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AIATSIS RESEARCH DISCUSSION PAPER NUMBER 32 MAY 2013



AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES
NATIVE TITLE RESEARCH UNIT

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AIATSIS Research Discussion Paper No. 32

First published in 2013 by AIATSIS Research Publications

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National Library of Australia Cataloguing-in-Publication entry:

Author:	Bauman, Toni, author.
Title:	Pathways to the co-management of protected areas and native title in Australia / Toni Bauman, Chris Haynes, Gabrielle Lauder.
ISBN:	9781922102119 (ebook)
Series:	Research discussion paper (Australian Institute of Aboriginal and Torres Strait Islander Studies) ; no. 32.
Subjects:	Aboriginal Australians--Land tenure--Management.
	Torres Strait Islanders--Land tenure--Management.
	Native title (Australia)
	Land use--Australia--Management.
Other Authors/	Haynes, Chris, author.
Contributors:	Lauder, Gabrielle, author.

Australian Institute of Aboriginal and Torres Strait Islander Studies.

Dewey Number: 346.940432

Cover photos: Rangers working with DEC to construct their own HQ at their ranger camp, which is known as Martu ku Ngurra (Martu's home). Lorna Glen Station, Western Australia, 2010. Photo credit: Lindsey Langford, Central Desert Native Title Services.

Timber Creek school children at the hand back of Judparra (Gregory) National Park. Jasper Gorge, Northern Territory, 2010. Photo credit: Lateral Concepts.

Robbie Wongawol, Land Management Officer with the Wiluna Martu Ranger Program. Lorna Glen Station, Western Australia, 2009. Photo credit: Lindsey Langford, Central Desert Native Title Services.

Typeset in Arial and Calibri

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Chris Haynes joined the Australian National Parks and Wildlife Service in 1978 after practising as a professional forester in South Australia and the Northern Territory, including at Maningrida in Arnhem Land. He worked in a number of different roles in the early development of Kakadu National Park (and Uluru for a brief period) before being appointed Director of National Parks in Western Australia in 1985. After retiring from the Western Australian government in 1997, he was a consultant for several years before resuming full-time work as Park Manager at Kakadu in 2002. He completed his PhD on the co-management of Kakadu in 2009 and has since carried out consulting work and part-time teaching and tutoring in anthropology and sociology at the University of Western Australia where he is an Honorary Research Fellow.

Gabrielle Lauder is a Senior Research Officer in the NTRU at AIATSIS. She completed her undergraduate studies (BA/LLB) and Honours in Law at the Australian National University and is currently studying for the Graduate Diploma in Legal Practice. Gabrielle has a background in human rights law and environmental law. Since early 2012 Gabrielle has been responsible for producing case summaries and analyses of native title jurisprudence and native title publications. She is currently focusing on the legal and policy pathways to the co-management of protected areas in Australia and the relative value of these institutional arrangements. Gabrielle is responsible for the table in the Appendix to this Discussion Paper.

Acknowledgments

We have many people to thank in bringing this paper to fruition over a significant period of gestation and preparation — too many to name in the space provided, but you know who you are. Our efforts to 'get it right' have entailed considerable collaborative efforts beyond the cause of duty with traditional owners, independent researchers, staff at other research institutions, including CSIRO, Native Title Representative Bodies and Native Title Service Providers, Registered Native Title Bodies Corporate, government departments, and staff in the NTRU at AIATSIS. Participants at a number of NTRU workshops, including a workshop of government staff in Alice Springs in 2012, have provided comments on and revisions to successive drafts, for which we are extremely grateful. Dr Dermot Smyth reviewed the paper and made a number of insightful suggestions.

The authors sincerely and gratefully acknowledge all these contributions, as well as those of the anonymous peer reviewers of an earlier version of this paper. Responsibility for the views expressed and for any errors is, of course, our own.

Disclaimer

Co-management negotiations in the states and territories are dynamic and often in a state of flux, and information can be difficult to locate. In the course of preparing this paper, governments have changed and some arrangements may be under review. The information in this paper is as accurate as possible at the time of writing, and does not comprehensively describe all co-management arrangements in place across Australia. Readers are advised to check information about individual protected areas or jurisdictions with sources close to the subject area including government officers and staff of Native Title Representative Bodies and Native Title Service Providers who are working on particular issues.

