consciousness became a quest for domination over nature and Aboriginal people; it became a quest to attain more knowledge of both man and nature by collecting and amassing things of curiosity and antiquity. From a European perspective, Australia had relic forms of nature and a primitive people: "It was a land of living fossils, a continental museum where the past was made in nature, a ‘paleontological’ penal colony” (Griffiths 1996, p. 9). This obsession for domination saw collecting institutions being developed in Australia. The very act of collecting and displaying had and has "a political or ideological or aesthetic dimension" and in an Australian perspective is value laden (Vergo 1989, p. 2).



#### 7.4 Ngulli Yahnai Gulli Bahn (We Are Still Here Now)

We know that on the historical stage, Bungaree sailed with Matthew Flinders on his circumnavigation of Australia; and Yuranigh, from the Aboriginal nation of Wiradjuri, travelled with Thomas Mitchell in 1836 and 1845. Ludwig Leichhardt also took two Aboriginal trackers with him on his first survey to Port Essington in the Northern Territory on 1 October 1844. These men were Charlie Fisher, a black tracker from the police force, and Harry Brown. In 1848, while surveying Gulf of Carpentaria Edmond Kennedy took with him Galmarra (Jacky Jacky) from the nation of Dharug N.S.W.

It is also well known, that historically several stockmen used Aboriginal guides and stock hands. The names of these Aboriginal men and women can be found in the diaries of those who pioneered the stock industries of Australia. Alfred Canning, who is remembered as the person who plotted the Canning stock route in Western Australia, used Aboriginal guides Charlie, Gabbi, Bandicoot, Politician, Bungarra, Smiler, Sandow and Tommy Waldron (Hewitt 1980, p. 23). Nat (Nathaniel) Buchanan, a stockman who is remembered for one of the most epic cattle drives in Australian history, was led by an Aboriginal stockman from Rockhampton, Queensland. In 1860, Chucky and Tiger joined an expedition with Landsborough and Buchanan to the Thomson River (Buchanan 1997, p. 8). These men should all be remembered and referenced.

In 1874, a feather footman, Birrianda from Belyando and the Dawson area, also worked for Buchanan. Birrianda at one time was employed as a black tracker and was also notorious for attacking shepherds. He was wanted for murder and killing of stock. In 1876, Buchanan performed a survey of the Gregory and Nicholson Rivers in search of better pastoral lands and he did this with the assistance of an Aboriginal stockman called Jimmy. The trip took in a total of over 480 kilometres and over the course of the journey Jimmy became a trusted friend. When Buchanan left Herbert Downs, Jimmy returned to his Country at Normanton (Buchanan 1997, p. 40-42).



Illustration 43. Wentworth on the Darling River at a place called Howdon's Ford. The memorial provides details of Joseph Hawdon and Charles Bonney driving trip of March 1st 1838 from a place near Albury NSW to Adelaide SA in which they crossed their cattle here at this spot. The memorial also details that two months later after their crossing Edward John Eyre used the same route then Captain Charles Sturt was to follow the same path. The memorial pays tribute to the first 'Overlanders'. Photography by Dale Kerwin 2018.

Illustration 43 provides historical information of drovers and stockmen looking for pastoral runs before areas were surveyed by explores. However, well before any established settlement, stockmen had been searching for better pastoral lands for their herds. Aboriginal people were already well aware of the coming of the whitefella. On 27 May, 1827 while on a surveying mission, Cunningham reached the 29° parallel – on what is now the border between New South Wales and Queensland. He stood on a high peak near present-day Warwick on 6 June, 1827, and observed a ‘most agreeable’ view. He named this landscape the Darling Downs. This whitefella artefact is marked on Kamilaroi and other Aboriginal nations lands (Centre for the Government of Queensland 2018. Date accessed 18/08/2020). In 1828, Cunningham led an expedition from Brisbane back to Cunningham’s Gap and the Darling Downs area (McMinn 1970, p. 88-91). Cunningham had observed tracks and made mention in his diaries of sighting several stock drovers’ camps on the Darling Downs.

From the time of the invasion there was this great European dream of an inland sea where the rivers emptied into the interior. Surveyors were employed to find this inland sea as there was a refusal to believe that Australia had a dry heart.

By 1798, Sir Joseph Banks had declared it impossible to conceive that this massive land did not "produce vast rivers, capable of being navigated into the heart of the interior". The explorer Charles Sturt held, as an article of almost religious faith, that those rivers must flow into a vast inland sea, and spent years in futile search for it (Tippet. Date accessed 04/07/2019).

Thus began the meeting of two worlds with surveyors and their foreign objects of carts, animals, tools and food.

In 1845, Surveyor-General Sir Thomas Mitchell was sponsored by the colonial government to find an overland route between Sydney and the head of the Gulf of Carpentaria. In the process he was also to survey the area of Barcoo Kuungkari Country. There, in the middle of the continent, Mitchell found an iron tomahawk. The discovery appeared odd, as this Country had not been surveyed by any white man (Mitchell 1848, p. 325). By the time Mitchell reached St George, squatters were moving into the Country. This was evidenced by horse tracks and information gained from some local Aboriginal women who were digging for food. Five white men and a group of Aboriginal guides had made the tracks (Mitchell 1848, p. 380). In Mitchell’s, words "the white hordes were breaking out of their colonial confines as people searched out land to squat on" (Mitchell 1848, p. 327).



Illustration 44. Information signage at St George Balonne River Thomas Mitchell crossed the Balonne on 23rd April 1846 by way of rocks that provide a natural cause way and named it Saint Georges Bridge. Photography by Dale Kerwin 2018.

To review this ‘colonial intrusion’, or as Tim Murray (1999) in his work on the archaeology of the Murray River called the encounters, - ‘a mutual history’ (Murray 1999, p. 17). At St George on the Balonne River Illustration 44 provides the point of ‘colonial intrusion’ Thomas Mitchell in 1846, crossed over a rocky causeway and squatters flocked to the area, this causeway become a convenient point for stock to be herded over. This ‘colonial intrusion’ caused conflict between First Nations (Kamilaroi, Kooma, Manandjanji, Gungarri, Bigambul) and the squatters (Collins 2002, p.17).

Chris Guest (2016) provides Aboriginal names for the Murray River: “The Murray has many Aboriginal names. Ngarrindjeri people call it Murrundi, Yorta Yorta people call it Dunghala and Wiradjuri people call it Millewah, just to name a few” (Guest 2016, p. 1). To trace the ‘mutual history’, Angela and Mike Bremers (2017), provide research on the exploitation of the Murray Darling Basin by the new Australians. In 1817-1836, the new Australians used human-powered crafts on six expeditions to survey the Murray Darling Rivers. In the belief that the westward flowing rivers entered into an inland sea, boats were carried so that these surveyors/explorers could travel the waterways and rivers to the inland seas (Bremers 2017, p. 1). Boats were used in the belief that the continent could be traversed by water from east to west. Row boats made it practical to map and test the navigability of the rivers (Bremers 2017, p. 5-12).

In 1817, Surveyor-General John Oxley was sent by Governor Macquarie to trace the course of the Lachlan River. Oxley was accompanied by Deputy Surveyor George Evans, Allan Cunningham, and ten others travelled on horse back; and with two rowboats they surveyed the Lachlan River for 250kms. They surveyed from a depot near Gooloogoog to near Condobolin (Bremers 2017, p. 6-7).

During Oxley's survey of the Lachlan and Macquarie rivers, he was the first non Aboriginal to use row boats on these rivers. However, after following both of these rivers to impassable marshes he devised a theory of the inland sea which drove the imagination of the new Australians (Bremers 2017, p. 6-7). In 1824-1825, Hamilton Hume and William Hovell surveyed the Murray River and named it the Hume River, however it was renamed later by Charles Sturt (Bremers 2017, p. 7-8).



Illustration 45. Information signage at Darling Point Beach Wagga Wagga. Charles Sturt on his 2nd survey following the rivers system in 1829-1830 surveyed Wagga Wagga region. He followed the Murrumbidgee to the junction of the Lachan River and onto the Murray River Junction by whale boat and up to the junction of the Murray Darling Rivers. There on the 9th February 1830 he named Lake Alexandrina.

Wagga Wagga in the the Wiradjuri language means Crows congregate; also the Murrumbidgee means big water forever flowing, which often floods. Photography by Dale Kerwin 2018.

Illustration 45 at Wagga Wagga records the 'colonial intrusion' as a historical marker on the First Nations lands of Wiradjurri and Ngarrindjeri along the Murrumbidgee, Murray Darling Rivers down to Lake Alexandrina, Coorong area South Australia. In 1828, Captain Charles Sturt, Hamilton Hume and six others were sent by Governor Darling to survey the course of the Macquarie River. At the western most settlement of NSW, Wellington valley on the Bell River near the confluence with the Macquarie the party of Sturt's men came in contact with Aboriginal people. A young Aboriginal man named Botheri acted as an ambassador between the two parties (Charles Sturt. Date accessed 08/10/2020).

On the 16th December 1829, Sturt's party met a large group of Aboriginal men all painted with red and yellow ochre and weapons at their side. Botheri, explained what Sturt's men were doing to this group of men; "the chief seemed perfectly reconciled to my presence" (Australian Heritage 1788-1988. (1989) Vol. 4 p. 583). Sturt rode up to the group of Aboriginal men and took a spear from one of them and handed him his gun, they seemed pacified. This group of Aboriginal men helped Sturt's men to carry supplies across the Macquarie River and at the end of the day the new Australians and the First Australians all swam and bathed together in the river. Sturt wrote "they are certainly a merry people .... and sit up laughing and talking more than half the night" (Australian Heritage 1788-1988. (1989) Vol. 4 pg. 583). After exploring the Macquarie Marshes, the party followed the Bogan and Castlereagh Rivers north-west and come across the Barka River which he renamed the Darling. After surveying the area his party headed south-east towards the Castlereagh River.

In 1830, Captain Charles Sturt, George Macleay, and soldiers Harris, Hopkinson, and Fraser, also convicts Clayton (who was on his first survey), Mulholland and MacNamee, launched two boats into the Murrumbidgee River at Maude (Lachlan junction). From here they surveyed the Murray River's mouth and travelled up the river to Narrandra (Hamilton's Plains). This survey solved the question of where the inland rivers flowed. Sturt travelled more than 3400 kilometers. Sturt was instructed by Governor Darling to see if the Murrumbidgee River terminated in the Macquarie marshes, united with the Darling or flowed into the ocean. On the 14 January 1830 at the junction of the Murrumbidgee River Sturt rounded into what he called 'a noble river' and named it the Murray River.

On the afternoon of January 19th 1830, Sturt recorded meeting a large body of Aboriginal men, who at first he thought were going to be hostile. It was late in the afternoon, Sturt decided to camp on the opposite bank for the night from this large party of men. Macleay, a member of Sturt's team entered into a "pantomimical dialogue" across the river with this group of men. During the dialogue, about 35 of the Aboriginal men came across to visit the camp. Sturt records that Macleay joined the visitor's wild singing around the camp fire, the 35 Aboriginal men gave Macleay an Aboriginal name "Rundi". When the survey resumed in the morning four of the local Aboriginals joined Sturt's team; Sturt writes that one was "remarkable for personal strength and stature" (Australian Heritage 1788-1988. (1989) Vol. 4 p. 601-605). Three days later, on the January 22 1830, near Mildura the whale boat hit rocks and almost sank. After retrieving the boat and sitting by the camp fire, the four Aboriginal men entered into a discussion about what lay ahead, by drawing in the dirt and using sticks as indicators of the Country ahead. Sturt showed his charts but neither could understand each other - this is an example of mutual cultural misunderstanding. The next morning these four left the surveying group.

Later on the January 23 1830, Sturt records another large group of Aboriginal men on the bank of the river all painted and armed. Some of the men had their ribs and thighs painted with white pigment, and looking like skeletons, while others were painted red and yellow and shone with grease. These men followed Sturt's party and gathered on a large sand bank that crossed a third of the way into the river. Sturt's men armed themselves ready for an attack but before any violence could erupt another party of Aboriginal men appeared on the opposite side of the bank, and one of these Aboriginal men dived into the river and swam to the sand bank. He entered into an argument with the leader of the angry mob; he grabbed him by the throat and forced all of the men back onto the bank of the river. Sturt records that there were about 600 Aboriginal men gathered in this spot.

Sturt sought out this "remarkable" ally to present him with a gift (Australian Heritage 1788-1988. (1989) Vol. 4 pg. 601-605).



From here Sturt and the crew rowed up stream and saw "a new beautiful stream" flowing from the north. He identified this as the Darling where he raised the Union Jack. In considering the map that was drawn for him in the dirt, and the use of sticks as indicators of the Country ahead by his Aboriginal friend, he now realised he had been shown a map of the meetings of the two rivers.

Illustration 46. Monument is in memory of Charles Sturt on reaching the mouth of the Murray River on Hindmarsh Island SA and seeing the waters of Encounter Bay in February 1830. The monument is also in memory of Collet Barker of the 35th Regiment who was speared to death by local Aboriginal people in 1831, while completing a survey of Lake Alexandrina in 1831. Photography by Dale Kerwin 2018.

Around 29 January 1830, at the present site of Renmark the river turned south. His party rowed south and were told by local Aboriginal people that the sea was near (Australian Heritage 1788-1988. (1989) Vol. 4 pg. 601-606). They rowed and sailed down to Lake Alexandrina, Hindmarsh Island and onto a spot near where the present day Goolwa Bridge stands in South Australia (Bremers 2017, p. 8-12). Illustration 46 commemorates Charles Sturt's reaching the mouth of the Murray River and the death of Collet Barker who was speared by Ngarrindjeri warriors in 1831.

In 1835, Major Thomas Mitchell, Mr Larmer and 14 men travelled in two row boats (the *Discovery and Resolution*) down the Darling River from Fort Bourke, however, he did not complete this survey. Later, he resumed his surveys and while on his fourth his survey to Port Essington, he surveyed the rivers Maranoa, Warrego, Belyando and Barcoo (Bremers 2017, p. 8-12).



Illustration 47. Information signage at Darling Point Beach Wagga Wagga. The dance shown here was held near Orange at Boree for the start of Thomas Mitchell's survey in 1836 of South Western NSW and Victoria and was led by Wiradjuri men. Photography by Dale Kerwin 2018.

Illustration 47 is a corroboree preformed by Wiradjuri people to 'pass on' Thomas Mitchell through their Country. Val



Donovan (2010), writes of European curiosity and Aboriginal aversion to contact with the white man. Thomas Mitchell in his journal entry for 9 March 1845, stated that his surveying party "had followed the well-beaten paths of the natives during the whole of this day's ride, and most anxious my guides and I to see them; but they avoided us" (Donovan 2010. Date accessed 16/01/2018). Mitchell also later commented on "the astonishment of the Aboriginal people near the Balonne River when they first saw him mount his horse and ride away towards the mountains. Imagine their curiosity, as they had never seen either a white man, who was almost totally covered with clothing or a horse before" (Donovan 2010. Date accessed 16/01/2018).

