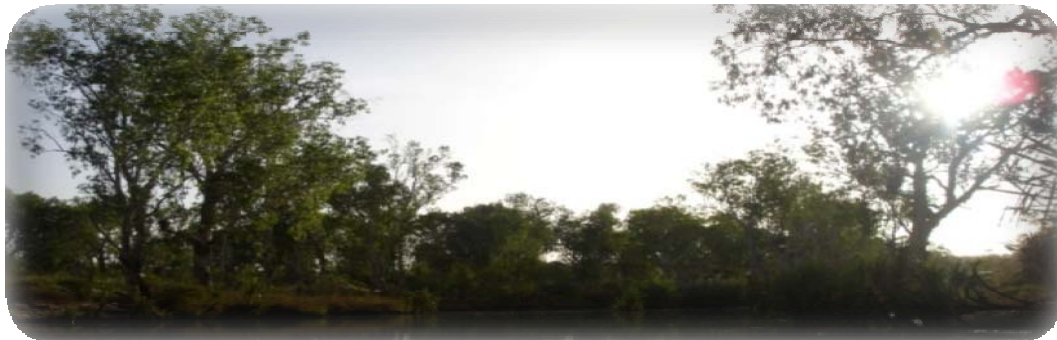


## 24 Indigenous people and water management in northern Australia: *Kimberley Institute submission*

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The future planned development of the North of Australia must be well planned and have balanced input from all stakeholders in Northern Australia.

## **PREAMBLE**

The Kimberley Institute's submission has been primarily informed by the contribution of the participants at the Mary River parking meeting convened by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) on 5 and 6 August 2009 and with the input from the Kimberley Institute Board and Policy Advisory Board.

The imperative to incorporate Indigenous knowledge and experience in the future development of Northern Australia will be critical to the balanced outcome that has historically been lacking in development initiatives since colonisation.

Never again should we as a nation allow ourselves to repeat the mistakes of the management of the Murray Darling Basin or the Ord River development. The future planned development of northern Australia must be well planned and have balanced input from all stakeholders in northern Australia.

The Kimberley Institute would like to thank the Taskforce for encouraging our submission and the resources that you have contributed to assisting with its development. We offer our support in positive initiatives that follow on from the Taskforce's report.

## CONTENTS

PREAMBLE .....	2
1. INTRODUCTION .....	4
1.2 Indigenous Water Governance and Management in Northern Australia .....	7
1.3 The likely consequences for Indigenous interests if the present water governance and management situation and trends persist .....	9
1.4 Proposal for improved water governance and management.....	10
1.4.1 Northern Australian collaborative governance institutional arrangement .....	12
1.4.2 Association of Northern Australian Traditional Water Owners .....	12
1.4.3 Indigenous water reserve .....	13
1.4.4 Northern Indigenous Water Fund .....	13
1.4.5 Independent monitoring mechanism .....	13
1.4.6 Two staged development approach.....	13
1.5 Positive consequences arising from this proposal.....	14
1.6 Negative consequences arising from this proposal .....	14
1.7 What can Government do by way of actions, incentives or regulations to promote the proposal's positive consequences? .....	15
1.8 What can Government do by way of actions, incentives or regulations to minimise the proposal's negative consequences? .....	15
1.9 What knowledge gaps will prevent the optimum application of items 7 & 8, above? What additional, hitherto unavailable, information would help Government better make a response to your recommendations? .....	16

## 1. INTRODUCTION

The Kimberley Institute is a Broome based not-for-profit incorporated organisation whose purpose is to support the building of an inclusive society where Indigenous heritage, culture and values are respected and incorporated as normal practice within the governance and policy framework of northern Australia.

Through advancing dialogue, partnerships and public discussion, the Kimberley Institute seeks to reform the current relationship between Indigenous people and governments that perpetuates inequity, exclusion and underdevelopment.

The Kimberley Institute views the focus on Northern Australia's future water use and management through the Northern Australian Land and Water Taskforce (NALWT) inquiry as a recognition by the national government that potential exploitation of northern Australia's water must be accompanied by different values and policies from that which have existed in southern Australia over the last century .

Northern Australia has recognized global significance because of the breadth of its biodiversity that coexists with traditional Indigenous societies. The fact that Indigenous societies are a defining feature of Northern Australia's cultural, demographic and social character makes it imperative that the Taskforce should advise the Australian Government that significant change to water policy and management should apply to northern Australia.