Abbreviations and acronyms

AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALA	*Aboriginal Land Act 1991* (Qld)
ALC	Aboriginal Land Council
ALCT	Aboriginal Land Council of Tasmania
ALP	Australian Labor Party
ALRA	*Aboriginal Land Rights Act 1983* (NSW)
ALRANT	*Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)
ALRM	Aboriginal Land Rights Movement
Balkanu	Balkanu Cape York Development Corporation
CALM Act	*Conservation Legislation Amendment Act 2011* (WA)
CFLA	*Conservation Forests and Lands Act 1987* (Vic)
CMA	Co-operative Management Agreement
COAG	Council of Australian Governments
CYA	*Cape York Peninsula Heritage Act 2007* (Qld)
DATSIMA	Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (Qld)
DEC	Department of Environment and Conservation (WA)
DECC	former Department of Environment and Climate Change (NSW)
DERM	Department of Environment and Resource Management (Qld)
DEWNR	Department of Environment, Water and Natural Resources (SA)
DSE	Department of Sustainability and Environment (Vic)
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999* (Cth)
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs (Cth)
Framework Act	*Parks and Reserves (Framework for the Future) Act 2003* (NT)
GABMP	Great Australian Bight Marine Park
GBRMP Act	*Great Barrier Reef Marine Park Act 1976* (Cth)
GBRMPA	Great Barrier Reef Marine Park Authority
GLaWAC	Gurnaikurnai Land and Waters Aboriginal Corporation
IJMA	Indigenous Joint Management Area
ILUA	Indigenous Land Use Agreement
IMA	Indigenous Management Agreement
IPA	Indigenous Protected Area
IUCN	International Union for the Conservation of Nature
JMA	Joint Management Agreement
KALNRMO	Kowanyama Aboriginal Land and Natural Resource Management Office
LAA	*Land Administration Act 1997* (WA)

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LNP	Liberal National Party
MACAI	Mannum Aboriginal Community Association Incorporated
MG Corp	Yawoorroong Miriuwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation
MoU	Memorandum of Understanding
MPA	Marine Protected Area
NAILSMA	North Australian Indigenous Land and Sea Management Alliance
NCA	*Nature Conservation Act 1992* (Qld)
NPA	*National Parks Act 1975* (Vic)
NPAL	National Park (Aboriginal land)
NPCYPAL	National Park (Cape York Peninsula Aboriginal land)
NPRMA	*National Parks and Reserves Management Act 2002* (Tas)
NPRSR	Department of National Parks, Recreation, Sport and Racing (Qld)
NPTSIL	National Park (Torres Strait Islander land)
NPWA	*National Parks and Wildlife Act 1974* (NSW)
NPWA SA	*National Parks and Wildlife Act 1972* (SA)
NPWAC	National Parks and Wildlife Advisory Council of Tasmania
NPWS	New South Wales Parks and Wildlife Service
NRS	National Reserve System
NRSMPA	National Reserve System of Marine Protected Areas
NSW	New South Wales
NT	Northern Territory
NTA	*Native Title Act 1993* (Cth)
NTMCs	Native Title Management Committees
NTPWC	Northern Territory Parks and Wildlife Commission
NTRB	Native Title Representative Body
NTS Corp	Native Title Services Corporation (NSW)
NTSP	Native Title Service Provider
NTSV	Native Title Services Victoria
OEH	Office of Environment and Heritage (NSW)
OFA	Ord Final Agreement
OIWG	Operational Implementation Working Group
PBC	Prescribed Body Corporate
QPWS	Queensland Parks and Wildlife Service
RAPA	Rainforest Aboriginal People's Alliance
RNTBC	Registered Native Title Body Corporate
RTO	Registered Training Organisation
RSA	Recognition and Settlement Agreement