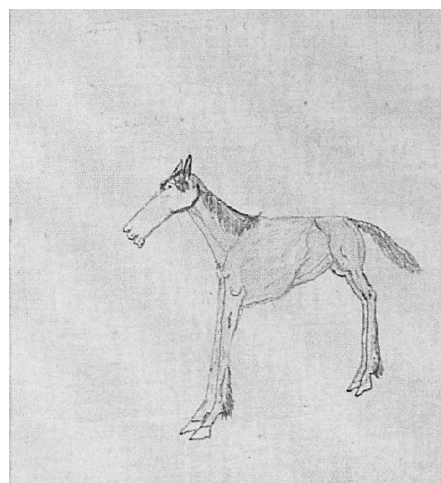
Noel Nannup, an Elder from the Bibbulmun Nation forest people Western Australia, recounts an oral history story about when the horse was first introduced into Western Australia.

this story of the yarramen has been passed down through the years. When they were being unloaded from the tall ships onto barges the Nyungar people were watching the white people unloading the horses from their ships. This was a curious event but what caught our mobs' eye were the horses. These horses, were rearing up and objecting to being put on the barge so there was a bit of a commotion happening. Even though they were secured they objected and played up.

So as the barge was being rowed up the Swan River at Fremantle to land and unload the horses, they were misbehaving and once they reached the shore all they wanted to do was get off, the horse handlers rode the horses off the barge and up the embankment. Well you could imagine horse and rider at full bolt, and as they came up and over the embankment they were rearing up, front legs in the air and standing on their back legs snorting loudly. All the while the horse handler was wrestling to keep the horse under control.

The commotion of noise, dust and sounds of a beast that man turned into - a scary sight. We had never seen such a sight man turning into a man beast that had a horse's head and body and a man's head and body and this monster moved quicker than a Kangaroo, wow - The Yarramen! It is not known who dared to catch one and ride it but as Aboriginal people we are observant people we quickly realised the value of such a beast (Noel Nannup pers. comm. 20 July, 2005).

Illustration 48. Drawing by Charlie Flannigan (Aboriginal stockman and Jockey) 1890 of a horse (Yarramen). Kind permission to reproduce given by the South Australian Museum (2002). Charlie Flannigan, was a stockman in a cattle drive of 20,000 head of cattle from Richmond Downs in Queensland to the Northern Territory in 1881/1882. In 1887 he was arrested for murder and while awaiting trial in Fannie Bay Gaol Darwin, he drew and sketched from memory cattle stations, cattle camps, horses and people he worked with.



The horse created ‘bewilderment and terror’.

D.W. A. Baker (1998) provides a narrative about Thomas Mitchell using Aboriginal guides for his four surveys, and coins the phrase, "the process of passing". It is a term where Aboriginal people of a Country "did not want to fight the white intruders but rather to get them through their territory with a minimum of trouble" (Baker 1998, p.5). It was a process by which Indigenous people were confronted by strange, possibly threatening, or dangerous white skinned intruders. The First Nations people tried to assist the white skinned strangers through their territory with as little fuss and damage as possible – these were known as *passers on*. The First Nations passers on, would have no English or only a couple of the First Nations passers on knew a little English. "The passing on had to be conducted by some sort of pantomime or practical assistance" (Baker 1998, p.5). Mitchell sometimes encountered Aboriginal people running away from his survey teams or others who showed outright hostilities. On one such occasion Mitchell writes about the "Spitting Tribe on the Darling near Wilcannia" (Baker 1998, p.5). However as noted in Illustration 49 of an information sign at Wilcannia NSW, Thomas Mitchell's engagement with the First Nations had some positive outcomes.

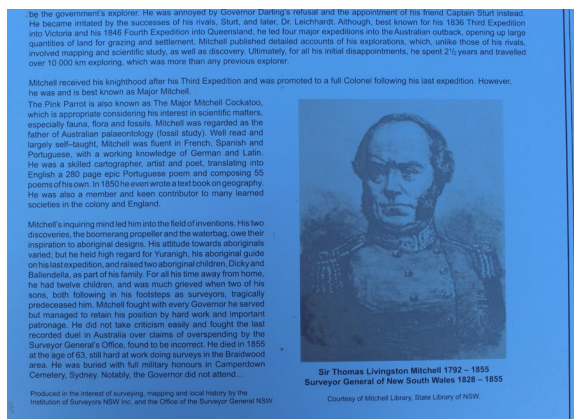


Illustration 49. Information signage at Wilcannia NSW, detailing Mitchell's life and close association with some Aboriginal guides such as Yuranigh, Dicky and Ballendella. The information signage also details how Mitchell while interacting and observing the First Nations use of water bags and boomerang Mitchell invented the water bag and boomerang propeller. Photography by Dale Kerwin 2018.

Mitchell, during his four surveys, encountered Aboriginal people in which he recorded these encounters and meetings. On his first expedition, Mitchell set off in 1831 to explore a river to the north west of Sydney, reported by an escaped convict. However, his path was blocked by a warring party of natives who killed two of his men and stole their supplies. As they had no fresh supplies, Mitchell was forced to turn back and return to Sydney (Baker 1998, p.40).

On his second expedition, he proved that the rivers crossed by Cunningham flowed into the Darling River. Mitchell planned to trace the course of the Darling River to the sea. In 1835, he followed the Darling for about 500 kilometres. Again Aboriginal people were sighted, and this



time Mitchell's men opened fire. Several Aboriginal men were killed and again he was forced to turn back.

On his third journey he followed the Lachlan, Murrumbidgee and Darling Rivers to where they joined the Murray. Crossing into what is now known as Victoria, Mitchell found the First Nations were friendly and traded a tomahawk for a beautifully woven native bag. On this expedition Mitchell had found excellent farming land and when he returned to Sydney with the news, it started a land rush. Mitchell was knighted for his discoveries in 1837.

Thomas Mitchell's fourth expedition to tropical Australia in 1845, records that at the Barcoo River there were large huts with rafters and square pieces of bark laid like tiles.

By 21 September the party was among the headwaters of what Mitchell called the Victoria, now known as the Barcoo. Here Mitchell remarked on some large huts, which were better planned and of a more substantial construction than those he had seen further south. A frame like a lean-to roof had first been erected; rafters had next been laid on that and thin, square pieces of bark like tiles had been fixed on these ((in) Baker 1997, p. 179).

Mitchell's fourth, and his last expedition, was a 12 month journey into central Queensland. His party consisted of 29 men. Of these, 23 were convicts. There was a blacksmith, 2 carpenters and a butcher. They took with them two Aboriginal guides; Yuranigh, a Wiradjuri man was one of these men. This expedition led to the opening up of rich pastoral areas of Central Queensland.

Yuranigh, a Wiradjuri man from the Molong area near Bathurst, accompanied Mitchell on several expeditions. Yuranigh from the Boree area of New South Wales was the chief guide used for the survey of Queensland in 1845–46 to within 150 kilometres west of Mackay in Queensland. During this survey Yuranigh met one of his countrymen on 1<sup>st</sup> of May 1846, between the present town of Mitchell and Surat – a distance of over 1,000 kilometres from his home (Mitchell 1848, p. 142). This is evident that Yuranigh having knowledge of the songlines, storyways and trading routes would have guided Mitchell over these tracks. In 1850, Yuranigh died and was buried in a true Wiradjuri ceremonial style for important people. Five trees were incised with Yuranigh's Clan design and totemic images and shapes, which are located at Gamboola Station, New South Wales (Illustration 50 is a good example of a scared tree carved by the Wiradjuri people).

A year later, in 1851, Mitchell went to his friend's grave and re-cut the incision marks, deeper into the trees. He paid for the site to be kept clean and fenced the area off from animals and other destructive forces. Today the site is listed on the National Heritage registry. Only two of the five sacred trees survive and are still growing (Mulvaney 1989, p. 85-86). According to Mitchell's notes it appears that Yuranigh's Totem is the emu, because Mitchell noted that he would not eat the flesh of this bird for religious reasons (Mitchell 1848, p. 317).



To Native Courage  
Honesty and Fidelity  
Yuranigh  
who accompanied the  
Expedition of Discovery  
Into Tropical Australia in 1846  
lies buried here  
According to the Rites  
Of his countrymen  
and this spot was  
dedicated and enclosed  
by the Governor General's Authority  
in 1852.

Illustration 50. Intricate patterns were carved into trees by the Wiradjuri Nation mostly to mark the burial sites of significant people and trading paths. Curved trees NSW. Date accessed 2017).

Yuranigh's grave and scarred trees are located at Molong, Cabonne Shire NSW. It is the only known grave yard where the First Nations and non-Indigenous burial practices coexist.

Aboriginal guides were rarely mentioned by name, in accordance with the European mentality of the era. At the start of Mitchell's expedition into the 'Interior of Tropical Australia' he did not mention any of the three Aboriginal guides accompanying the team of twenty-eight men. It was not until three weeks after the trip had started, that Mitchell mentioned Yuranigh. Throughout the rest of the journal Mitchell mentions Yuranigh more than ninety times (Mulvaney 1989, p. 86-87). Mitchell also mentioned meeting with Aboriginal people over eighty times, and receiving information from them several times (Mitchell 1848). He also described following Aboriginal paths, and coming across camp sites and a number of shell middens. Mitchell followed songlines storyways and trading routes (Aboriginal roads) during his surveys/expedition in searching for the inland sea.

The meeting of the two worlds in some instances was peaceful and in others very confrontational. There was also a mutual curiosity of both worlds which led to invaluable knowledge not only of the physical landscape, but about the people they were both to meet for the first time. The surveyors and explorers provide some favourable accounts and some very negative views of Aboriginal society; for example Sturt while rowing down the Murrumbidgee in 1830 between Wagga Wagga and Narrandera, met a group of Aboriginal people that he described as of a not prepossessing appearance "the worst featured of any .... It is scarcely possible to conceive that human beings could be so hideous and loathsome" (Australian Heritage 1788-1988. (1989) Vol. 4 p. 601-605). These racist colonial negative remarks were recorded and referenced for future competing interest in the use of the waterways. These negative remarks were used by governments to assume ownership and management rights for the waterways on behalf of the "Australian" community. In which Australian governments allocate user rights to a wide range of commercial and private usage of water.

Diaries and recordings from all of Australia's historical actors' from the European Australian cultural memory of men who surveyed, plotted, and named the Aboriginal landscape did so for the purpose of owning it and to make it recognisable for their cultural group. Through their writings about their travels, we share their experiences and interpret their observations and can reflect on the Aboriginal knowledge of waterways and the landscape.

### **7.5 Duggai Gulli Yahngu (The Whitefella are here to Stay)**

Throughout Australia's history, non-Aboriginals have exerted an influence on the Australian character and psyche, and they are remembered in autobiographies or biographies. Some of these characters' stories detail how they braved death by being speared by Aboriginal people or death by starvation, thirst or exposure to the extremes of the weather. These people have been immortalised in folklore, monuments, songs, poems, film as well as the Australian educational curriculum. Surveyors/explorers, squatters, drovers, entrepreneurs, resource extractive industries and neoliberal capitalists have all been granted a place in Australian social memory. But when we read their memoirs and journals, we find that Aboriginal people played a major part in the success of these people.

Non-Aboriginal peoples' lives are recreated in specific ways to create a specific sense of nationalism and Australian identity. But what were the roles that Aboriginal people played in the creation of the national identity? The chapter has followed, like a tourist, in the foot prints of the

surveyors (explorers) who went in search of water from Goolwa to the Gulf of Carpentaria, and the assistance given by the First Nations on their tour of the Aboriginal acculturated landscape.

Since the earliest years of the colonising process, Europeans needed and used Aboriginal guides who travelled along the paths already carved in the Aboriginal landscape as songlines and storyways. Settlers and graziers subsequently followed these pathways with the result that Aboriginal songlines, storyways and trading paths along the waterways became drover runs and coach ways. Aboriginal land management, such as fire stick farming, presented the colonisers with a landscape that had been sculptured by humans to suit their needs.



Illustration 51: On the road to Goolwa SA the Mighty Murray Way Touring route. Photography by Dale Kerwin 2018.

Following settlement by the new Australians, and when most of the surveying and mapping of the Aboriginal Australian landscape was completed, surveyors wrote reports about where good sources of water and agricultural land could be found. Squatters, drovers and surveyors and explorers then led the race to inhabit the rich lands that did not appear to have any system of land ownership. Following these people, and in some cases leading the charge into the new lands, were the drovers, stockmen, miners, and agriculturalists. In contemporary times sign posting such as Illustration 51 help tourists follow the adventure ways of the Australian landscape and history.

Finally, Australian history educates and expands on theories that are based on a deficit model - history is taught from a poor bugger me mentality - in the past Aboriginal people were seen as curios and were subjected to discrimination simply by theories that were being framed for the audience. Today the political system is still embedding outdated practices, but is trying to be more reflective about history, epistemology and culture; and entwining these concepts in the diorama of what is Australian history.

## 7.6 Conclusion

In conclusion the chapter has drawn together some of the major themes for re-remembering and concepts of social memory. These were framed in a historicity of forgetting the First Nations people within the nation building exercise. In this nation building exercise Europeans felt at home in Australia once they had mapped it with their spatial metaphors, and the "landscape looked

forward to being occupied by a civilised society" (Paul Carter 1987, p. 163-340). Since the historic Mabo High Court decision in 1992, when the doctrine of *Terra Nullius* was thoroughly discredited in law, there was no option for Australia but to accept and recognise the First Nations people. This recognition entails an acknowledgment that Aboriginal nations had, and continue to have, proprietary rights to their territories, waterways and soils; and not merely as custodians (Gardiner-Garden 1994, p.39-45). The Mabo decision relating to the land of the Murray Islanders in the Torres Straits, marked an acceptance by jurisprudence of these rights. Yet a cultural version of *Terra Nullius* still exists – the denial of the prior existence of a fully-fledged and viable culture still thrives like weeds in a freshly ploughed garden.

Australians now recognise Aboriginal people as the first people of Australia. This became evident when millions of Australian people marched in a mass demonstration of support for reconciliation with Aboriginal people in all the major cities in 2000. But Aboriginal history is still not recognised as a legitimate part of the Australian heritage. The Mabo High Court decision has forced the Australian political system to devise laws for Aboriginal claims to Country. Government policy requires Aboriginal nations to make Native Title claims to Country through connection reports based on anthropology, archaeology, and historical evidence. Just as Aboriginal claims to Country now need to be documented for Native Title, this chapter used historical accounts.