The cultural and social values of living Indigenous societies will be marginalised if the current national water policy framework becomes entrenched in northern Australia. Commercialisation of water and accompanying land development is a continuation of the western development ethos which has caused devastation to Indigenous people and their physical environments throughout much of Australia, to say nothing of the land and environmental degradation caused by this type of development philosophy. Colonial entrenchment and land development appear to be more intertwined rather than environmental best practice and ecological foresight.

Indigenous people do not reduce water and land to mere economic assets. They are pillars of life in which the economic sphere is but one among many and quite often subsumed under others, including belief systems. In the past Australian governments and development planners have systematically ignored the cultural dimensions that distinguish Indigenous logic from western logic.

The Indigenous position on the proposed use of water in northern Australia was made clear at the forum of Indigenous water experts convened by the Northern Australian Indigenous Land and Sea Management Alliance (NAISMA) at Mary River in August 2009. The meeting affirmed the critical importance of maintaining Indigenous ecosystems and ensuring minimal impact from settlement and unsound or unsustainable development across Northern Australia. The forum urged governments to ensure the participation of the Indigenous peoples based on their rights as Traditional Owners of northern Australia in the development of policies, setting of allocations and management of regulatory schemes that may evolve.

This submission is framed from the principles and ideas articulated by Indigenous people at Mary River and from the continuing work of NAISMA's Indigenous Water Policy Group and informed by research undertaken by the Lingjari Foundation in partnership with ATSIC in 2002.

The submission recognises that the task of the NALWT to assess economic development opportunities in tropical northern Australia in a manner that is consistent with the sustainable use of

the water resource and the National Water Initiative (NWI) is all the more complex because of the different legal regimes that apply in this region, which overlay the common law and statutory recognition of Indigenous rights, and the widespread practice of customary law. There are four legal jurisdictions, one national and three provincial (Queensland, Northern Territory and Western Australia), that divide tropical north Australia from east to west, encompassing the northern river systems. Two of those jurisdictions are states of the federation, with the Northern Territory located in the middle. Within this western overlay of Australian jurisdictions are many pre-existing customary laws that have their distinctions.

The capitals of the two States and the national Government are located in southern Australia, which perpetuates some of the salient features of northern Australia's historic colonial relationship with the modern Australian nation state. The federal constitutional powers of the Commonwealth Government are different with respect to a State and Territory, with the Commonwealth Government particularly active in the Northern Territory with respect to Indigenous affairs and having legislated effectively on behalf of the NT with respect to the one major water project in the region – the Ord River Irrigation Scheme in 1968.

People living in northern Australia tend to think of this geographical space as North, or East to West, or vice versa. This sense of identity is intertwined with the northern climatic conditions and the built environment.

The implementation of the National Water Initiative with respect to Indigenous interests was designated a priority by the National Water Commission in 2008:

“Improving water plans to incorporate indigenous issues more effectively” was designated as a priority in the last National Water Commission report on progress in water reform<sup>1</sup>.

The NWI was initially approved by COAG – all Australian Governments – without input from independent Indigenous interests.

The Agreement provides that States and Territories:

- Include Indigenous representation in water planning, wherever possible
- Incorporate Indigenous social, spiritual and customary objectives and strategies for achieving these objectives, wherever they can be developed
- Take account of the possible existence of native title rights to water in the catchment or aquifer area
- Potentially allocate water to native title holders
- Account for any water allocated to native title holders for ‘traditional cultural purposes’.<sup>2</sup>

An update of progress in water reform under the NWI in 2008 conducted for the NWC confirms the variable and slow rate of implementation of these commitments concerning Indigenous interests by the relevant jurisdictions in northern Australia<sup>3</sup>.

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<sup>1</sup> “Update of progress in water reform” INPUT INTO THE WATER SUB GROUP (WSG) STOCKTAKE REPORT 15 February 2008 National Water Commission available at <http://www.nwc.gov.au/resources/documents/COAG-Update-WR-150208.pdf>

<sup>2</sup> NAILSMA IWPG Indigenous Interests and the NWI: Water Management, Reform and Implementation Summary Booklet above n 1, 3. Specifically see NWI 2004, para. 52-54.