SA	South Australia
SANTS	South Australian Native Title Services
SEWPaC	Department of Sustainability, Environment, Water, Population and Communities (Cth)
SIWG	Senior Implementation Working Group
TALSC	Tasmanian Aboriginal Land and Sea Council
TOLMA	Traditional Owner Land Management Agreement
TOLMB	Traditional Owner Land Management Board
TOSA	*Traditional Owner Settlement Act 2010* (Vic)
TPWC	Territory Parks and Wildlife Service
TPWCA	*Territory Parks and Wildlife Conservation Act 2005* (NT)
TPWS	Tasmania Parks and Wildlife Service
TSB	Territorial Sea Baseline
TSRA	Torres Strait Regional Authority
TUMRA	Traditional Use of Marine Resource Agreements
UNDRIP	United Nations Declaration for Indigenous Peoples
UNESCO	United Nations Organization for Education, Science and Culture
WA	Western Australia
WHACC	Tasmanian Wilderness World Heritage Area Consultative Committee
WOC	Working on Country program
WTMA	Wet Tropics Management Authority
YCI	Yalata Community Incorporated
YLM	Yalata Land Management

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Introduction

In recent decades, various forms of co-management of national parks and other protected areas[1] by governments and Indigenous people have come to the fore. This has occurred as Indigenous peoples have progressively demanded greater access to and decision-making power over their traditional lands. The response of governments has also seen the aligning of a number of policy approaches that have contributed to an increase in attention to co-management.

In the first instance, there has been a rapid rise in the number of protected areas in Australia since the 1960s, and this is continuing as the Commonwealth government aims to increase the size of the Australian National Reserve System (NRS) by 25 per cent and Australia's network of terrestrial protected areas to 125 million hectares by 2013 (Caring for Our Country 2013a).[2] In addition, at least 16 per cent of Australia's land area is now held by Indigenous peoples under a range of tenures, with much of this land being of high biodiversity value (Altman & Kerins 2012). As a mechanism for adding new protected areas to the NRS, the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) has an Indigenous Protected Area (IPA) program that supports traditional owners of lands or seas who voluntarily dedicate their lands as protected areas to promote biodiversity and cultural resource conservation. IPAs now form the second largest component of the National Reserve System, covering over 3 per cent of Australia and making up 23 per cent of the NRS (SEWPaC 2013b).

Alongside this growth in protected areas, there has been a rapid increase in Indigenous involvement in environmental management (Smyth 2011),[3] particularly through the Commonwealth government's Working on Country (SEWPaC 2013c) and Caring for Our Country (2013b)[4] programs, Indigenous employment programs that are managed by SEWPaC. As research has progressively demonstrated that caring for and working on country has a significant positive impact on Indigenous social and emotional well-being (Burgess et al. 2005, 2009; Garnett & Sithole 2007; Hunt, Altman & May 2009; Berry et al. 2010; Johns & Eyzaguirre 2006; Altman & Kerins 2012; Weir, Stacey & Youngentoub 2011; Griffiths & Kinnane 2010; Ganesharajah 2009), and can provide economic development opportunities (see Altman, Buchanan & Larsen 2007), a link is now being made between Indigenous

1 The guidelines of the International Union for the Conservation of Nature (IUCN) list seven categories of protected areas set aside for their natural and cultural importance, grading them on a scale that relates to the degree of human activity that is allowed. As defined by the IUCN, protected areas are areas of 'clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve long-term conservation of nature with associated ecosystem services and cultural value' (Dudley 2009).

2 The NRS includes almost 10,000 protected areas covering 13.4 per cent of the country — over 103 million hectares. It is made up of Commonwealth, state and territory reserves, Indigenous lands and protected areas run by non-profit conservation organisations, through to ecosystems protected by farmers on their private working properties (SEWPaC 2013a).

3 Smyth (2011); see also Hill et al. (2012: 7) for a range of statistics concerning the growing importance of Indigenous involvement in protected area management.

4 In 2012, the 'Caring for Country' program, specifically aimed at Indigenous people, was replaced by the 'Caring for our Country' program, which is aimed at supporting all communities, farmers and other land managers in protecting Australia's natural environment and sustainability.

activities on country and reducing Indigenous disadvantage. This link has been officially recognised by the Council of Australian Governments (COAG) in its National Indigenous Reform Agreement and 'Closing the Gap' policies, to which all states and territories are parties, which emphasise partnerships between government and Indigenous people such as co-management as key elements of addressing Indigenous disadvantage (FaHCSIA 2012).