The remembering of Aboriginal people in Australian history, basically is that Aboriginal people are absent from the historical stage of colonisation. The imagining of Aboriginal peoples rights was founded in the practices of early settlement where cruelty and dispossession, dispassionate branding Aboriginal people as criminals and religious racism were played out over and over again throughout the nineteenth century. The argument of this chapter is the erasure of Aboriginal people from social memory - the performance of history provided one way to think about Aboriginal people. The erasure of Aboriginal people from history provided Australian governments (Federal and State) and institutions with a cultural imagination to ritually dig up and display Aboriginal culture as a people with no history to an audience.

However, Aboriginal society and people have remained highly visible and have persisted in being exposed to Australian history. Aboriginal corporeality and spatiality has persisted, the embodied being of what it is to be Aboriginal is still troubling public policy makers, and the outcome is them continually being silent. The events and practices that have been mentioned above provide Australians with a lived history that is remembered through institutional arrangements and habitual

ceremonials, and are confirmed in property law and naming of the landscape. In this, the imagining and remembering of an Aboriginal contribution to the fabric of Australian history needs to move past being selective of what we will interpret and display in the remembering process.

It is time to now present a history that deconstructs the myths of the past, by offering a total history of the settlement period and colonising process, which provides a two way methodology that embraces Aboriginal memories, culture and historical figures that have contributed to the very fabric of Australian society. A history that is representative of Aboriginal society, culture and history to be seen as 'central' there is more to Aboriginal history than being a preamble or a footnote or an after word in Australian historical texts and constitution.

## **Chapter 8 Water and the Environment**

### **8.0 Introduction**

The Australian High Court decision for Mabo (2) took a narrow approach and held that Native Title exists as a bundle of rights and interests and must be based on traditional laws and customs and an unbroken connection with an area in question ceremonial and communal needs. These include the rights to hunt and fish for personal, domestic and non-commercial purposes. Significant uncertainty remains in Australian common law over the nature and extent of water rights (Durette 2010, p. 303).

This chapter is an exploration of Australia's strategies, within both Federal and State jurisdictions, towards providing the First Nations rights for water and environment. However, Native Title legislation provides Federal and State government power with the ability to extinguish the First Nations rights to water for other interests.

The chapter provides an analysis of the general laws for water and the environment; also the shortcomings and problems within these jurisdictions for the First Nations rights to water. The theoretical, historical and contemporary positions built into Native Title and Land Rights, will be explored through the notions of traditional customs for cultural land management practices, spiritual and religious practices. Further the chapter will provide an articulation of the First Nations rights to conservation and preservation of the ecosystems, based on Human Rights principles and the lack of constitutional rights for the environment. The central point of the narrative is a discussion on the traditional continuing spiritual connection to Country of Indigenous people and the global movement of providing environmental human rights to the environment. The narrative focuses on the ethical and moral issues of the First Nations have with our connection to the environment. The chapter focuses on the legal and traditional spiritual connection to Country and enters into a discourse on the current movement of bringing the spiritual into legal definitions and protections. (This can be witnessed with the closure of Uluru on the 26th October 2019, by the Uluru-Kata Tjuta National Park Board of Management in respect to the Anangu First Nations people religious and spiritual beliefs). This will be explored in this chapter.

The earlier chapters provided the discourses for the National Interest, economic, social, cultural and heritage rights for the First Nations. This chapter will provide a narrative on The First Nations beliefs in rivers, the environment as a person and 'earth centred law'.

We know today there is a growing movement around the world for the idea of environmental human rights due to the ecological issues of global warming, air pollution, extinction of native species of flora and fauna, and the drying up of waterways with prolonged droughts. There is also a growing awareness of pollutants within waterways. In Australia the concern is the drying up of the ground water systems such as the Great Artesian basin and salinity within soils.

## 8.1 Water is Life

The liquid circulatory system of the beast: Earth's oceans and other waters. Earth is truly the water plant, for water on [in] its three states- vapour, liquid and solid- defines and sustains it. Liquid water covers 71 per cent of the Earth's surface while solid water, mostly in the form of glacial ice, covers a further 10.4 per cent (Flannery 2010, p.46-47).

In a Facebook and web site *When water is death*, Gadrian Hoosan posted in regards to the poisoning of the MacArthur River by mining activities in the region. Gadrian, is a traditional owner from Garrwa and Yanyuwa First nations. He is a community leader and musician: he lives in the township of Borroloola which is part of the Gulf Country of Northern Territory (NT). In the post Gadrian provides a letter (see Illustration 52) that was sent by the NT Government Health Department in 2018 saying 'there is lead contamination in the drinking water'. Gadrian, in Illustration 53 also draws attention to the killing of cattle by the McArthur River Mine:

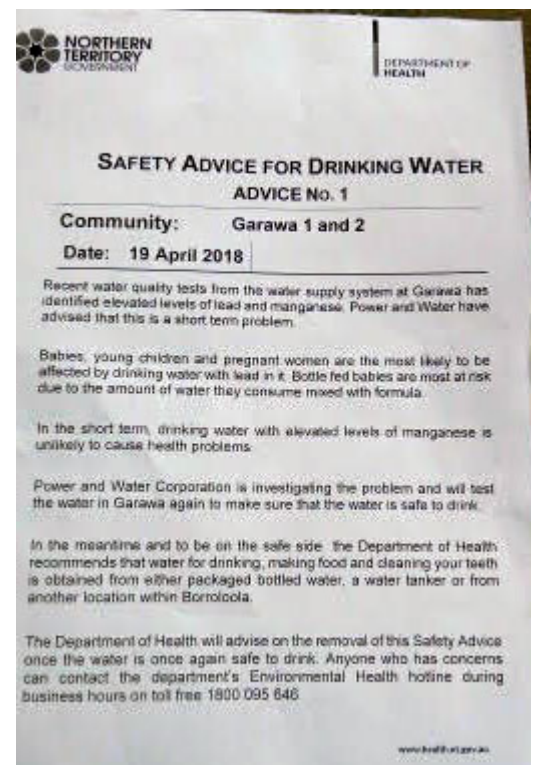


Illustration 52. Gadrian Hoosan posted in Face Book a NT Government Health Department letter, warning of poisoning of drinking water from the MacArthur River (2018). (Hoosan. Date accessed 02/07/2019).



Illustration 53. Painting by Gadrian Hoosan (2018) of McArthur River Mines shooting cattle but leaving native animals alive. (Hoosan. Date accessed 02/07/2019).

A Couple of years back at McArthur River Mine



@GlencoreAus shot hundreds of cattle cos some tested positive for lead. They don't want lead in the whitefella food chain but what about us, our fish, goannas, bustards, emu, wallaby. They just don't care! We have no drinking water (Hoosan. Date accessed 02/07/2019).

The First Nations across Australia are joining conservation groups and leading campaigns in protecting waterways and the environment. A similar campaign is being waged by the Ngaiyoo Nyikina peoples (Traditional owners) of the Mardoowarra, (Fitzroy River) Kimberley region of Western Australia (WA), against mining. Dr. Anne Poelina is a Ngaiyoo Nyikina person, and in her pod cast, Blood Line Song Line, she provides a First Nations perspective on waterways and rivers with her describing Mardoowarra (Fitzroy) river as a person. The songline for the Mardoowarra (Fitzroy) river travels along the songline/dreaming tracks for Mardoowarra and his boss Woonyoomboo. They are known as the same identity through every other First Nations Country they pass through...as with the spirit figure Murullbakgera (Poelina; 12 Aug 2016. Date accessed 17/08/2017).

We are custodians for and in partnership with nature - our duty of care recognises the Mardoowarra as the River of Life! The Mardoowarra is recognised as a living being, with a right to life (Poelina; 12 Aug 2016. Date accessed 17/08/2017).

Jess McLean (2007), states that the Sovereign First Nations people of the Kimberley's Fitzroy catchment are "extremely socially complex" as there are "seven ethno-linguistic groups and about 30 discrete communities" (McLean 2007, p. 30).

First Nations across Australia, like the Garrwa and Yanyuwa peoples, and the Ngaiyoo Nyikina people's declaration, see rivers as a living ancestral being and believe that as "a living entity and as a living being it has the right to life to survive" (Anne Poelina; 12 Aug 2016. Date accessed 17/08/2017). These declarations provide the point that, Traditional owners have an obligation in Aboriginal law to protect the river systems for future generations. This is a worldwide movement which Gadrian Hoosan (April 22, 2018), in his Facebook and web site post, recognises that other countries have given human rights and have rights of nature enshrined in their constitutions, such as Ecuador's in 2008 and Bolivia's in 2010 with the 'Rights of Mother Earth' to rivers by stating:

Today we all use the term #WaterIsLife, from the Tar Sands movement and Standing Rock in Turtle Island, to Mauna Kea and Aotearoa across Pasifika, to South America, and all over, we sing, chant, dance for all to know #WaterIsLife. Our relations together, we fight for water because we all care about maintaining conditions for life (Hoosan. Date accessed 02/07/2019).

Jane Gleeson White (2018), in an article written for the *Guardian*, an on-line newspaper, identified a community rally on "20 March 2018 where protesters were calling for the Margaret River south of Perth WA to be given legal entity status" (White, 2018. Date accessed 17/01/19).

The protest meeting was held in opposition to plans for a mountain-bike and walking track being constructed along the foreshores of the Margaret River. Jane Gleeson White (2018), points out that there is a growing awareness for "international rights-of-nature" which aims to

address the way western legal systems treat nature as property, making the living world invisible to the law. It uses western legal constructs, such as personhood and rights-based approaches, to shift the status of nature from property to a subject in law in an effort to protect the natural world (White, 2018, date accessed 17/01/19).

This movement for the 'rights of nature' is now a shared cultural response and concern for the environment, here in Australia and around the world:

rights of nature is inspired and led by Indigenous traditions of Earth-centred law and culture, it's also whitefellas talking back to the white system, any system that puts no value on the life around us is wrong, it's as simple as that (White, 2018. Date accessed 17/01/19).

Here in Australia, the Australia Earth Laws Alliance (AELA) is working with the First Nations communities and mainstream communities, in exploring legal avenues with 'the Australian Peoples' Tribunal for Community and Nature's Rights for law reform in providing 'rights of nature' (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019). AELA provides a definition for the 'rights of nature' based on these principles: "Acknowledging that all life on Earth has a right to exist, thrive and evolve"- that is "the Earth community should be recognised as having the right to exist, thrive and continue its evolutionary journey into the future" (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

When we talk about the Rights of Nature, it means recognizing that ecosystems and natural communities are not merely property that can be owned. Rather, they are entities that have an independent and inalienable right to exist and flourish (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

This recognises that humans and life on earth are "life supporting ecosystems... interconnected" by a web of life (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019). It also recognises that the natural world has a right to survive as do human beings. AELA further states that "valuing and protecting nature for its inherent worth" in this construct "recognising that the

natural world is just as entitled to exist and evolve as we are, necessarily changes the way humans act” (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

This is based on how the Australian First Nations and other 'Earth-centred cultures' around the world as humans treat the 'natural world' (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

Many Indigenous cultures see plants and animals as relatives, members of an inter-connected community of life that is self-sustaining and deserves respect. They draw from the natural world to live, but do not take more than the natural system can sustainably provide (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

From a First Nations perspective, "it's the first time in Australia that both first law and the instrument" are working together in protecting the natural environment as a person (Anne Poelina (in) Gleeson White, 2018. Date accessed 17/01/19). We can see this with the *National Water Initiative* (NWI) whereby it states;

that Indigenous peoples will be included in water planning processes wherever possible and that the water plans themselves will incorporate Indigenous social, spiritual and customary objectives wherever they can be developed (Melanie Durette 2010, p. 311).

However, Aboriginal people are complaining that these consultations are tokenistic. Melanie Durette (2010), points out that in Australia, the State and Federal Governments' "approach is to invite Indigenous people to sit at the table rather than to recognise an inherent right to self-government" (Durette 2010, p. 312-313). From a First Nations perspective this approach is an insult, because of our inherent rights as the First Nations, with spiritual and religious links to land, water and environment, which "entitles them to a status such that consultations take place government to government" (Durette 2010, p. 312-313).

Australia Earth Laws Alliance (AELW) states that there are 'contrasts with' First Nations perspective for being earth centred beings, and to that of,

the culture and legal system that is dominant in western industrialised nations today, which treats plants, animals and entire ecosystems, as objects that are human property (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

AELW also states that "our current legal system allows humans to destroy ecosystems in the name of material 'development' and only grants rights to humans and human-created constructs, such as

corporations and nation-states” (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019). Further to this statement AELW recognises that the First Nations have never ceded sovereignty:

by treaty nor in any other way.... [Governments must] acknowledge and respect First Nations peoples’ laws and ecologically sustainable custodianship of Australia over tens of thousands of years through land and sea management practices that continue today (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

In recognising the world wide movement AELA states that this movement is motivated and "inspired by the ancient wisdom of First Nations people around the world" (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019). Here in Australia non-Indigenous people are joining the First Nations people in forums and meeting for recognition of human rights to water ways. On September 17th 2019, a five day *Water Yarning- Tidings, Flows and Sorrows* forum was held on Gumbaynggirr Country at Corindi NSW and attended by over 200 people. The forum was funded by the Sovereign First Nations people and brought Law/lore men and women and non-Indigenous people from across Australia. The aim of the forum was to promote, a shift away from a materialistic, greed-driven ‘take’ towards a deeper understanding, a living respect, a uniting will to protect all bodies of water; within an understanding that water is a sovereign being with its own identities and rights. In the conclusion of the forum the *Corindi Water Declaration* was written and as of yet has not been presented to government (Appendix 3).

It should be recognised in Western and Industrially developed nations, nature is treated as the property of humans, thus providing a property right to the owner to use in whatever way he or she sees fit within the Country's governmental and legal jurisdictions; they own the property. Also there is a contrast between Western management systems for water and the First Nations management practices. Western systems "operate as if the water is separate from land and people and allow water to be measured, taxed and traded” (Durette 2010, p. 314). Whereby for the First Nations "there is often no distinction between land, rivers and sea management practices are holistic in nature recognising the interconnectedness of the entire ecosystem” (Durette 2010, p. 314). In a Western construct;

Property at a site consists of a bundle of entitlements to occupy a natural resource, often separated for administrative convenience into land, water, vegetation and various other elements.... Every entitlement in the bundle is a social construct, a complex mixture of rights and obligations, with the obligations being inherent in the property itself (*Property: An Analysis of Rights and Obligations in Property, Focused on Fresh Waters*. Date accessed 10/09/18).

This confers a right of ownership to exploit the property for profit driven needs. The Rights of Nature laws see these activities as destroying the physical health and 'well-being of nature'. The "rights of Nature laws...transform the status of nature from being regarded as property to being rights-bearing. In fact, these laws change the status of property law" (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

The NBAN, in a declaration to the Australian government in 2018 for the protection of their "most sacred water spirits", demanded that the Federal and State governments immediately enact legislation to stop and prevent "extraction of water from underground streams, the Great Artesian Basin and aquifers, including water that is being extracted under coal seam gas extraction operations" (Hooper 2018. Date accessed 10/05/2019).