<sup>3</sup> Ibid “Attachment A” page 10.

Kimberley Institute's view is that not only have those parts of the NWI concerning Indigenous interests not been effectively implemented but also that the terms of that recognition is seriously inadequate.

The major problems with the current attempt to recognize indigenous interests in the NWI are:

- The general lack of recognition of the status of Indigenous peoples as the first peoples of northern Australia, the fact that they are one of the largest landholders in the north and consequently fair recognition of their responsibilities in the management, use and protection of the water resources of northern Australia
- The discretionary and not mandatory nature of most of the requirements
- The failure to unambiguously recognize an Indigenous specific consumptive/commercial water allocation in water plans that will provide effectively for Indigenous economic aspirations
- The narrowing of the allocation of water to native title holders only and generally only for cultural purposes
- The inclusion of Indigenous cultural flows within the environmental pool and not as a separate planning requirement.

Indigenous people's interests need to be recognised more broadly and be based on both the nature of their communities, their economic development aspirations and their status as the first peoples, the Traditional Owners of the lands and waters of northern Australia. Indigenous people have a relationship and connection to these lands and waters that have evolved unique spiritualities and cosmological interpretations to humanity's relationships to creation.

To base recognition solely on native title is deficient as many Indigenous people hold title under the Northern Territory Land Rights Act 1976 and not native title in accordance with the Native Title Act, 1993. In addition many are still claimants under the NTA process which will take some years to resolve.

In other situations Traditional Owners hold customary interest in parks and conservation areas or in pastoral leases.

Some Indigenous people also will not achieve legal recognition under the NTA because their land has been given to someone else or they have been ruled out because of the convenient but culturally absurd notion of extinguishment. The historic capacity to legislate injustice for Indigenous people continues through the Native Title Act and court rulings such as *Yorta Yorta*.

Unless these situations are taken into account many Indigenous people will miss out on water allocations and also not have their traditional interests recognised in water management and use.

Australia will simply continue on its colonial trajectory regarding Indigenous rights and responsibilities.

The Australian State has now endorsed the United Nations Declaration on the Rights of Indigenous People which has a number of articles that relate to Indigenous people's rights to water. Consistent with the Declaration, the Mary River Statement expressed that, "any policies and legislation that are developed in water allocation and management in North Australia needs to ensure that Indigenous rights are paramount".

This submission takes account of these concerns and argues that governments should put in place a cross jurisdictional policy and governance framework to ensure that water allocations and use in northern Australia is culturally, socially and ecologically sustainable.

The Kimberley Institute submission acknowledges that many of our proposals will require legislative accommodation and would argue that the Taskforce considers these issues and also consider what statutory measures would guarantee the ongoing and critical participation by Indigenous interests in the future management and exploitation of northern Australia's land and water resources.

## **1.2 Indigenous Water Governance and Management in Northern Australia**

The history of northern Australia is characterised by wealth extracted from the region, mainly through the pastoral, mining, pearling and forestry industries. Indigenous labour was central to economic colonialism, but Indigenous people were largely excluded from the material benefits. This exploitation has been accompanied by fragile regional governance, dependence on state support, lack of public investment in community capacity, social and capital infrastructure and an outmoded land administration system. For Indigenous people it has meant a decline in social, economic and cultural well-being and marginalisation in the development process.

The persistence of these conditions maintains the region's underdevelopment status and will continue to do so unless and until more positive benefits are returned to the region and there is better planning for socio-economic and environmental sustainability.

An expectation by governments and investors that the Northern Australia Land and Water Taskforce will identify the sustainable capacity of the northern river systems and/or drainage basins to support increased consumptive water use as well as identify economic development and diversification opportunities, can only mean further exploitation of a unique northern resource. Hence the issue is not just about developing water resources to increase usage or create economic opportunities, but also about managing future usage demands on water in a manner that ensures the preminent position of Indigenous societies and a mutually agreed framework by which they will survive and prosper whilst contributing to the advancement of the broader society.

Overuse of water and failure to address ecological problems, as has happened in the southern States of Australia, is an important lesson for future use and exploitation of northern rivers and drainage systems. The northern rivers and drainage basins are relatively undisturbed compared to southern Australia. Northern rivers carry vast amounts of water and demand for water in these regions is low due to sparse populations. However northern land and rivers are likely to face increasing development pressure thus putting at risk the cultural and ecological systems which are highly vulnerable to intervention. A transparent risk management framework and strategy has an essential place in any disturbance of the Northern Australian waters and lands.