Another factor that has made co-management increasingly important is that state and territory governments have progressively employed such arrangements as solutions to demands for Indigenous land justice and reconciliation, as well as a way of 'reconciling the competing imperatives of ecosystem protection and Indigenous rights and cultural heritage' (Corbett, Lane & Clifford 1998: 2). Since the passage of the *Native Title Act 1993* (Cth) (NTA), co-management arrangements have become relatively commonplace as they often constitute the only substantive native title outcomes for traditional owners through Indigenous Land Use Agreement (ILUA)[5] negotiations with governments. ILUAs are often pursued in parallel with negotiations towards native title consent determinations, or instead of such determinations. In the case of protected areas, the NTA only allows that native title may be determined as a 'bundle of rights' — the right to hunt or fish, for example — rather than as a right to exclusive possession or ownership, and the rights of the Crown are seen to prevail over those of traditional owners.[6] Throughout Australia, there is also a growing trend towards native title agreement-making that links native title and co-management 'in common legal, economic and social framings given that areas where native title has been determined to exist coincide with extensive areas of naturally vegetated land' (Maclean et al. 2012: 19; see also Godden 2012; Bauman, Stacey & Lauder 2012).

Most states and territories have now introduced new legislation and/or amended existing conservation legislation to enable co-management over protected areas. As the IPA program increasingly interacts with native title processes, it has evolved to enable the co-management of existing government-declared protected areas. IPAs have now been dedicated — not only over Indigenous-owned land as has been the case until recently, but also over a range of other tenures within the traditional estate of an Indigenous group (Smyth 2009; Ross et al. 2009: 245–7; Bauman, Stacey & Lauder 2012; Djunbunji Ltd 2011).

The emerging acceptance of co-management suggests that the early fears and hostility towards it by some members of the public and government involved in the management of protected areas throughout Australia in the 1970s and 1980s have been significantly allayed.[7] Over the years, the activism of Indigenous peoples in lobbying governments, often through their representation by various representative bodies and land councils, has played a critical role in this development as they persist in their demands for recognition of their unique traditional responsibilities and knowledge (Ens et al. 2012; Muller 2012) in looking after country in the often protracted negotiation processes towards co-management. However, governments have been slower to support similar arrangements over Marine

5 Indigenous land use agreements are prescribed under the *Native Title Act 1993* (Cth), Pt 2 Div 3.

6 *Wik Peoples v Queensland* (1996) 187 CLR 1.

7 Such early resistance was particularly noticeable in the Northern Territory — for example, in the late 1970s and early 1980s negotiations surrounding Kakadu (Haynes 2009; RUEI 1977a, 1977b), Uluru (Toyne 1994) and Nitmiluk (Bauman & Smyth 2007: 17).

Protected Areas (MPAs) — 'sea country' or 'saltwater country' as traditional owners often refer to marine areas (Smyth 2009: 95) — and over freshwater (Bauman & Smyth 2007: xii; Smyth & Ward 2009: 2).

In this paper, we are concerned with the regulatory and non-regulatory 'formal institutions' defined by Maclean et al. (2012: 21) as 'the rules, regulations and social norms that are formalised in conventions, strategies, policy and plans' that frame the entrance to co-management arrangements. The paper first provides an overview of these institutions in Commonwealth, state and territory jurisdictions, and discusses a number of evolving pathways to co-management in Australia, in particular native title. It then makes some jurisdictional comparisons of these institutional arrangements, questioning their relative value and whether their diversity is creating significant inequities among Aboriginal people.

Jurisdictional comparisons cannot be made wholesale or at face value, however. The paper discusses a number of issues in making such comparisons and highlights the importance of flexible co-management arrangements on an incremental pathway to 'full' co-management arrangements with a number of provisos, including that governments formally agree to such a progression at the outset. Like many others in recent years (e.g. Galvin and Haller 2008; Ross et al. 2011), we also argue that institutionalised arrangements do not tell the full story about what is actually happening 'on the ground', and we discuss a number of issues that can arise as such arrangements play out in practice.

As Borrini-Feyerabend et al. (2004a: 69) comment, it is not easy to identify 'a sharp demarcation between formal types of participation and actual power sharing in management activities'. Co-management is not only a matter of institutionalised arrangements and their expression in formal institutionalised cooperation (Hill 2011: 83). It is also a human capability and an ongoing process of negotiation, the brokering of partnerships, and the building and maintaining of relationships. That is, while formal institutional arrangements such as legislation, tenure, lease-back arrangements and the structures of boards and committees are clearly important, co-management is as much about 'people, power and relationships as it is about formal structures, management and corporate technicalities' (Hunt et al. 2008: 9).