In summary, the Rights of Nature laws take away a property owner's authority to affect the natural functioning of an ecosystem and natural environmental communities that rely on the property to survive. This differs from environmental laws, in the fact that environmental laws permit human centred, material gain development and harm to the natural world by legalising corporations, business entities and activities in the natural environments. The Laws of Nature provide a basic principle right to enable people, communities and environmental ecosystems, the rights to protect, defend and enforce these Rights of Nature. This provides a vehicle for the non-human world, a place in the law to be heard, to be seen and not to be invisible or a tool for neo-liberal capitalist gains (*Rights of Nature*: Australia Earth Laws Alliance. Date accessed 06/07/2019).

## **8.2 In the Age of the Anthropocene**

Our anthropocentric ethics value the natural world as a resource to be manipulated at will for human benefit, without regard for the rights of non-animate things (Elder 1984; Date accessed 04/07/2019).

In 1972, Christopher Stone postulated that nature has rights; this was based on the evolution of laws for nature, and is based on the very foundations of the evolution of laws for human rights. Stone provided an historical overview of laws giving peoples, who were deemed not fit to be people, rights. If we review this thought; metaphorically hop into a time machine and go back through the layers of time, to the legal development of peoples rights in Australia. We know that in 1788 when the British invaded Australia, they brought with them their laws and cultural lens, however, before the invasion in 1770 there was a movement in Britain by British antislavery abolitionists. Slavery has been defined as

Generally, the practice of subordinating persons to the control or ownership of others, somewhat in nature of property, usually accompanied with forced labour (Nygh, Butt 1997 (ed). p.1086).

This eventually led to the British parliament passing the *Slavery Abolition Act 1833*, which fundamentally abolished slavery in the British colonies (*Slavery Abolition Act 1833*. Date accessed 28/04/2020). However, Indigenous Australians argue that it never ceased here in Australia until 1975 when the Whitlam Government passed the Anti-Discrimination Act.

Continuing this historical overview Women's rights were expanded by the suffragettes to give some women the right to vote in Australia. A year after Federation, in 1902, the Australian parliament passed the *Commonwealth Franchise Act*, this Act allowed white women to vote and stand in the 1903 Federal election (Young 2002, p.228). Helen Irving (2008) reasons that this is “sine qua non” (absolutely necessary) she states it “as a fundamental political right, without which a Country could not validly claim the title ‘democratic’ or assert democratic legitimacy” (Irving 2008, p.109-110). In viewing this “sine qua non” and women’s rights to vote, the First Nations women were not given the right to vote until 1962 in the Federal election (Brigid Andersen 2012. Date accessed 08/07/2019, Electoral milestones for Indigenous Australians. Date accessed 12/10/2020). Helen Irving (2008) defined this as “formal and substantive rights” – formal equality provides equal rights, “conditions, and opportunities” as men get as citizens, it prohibits gender discrimination” (Irving 2008, p.2-3). The concept of substantive equality “recognises that formal equality can produce unequal results” similar to the treatment of Aboriginal women who were historically not seen as citizens with rights to vote - it was discriminatory! (Irving 2008, p.2-3).

The *Commonwealth Franchise Act 1902* was repealed in 1973 and along with the *Commonwealth Electoral Act 1918*, was changed to lower the voting age to 18 years of age. Aboriginal and Torres Strait Islander peoples were given rights to vote in 1962 and this became compulsory in 1984 (*Australian voting history in action*. Date accessed 08/07/2019).

We also can trace when the rights of children first become law. At an Association of Children's Welfare Agencies Conference in 2014, Megan Mitchell, of the Australian Human Rights Commission, and National Children's Commissioner outlined the history of children's rights from the Middle ages to today with the "adoption of the *United Nations Convention on the Rights of the Child* (CRC) in 1989" (Mitchell 2014. Date accessed 08/07/2019). This came into force in 1990, and for the first time in an international human rights treaty, children became "rights-bearers".

These rights covered "economic, social, civil and political rights" and had four guiding principles. The most important one for this analysis is the "Right to life, survival and development (Article 12)" (Mitchell, Megan. 2014. Date accessed 08/07/2019).

In Australia 'Suffrage' pertains to the right to vote; it was via a *Commonwealth Franchise Act 1902* that was enjoyed by Australian citizens over the age of 21 years and who were British subjects. However, in 1903 at the Federal election, certain peoples were unable to vote; clause 4 of the *Commonwealth Franchise Act* stated that;

(4) No aboriginal native of Australia Asia Africa or the Islands of the Pacific except New Zealand shall be entitled to have his name placed on an Electoral Roll unless so entitled under section forty-one of the Constitution (AN ACT, *To provide for an Uniform Federal Franchise*. Date accessed 28/04/2020.).

For one hundred and ninety six years the laws of Australia were discriminatory against, the First Nations people who had no say in the political, economic, cultural aspects of Australia. Christopher Stone's (1972), research on the history of human rights, pointed out that in the nineteenth century certain races of people who were not part of the dominant race were seen as people "whom nature has marked as inferior" and unable to obtain intellectual development or progress past a certain point on the evolutionary scale. It was viewed in this point of history that "nature [is] an impassable difference" (Stone 1972; p. 454).

When we view the fundamental philosophical gap between European cultures of colonisation and conquest of First Nations lands, we know historically the colonisers had the view of 'survival of the fittest' and Aboriginal people were on a path to death, and extinction. This saw the Australian states and territories enact protection policies for the First Nations people. The First Nations people were moved to missions or as the First Nations people see them as concentration camps where their lives were neglected and stranded on these missions and on a path to death. The dominant European value judgements at that time in Australia articulated that they were 'smoothing the pillow of the dying breed'. Today the dominant political and economic cultures of Australia are slowly recognising the First Nations inherent rights to control Country, ecosystems and to live independent lives. This recognition began in 1992, with the Australian High Court's decision for *Mabo (2)* and the Native Title legislation was subsequently introduced into the Australian legal system. In 2018, Fred Hooper, chair of the NBN, made a statement in regards to Aboriginal Sovereignty as First Nations of the northern Murray Darling Basin;

that federal and state governments recognise that they have never ceded or acquiesced sovereignty, dominion or ultimate title over the lands,

subsurface, all waters, natural resources and airspace within the northern Murray-Darling Basin (Hooper 2018. Date accessed 10/05/2019).

In today's neo-liberal political and environmental awareness, human rights have been derived from ideas about the Law of Nature from:

natural lawyers in the Aristotelian-Thomistic tradition ... principles which a person needs to apply in order to satisfy the basic requirements of social justice and human flourishing, [include] 'do good and avoid evil' and the reasoned exercise of mental, moral and physical attributes of humans (Nygh, Butt. 1997 (ed). p.671).

As seen above, the human being (anthropos) is at the centre of legal philosophy and reasoning. The laws in Australia are designed so that the individual human is the true agent and beneficiary.



Illustration 54. Photography of a sculpture on Brisbane city council chambers of the coming of colonial rule pushing Aboriginal people and the Australian environment to the fringes of society. Photography by Dale Kerwin 2019.

The nineteenth century legacy excluded Aboriginal people as reasoning individuals and they and all other life systems are treated as objects. In this discursive space, anthropos is central and our age and society is characterised as anthropocene. This is similar to a stage play or a carved stone memorial (see Illustration 54), where the non-Indigenous human takes centre stage with the First Nations

people and the environment pushed to the boundaries, in the social, political and legal theatre here in Australia (as can be seen in Illustration 54 sculpture on Brisbane City Council Chambers Qld).

From a First Nations perspective our continued connection to Country and the ecosystem that the dominant society tried to eradicate through the long years of the protection policy era are now being reflected by the creative arts. Creative arts present the sustained relationship to Country, spirituality, and beliefs. The First Nations people create song, poetry, dance, Kinship connection that reflect a First Nations identity, history, connection to land, water and environment and also beliefs in the creator. The creative arts also reflect identity and history and connection to Country. The First Nations through the long years of managing the environment developed a system of knowledge based on the ways of knowing and understanding the Australian environment. The First



Nations philosophy is an understanding how humans fit into the environment as a living organism and there is a relationship between all living organisms and not man at the centre or top of creation.

If the matter of how and what belongs to maintaining the position of humans at the top of the food chain, the social hierarchy for communities and economic prosperity, then there needs to be a serious effort put into understanding how nature is represented in law and through the First Nations legal recognition for property. Not only those imposed on one another as human beings, but those imposed on the Mother Earth and the non-human species which are intrinsic to "anthropocentrism" (Villavicencio and Kotzé (2018). Date accessed 06/07/2019).

For Mother Earth, in the Australian context, environmental planning policies dictate town planning or use of land. These are "instruments used to provide guidance, yet flexibility in achieving the state's planning objective. The planning instrument is made under a law of the commonwealth, a state or territory and relates to town planning or use of land" (Nygh, Butt 1997 (ed). p. 1108). In Australia, the patchwork of common law rules, statutes and environmental policies are all designed to suit the interests of both State and Federal governments. For the First Nations "access to water, both for customary and commercial purposes, is dependent on" these patchwork of rules, statutes and policies (Melanie Durette 2010, p. 312). These patchwork of rules, statutes and policies "do not reflect the relationship that Indigenous people have with water (Melanie Durette 2010, p. 312)".



Illustration 55. "Kuya" by Tanya Martin (2008). Kuya means fish in Ngiyampaa (Ngemba) language. (Fact Sheet 2009. p. 3)

When we focus our attention on the First Nations spiritual attachment to water and attachment to the Mother Earth; an information fact sheet produced by the 'Western Catchment Management Authority' NSW (2009), on *The Barwon-Darling River: Aboriginal life along the River*; includes a painting (Kuya image) by Tanya Martin, an Aboriginal woman from the Ngemba First Nation (see Illustration 55). She has strong personal and spiritual links with her culture (Kurulkiyalia – Stone Country people). The painting is of the Ngemba peoples, and depicts their

spiritual belief in the "the importance of man to walk in harmony with Mother Earth". Tanya explains that "If we care for her in the 'right way' she will care for our children" (Martin 2005).

The thick lines represent the banks of the Darling River, while thin lines around the yellowbelly represent the Brewarrina fish traps as painted on Mt Gundabooka rock art site, Bourke. The yellowbelly is shown with a large belly of eggs. Footprints represent the traditional custodians walking on their country. Pelicans represent the abundance of fish within the Darling River. Fish, turtle and shrimp represent traditional food sources from the Darling River (*The Barwon-Darling River: Aboriginal life along the River* 2009, p. 2).

The information booklet recognises that there are many spiritual stories about the formation and creation of the river. One in particular pertains to the waterways and the Barwon-Darling river. The story relates to Coolerbaroo, the cultural hero of the Naualko, who created the river by emptying his skin waterbag into the long winding channel left when Dayeery pulled a tree root from the ground (*The Barwon-Darling River: Aboriginal life along the River* 2009, p. 2).

In summary, the development and conferring of rights for anything that is in opposition to those who hold the rights, object at that point in time. They find it ridiculous, intimidating and alarming. We can see this with the ending of the Slave Trade, the rights given to women to vote, voting age, the voting rights and being counted in the census for the Indigenous Australians. We can also see the opposition to when the First Nations began identifying publicly as traditional owners of Country. We can also reflect on the amount of backlash which occurred when Native Title was awarded to Aboriginal and Torres Strait Islander peoples in 1993. This backlash is based on the dominant cultural group seeing the 'thing' as not having any significance until the 'thing' is seen as having significance to functions of the dominant group, ie. those who hold the power. We are on the cusp of a monumental deterioration of the environment with extinction of flora and fauna species, melting of the ice caps, drying up of the waterways (see Illustration 56: Lake Broad Water Dalby Qld empty of water) and mass pollution of the environment but those who hold power are unaffected and continue to deny environmental rights to the First Nations and all people.



Illustration 56. Lake Broad Water Dalby Qld empty of water in mid 2019. Photography by Dale Kerwin.

### 8.3 Earth as the Mother

In world histories there have been concepts of earth as the mother. The ancient Greeks used the term 'Gaia', the Greek Mother goddess; this reflects that the Mother Earth has functions comparable to the human body as an organism. For the First Nations;

there are physical and spiritual dimensions that are all symbolically reflected in one another. This relationship is like that of a pregnant woman to a child within her: the woman changes both psychologically as the child develops, and the foetus derives all of its capacities to grow from the Mother (Lawlor 1991, p.90).

We also see in the Judaeo-Christian traditions that property is based "upon a sacred duty of custodianship and obligations to others" and all have "a share of the earth's bounty and is a part owner" with nature and not to push nature to its limits (*Property: An Analysis of Rights and Obligations in Property, Focused on Fresh Waters*. Date accessed 10/09/18).

The First Nations people tell stories and perform ceremonies of the Mother as a religious entity with;

jiva or guruwari, a seed power of life. This refers to every meaningful activity, event, or life process that occurs at a particular place leaves behind a vibrational residue in the Mother Earth, as plants leave an image of themselves as seeds (Lawlor 1991, p.1).

The shape of the Mother Earth in: Country, mountains, rocks, waterways, riverbeds, waterholes, its vibrations (wind, storms, movement, and rhythmic pulse) and seasonal changes: are echo events of creation. These are symbolic footprints of the creator whose foot prints created the world; this is

the Dreaming and relates to the sacredness of the mother. It is remembered through tangible and intangible memory, and welded into memory by storytelling and ceremony (Lawlor 1991, p.1).

In the First Nations people's belief systems around the world, the 'Mother Earth' is used to define nature; this signifies a strong spiritual belief:

that the Earth is the source of life, the Mother of everything and everyone. In addition to giving life, mothers nurture, care, feed, console and raise those dependent on them. Mother Earth, a distinctly feminine entity, does the same (Villavicencio, and Kotzé (2018). Date accessed 06/07/2019).

Archaeology has dug down into the 'deep past' to unearth timelines for Australian First Nations from 60,000 years to 150,000 years. "Aboriginal rituals, beliefs, and cosmology may represent the deepest collective memory" of all peoples on earth (Lawlor 1991, p.9). With this understanding of living on a continent that is separated from other continents by an ocean; the First Nations people gained an in-depth knowledge of the Mother Earth and all the flora and fauna on the continent. With this knowledge they managed all the natural resources, to provide a standard of living in harmony with the vibrations of the Mother Earth and had a coexistence with the Mother Earth that was non-hierarchical, and part of the socio-cultural economic fabric of the First Nations. Metaphorically we can see this with the scarring on the river red gums, where canoes were carved out of the tree trunk at spring time, when the sap was bleeding out of the tree. The tree healed and survived and lived, maybe, for well over 300 years. These stand as testimony to the First Nations knowledge of the flora and fauna.