This in turn has to demonstrate how any detrimental impact on Indigenous people will be mitigated. Indigenous people are uniquely connected to surface and ground water, relying on them for food, medicines, materials and cultural identity, yet Indigenous interests and values in water are poorly understood by the decision-makers who determine how water resources are used. This is no longer an acceptable defence.

Mechanisms and structural learning forums guided by Indigenous people must have a central role prior to setting or carrying out any policy.

Western notions of commercial and environmental flows of both ground water and surface water do not reflect the significant importance of water to Indigenous customary law and traditional economy. In the Indigenous spiritual and physical world land and water are indivisible. Indigenous knowledge of water and technological expertise in harvesting water has sustained traditional societies and ecosystems for thousands of years. Water flows are fundamental to sustaining cultural environments and are consistent with land and other natural resources. Indigenous values determine that water is communally owned and shared.

Water is culturally important to Indigenous people because it sustains the environment and the people. Flora and fauna that exists in the environment and topography that is associated with water courses and the land will have an integral and intelligible link in Aboriginal world view of life and its meaning.

Water has a greater value beyond the narrow commercial value placed on it by business and industry. For Indigenous people the cultural importance of water is emphasised through Indigenous laws, responsibilities and protocols. There are key elements which reflect this cultural value including:

- Traditional ownership of land and waters through systems of kinship and ancestral relationships
- Rules, protocols and responsibilities are attached to traditional ownership of land and waters
- Water sustains the environment and the people, replenishing the bush foods and sustaining culture and economic activities
- Water is important for recreation and education and is critical to well-being
- The landscape including water has stories, songs, ceremony and cultural meaning.

Indigenous people are not merely another stakeholder but have status as first peoples with rights and responsibilities in land and natural resources that predate colonisation. Such rights and responsibilities continue today, yet state recognition of Indigenous water rights is limited to non-commercial resource use. Indigenous people constitute a significant proportion of the permanent residents of northern Australia and dominate the population who live outside Darwin, Mt Isa, Kununurra, Katherine, Kununurra and Broome where river systems are fundamental to liveability and cultural life. As such they are important contributors to the regional economies and have long term interest in protecting and utilising the natural resources in a sustainable way. This has enormous benefits for policy makers because Indigenous knowledge of local water systems and their place in the natural environment provides a potential valuable resource for water planning and management.

Indigenous people are also major landowners (40% of the region's land mass) with various titles including statutory land rights title, native title exclusive possession and coexistence rights, ownership and co-management of conservation lands, Aboriginal reserves, lease hold land and Aboriginal owned pastoral leases. Indigenous land holdings will expand through the processes of the Native Title Act.

Traditional owners and others are uncertain about water management in Northern Australia. Common law Indigenous rights, the Commonwealth Native Title Act and other statutes provide limited legal recognition for Indigenous people to inland waters. As a consequence, statutory water management systems empower State and Territory water authorities to control and regulate water resources, and privilege 'mainstream' management approaches, normative frameworks and values over those of Indigenous people.

There are inherent impediments to recognising Indigenous rights and interests in the National Water Initiative. Compared to other countries with a similar colonial/settlement historic experience

Australia has inconsistent, ad hoc and underdeveloped approaches to allocating water to Indigenous uses and meeting Indigenous values in water quality management and river conservation. There is no clear policy framework to incorporate Indigenous rights and for the domestic application of the UN Declaration of the Rights of Indigenous Peoples or other international treaties and conventions.

### **1.3 The likely consequences for Indigenous interests if the present water governance and management situation and trends persist**

If the historic trend continues in regards to water resources and associated land use activities the consequences for Indigenous people in northern Australia will be tragically inevitable. Social and economic disenfranchisement of Indigenous people is a global issue which nation states including Australia have to confront. The United Nations Declaration on the Rights of Indigenous Peoples presents a clear charter for nation states.

For many Indigenous people, including Indigenous people in Australia, the experience is appropriation of land, social and cultural disintegration, alcohol and drug abuse and increased crime and social disorder. Indigenous people are custodians of the land and waters in the north and play a critical role in protecting and maintaining the country for a sustainable future.