Nevertheless, as we note, institutions *do* matter, and it is important to get them 'right', including their 'fit' with local circumstances and their ability to be flexible, adaptable and collaborative, in allowing for the serial capacity-building of both Indigenous and government parties, and for changes in aspirations over time.

Finally, the paper suggests that there is a need to normalise a culture in which co-management is conceived as an ongoing process of the negotiation of meaning and relationships within and across parties, rather than as a partnership made up of distinct entities of 'us' and 'them'. Seen through such a lens, co-management is a distinctive and complex single form of governance in which traditional owners, Indigenous organisations and bureaucracies interact to produce shared outcomes. Achieving shared outcomes requires the meeting of 'top-down' bureaucratic policy and decision-making and 'bottom-up' decision-making, needs and interests.

A note on terminology

In Australia, and indeed elsewhere, the term 'co-management' is often used interchangeably with the term 'joint management'. Each may also signify specific co-management arrangements in particular jurisdictions, though such usages are not standardised across them.

The term 'co-management' has its roots in international human rights discourse and although the International Union for Conservation of Nature (IUCN) has defined a set of protected area governance types, it has no universally agreed definition (see Lyver Davies & Allen 2013 for a discussion of typology and Graham, Amos & Plumptre 2003 for the governance types). The term co-management is gaining currency in Australia, including within the IPA regime, and is employed to discuss a range of governance types. The term, 'joint management' was coined by the Aboriginal Land Rights Commission (ALRC 1974) in the Northern Territory to mean that the interests and powers of the Indigenous people in relation to the land are guaranteed by law — specifically, that title to the land is vested under Australian law in its traditional owners,[8] leased back to the state for purposes of national park (or other reserve) and governed by a board with members drawn from the state and a majority of traditional owners. Later it came to mean, in addition, that the board was chaired by a traditional owner and that day-to-day decisions were made consultatively.

Today in Australia, the terms 'joint management' and 'co-management' are sometimes used interchangeably and may involve something less than the control over decision-making envisaged in international definitions of co-management, where 'decision-making power, responsibility and accountability are shared between government agencies and Indigenous peoples … that depend on that area culturally and/or for their livelihood' (Borrini-Feyerabend, Kothari & Oviedo 2004b: 32). The terms may, for example, confer only 'co-operative' advisory status to traditional owners and involve commitments to provide information or consult on a continuum of governance options (Borrini-Feyerabend, Kothari & Oviedo 2004b: 30). They may also be applied in some jurisdictions to what are more commonly referred to in the international literature as 'collaborative arrangements', where specific arrangements are negotiated 'as appropriate for each context, [including] the authority and responsibility for the management of specific area or sets of resources' (IUCN 1996 in Borrini-Feyerabend et al. 2004a: 66).

In this paper, we use the term 'co-management' as an overriding generic term. However, in discussing specific jurisdictions, we employ terms, including the term 'co-management', consistent with their usage in those jurisdictions. In Victoria, for example, the term 'co-operative management' may be used to distinguish between the advisory status of committees under these arrangements, and the apparently more powerful 'joint management' decision-making by Traditional Owner Land Management Boards. In Queensland, the state government tends to draw a distinction between 'joint management' as it applies specifically to the Cape York Peninsula and North Stradbroke Island and 'co-operative' or 'co-management' as they apply to other arrangements. In New South Wales,

8 The definition of traditional owners here follows that used in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), s 3(1): 'a local descent group of Aboriginals who have common spiritual affiliations to a site on the land, being affiliations that place the group under primary spiritual responsibility for that site and for the land; and, are entitled by Aboriginal tradition to forage as of right over that land'.

the preferred term 'joint management' seems to apply to both parks with traditional owner majority decision-making powers and those with only advisory and consultative committees. In South Australia, the term 'co-management' is used to describe a range of arrangements while the term 'co-operative management' appears to be employed to refer to less formal engagement of Aboriginal people. The term 'joint management' is usually employed in Western Australia, including in legislation, though terms such as co-management, co-operative management and consultative management may occasionally be employed. In Tasmania, the term 'joint management' appears to be in the process of being replaced by 'co-management'; and in the Australian Capital Territory, the term 'co-operative' is used.