If we look at the environment and how much gets protected, the evidence indicates that the government does not share this interest in preserving the environment. Only 1.3% of applications under the Environment Protection Biodiversity Conservation (EPBC) Act 1999 (Cwth) are refused, with that figure dropping to just 0.4% when it comes to applications from the resources industry. Greens senator Larissa Waters has argued, "fundamentally, the laws aren't set up to protect the environment, they are set up to facilitate development" (*The government vs the environment: lawfare in Australia* August 18, 2015. Date accessed 27/06/2019).

But now as the new Australians etch their 230 odd years being on the Mother Earth, we watch this drama played out like a theatre production in the newspapers, television documentaries and news reports, for the unlawful legal rights of Terra Nullius.

Legal Rights as defined is an interesting claim, or privilege to something which is recognised and protected by rule of law, irrespective of whether the right has a moral basis. Legal rights are in contrast with moral rights which do not have any legal effect (Nyg, Butt, (ed). 1997, p. 680).

This legitimises and perpetuates the neoliberal development model being acted out in all the states and territories of Australia; it is anthropocentrism of Australian laws and development. These legal rights are deeply vested corporately-driven neoliberal and political economic interests with developmental priorities. They are based on the power of markets and financial resources, in which money is what gives life to everything and development is a means without an end. Economic development and resource extraction is based on the exploitation of natural resources and the domination of nature. This is a neo-liberal paradigm for consumerism, and growth without limits; whereby it is an exploitation of the Mother Earth and the First Nations, with the ever increasing degradation of the Mother Earth (Villavicencio, and Kotzé, 2018. Date accessed 06/07/2019).

Fred Hooper (2018), chair of the NBAN in his submission to NSW Water Reform Action Plan highlighted the ecological death of the Murray Darling Rivers and loss of totemic animals and spiritual waterholes.

The Barwon-Darling and northern basin is Home to significant totemic animals integral to First Nations culture and spirituality. The State needs to pay specific attention to water-dependent habitats of totemic animals and plants. To fail to do maintains disrespect and disregard of First Nations' needs and requirements for longevity and goes against the United Nations Declaration of the Rights of Indigenous Peoples (Hooper 2018, p. 12).

Fred Hooper (2018) in his submission also referred to the Murray Darling rivers as veins that are being clogged up with dead trees falling into the rivers causing blockages, stopping river flows essential for fish habitats. This can be related to "blockage[s] in the human circulatory system causes either crippling through strokes, and if all these are not addressed there is a death" (Fred Hooper 2018, p.13). Hooper (2018) states that the Murray-Darling needs urgent action and that the rivers have now:

passed the level of strokes" and stints need to be put into the rivers so the river "system does not die.... The river system should be free flowing. The system is becoming dysfunctional and sick ..... As Ancestral Owners, we have obligations under our Lore and Custom to care for our Country" (Hooper 2018, p. 13).

As evidence to the degradation of the Mother Earth all we have to do is read about the death of the Murray Darling Rivers. Gary Tippet (2003), writes about the damage done to the eco-system of the

Murray-Darling Basin "by reversing natural flow pattern, by starving the rivers in winter while turning them into bank-full irrigation channels in summer" (Tippet 2003. Date accessed 04/07/2019). He further states that there has been an over extraction of water with the building of weirs which have provided the "ideal habitat for both European carp and toxic blue-green algae" (Tippet 2003. Date accessed 04/07/2019). He also points out that levees stop the water flows to the rivers flood plains which have devastated native fish and bird populations and the river red gum forests (Tippet 2003, date accessed 04/07/2019).

As the drought of 2018-2019 continued public outrage was being voiced over water allocations and drying up of the Murray Darling Rivers. Even *The Australian Women's Weekly* did an investigation into the Murray Darling Basin and the fish deaths. The popular magazine interviewed four women who work and live in the Murray Darling Basin area (Trenoweth 2019). One of the women Gabbie made the point that:

its the governments and regulators, the Murray-Darling Basin Authority, and large scale agriculture interest upstream have some explaining to do. The reason we are without water in the river is because of the mismanagement and over allocation. The drought is a factor but its not the cause (Trenoweth 2019, p.35).

One of the key philosophical points made in *The Australian Women's Weekly* (April 2019) is the collective will of all peoples in a history of water sharing, and reliance on the humanity of all Australians for better water sharing and management. *The Australian Women's Weekly* (April 2019) article is similar to the Yugambeh nation's philosophical and methodology constructs of sharing stories "Talngai Gawarima".

#### **8.4 Talngai Gawarima**

"Talngai Gawarima" is a philosophical and methodological construct from the Yugambeh Aboriginal nation, which means 'the light goes around the camp and in a circular movement enlightens through stories and becomes knowledge which is of a ritual nature and heals through feeling the knowledge'. In reflecting on this and turning the attention on water rights and land rights in Australia, the non-Indigenous peoples are questioning the jurisprudence for property ownership and allocations of water. The First Nations have historically been kept out of the legal system. Australia is the only Commonwealth Country that has not signed treaties with their First Nations. The First Nations are now questioning the theory of philosophy of law for land and water as are some new Australians. To understand this philosophy of law and its development in

Australia, one needs to review the legal definition for jurisprudence, it is; "the theory of law; the study of the principles of law and legal systems and their fundamental philosophical basis" (Nygh, Butt, (ed). 1997, p. 651). However, there are several schools of jurisprudence that are reflected in the Australian legal system with their own methodology and philosophical positions. Today we live in a Country with a shared history, and in understanding this shared history there are also two laws - that is the First Nations traditional law/lore and mainstream Australian law.

Ida Nursoo (2018), in her paper on decolonising justice and introducing a legal framework, called this "jurisprudence of hybridity" (Nursoo 2018, p. 57). This is based on the fact that "discursive colonialism" which brought "the injustice of colonial acquisition of sovereignty" was unable to recognise the First Nations sovereignty, and was overturned by the Mabo decision (Nursoo 2018, p. 57-63). This signalled a fundamental shift in mainstream Australian jurisprudence for the status of the First Nations tenure to land as lawful that is having a "society organised by law" (Nursoo 2018, p. 57-63). In viewing these shared histories and occupation of Country one of the other women interviewed by the *Australian Women's Weekly*, Emma Carmody (a non-Indigenous woman) stated

that the future of the Murray-Darling relies on Australia mustering the collective will. Whether we like it or not we all belong to the marvellous tangle of humanity that makes up community and nation... we are all contributing either actively or passively, to the formation of our nation's history.... we can take the best of our democracy- our courts, our civil society, our free press - and we can use it to advance a vision of sustainable and equitable society.... so my daughters and children can sit on the banks of the Darling river...and watch water pass under Tilpa Bridge ((in) Trenoweth 2019, p.38).

Turning our attention to historical jurisprudence based on the philosophical position that:

customary law is a result of social evolution and is preferred to statutes and codes. (It) favours the idea that the law is connected to traditions and customs of the people and derives its legitimacy from these. (The) emphasis on the social value of tradition...the importance of historical continuity ... historical jurisprudence is a reaction against...(the) notion that the law is whatever the sovereign wills (Nygh, , Butt, (ed). 1997, p. 552).

Mabo (No 2) provided the repositioning in Australian jurisprudence for recognition of the First Nations jurisprudence, however, the High Court's decision was unable to recognise the sovereignty of First Nations of Australia. The High Court decision provided the Australian Parliament with authority, with the right to extinguish any recognised Indigenous title, and eventually this was written into the Native Title Act 1993 at section s11. In this view the High

Court's decision refused to compromise the legitimacy of the very legal system, or undermine the sovereignty of Australia as a nation (Ida Nursoo 2018, p. 63). Melanie Durette 2010, writes that the Courts in Australia are very "conservative in their interpretation of Native Title and their application of the principle of fiduciary duty to protect Native Title and other Indigenous interests" (Durette 2010, p. 312).

To define "Indigenous jurisprudence" Ida Nursoo (2018), states that it;

is etymologically informed...The Indigenous jurisprudential tradition, consists of poetry, law stories, songs and narratives amongst other things. These law stories weave together the members of the clan and pattern them into the land, which is the source of the Law (Nursoo 2018, p. 59).

The Australian legal system has labelled the First Nations law as 'customs', this is validated by "anthropological experts" giving evidence in the courts. Labelling the First Nations law as 'customs' makes "Indigenous jurisprudence" subservient to mainstream Australian law (Nursoo 2018, p 63-64). Maria Giannacopoulos (2019), in her online article on the movement for an Aboriginal and Torres Strait Islander voice in Parliament, quoted Gary Foley's position for Native Title that "native title *does not* equal land rights — meaning that white law cannot deliver justice, since it is itself an important arm of the colonial infrastructure" (Giannacopoulos 2019, online article. Date accessed 12/07/2019).

The notion of a sovereign debt is raised by the Sovereign First Nations with the depletion of the waterways, flora and fauna and exploitation of land which is the very basis for profit and prosperity within Australian legal structures. The Sovereign First Nations people are prevented from continuing their obligations to care for Country as the custodians within their laws/lore. The continuing exploitation of the waterways and Mother Earth for profit from a Sovereign First Nations perspective will incur a "sovereign debt" to be paid for in the future (Giannacopoulos 2019, online article. Date accessed 12/07/2019).

The Federal and State Governments' constitutional rights are being questioned in regards to the waterways, ground water and the natural environment by the Sovereign First Nations as a continuation of colonial rule by not recognising the Sovereign First Nations laws/lore and traditions. Maria Giannacopoulos (2019) states that

our democracy, our economy and legal system are built on a foundation of profound inequality, dispossession and theft of lands and resources. Because a nation and its wealth have been built through theft and violence, our democracy



is in the grips of a major yet disavowed sovereign debt crisis. Nowhere are the features of this indebted and dispossessing democracy more clearly delineated — but also invisible — than in the Australian Constitution (Giannacopoulos 2019, online article. Date accessed 12/07/2019).

The Australian Constitution gives and "sets out the structure and establishes the separation of powers doctrine, where power is divided and separated between executive, judiciary and legislature" (Giannacopoulos 2019, online article, date accessed 12/07/2019). Despite the Sovereign First Nations calls for recognition of their sovereign rights and laws as a sovereign power, the Australian government (a colonial state) retains "exclusive law-making power...." (Giannacopoulos 2019, online article. Date accessed 12/07/2019). The Australian government refuses to "share power, law-making and sovereignty" within its constitution in this sense, so too is the Federal court seen by the Sovereign First Nations as a "colonial force and an effect of colonial dispossession (Giannacopoulos 2019, online article. Date accessed 12/07/2019). When viewing consent notions within Indigenous Land Use Agreement, it is a legally construed construct that does not consider an Indigenous jurisprudential tradition.

Another of the four women interviewed by *The Australian Women's Weekly* (April 2019) is a First Nations person from the Nari Nari nation. Tara works on the Nimmie-Caira wetland project which is an IPA. Tara made the point that once people were able to put their feet into the river and see their feet. Now it is full of blue-green algae and the locals have been told not to put their feet in the water as they will become sick. Tara also pointed out that

water could be managed better with greater collaboration between traditional custodians and the Murray-Darling Basin bureaucracy. We would like to be masters of our own land, our own water and our own destiny. We would like to be involved in the decision making, working collaborative with partners around water management, rather than being sat down the back and having them come to us after the decisions are made. We'd like them to come to us just because they've got to consult, but to actually involve Aboriginal people and give them a voice, particularly with management of the waterways (Trenoweth 2019, p.38).

As has been pointed out changes made to Native Title in 1993 by Keating and later Howard legislated against Native Title owners having the power to stop any impacts to their Country. We also saw this with the repeal of the *Wild Rivers* legislation in Queensland. So this begs the question of jurisprudence in common law if the High Court rules that Native Title is a special law with a bundle of rights, then *Native Title* owners have a right to stop any impacts on their Country, have the right to input and regulate development for the environment. As stated earlier the Mount Jowlaenga traditional owners in a landmark decision by the Full Court of the Federal Court in

2017 stopped mining on Jowlaenga traditional lands. Also in 2019 the Yijibarni people's win in the Federal Court rejection of a mining appeal to mine on Yijibarni peoples traditional lands. There is now recognition in the Federal Court of the First Nations rights in common law.

*Native Title* is a special law with bundles of tenure, so can statute law be challenged by the First Nations peoples through the High Courts as these rights are from "neither the common law nor legislation but a ruling by the High Court of Australia" (Briese, Kingsland and Orr 2009, p. 8). They are "enforced and protected by the Australian legal system; for example, by injunctive or declaratory relief" (Briese, Kingsland and Orr 2009, p. 8). In regards to water Native title holders have a non exclusive right to access water which is provided for in some states by Water Acts; for example the NSW Water Act provides that

A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights (Briese, Kingsland and Orr 2009, p. 9).

In summary there is a shared history in Australia for 'Water Dreaming', when considering any Australian who depends on the waterways, and sat on the banks of our Marry-Darling rivers and saw the dead fish and dead river Red gums. They will have a passion for protection of the environment and stand with the Sovereign First Nations in recognising Aboriginal laws and waterways environmental management and choose to belong to this Country.

We will only find ourselves, and our shape as a nation, through reconciling ourselves with our land - it is the one thing all Australians share in common that is unique to us (Tippet 2003. Date accessed 04/07/2019).

There has been a long waged battle by the Sovereign First Nations for the recognition of Aboriginal Land Rights, *Native Title* and Aboriginal waterways and environmental management. It was unthinkable in Australian law since colonisation up to the 1980s. However, now in the new millennium, the drying up and pollution of the rivers and the extinction of native species of flora and fauna have given rise to a consideration of the extension of rights to the Sovereign First Nations as a sovereign entity with their own laws.

## **8.5 Rivers with Human Rights and the Law of Nature**

Water is essential to life, and in the traditional thought around the world, it has long been considered one of the main life-force elements. Given water's importance, it isn't surprising that it has a prominent role in traditional heritage practices. In terms of ritual, worship, and practicality, water is of vital importance (ICH and Water Management 2018, p.12).

We know today that four rivers have been given human rights and the rights of nature in the world - these are the Vilcabamba (Pachamama) River in Ecuador, the Whanganui River in New Zealand and the Ganga (Ganges) and Yamuna Rivers in India. To date, there are no internationally legally binding frameworks that adequately address the challenges we face for water protection. The environment and water is seen through the construct, as Nathalie Rühs and Alex Jones (2016) state of the, “Anthropocene to define our new relationship with nature” (Rühs and Jones 2016, p.1). To define Anthropocene, it is interpreting all things in the universe in terms of man and his values. Rühs and Jones (2016) argue that there needs to be a shift from this paradigm to an Earth-centred paradigm. They argue that there is also a need for “the concept of Earth Jurisprudence .... and the constitutional right of nature is needed to address the challenges that we now face globally” (Rühs and Jones 2016, p.1).