Social and economic disenfranchisement in regards to the issue of water management will further marginalise Indigenous people in the future development of the north. The concurrent outcome is poor consideration or total neglect of Indigenous water interests. This is a recipe for conflict not only over water and associated land use but also over policy approaches that treat Indigenous knowledge and practices as problems to be solved. However the usual approach is to overlay more ill-informed policies and practices.

There will be a significant social and economic cost if Australia abrogates its responsibility to properly manage a vast region of recognised global significance. This global significance is underlined by a traditional knowledge base and a largely intact natural environment in the north of Australia. The traditional knowledge base which has sustainably managed the environment for many millennia is built on the spiritual and cultural affiliation to land and associated management practices of Indigenous people.

There will also be a cost in Australia's international standing and an unmeasurable opportunity lost in failing to apply new thinking and methodologies to land and natural resource management through partnerships with traditional land owning groups. Avenues of scientific innovations in food, medicine and carbon sequestration and abatement could also be truncated through the continued exclusion of Indigenous people from policy formation and decision making.

Southern Australia's continued exploitation of northern Australia's resources would mean that Australia would forego a historic opportunity to rebuild Indigenous societies, manage and protect northern Australia's cultural, ecological and social values and make a significant contribution to lessening Australia's carbon emissions through a partnership of Traditional Owners, governments, industry and environmentalists.

In the absence of the structural inclusion of Indigenous people in the management of water in northern Australia there will be an inevitable loss of unique Indigenous bio-cultural diversity as well as future water scarcity. In this situation there is potential for conflict expressed through litigation and social fracturing.

With higher possibilities of environmental degradation, salinity and increase in acid sulphate soils, governments should be mindful of the experience of southern Australia and the inevitable future cost of addressing mistakes.

#### **1.4 Proposal for improved water governance and management**

The Kimberley Institute proposes a radically different treatment of the northern regions of Australia of which water management must be cognizant. The Kimberley Institute argues that the extension of a national policy framework on water management to northern Australia as envisaged under the terms of the National Water Initiative ignores fundamental differences between northern Australia and the moderate climatic regions of settled, southern Australia.

Early European colonisers engaged with the temperate regions of southern Australia with a sense of environmental and economic familiarity that resulted in western traditions of land use and settlement patterns. Intensive agricultural production, livestock grazing and rapidly expanding urban settlement has led to the destruction of Indigenous nations with Indigenous survivors clinging to eroding remnants of their traditional worlds. Indigenous physical environments have been profoundly reshaped by European land use and settlement to the point that sustainable livelihoods and economic habitats are threatened over vast regions of southern Australia.

Northern Australia's geography and climate has shaped a completely different European occupation of northern Australia, so much so that it could easily be seen as a distinct country. Here the monsoon "wet" and the temperate "dry" are two distinct climatic seasons that create a physical geography that bear no resemblance to European traditions of land use and liveability. Consequently European occupation of northern Australia has been tenuous, characterised by sparse non-permanent western settlement and only a few urban centres whose viability are mostly underpinned by government outlays.

In northern Australia Indigenous people's social networks, culture and physical environments have not been damaged in any way that could be compared with Indigenous people in the southern Australia. This is both a historical truth and a contemporary reality. Except for a handful of population centres, there is no evidence that northern Australia will repeat the historical patterns of large scale non-Indigenous settlement which has occurred in southern Australia.

Good Government and sound nation building calls for a governance regime for managing the sustainable use of northern Australian lands and waters which reflects the social, cultural and environmental reality.

If the future management of the water and land resources of Northern Australia is to be under a new regime of sustainability and partnership then the provisions of the various mining acts need to be subject to the constraints and philosophy of a new contemporary sustainable water management in northern Australia.

The mistakes of not taking into account the environmental and social disasters of MacArthur River and the Ord Stage 2 Development should not be repeated in any future development for northern Australia.

The Kimberley Institute propose a governance and management approach that has a longer term vision for northern Australia by creating a uniform water management system across the north of Australia. The proposal's philosophical underpinnings are that Indigenous traditional society and the

physical environment which supports it are seen as fundamental assets to attract Indigenous people's economic and social participation, as opposed to being trapped in the legacy of exclusion and dispossession that has been the hallmark of northern development to date. Here is a golden opportunity to do business differently with respect and integrity to substantiate values around nation building.