Throughout the paper, we use the term 'traditional owner' rather than 'native title holder' to refer to 'Aboriginal and Torres Strait Islander people who have responsibilities, rights and interests in relation to lands or waters under their own laws and customs' (Duff & Weir 2013: viii). Although the term 'traditional owner' has specific legal meanings across state and territory jurisdictions, it is a more inclusive term, give that traditional owners may or may not have had their native title rights recognised under the NTA.

Co-management arrangements in Commonwealth, state and territory jurisdictions in Australia

In this section, we describe the various shared management arrangements that are in place in Commonwealth, state and territory jurisdictions, commencing with the Commonwealth. There is a demand for this kind of comparative information, particularly from the Native Title Representative Bodies or Service Providers (NTRBs and NTSPs) involved in negotiating co-management arrangements on behalf of traditional owners. Locating such information is not always straightforward, however. While some information is publicly available in formal documents such as native title consent determinations, ILUAs, management agreements and plans of management, this is not always the case. ILUAs, for example, may contain confidentiality provisions that make access difficult (despite the fact that protected areas are intended to be managed on behalf of and for the benefit of all).

Information about co-management arrangements is also located in a changing policy environment, and as a result the details of jurisdictional arrangements may become rapidly outdated. The first incarnation of this paper was towards the end of 2009, for the purposes of reviewing the array of co-management arrangements in Australia. It sought to incorporate and update information that was produced by an earlier AIATSIS project, published as a series of reviews of most jurisdictions on the NTRU website in that same year (AIATSIS 2009). In the process of updating, we discovered a host of new information about a rapidly changing scene. Since 2009, most jurisdictions have introduced or amended legislation or modified policy, native title claims have been settled, and there has been a rapid expansion of academic and government-sponsored literature.[9] Many jurisdictions have also changed governments, and new policies and approaches may have been drafted but not announced, or are still being tested and have not become fully effective. Some management agreements are still subject to ongoing negotiations.

Readers are advised to check information about individual protected areas or jurisdictions with sources close to the subject area, including government officers and staff of NTRBs and NTSPs who are working on particular issues.

The Commonwealth

After much struggle and persistence by traditional owners, the Commonwealth government entered into joint management arrangements with traditional owners over three national parks in Australia between the late 1970s and the 1990s: Booderee National Park located in Jervis Bay Territory;[10] and Kakadu National Park and Uluru-Kata Tjuta National Park (both of which have World Heritage status) in the Northern Territory. These arrangements were made possible by earlier struggles over land rights in the Northern Territory, which led to the Royal Commission headed by Justice Woodward in 1973 and 1974. Woodward's general

9 As we have noted in the Acknowledgments section of this paper, our efforts to ensure accuracy of content have entailed considerable collaborative efforts within the NTRU, with staff at other research institutions, NTRBs and NTSPs and government staff. The liaison with government staff resulted in a workshop in Alice Springs in 2012 (Bauman, Stacey & Lauder 2012).

10 Jervis Bay Territory was acquired by the Commonwealth government from New South Wales in 1915 to provide a sea port for the land-locked ACT (Smyth 2007a: 71).

recommendations led to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRANT) soon afterwards, and his more precise recommendations for joint management followed in later sets of amendments to that Act.

Stage 1 of Kakadu National Park came into being after the first successful land claim under the ALRANT in 1977. In 1979, most of Stage 1 of the park was declared over the land that had been granted and, as a condition of the grant, was leased back to the Commonwealth's Director of National Parks and Wildlife. There was initially no formal board of management at Kakadu. A board of management only came into being in 1989, following successful lobbying by the traditional owners of (now) Uluru-Kata Tjuta National Park to change the then *National Parks and Wildlife Conservation Act 1975* (Cth) (NPWCA) to enable the expression of Justice Woodward's original intent and implementation of traditional owners' wishes. Title to Uluru-Kata Tjuta was handed back to its traditional owners in 1985 and, because it was the first park where traditional ownership was recognised *and* a board with an Aboriginal majority was in place, many people consider it to have been the first co-managed national park in Australia.[11] Joint management arrangements at Booderee National Park were finalised in 1995 following a protracted struggle by Aboriginal people living at Wreck Bay who have long expressed their commitment to achieving sole management of the park. The struggle included a blockade on Australia Day in 1979 at the Summercloud Bay Jervis Bay Nature Reserve (Smyth 2007a: 72).