In 2010, *National Geographic* produced a special volume on water - *The Water Issue* (Vol. 10. No. 4). In one article Barbara Kingsolver (2010), writes that,

Water is life. It's the briny broth of our origins, the pounding circulatory system of the world, a precarious molecular edge on which we survive. It makes up two-thirds of our bodies, just like the map of the world: our vital fluids are saline, like the ocean. The apple doesn't fall far from the tree (Kingsolver 2010, p.44).

Water is life and the First Nations knowledge and management of water is a cultural expression as it meant the difference between life and death. The First Nations understanding of Mother Earth is finely detailed in the knowledge of water places and flora such as trees and roots that hold water. The environment like a human artery is a detailed map which provided signs for where water sources are and these were laid down in the Dreamtime by the creators and sung in song and scarred on the mother earth. This is reflected by the Woi-wurrung people of Victoria and traditional custodians of the Birrarung (Yarra) River statement in the preamble of the *Yarra River Protection (Wilip-gin Birrarung murron)* Act 2017 Vic.

In recognising the rights of the environment, Ecuador has become the first nation to include the rights of water into its constitution. On March 30, 2011, the Provincial Court in Loja, Ecuador ruled in favour of Nature – specifically the Vilcabamba River – marking the first successful case of enforcing the Rights of Nature outlined in their 2008 Constitution (Kingsolver 2010, p. 48). Ecuadorian law recognises the rights of rivers and forests as beings not as property. The Ecuadorian law provides rights to rivers and forests to flourish (Barbara Kingsolver 2010, p. 49).

On the 5 August 2014, the New Zealand parliament passed a bill to grant a New Zealand River, the Te Awa Tupua (Whanganui River) a legal personality. This became official in March 2017 with the passing of the Whanganui Iwi Deed of Settlement. This confers the river as a legal person as an entity that has the same rights and responsibilities as a person.

Following these two decisions, India has also recognised the rights of two of its rivers, the Ganges and Yamuna rivers. The Ganges and Yamuna rivers were granted the same legal rights as human beings in 2014. The Ganges River and its waters are considered sacred by well over a billion Indians. The Ganges River is the first non-human entity to be granted the same legal rights as people in India. A court in the Uttarakhand state of Northern India passed a law that the Ganges and the Yamuna its tributary be given “legal and living entities having the status of a legal person with all corresponding rights, duties, and liabilities” (Daley 2017. Date accessed 23/01/18).

Here in Australia, the Victorian state government has committed to establishing the 'Birrarung Council' to be the voice of the Yarra River (*Yarra River Protection (Wilip-gin Birrarung murrong)* Act 2017. No. 49 of 2017. Victorian Parliament). These unprecedented developments have fundamentally altered the legal status of one river in law here in Australia and a changing philosophical view of nature and rivers with a First Nations perspective. The Act also at clause 6 page 11 “binds the Crown in all its capabilities” (*Yarra River Protection (Wilip-gin Birrarung murrong)* Act 2017. No. 49 of 2017. Victorian Parliament p.11). The Yarra River is now seen as an integrated living entity to be protected. However, the Act does not give the Yarra River full legal rights as a person; all the legislation does is gives it a voice for the Traditional owners in the management of the river and environments. Michelle Maloney states that “the Yarra River Act is not a Rights of Nature law and does not change the legal status of the river itself (the river is still an object in the law),” that is a property in Australian law (Maloney 2018, p.12).

The *Yarra River Protection (Wilip-gin Birrarung murrong) Bill* combines the ‘Caring for Country’ wisdom of Traditional Owners with the most modern river management expertise. This is the first time in Australia's settlement history that legislation is co-titled and written in an Aboriginal language (Woi-wurrang) and provides a permanent voice in the governance and protection of the Yarra River. In the Woi-wurrung language of the traditional owners, *Wilip-gin Birrarung murrong* means "keep the Birrarung alive". In the Act there is a statement written in the Woi-wurrung language and in English (*Yarra River Protection (Wilip-gin Birrarung murrong)* Act 2017. No. 49 of 2017. Victorian Parliament).

The Birrarung is alive, has a heart, a spirit and is part of our Dreaming. We have lived with and known the Birrarung since the beginning. We will always know the Birrarung. Bunjil, the great Eagle, the creator spirit, made the land, the sky, the sea, the rivers, flora and fauna, the lore. He made Kulin from the earth. Bunjil gave Waa, the crow, the responsibility of Protector. Bunjil's brother, Palliyang, the Bat, created Bagarook, women, from the water. Since our beginning it has been known that we have an obligation to keep the Birrarung alive and healthy—for all generations to come (*Yarra River Protection (Wilip-gin Birrarung murrong)* Act 2017. No. 49 of 2017. Victorian Parliament. p.2).

This Act recognises the intrinsic connection of the traditional owners to the Yarra River and its Country with spiritual and religious beliefs, and further recognises them as the custodians of the land and waterway, which they call Birrarung. Written within the *Yarra River Protection (Wilip-gin Birrarung murrong)* Act 2017 Vic., part 2: Yarra protection principles section 12 Cultural principles states that,

- (1) Aboriginal cultural values, heritage and knowledge of Yarra River land should be acknowledged, reflected, protected and promoted.
- (2) The role of the traditional owners as custodians of Yarra River land should be acknowledged through partnership, representation and involvement in policy planning and decision-making (*Yarra River Protection (Wilip-gin Birrarung murrong)* Act 2017. No. 49 of 2017. Victorian Parliament p.14).

## 8.6 Interconnection of Religion to Water

A poem written by Phillip Larkin (1954), engages in the spiritual aspects of water.

Water  
If I were called in  
To construct a religion  
I should make use of water.  
Going to church  
Would entail a fording  
To dry, different clothes;  
My liturgy would employ  
Images of sousing,  
A furious devout drench,  
And I should raise in the east  
A glass of water  
Where any—angled light  
Would congregate endlessly.  
(Phillip 1954. Date accessed 10/09/2018).

Phillip Larkin (1954), writes “if I were to construct a religion I should make use of water” (Larkin 1954. Date accessed 10/09/2018). To further this symbolic role of religion to water, Mircea Eliade, a religious historian, provides the construct of ‘hierophany’. This is defined as traditional man’s,

myths of the sacred and supernatural becoming beings into the World. Mircea Eliade examines various natural phenomena in turn, and provides a paradigm where the sacred is manifested into a reality for traditional man, where all things conform and imitate the sacred, an ontological model ((in) Newman 2010, p.82). "Spring and origin, the reservoir of all the possibilities of existence; they, precede every form and support every creation" (Newman 2010, p.82). Newman (2010), introduces the ideas of spiritual understanding, for Pima Indians, Hebrew, Greek and Aztec cultures for Mother Earth. Further to the spiritual, Newman (2010) discusses the biblical aspects for water in the book of genesis (Newman 2010, p.82). Aaron T. Wolf. (2012) explores these constructs of spiritual and biblical, and describes the construct of 'Enlightenment Rift' for understanding water in today's contemporary world (Wolf 2012, p.73). Wolf (2012) discusses the process by which the global West and North has separated the worlds of rationality and spirituality. Wolf (2012) provides how the impact of this rift on ideas related to natural resources management, might be interwoven, for more effective water conflict management and transformation (Wolf 2012, p.73).

We find that here in Australia water rights doctrines are designed to meet the Federal Government and State Government systems, purposes and policies; "legal rights to water are tied to fulfilment of national policy goals and not cultural protection" (Melanie Durette 2010, p. 298). There are no Sovereign First Nations values for water in any legislation or policies. These policies and processes do not reflect the First Nations water rights and all of the policies and procedures are not based on Indigenous values (Melanie Durette 2010, p. 298).

In viewing the 'Enlightenment Rift', the Murray–Darling Basin web site for Aboriginal heritage and culture provides and describes Aboriginal 'Spiritual connection' to water however, this is contradictory. It is seen that this empowers and promotes an Aboriginal voice. However, economic and ethnocentric values still determine the management of water in Australia with no real legal decision making given to the Aboriginal voice. In 1987 the first Murray–Darling Basin Agreement was reached, which established the Murray–Darling Basin Commission (MDBC). In 1998 the Commission partnered with Aboriginal nations for the Murray Lower Darling Rivers Indigenous Nations. Then in 2007 the Australian Government passed legislation for the *Water Act 2007* (Cwlth), and in 2008 formed the Murray-Darling Basin Authority. It was then recognised that further negotiations needed to occur with Aboriginal nations for the northern part of the basin, and in 2010 the Northern Basin Aboriginal Nations (NBAN) consultative group was formed. In all, as

a collective there are 46 delegates representing Traditional Owner interest across the Murray–Darling Basin.

Further in 2008, with the event of the *Ramsar Convention on Wetlands* (DEWHA 2008), a change was made to how reviews and knowledge are focused, with the inclusion of Aboriginal cultural knowledge of water flows. This was mainly due to the perceptions and realisation that Western constructs do not provide an accurate account of the cross-cultural knowledge transmission practices. This is evident in the *Aboriginal Assessment Program for the Murray–Darling Basin* (2015), whereby assessment tools were designed and tested based on the Maori example as Traditional Owners.

In a collaborative study that was conducted over 3 years from 2008 to 2010, CSIRO and Aboriginal communities of the Tropical Rivers and Coastal Knowledge hub (TRaCK) recorded Aboriginal knowledges for water. The study was conducted with Traditional owners from the Daly River in Northern Territory and the Fitzroy River in Western Australia. The stated aim of the *Tropical Rivers and Coastal Knowledge* (TRaCK) (2011) research program was to,

provide the science and knowledge that governments, communities and industries need to make better decisions for the sustainable use and management of Australia’s tropical rivers and coasts (*Tropical Rivers and Cultural Knowledge* 2011, p.4).

The focus of the research program was “on the tropical savannas of northern Australia, including the rivers and estuaries between the tip of Gulf of Carpentaria Peninsula in Queensland and Broome in Western Australia (*Tropical Rivers and Cultural Knowledge* 2011, p.4). The researchers for the program engaged with Indigenous people’s traditional knowledge holders who “own and manage large parts of northern Australia’s rivers and coasts” (*Tropical Rivers and Cultural Knowledge* 2011, p.4). It was concluded by TRaCK (2011): that the Sovereign First Nations people’s knowledge perspectives and practices are essential, as some of these practices are still being used in Northern Australia in managing the environment and waterways (*Tropical Rivers and Cultural Knowledge* 2011, p.4). The aim of the project was to build on Australia’s capacity to protect the waterways as they are “valuable assets” to continue and develop economic “sustainable livelihood opportunities” in the northern Australian region (*Tropical Rivers and Cultural Knowledge* 2011, p.4).

In Australia, there is very little other knowledge or research being conducted in the northern regions of Australia on waterways and future degradations to the environment from over

exploitation and human impacts. TRaCK (2011), recognised that there was little integration of research from “social, economic, and environmental disciplines” (*Tropical Rivers and Cultural Knowledge* 2011, p.4). The project used science so as to inform both public debate and policy making for Australia’s northern rivers and systems (estuaries) (*Tropical Rivers and Cultural Knowledge* 2011, p.4).

The program of research had seven interconnected themes and was designed to generate, communicate, and distribute knowledge needed by the regional environmental management organisations and governments, the Sovereign First Nations communities, and industry for the sustainable management of the Northern Australia Rivers and coastal environments (*Tropical Rivers and Cultural Knowledge* 2011, p.4).

Today there is more research being conducted by academics into the Sovereign First Nations values for water and acknowledgement of the cultural differences and rights to water. Across Australia in the past there was an under valuing of Aboriginal rights to water. This under valuing was due to little understanding of the Sovereign First Nations society’s water relationships and the differences between the Sovereign First Nations and non-Indigenous water management practices within Australia. Jess McLean (2007), explains;

the subjective, intangible and highly distinct values underpinning Indigenous people’s relationships to water do not easily translate into Western environmental management frameworks (McLean 2007, p. 30).

Jess McLean (2007), describes (the TRaCK project) studies that are being conducted in the Daly River Northern Territory, the Mitchell catchment in northern Australia and the Kimberley’s Fitzroy river catchment with the traditional owners, for the "internal differences in Indigenous cultural practices" and also that they are "extremely socially complex" (McLean 2007, p. 30 ). She also comments on the lack of and acknowledgement of the Sovereign First Nations traditional values for water in the Murray River (McLean 2007, p. 30).

The First Nations people managed Country and the waterways to sustain their lives and food production. This management became the foundations of the coloniser and current liberal economic practices. These practices of exploitation of the eco-systems cause conflict and destruction as we have seen with the rivers drying up, fish deaths, and fires across the landscape. Jess McLean (2007), points out that Indigenous interests in water have been and continue to be renegotiated in response to the expansion of pastoral, agriculturist, mining and other corporate



developments. "One factor in achieving this cross-cultural recognition is the necessity of properly embracing the internal differences in Indigenous cultural practices" to mainstream cultural values in water (McLean 2007, p. 30).

However, if we look back through time, focusing on the Sovereign First Nations cultural rights and environmental human rights, and following the timelines for rights given to "civil and political rights and economic, social and cultural rights. These are often classified as part of a so-called third generation of 'newer' human rights" (*Is a healthy environment a human right? Testing the idea in Appalachia*. Date accessed 27/06/2019). These rights were given decades ago to other cultural groups around the world. But here in Australia the Sovereign First Nations have had inconsistent success with the enforcement of their rights to water and the environment.

Phil Ducan was chair of the *National Water Commission: First Peoples Water Engagement Council*, in 2011; he is also a First Nations person from the Kamilaroi Nation of NSW. Phil was asked to give the opening address to the *International River Symposium held in Brisbane* in 2011. Phil Ducan spoke about these imbalances in the consultation and engagement of the Sovereign First Nations for water. He stated that there needs to be better integration of the Sovereign First Nations in water management policies based on the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP), Article 19.

States shall consult and co-operate in good faith with the Indigenous people concerned through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (Ducan, 2011).

Phil Ducan also stated that the *National Water Commission: First Peoples Water Engagement Council* bases its work on the "*UN Declaration on the Rights of Indigenous Peoples* (UNDRIP) as the principles for improved water governance and integrated water management in Australia" (Ducan, 2011). Ducan, recognised the shared histories in Australia for land and water management.

In Australian law there are "two categories of rights: substantive – things we are entitled to have – and procedural – things we are entitled to do.... We also expect, particularly in democracies, that people should be able to obtain information, participate in decision-making, and seek legal remedies for environmental harms ...." (*Is a healthy environment a human right? Testing the idea in Appalachia*. Date accessed 27/06/2019). Considering these two categories of rights in

relationship for 'environmental justice' in the context of 'water justice' and Aboriginal jurisprudence provides, "circles of concern": recognition of difference, plurality of participation" (McLean 2007, p. 25). This is thought provoking, as history has shown us that as societies have grown they have extended legal rights to a "new entity" such as the First Nations, abolition of slavery, women, voting, children, foetuses and Uluru (Ayers Rock) (Should Trees Have Standing? Forty-five years on from Christopher Stone's proposal. Date accessed 03/07/2019).