**Central to the proposal is that there should be agreement between Indigenous people in northern Australia and the Commonwealth, Western Australian, Queensland and Northern Territory Governments about the comprehensive governance arrangements expressed through a northern Australian policy framework.**

The policy framework will provide guidelines for the sustainable use of water in northern Australia. The sustainability framework relates to the management of the total northern Australian waters that essentially is made up by the consumptive pool which makes water available for economic development purposes and environmental and cultural flows. The Kimberley Institute is concerned about the inherent uncertainty of allocating licences for water use when there is such a paucity of reliable data on northern water catchments. Given the potential for drawing on water from the environment and cultural pool to supplement the consumptive pool, it is proposed that a third category as a proportion of the total northern water pool be created as a safeguard reservoir that is quarantined from any further draw downs on the unknown or uncertain reserve in question. The safeguard reservoir should be part of the total percentage setting for any catchment use involving consumptive and environmental and cultural flows and not be used to top up the environmental and cultural flows without a serious review of existing use. The purpose of the safeguard reservoir is to safeguard the northern Australian water flow in the long term.

Determinations in increasing the ascribed regulated percentages for use and conservation in the past has not been transparent. In the north this needs to be justified not just on the basis of market demand.

In addition to the sustainability reserve, it is also proposed to establish a reserve within the consumptive pool for Indigenous economic purposes.

The policy framework will also provide guidelines about minimising the impact of water related economic development on the environment through mechanisms such as buffer zones.

The policy framework would detail the integrated governance arrangements of northern Australian water management incorporating:

- A Commonwealth Government led institutional decision making mechanism of collaborative governance comprising State and Territory Governments, Indigenous interests, industry, and environmentalists
- Establishment of Northern Australian Association of Traditional Water Owners to enable a partnership approach to manage northern Australian water and administer Indigenous benefits
- Creation of an Indigenous Water Fund to address past exclusion and dispossession and enable Indigenous participation in economic development
- Establishment of an Indigenous Water Reserve for Indigenous cultural, social and economic use as a component of the consumptive pool
- Establishment of an independent monitoring mechanism of the environmental and social impacts of water use
- A two staged development approach where Indigenous interests are dealt with as a priority before third party applications and interests are addressed.

### **1.4.1 Northern Australian collaborative governance institutional arrangement**

It is proposed that the Commonwealth Government should have oversight of the jurisdictional space of northern Australia supported by collaborative governance arrangements where State and Territory management and licencing regimes are exercisable via a North Australia Land and Water management and regulation entity that would be chaired by the Commonwealth and incorporating Western Australia, Northern Territory and Queensland Governments, Indigenous people, environmentalists and industry.

This governance arrangement would transcend the current complex and unsatisfactory institutional arrangements where the issuing of water licences and management of water is managed separately by each State and Territory in northern Australia involving numerous agencies and regulations that govern different aspects of water, such as water quality, pricing, wastewater management and environmental impacts.

The proposed management entity would be an institutional mechanism which would formalise the inclusion of Indigenous people in the management and development of northern Australia's land and waters. It is proposed that at least two Indigenous people from each jurisdiction be represented on the northern Australian body.

Its purpose would be to:

- Determine the percentage of the categories of northern Australian waters to be assigned to consumptive pool, environmental and cultural flows and the Safeguard Reservoir
- Regulate allocations from the consumptive pool
- Negotiate, develop and approve water management plans
- Monitor impacts of water use through independent monitoring mechanisms
- Protect of Indigenous values.

The Northern Australian Land and Waters governance entity would develop and approve a legally binding overarching northern Australian water plan. Local or regional water plans would be developed by State and Territory water agencies consistent with the northern Australian water plan and approved by the Northern Australian Land and Waters Governance entity. Water licenses and projects would continue to be issued by State and Territory authorities consistent with both plans.

### **1.4.2 Association of Northern Australian Traditional Water Owners**

An Indigenous representation and accountability structure is fundamental to the effectiveness of a new water management regime in northern Australia that recognises Indigenous rights as a defining feature. It is proposed to establish an Association of Northern Australian Traditional Water Owners represented by Native Title Representative Bodies, Native Title Prescribed Bodies Corporate, Native Title claimants and Traditional Owners whose native title cannot be determined under Australia's legal system.

