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LIST OF ACRONYMS & ABBREVIATIONS

| | |
|---------|---|
| ACT | Australian Capital Territory |
| AIATSIS | Australian Institute of Aboriginal and Torres Strait Islander Studies |
| ALRC | Australian Law Reform Commission |
| ARMCANZ | Agriculture and Resource Management Council of Australia and New Zealand |
| ATSIC | Aboriginal and Torres Strait Islander Commission |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CERD | Convention on the Elimination of All Forms of Racial Discrimination |
| COAG | Council of Australian Governments |
| CRC | Convention on the Rights of the Child |
| CSIRO | Commonwealth Scientific and Industrial Research Organisation |
| FPWEC | First Peoples' Water Engagement Council |
| HREOC | Human Rights and Equal Opportunity Commission |
| ICCPR | International Covenant on Civil and Political Rights 1976 |
| ICESCR | International Covenant on Economic Social and Cultural Rights |
| ILUA | Indigenous Land Use Agreement |
| ILC | Indigenous Land Corporation |
| NAILSMA | North Australian Indigenous Land and Sea Management Alliance |
| NSW | New South Wales |
| NT | Northern Territory |
| NWI | National Water Initiative |
| NZ | New Zealand |
| OECD | Organisation for Economic Co-operation and Development |
| Qld | Queensland |
| QYAC | Quandamooka Yoolooburrabee Aboriginal Corporation |
| RIWR | Reserved Indigenous Water Rights |
| SA | South Australia |
| SDL | Sustainable Diversion Limit |
| Tas | Tasmania |
| TEK | Traditional Ecological Knowledge |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| Vic | Victoria |
| WA | Western Australia |
| WAL | water access licences |

PREFACE

Water has and always will play a significant role in my life. As a young child I swam and went fishing. I remember swimming through the ocean waves far from the shoreline and then wiping the beads of saltwater off my skin. The freedom of being surrounded by glistening water, either in the river or the ocean, is an important part of my being.

Since embarking upon my research I am more acutely aware of the integral spiritual relationship water conveys in Aboriginal society and within my own family. My identity is central to this research and the Aboriginal perspective of this book. Many books are written about Aboriginal communities and not by Aboriginal peoples.

In 2005, the first year of my doctoral studies, Australia was in the midst of a devastating drought and a great number of Australians experienced the personal and economic impact of water scarcity. Public commentary in the media regularly debated the state of Australia's water management and the need for governments to advocate and secure water access and use for industry, farmers and irrigators. The experiences of Aboriginal communities were barely written or spoken about. From my daily reading and research, the silence of the media on Aboriginal water rights was telling. Why was there no interest in the First Australians?

The national dialogue on Australia's 'drought of the century' omitted generations of Aboriginal water knowledge – an intimate knowledge of seasonal weather cycles and hundreds and thousands of years in drought. Drought is the cyclical condition inherent to the Australian landscape and the lived experience of the First Australians. Australian society failed to recognise that this ancient knowledge was the result of thousands of generations of Aboriginal habitation, observation, experiment and adherence to the Aboriginal rule of law.

Australia's short timeline of European invasion and occupation virtually ignored Aboriginal water rights and interests. Aboriginal water knowledge would have been instructive for Australian society during this 'hundred year drought' – for example in evaluating the human and cultural relationships of water, how to maintain water access and water quality, to identify the parameters of water use during cyclical conditions of drought and appreciate the significance of Aboriginal water creation stories to understand Australia's ecological environment.

It's taken many years for Australian society to value Aboriginal knowledge such as fire management practices, bush medicines, bush tucker and traditional

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ecological knowledge. Some sectors of the broader community accept this knowledge as Aboriginal science — a systematic approach to understanding the environment and our relationship with the land, the waters and the ecological systems that depend on them. Recognising the value of Aboriginal water use practices is critical if we are serious in responding to Australia's future water needs. There is a universal benefit in applying Aboriginal knowledge to the Aboriginal environment — Australia's ancient cultural creation is unique and Aboriginal water knowledge is the key to future water planning.

It was timely to receive the Stanner Prize because it provided national recognition for Aboriginal water rights and why there is an urgent need to prioritise major policy and law reform on these issues. It is well overdue to overturn the myth of *aqua nullius* that exists in Australia's constitutional and legal framework — and remedy the wrongs. My desire is to share this research with a wider audience — not just an academic work for the few but a conversation that we all need to have.

This book explores Aboriginal water rights and interests in Australia. In the early drafts of my research I wrote about the experience of common law countries in Canada, New Zealand and the USA and how they addressed water resource regimes with Indigenous communities. Sadly, this material was cut to meet the academic word limit.

My doctoral work examines the general failure of the Australian legal system to formalise Aboriginal peoples' ownership of water as an Aboriginal property right and why this failure affects Aboriginal peoples' rights. In particular for Aboriginal communities to make decisions on the use and management of water resources. The chapters explain why Australia's marginalisation of the water rights of Aboriginal peoples impacts upon the living standards of Aboriginal communities and compounds intergenerational poverty.

The water interests of the Torres Strait are not addressed because I believe this research is better instructed by Torres Strait Islander peoples, who are innately connected to the cultural knowledge and interpretative water dialogue of their communities.

About the author

I am a Wiradjuri Nyemba woman. Wiradjuri Country is generally accepted as 'extending from Coonabarabran, the Great Dividing Range to the Murray River and western NSW'. As long as I can remember I have loved water. Swimming past the surfers and riding the waves back to shore. Childhood memories of throwing a line in – eating freshly caught mullet and pippies. Just sitting on a beach and

watching the sunset is enough. My boys love fishing and eating what they catch. Horses have been a lifelong passion and my daughter is a fearsome rider. As long as I can remember music was always played in the house – on the piano, the ukulele or the accordion.

The idea of university came years later. With four years of high school and four young children I applied to TAFE College because I wanted to join the police force. It was hard to believe that a year at TAFE opened other doors to undergraduate studies. My study load with three concurrent degrees in arts, education and law was challenging. Education offered my family the prospect of a better life. There was always a sacrifice — studying when I wanted to play with the kids, leaving early to lectures and home late for evening tutorials and working in-between. When I was admitted as a practising lawyer in Sydney I looked over to see the smile on my daughter's face. We made it!

I started legal practice as a criminal defence lawyer in 2003 before taking up a research and associate position in the Federal Court of Australia under Justices Wilcox and Branson. In 2005 I led the Aboriginal Water Trust of the NSW Department of Natural Resources to establish, administer and implement an increased level of Aboriginal participation in the water market. This opened my eyes to the bureaucracy in water management and the poor level of support for the water needs of Aboriginal communities.

I was invited to attend the inaugural Indigenous Water Summit established by the National Water Commission and was commissioned by the Western Australian Government's Department of Water to review and make recommendations on Indigenous water policy for the Water Resources Management Bill. Since 2013 I have been principal solicitor of Triple BL Legal specialising in intellectual property and Indigenous Traditional Knowledge, commercial law and pro bono work with remote Aboriginal communities.

My role as Executive Officer of the first Aboriginal Water Trust in Australia gave me a deeper understanding of the legal and political issues surrounding water resources — and the government's position with state water policy, water planning and enterprise development. At the time I was Virginia Falk changing my name to Virginia Marshall on my marriage in 2010.