This provides a framework and lawful recognition of the First Nations traditional law/lore for water justice here in Australia and a vehicle for water relationships, that for the environment, include social, and socio-cultural economic dimensions. This also provides for the appropriate recognition of cultural differences for management of the water and environment.

## **8.7 Conclusion**

The chapter provided a narrative on the world wide movement to Earth jurisprudence with the human rights accorded to four rivers and the movement here in Australia. This was interrogated at a national, state and local level, where polarised debates were analysed from a Sovereign First Nations perspective and a shared histories perspective. The chapter also recognised that there is a growing awareness of the recognition of cultural differences regarding Australian waterways and environmental management, when viewing the Sovereign First Nations beliefs in the Mother Earth and creation stories. This has united Australians for the recognition of the Sovereign First Nations laws/lore for Country and 'earth centred law'.

The chapter also examined studies that were undertaken in catchment areas within a local context, with the possibilities of providing the Sovereign First Nations social context and relationship to waterways. The historical paradigm for Land Rights and *Native Title*, and the short comings built into them by a colonial theoretical position of sovereignty, whereby the legal notions of traditional rights, customs, spiritual, religious practices and land management practices are glued to the pre colonisation period. For First Nations these rights are non-exclusive and non-commercial in nature.

The chapter also recognised that in the political arena, governments and legislatures prefer to leave any determinations of the Sovereign First Nations regarding water rights to the courts. Rather than making any political decisions for these rights as was seen with the Wik decision. The chapter provided a narrative of the Sovereign First Nations lack of constitutional rights, where these rights are articulated through the High Court of Australia and Human Rights for the environment.

This chapter has focused on the theory of water justice, through religious beliefs in the Mother Earth (law of Nature), human rights for earth jurisprudence and a theoretical inclusion of Aboriginal jurisprudence. The chapter also provided a narrative on legal rights accorded to other entities, through the historical lens of a society's social development and the polarised debates for these rights. Through this lens and the use of a shared history viewpoint for the advantages of providing appropriate acknowledgement of water rights to the Sovereign First Nations. This will provide a better understanding of cultural realities for water for all Australians. However, there is still a lack of valuing the Sovereign First Nations in water rights.

## Chapter 9 Conclusion



Illustration 57. *Great Artisan Basin Water Down Under- The Story of the Great Artisan Basin*. (2012). (Poster (2012)).

This thesis engaged in a culturally-responsive technique known as autoethnography. This widens the storying of Aboriginal knowledge of cultural practices used along the waterways, their social and economic uses and ecological management. There is a need to look through the omissions of colonial Australian history and the impact of overlooking the First Nations in relation to water rights. By reconstructing the past and lifting the fog of time, we are able to see the reactions of the first Australians to the new social order imposed by the new dominant cultural group, which was designed to manage the collective lives of the First Nations people. One cannot help but marvel at the reactions and play of humanity exhibited by Aboriginal people as they coped with a new order. Spiritual, religious, and cultural complexities were maintained within the context of a complex, indifferent colonial intrusion, where survival was the main goal. This can be seen with the knowledge of water flows from the Gulf of Carpentaria to Goolwa in South Australia and the cultural sites along the waterways, whereby the ritual of inscribing, etching, painting, storytelling, singing (song) and dance continued over the long period of colonial rule. This maintained the First Nations relationships to the environment as the giver of life. The painting in Illustration 57 is a representation of this cultural continuum using artistic expression to convey knowledge.

This relationship is spiritual, and through the First Nations law/lore, provided a jurisprudence principle that one was not to take more than was needed, and the survival of flora and fauna species were maintained to ensure that all peoples needs were met. The knowledge of living within ones means was passed down through generations for both men and women.

In Queensland the Nowranie Waterhole is an important cultural site for the Indjalandji-Dhidhanu peoples. The Indjalandji-Dhidhanu Peoples Native Title Corporation designed and published a pamphlet (2014) that provides information to visitors when entering their Country about their Country and cultural heritage and spiritual connection to the Nowranie Waterhole. When examining the pamphlet there is a map of the trading paths that follow the waterways north and south. Also within the pamphlet is a photograph of the Georgina River (see Illustration 58).

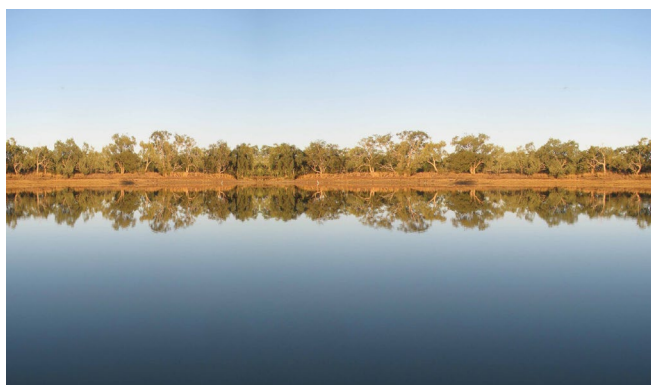


Illustration 58. Georgina River -The Indjalandji-Dhidhanu Peoples Native Title Corporation pamphlet, 2014.

The Georgina River was a favoured location for the Indjalandji-Dhidhanu People and surrounding Aboriginal groups. The Georgina River and the Ilaga -Dhuwani Rainbow Serpent Dreaming are part of the system of major trading routes that existed

across Australia before Europeans arrived. The First Nations in this region traded materials, resources and knowledge (The Indjalandji-

Dhidhanu Peoples Native Title Corporation pamphlet, 2014).



Illustration 59. *Trading paths/songlines*. The Indjalandji-Dhidhanu Peoples Native Title Corporation pamphlet (2014).

If the pamphlet is examined more closely, it can be seen that the 'trading paths' follow the major river systems west of the Great Dividing Range as shown in Illustration 59.

The colonisers, on settlement, began the illegal takeover of the First Nations lands and property, in a process known as '*Terra Nullius*', which gave all rights to the Crown. Along with the invasion of the First Nations lands and properties, the colonials brought with them concepts of "Water Dreaming" from

their own countries. Surveyors and explorers such as Sturt and Mitchell followed Aboriginal trading ways and songlines along the waterways in search of the inland sea. The colonisers believed that the rivers flowed inland to an inland sea, and thus began the concept of 'water dreamers'. Stockmen drove cattle along Aboriginal trading ways and songlines that followed the waterways in search of good pastoral lands. These historical characters used Aboriginal guides as ambassadors' to guide them along the storyways/songlines.

As settlement spread, and the depopulation of the First Nations people through mass murder and the spread of diseases, the First Nations lands and property were sold, leased and exploited through an anthropocene dream of constructing a nation. Thus this imposed on the First Nations people constructs of water nullius, economic nullius and environmental nullius. Colonisers, once planting themselves into the landscape, sought ways to make economic gains, this followed with the ensuing explorations of the waterways, which were used to move people and goods up and down the waterways. This led to the opening up of agricultural lands, sheep and cattle properties and the extraction of natural resources. Steam boats were also used to move goods to ports so the rivers became means of transportation, communication and communal activities. With the opening up of the land for economic purposes, the environment was cleared and the extraction of natural resources saw the need also to insert railway lines across the Country which drove a need for timber. This began the 'ecological arrogance' of mass extinction of native flora and fauna and drying up of the waterways.

Ironically, living on the driest inhabited continent in the world, this 'ecological arrogance' by the new Australians created consequences that are unimaginable for the environment. So began the colonial waterways management for the Murray Darling Basin that stopped the natural flows that filled the flood plains and anabranches, by inserting irrigation schemes, dams and levee banks. These schemes diverted the waterflows for population growth, agriculture and mining, which has stopped the Murray-Darling Rivers from flowing into the sea at Goolwa. The recent (2018-2019) drought in Australia highlighted that over a 100 years of poor water policies, political decisions and bureaucratic mis-management created this ecological disaster.

This 'ecological arrogance' can be viewed throughout Australian law but also in water management policies, whereby intergovernmental agreements and policy agreements at national, state and regional levels for fresh water and salt water are controlled through different legislative frameworks. These frameworks only consider the importance of the environment for human use of its resources. This gives the primary responsibility for water law and rights through legislation and policy making that include the federal, states and territories' property rights in water. In examining these, there are minimal provisions for the First Nations rights to water, or any of the other entitlements or allocations, as expressed for other water user rights. Water rights (within a Native Title Holders position) is a legal right to use water in which Native Title holders have access for cultural and customary purposes, we also know that entitlements are permits and licences, that provide allocations for water usages.

The Murray Darling Rivers fall under Australia's international agreements for *Human Rights*, *Declaration for the rights of Indigenous people*, *The Ramsar Convention*, *Convention on Biological Diversity*. However, the First Nations recognised right to participate under these agreements is often negated by the Federal, state and local jurisdictions. With the demise of water in the Murray-Darling Basin, the Federal government has inserted itself within water resource management. As water is defined within the National Interest as 'natural capital' there is a need for a consistent Council of Australian Government (COAG) approach to water management in Australia. This led to a COAG (intergovernmental) agreement for a uniform management policy of water in Australia. This has also removed: access entitlements, water delivery regulations and legislation for environmental benefit, and as of yet no provision or commitment for the First Nations water needs.

However, the formulation of the *National Water Initiative* (NWI) was meant to have clear guidelines to address the First Nations spiritual and cultural needs for water, but is lacking in any provisions, because it states 'whenever and wherever'. There are no distinctive categories for the First Nations cultural use or any access entitlements. The First Nations, whose Country is along the waterways, are calling for specific cultural water allocations, known as cultural flows, to meet their spiritual, cultural, social, economic and environmental management responsibilities and aspirations. The First Nations are clearly stating that they want to be empowered to care for Country, to make decisions about water flows based on traditional knowledge, with a clear distinction between environmental and cultural flows. Still today there are no clear definitions for cultural flows within legislative provisions, however, the only certainty is that First Nations cannot use cultural flows for economic gains.

As pointed out in Chapter 6 the Nari Nari people have access to cultural water but they have to pay for it; the funding Nari Nari people get, does not help with infrastructure. The funding only provides for water allocation. There are significant barriers in gaining and maintaining the cultural water flow licence, such as infrastructure costs (pumps), the expensive nature of the licence, and the level of bureaucratic applications. It is in the National Interest to grant cultural water licences to the First Nations, as they care for Country by rehabilitating the wetlands, waterways and ecosystems and by conducting cultural land management activities.

As noted in Chapters 5 and 6 there are gaps in water policy, and an inconsistent approach to engaging the First Nations people in implementing water policies across Australia. As with other

areas of legislation that are based on First Nations rights, water policy and legislation have negated the First Nations rights to social and economic rights. The First Nations are forced to fit into Federal, state, territory and local Councils criteria for water legislation and water policies. This can be seen with other legislation such as Native title, land rights and cultural heritage, rights for lands, waters, natural resources, cultural heritage and copyright. The First Nations people are demanding rights to water as the first Sovereign peoples of Australia.

Australia asserts sovereign rights to territorial waters under commonwealth legislation *Seas and Submerged Lands Act 1973* (Cwth). The *Native Title Act 1993* (Cwth), provides for native title rights and interest in relation to waters, which includes both sea and freshwater, including the rights to fish, hunt and gather resources from the sea and waterways. These rights are perceived as non-exclusive customary rights to water. However, in 1998, amendments were made to the 1993 *Native Title Act* that provided for future acts and licences, and regulating management of water to be valid. The procedural rights to negotiate were also watered down to a right to comment. Even the customary rights to water usage can result in extinguishment, and there is no clear provision for the protection of customary rights against other water users.

Though in recent times the Federal Court has recognised in consent determinations the First Nations rights to the enjoyment of water, and taking of resources from water. The Gunditjmara people of Lake Condah in 2004 had Budj Bim recognised as an Indigenous Landscape, and in 2008 won their native title rights. It is recognised that Lake Condah is the oldest form of aquaculture and stone houses known in world history. Budj Bim was just recently listed on the world heritage registrar. For Land Rights, each state and territory has its own land rights regimes that provide for the First Nations water rights. For example the Blue Mud Bay decision, whereby the High Court granted the First Nations people of Northern Territory exclusive ownership to eighty percent of the coastline; this included the inter tidal zone. The High Court recognised that this land was granted under the Northern Territory *Aboriginal Land Rights Act 1976* (Cwth). In effect this means the First Nations of the Northern Territory can control activities on their Country, and exercise their rights to Country.

In digging down through the deep past of cultural heritage, the Commonwealth, states, territories, and local governments introduced Aboriginal and Torres Strait Islander cultural heritage laws, which are meant to protect the First Nations cultural heritage. These pieces of legislation are meant to give preservation and protection for the First Nations cultural heritage, but are lacking full



protection from the interests of the states, territories and the neo-liberal anthropocene notions of natural resource extraction industries. Cultural Heritage legislation is meant to protect the First Nations cultural heritage in Australian waters however it does not protect areas, objects or the natural flora and fauna. The First Nations cultural heritage in the waterways and water places of cultural significance are secondary to the national interest or state, territory interests. As discussed in chapter 4, with the Queensland Premier Campbell Newman (Liberal National Party) axing of the Queensland *Wild Rivers Act* 2005 which was overturned and axed when elected in 2012.

Since the Federal Government's intervention in the Franklin Dam (Tasmania) and the rapid decline of water quality and quantity and loss of native flora and fauna, there has been a growing campaign by environmental groups, wilderness groups and the First Nations against Government inaction. Since colonisation the First Nations have had little to no input into water policies and management, within areas which they have managed effectively since the Dreamtime (beginning of time) for future generations.

Aboriginal people have historically been left out of water planning but we know that in 2000 Aboriginal involvement in water planning began, after long years of Aboriginal people making water, environmental and cultural heritage declarations and presenting these to the Governments of the day.

This has resulted in some Australian people coming together in a shared histories perspective with the new Australians, to highlight and ensure the protection of natural values to land and waterways. This has also extended to recognising the First Nations cultural obligations to water and land. This political movement is recognising the First Nations expertise, knowledge for the management of the landscape and waterways, and rights to the sharing of knowledge and being engaged in water management policy developments and legislative frameworks. However, there needs to be a more equal footing in these legislative mechanisms that address the lack of recognition to the First Nations laws/lore, spiritual, religious and cultural beliefs within water, the natural environment, native title and cultural heritage. This needs to go beyond a participatory level but as equal partners for the cultural knowledge and knowledge of the impacts on their traditional Country, impacts to cultural traditions, beliefs and lives from the over extraction of water and pollution of the waterways. It is a basic human right for the First Nations people to continue cultural practices and pass on the knowledge of the waterways to future generations.