The Association will require a secretariat funded by the Commonwealth with appropriate scientific, planning and policy development expertise.

The role of this association will be to:

- Determine Indigenous membership on northern Australian land and waters governance entity
- Oversee proposed Indigenous Water Reserve and determine applications
- Manage proposed Indigenous Water Fund
- Undertake environmental, social and economic research and provide advice to Indigenous people
- Support Indigenous participation and negotiation in regional water management plans.

### **1.4.3 Indigenous water reserve**

In recognition of past appropriation of Indigenous people's land and waters and the current reality of Indigenous people's cultural and geographic demography in northern Australia it is important that an appropriate proportion of the consumptive pool be allocated for Indigenous people's cultural, social and economic use. The allocation of licenses for Indigenous use should be undertaken through the water management planning process through the strategic support of the Association of Northern Australian Traditional Water Owners.

### **1.4.4 Northern Indigenous Water Fund**

In conjunction with the proposed Indigenous water reserve as a component of the consumptive pool it is also proposed that a Northern Indigenous Water Fund be created through Commonwealth budget appropriation. The Fund would be managed by the Association of Northern Australian Traditional Water Owners to support Indigenous cultural and social sustainability and enable Indigenous people to participate in economic development, purchases of licences or participate in water trading.

### **1.4.5 Independent monitoring mechanism**

The recent report by CSIRO North Australia Sustainable Yields Project highlights the lack of data about northern Australian river systems. The ecological and social impacts from the use of water for commercial purposes from these river systems will be uncertain and will require regular monitoring. It is proposed to establish an independent monitoring entity which will have small board comprising scientists, Indigenous community, government, Industry and conservation interests who will have a secretariat to monitor water use. The independent monitoring entity will make recommendations to the Northern Australian Land and Waters governance entity with respect to licence conditions, compliance and matters dealing with environmental and social impacts.

### **1.4.6 Two staged development approach**

In recognition that Indigenous people are not treated as simply another stakeholder but occupy a status of Traditional Owners with primary rights, it is proposed that Indigenous interests and concerns are dealt with in the first instance before water licences are allocated to third party interests.

Dealing with Indigenous concerns involves settling unresolved land claims, ensuring that Traditional Owners understand the consequences of proposed development and enabling access to Indigenous water reserves before other uses for conservation or commercial purpose are allocated licences.

## **1.5 Positive consequences arising from this proposal**

The proposal provides a policy framework and a governance structure that could build a new paradigm for northern development and mitigate the negative impacts of future development.

The proposal would allow for the engagement and participation of Indigenous peoples in development planning and the economic and conservation strategies that could shape inclusive and sustainable development in Northern Australia. A sustainable development paradigm would build a social and economic environment for delivery of long term needs as opposed to short term economic gains.

The proposed Commonwealth led cooperative governance arrangements would allow for a comprehensive management regime across diverse jurisdictional domains within a coherent policy framework. This would result in a cost effective and transparent management of water resources consistent with national goals and objectives.

The primary interests of Indigenous people in the proposal would allow uncertainties over native title and heritage concerns to be resolved which would encourage a clear foundation for sustainable development planning.

The new chapter in Australian history that Prime Minister Rudd spoke of in the Parliamentary Apology speech in February 2008 could achieve significant meaning by placing Aboriginal people and their rights and responsibilities at the centre of and paramount to proposed reforms in water management in northern Australia.

## **1.6 Negative consequences arising from this proposal**

The proposal will be seen by some, particularly the States and Territory governments as a power grab by the Commonwealth that will usher in sweeping machinery changes in State Government instrumentalities. But the price of not cooperating to ensure sustainable management of water is a price too high to pay, if the ecological problems experienced in the southern States are to be bequeathed to the future of Northern Australia.

Existing development projects that may not be sustainable or cause detrimental impacts on Indigenous people and the environment - will not be affected by this proposal and therefore will remain in operation.

The proposal will require substantive legislative action at both the national and state level that could cause delays and political tensions. The establishment of administrative and machinery structures will result in short to medium term increases in public outlays.