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## **Appendix 1      UNIVERSAL DECLARATION OF THE RIGHTS OF RIVERS**

### **PREAMBLE**

Acknowledging that rivers are essential to all life by supporting a wondrous diversity of species and ecosystems, feeding wetlands and other aquatic habitats with abundant water, delivering life-giving nutrients to coastal estuaries and the oceans, carrying sediments to river deltas teeming with life, and performing other essential ecological functions,

Aware that rivers also play a vital role in the functioning of Earth's hydrologic cycle, and that the viability of rivers to play this role depends on numerous factors, including the maintenance of surrounding river catchments, floodplains, and wetlands,

Recognizing the absolute dependence of people on rivers and water-based systems, which support human life by providing us with clean and bountiful water for drinking and sanitation, fertile soil, food sources for billions of people, recreation, cultural uses, and nourishment of the human spirit, as they have done since the beginning of human civilization,

Alarmed that humans have caused the significant pollution of rivers worldwide, including with organic matter from wastewater and sewage, plastic waste, pathogens and nutrients from agriculture, and contaminants from industry, in addition to many other forms and sources of pollution, with resulting declines in aquatic health and biodiversity, as well as extensive negative human health impacts,

Concerned that excessive waterway diversions and groundwater withdrawals have significantly reduced flows in rivers worldwide, with many waterways now running completely dry, despite scientific consensus that adequate flows are fundamental to the survival of river ecosystems and serve as the lifeblood of many river-dependent freshwater and riparian ecosystems,

Further concerned that humans have caused widescale physical changes to rivers through dams and other infrastructure, which includes the construction of over 57,000 large dams worldwide that impact over two-thirds of all rivers, resulting in fragmented habitats, reduced biodiversity, imperiled fish populations, exacerbated climate change, and retained sediment and nutrients that are fundamental to downstream ecosystem health,

Finding that national and international laws pertaining to waterways are vastly inadequate to protect the integral health of rivers and river basins alike, and that these laws also fail to ensure current and future generations of humans and other species as well as ecosystems with adequate supplies of clean water to meet their basic needs,

Aware that all people, including indigenous communities and other local communities of all spiritual faiths, have long held through their traditions, religions, customs, and laws that nature (often called "Mother Earth") is a rights-bearing entity, and that rivers in particular are sacred entities possessing their own fundamental rights,

Cognizant that the degradation and exploitation of rivers is not only an environmental issue, but also a rights concern for indigenous peoples and other local communities, as the destruction of rivers threatens the very existence and way of life of those who rely upon river systems for their well-being,

Guided by the growing number of governments worldwide that seek to reverse the ongoing trend of global environmental degradation by recognizing and enforcing nature's inherent rights, including through a constitutional amendment in Ecuador,<sup>1</sup> two national laws in the Plurinational State of Bolivia,<sup>2,3</sup> a new constitution of Mexico City,<sup>4</sup> and dozens of rights of nature ordinances in the United States<sup>5</sup>,

Further guided by the growing legal recognition of the inherent rights of rivers, including through a New Zealand treaty recognizing the Whanganui River (or "Te Awa Tupua") as "an indivisible and living whole" and "a legal person," with appointed guardians to represent the River's interests; a Uttarakhand High Court decision declaring the Ganga (or "Ganges") and Yamuna Rivers as "having the status of a legal person ... in order to preserve and conserve them"; a Colombia Constitutional Court decision ruling that the Atrato River basin possesses rights to "protection, conservation, maintenance, and restoration" and a right to be free from pollution and destruction; and an Ecuadorian Provincial Court ruling enforcing the constitutional rights of the Vilcabamba River and calling for its remediation and rehabilitation,

Convinced that recognizing the rights of nature, and in particular recognizing those river rights contained in this Declaration, will foster the creation of a new legal and social paradigm based on living in harmony with nature and respecting both the rights of nature and human rights, particularly with reference to the urgent needs of indigenous communities and the ecosystems they have long protected, Mourning the many rivers across the globe that have already died due to human activities – including those so over-diverted as to no longer flow, those enclosed within pipes and buried under layers of concrete, and those so polluted as to no longer sustain life,

1. Declares that all rivers are entitled to the fundamental rights set forth in this Declaration, which arise from their very existence on our shared planet;
2. Further declares that all rivers are living entities that possess legal standing in a court of law;
3. Establishes that all rivers shall possess, at minimum, the following fundamental rights:
  - (1) The right to flow,
  - (2) The right perform essential functions within its ecosystem,
  - (3) The right to be free from pollution,
  - (4) The right to feed and be fed by sustainable aquifers,
  - (5) The right to native biodiversity, and
  - (6) The right to regeneration and restoration;
4. Further establishes that these rights are intended not only to ensure the health of rivers, but also the health of watersheds and river basins of which rivers are a part, as well as the health of all ecosystems and natural beings therein, all of which possess, at minimum, the fundamental rights to exist, thrive, and evolve;
5. Maintains that in order to ensure full implementation and enforcement of these rights, each river shall be entitled to the independent appointment of one or more legal guardians that acts solely on behalf of the river's rights and who may represent the river in any legal proceeding or before any governmental body empowered to affect it, with at least one legal guardian being an indigenous representative for those rivers upon which indigenous communities traditionally depend;

6. Determines that rivers shall have their best interests, as determined by their legal guardians, assessed and taken into account by both government and private entities in all actions or decisions that concern such rivers;

7. Resolves that all states shall implement these rights in full within a reasonable amount of time, including by developing and acting upon an integrated assessment of watershed health according to the most recent scientific understandings and in partnership with all stakeholders,

8. Strongly urges all governments to ensure prompt and adequate financial mechanisms to realize these fundamental river rights, including the right of all rivers to restoration,

9. Asserts that governments shall consider for decommission all dams that lack a compelling social and ecological purpose, and that new dam construction shall only occur when necessary to achieve a compelling social and ecological purpose that cannot be met by other reasonable means, and that in such case dam construction shall only occur upon securing the full free, prior, and informed consent of indigenous and other impacted communities, including marginalized communities, and by using the best available technologies by which to preserve ecosystem health.

10 Flows must, at minimum, follow natural flow patterns and be sufficient in quantity to maintain the ecosystem health of the entire river system. In addition, rivers – not people – own the water that flows within them.

11 These include flooding, moving and depositing sediment, recharging groundwater, providing adequate habitat for native flora and fauna, and other essential functions.

**UNIVERSAL DECLARATION OF THE RIGHTS OF RIVERS:** From:  
<http://files.harmonywithnatureun.org/uploads/upload987.pdf>. Date accessed 12/09/2020.

**Précis**

Indigenous peoples internationally share cultural and customary responsibilities to fresh water. This International Indigenous Water Declaration is a testament to the undersigned Indigenous peoples' connections to water and expresses the significance of Indigenous knowledge and water interests to the security of freshwater when water laws and systems are merging into an industry that portrays water as a commodity.

**Introduction**

In August 2008, a small group of Indigenous peoples from across the world convened in northern Australia at the site of the Garma Festival in north east Arnhem Land to share their experiences on issues and opportunities arising from emerging trends in mainstream water management systems. This exchange arose out of relationships between the North Australian Indigenous Land and Sea Management Alliance's Indigenous Water Policy Group and the United Nations University – Institute of Advanced Studies Traditional Knowledge Institute. It was anticipated that access to international experience and perspectives would broaden the frame of reference for participants in such a way that would enhance their capacity to identify and advocate around Indigenous interests in water. The exchange was successful in serving this purpose for all participants from Australia and around the world.

Particular attention was given to issues arising from emerging water trading and water property rights regimes and the increasing recognition by western science of the value of traditional knowledge for natural resource management. The meeting facilitated discussions around how best to achieve appropriate protection of Indigenous interests in water and explored how Indigenous knowledge can be recognised as expert knowledge and used alongside western scientific knowledge in water management systems.

Another outcome of the International Indigenous Water Experts Exchange and of significance to the 5th World Water Forum, as well as other relevant international fora, was the development and adoption of a statement and set of recommendations on Indigenous water knowledge and interests.

**Declaration Preamble****Context**

RECOGNISING and REAFFIRMING that the Indigenous Peoples of the World are and have been since time immemorial sovereign over their own lands and waters and that Indigenous peoples obtain their spiritual and cultural identity, life and livelihood from their lands and waters;

We assert that water has a right to be recognized as an ecological entity, a being with a spirit and must be treated accordingly. For the Indigenous Peoples water is essential to creation; Ancestral beings are created by and dwell within water.

We do not believe that water should solely be treated as a resource or a commodity.

Nation-States, in asserting competing sovereignty over the lands and waters, have introduced and enforced unlawful and unjust mechanisms resulting in trespass of the legal entitlements of Indigenous Peoples to the ownership, use, management and benefit of the lands and the waters, without consultation, consent or just compensation where required by law.

Furthermore Nation-States have grossly mismanaged the lands and waters of Indigenous Peoples, causing ecosystem collapse, human induced climate change, severe water quality degradation, extreme stress upon ecologies and species extinction at a scale and rate which is unprecedented; and

Gross mismanagement of the lands and waters and denial of access of Indigenous Peoples to their lands and waters has caused severe, widespread and on-going detrimental impacts to all aspects of the lives and livelihoods of Indigenous Peoples. This includes significant disadvantages to the health, economy and social well-being of many Indigenous Peoples. Cultural and linguistic diversity has also been compromised, leading to loss of culture and life-ways of Indigenous Peoples. A contributing factor is the concomitant degradation and expropriation by Nation-States of significant landscapes and sites of spiritual and cultural importance to Indigenous Peoples.

Indigenous Peoples have responsibilities and obligations in accordance with their Indigenous Laws, Traditions, Protocols and Customs to protect, conserve and maintain the environment and ecosystems in their natural state so as to ensure the sustainability of the whole environment.

### **Acknowledgements**

We acknowledge our ancestors and Elders who have honored and maintained the land and waters to the highest standards.

We acknowledge the work of past Indigenous Peoples in drafting and implementing international instruments and customary international law that informs our work towards justice.

### **The Declaration**

We the Indigenous Peoples of the World DECLARE that:

- Water is not a commodity. Water is a spirit that has a right to be treated as an ecological entity, with its own inherent right to exist. We further DECLARE that Indigenous Peoples:
- Of many Indigenous Nations have inherent aboriginal, treaty and other rights to water and waterways for navigation, customary and cultural uses of water.
- Have inherent and human rights to water for basic human needs, sanitation, social, economic and cultural purposes.
- Have a right to access adequate supplies of water that are safe for human consumption, hygiene and cooking.
- Must be fully involved in source water and water shed protection planning and operational processes including controlling Indigenous water licenses and fair allocation policies and practices; and
- Have a right to access and control, regulate and use water for navigation, irrigation, harvesting, transportation and other beneficial purposes.

**Indigenous Peoples also DECLARE that States must:**

- Fully adopt, implement and adhere to those international instruments that recognize the rights of Indigenous peoples and our right to land and water. These include but are not limited to the:
  1. International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD);
  2. World Heritage Convention 1972;
  3. International Covenant on Cultural, Economic and Social Rights;
  4. International Labour Organization Convention 169;
  5. Rio Earth Summit Declaration;
  6. Palenque Declaration;
  7. Kyoto Water Declaration;
  8. Ramstad Convention;
  9. Convention on Biological Diversity 1992; and
- 10. United Nations Declaration on the Rights of Indigenous Peoples, specifically Articles 8, 20, 24, 25, 26, 27, 28, 29, 31 and 32.
- 11. International Covenant of Political and Civil Rights.
- 12. UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
- 13. UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001)
- 14. UNESCO Convention on the Safeguarding of Intangible Cultural Heritage (2003)
- Recognize that all traditional Intellectual Knowledge and interpretation of the knowledge is the property of the Indigenous peoples and knowledge holder(s); and
- Fully engage with Indigenous peoples and obtain their free prior and informed consent on matters affecting them. States shall engage with the Indigenous Peoples delegated representatives in accordance with Article 19 of the United Nations Declaration of the Rights of Indigenous Peoples.
- Continue adoption of major cuts to greenhouse gas emissions to combat human induced Climate Change, as well as other harmful compounds and chemicals that cause pollution of water sources.

Signed By:

Name

Indigenous Affiliation

Organization

Contacts:

Please send your endorsed copy of the declaration to: [water@cdu.edu.au](mailto:water@cdu.edu.au) (Independent Indigenous non government organization)

Garma International Indigenous Water Declaration.

From: <https://www.afn.ca/uploads/files/env/garma-international.pdf>. Date accessed 08/08/2020

### **Appendix 3**

### **CORINDI WATER DECLARATION 2019**

WE, the First Nations People and Traditional custodians, join together with non-indigenous people of Australia to honour the spirit of Water by being a voice for it in law.

As citizens of this earth, we declare, acknowledge and recognise Water as a living spiritual ancestral being with inherent rights, above all, the right to be protected for the good of all life.

We demand that the protection of Water and the rights of nature are enshrined in the Australian constitution for the common good of all living things.

We join together to honour and respect the ancient guardianship of the First Nations People to act as rightful custodians of Country and Water - inseparable since time immemorial - bound by obligation handed down from the time of creation and based in First Nations' law, to protect all forms of Water for future generations. We recognise the existence of Water sites with multiple levels of sacred story and cultural values.

We jointly insist First Nations People design the engagement processes between themselves and the government over the care, protection and use of all Water on, below and surrounding this continent.

We require the Federal Government to commit to a national statement that enshrines natural resource management and Water with full respect to cultural differences relating to Waterscapes and determines all future Water reforms with the full inclusion of First Nations' rights.

We recognise First Nations' law and jurisprudence over Waterways and stress these rights must be enshrined in Australian jurisprudence and built into the Australian constitution as the First Nations' rights to natural resources (Water). First Nations People's Water rights have a legal status equal to that of free and simple ownership of land under common law.

We require the provision in the Native Title Act be amended: passages that acknowledge situations where rights to Water might be extinguished and overridden by other interests (mining, corporate agriculture, hydroelectricity, etc.) must be deleted.

We require that the National Water Initiative be rewritten to exclude all language that marginalises and diminishes the position of First Peoples' custodianship through terminology, such as "wherever possible" and "wherever they [rights] can be developed".

We demand that The Water Management Principles expressed in s 5 of the Act be removed and strengthened; that 'passive' terms be deleted from all legislation and policies; and the terminology 'should be protected' used instead.

We demand the Definition for Cultural Use (of Water) be defined by the First Nations peoples.

We demand that the objectives of the Australian Indigenous Water Focus Group are rewritten.

We, the First Nations People and non-indigenous peoples of Australia, join together to demand that state and federal governments revoke all Water licenses within the Murray-Darling Basin and establish new arrangements for dealing with Water in accord with the above statement.

We join together to recognise Country, which includes Water, as a living entity with a yesterday, today and tomorrow; with a consciousness; and a will towards life. Because of this richness, Country is home and peace; nourishment for body, mind and spirit; Country is hearts' ease.