A significant reform of this nature will cause tensions and resistance by sector interest groups including Indigenous groups who have power, roles and responsibilities under current governance arrangements.

## **1.7 What can Government do by way of actions, incentives or regulations to promote the proposal's positive consequences?**

It is fundamental that the Commonwealth Government should adopt a longer term view of northern Australian development and communicate a vision of its sustainable development and social and cultural inclusion as an important facet of nation building. In doing this every effort should be made to develop a cross party political consensus to be enshrined as a national policy statement for the management and use of northern Australia's waters.

In the promotion of the northern Australian vision the Commonwealth Government should ensure due weight is given to Indigenous aspiration, rights and concerns.

As a first step governments should agree to set up specific mechanisms to deal with issues arising from giving priority to resolving Indigenous concerns over land title and water use.

NAILSMA and the expanded Indigenous Water Policy Group should be adequately resourced to undertake consultations with Indigenous people in northern Australia so that Traditional Owners understand proposed changes over water management and are in a position to participate in policy formation and governance development.

Government should commence a process of rationalising and prioritising the various projects concerned with Northern Australia land and water exploitation to be addressed under the new regime of sustainability.

Government should endorse an agreement making process informed by the Regional Forest Agreement model which aims to culminate in a comprehensive agreement in areas defined by cultural geography and eco systems.

The Commonwealth should amend the Native Title Act as recommended from Mary River Report, "That the Native Title Act is amended to include water as a use right, to negotiate benefits (other than just customary use rights), and that this be included in any other local/state/federal/international laws, codes and protocols." (Page 6)

## **1.8 What can Government do by way of actions, incentives or regulations to minimise the proposal's negative consequences?**

The Commonwealth should provide financial assistance to State and Territory Governments to enable them to undertake planning, assessments, consultations and issue licenses under the proposed regime through COAG mandated National Partnership Agreements.

Government should invest in a strategy of dialogue and culturally effective mediation and conciliation between Indigenous people and between Indigenous and other stakeholders to create a space for meaningful engagement, to dispel misconceptions, minimise confusion and tension and importantly to solve difficult issues.

A communications strategy should be developed involving mainstream and Aboriginal Media to inform and create a new narrative for northern Australia around water values, water usage and water management about why this time - arrangements, structures and activities will be different.

Every effort should be made to achieve broad cross party consensus.

**1.9 What knowledge gaps will prevent the optimum application of items 7 & 8, above? What additional, hitherto unavailable, information would help Government better make a response to your recommendations?**

There is a lack of understanding in Government and at ministerial levels about cultural knowledge that Indigenous people have in regard to land, country and other relationships Indigenous people have as part of their unique identity and sense of being. Nor is there any clarity or certainty in government of future Indigenous aspirations

On the Indigenous side there is clear lack of knowledge about Government water reform policy, particularly related to the proposed separation of land from water and proposed commercialisation of water through trading entitlements and licences.

Research into the development of a historical cultural map overlaying the physical topography that is targeted for development, incorporating historical catchments through living experience, historical records and scientific understanding could provide knowledge partnership methodology to assist assessments and analysis.

Governments and industry have limited understanding of Indigenous people's economic aspirations for the use of water. Indigenous aspirations are varied and do not necessarily correlate with commercial development.

There is a dearth of data on domestic water supply to Indigenous communities and remote towns especially regarding water quality.

There is a critical lack of knowledge about the potential for economic opportunity from the ethno botany harvesting particularly with respect to traditional medicines.

The general lack of knowledge and appreciation of Indigenous belief systems and life practices creates unthinking development and contributes to the assimilation of Indigenous peoples.

There is a pervasive ignorance in the dominant society about the vulnerability of Indigenous people within the developing modern Australian State in the absence of constitutional protection for Indigenous culture and values.

The development ethos of global capitalism permeates public policy with fundamental assumptions that spreading wealth through trickle down from development is the solution to poverty and social disadvantage. In Australia the Closing the Gap strategy ignores Indigenous well being imperatives such as cultural practice and healthy country.

Sustainability has come to mean all things that it has become abused and meaningless. There needs to be an informed approach through rigorous data about what is not sustainable on cultural, social and ecological grounds.

Within key Government agencies there is a lack of data on existing commercial use of water by Indigenous people and there is no standard facility for identifying Indigenous licensee's within jurisdictions.