Uluru-Kata Tjuta and Booderee National Parks are entirely vested in their traditional owners. Approximately half of Kakadu is similarly vested but the whole park is managed as if it is Aboriginal land (Director of National Parks & Kakadu Board of Management 2007: 6–7).[12] The vesting of Uluru and half of Kakadu is technically in land trusts on behalf of the traditional owners under provisions of the ALRANT; title for land in the Booderee National Park is owned by the Wreck Bay Aboriginal Community Council (amendments were made to the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) and the (then) NPWCA to facilitate the grant). Annual rent is paid to traditional owners for the leasing of all three parks for 99 years and there are provisions for five-year reviews. Lease terms and conditions are largely the same across all three parks, providing for the payment to traditional owners of annual rent and a proportion of revenue derived from activities in the park (entry fees, camping fees, and income from commercial operations).

A range of legally constituted arrangements support the discussion, consultation and decision-making that occurs on a daily basis between traditional owners, government representatives and park staff (some of whom may also be traditional owners). The

11 Others argue that the first co-managed national park was Garig Gunak Barlu National Park at Cobourg Peninsula in 1981 (see the following section), but although it was the first to have a board of management, there was no Aboriginal title over the land and leaseback.

12 Kakadu National Park was declared in three stages between 1979 and 1991 (Director of National Parks 2007: 6–7): Stage 1 in 1979; Stage 2 in 1984; and Stage 3 between 1987 and 1991. Stage 1 is, with the exception of the greater Jabiru town area, entirely Aboriginal freehold, though this is the case for only small parts on the eastern edge of Stage 2 and about half of Stage 3. In March 2013, the Commonwealth government introduced legislation which recognises Mirrar traditional ownership of the Jabiru township and surrounding land under ALRANT (Australian Government 2013).

Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) is the enabling legislation for management of the parks. Almost all provisions of the now-repealed NPWCA have been incorporated into the EPBC Act, and the statutory office of Director of National Parks and Wildlife was replaced by a Director of National Parks (the Director), and is located within SEWPaC**,** the department responsible for the EPBC Act.

All parks are subject to joint decision-making by the Director and boards of management that have traditional owner nominated majorities and chairs, although the exercise of statutory discretion remains with the Director (EPBC Act, ss 353–359B). The boards may include non-Aboriginal members as specified in the Gazette — for example, representatives of industry and tourism and other government nominees. Board members receive sitting fees (EPBC Act, s 381). The overriding requirement of s 367(1) is that management plans must provide for the protection and conservation of the park. Boards are required to develop and monitor management plans, including employment, training and natural and cultural conservation priorities. In conjunction with the Director, boards make decisions to implement the plans and to advise the Minister on future development. Day-to-day management is the responsibility of Parks Australia, a non-statutory body located within the responsible department to assist the Director in management.

Dispute-resolution processes for resolving disagreement about the implementation of management plans are available under sections 363–4 of the EPBC Act. Section 363(1) provides that if the chair of a land council and the Director disagree about whether the Director is performing his or her functions consistently with the joint management plan, the Director must inform the Minister. The Director must also inform the Minister if he/she believes that a board decision is 'likely to be substantially detrimental to the good management of the reserve' or 'contrary to a management plan in operation for the reserve' (EPBC Act, s 364(1)(a–b)). The Minister may appoint an arbitrator to resolve the issue (EPBC Act, s 364(2–3)).

All three parks have a complex spectrum of stakeholders working in partnership teams with the board of management, the broader community and traditional owners and their representative organisations. There can be also considerable differences in cultural priorities, language, customary laws and traditional land tenure interests across the parks and with neighbouring groups. At Kakadu in particular, a number of language and clan groups are represented across the park, and this can create difficulties for board decision-making.

Employment arrangements vary across the three parks. Substantial Aboriginal employment in Kakadu, for example, is a direct consequence of the complex deal around establishing the Ranger Mine (Commonwealth of Australia 1977; RUEI 1977a) and relatively large-scale tourism in the park (Commonwealth Parliament 1988; Collins 2000). At Booderee, Wreck Bay Enterprises Limited, located within the park headquarters, is a private company owned by the Wreck Bay Aboriginal Community that delivers a range of services to the park. WBEL's objective is to provide these services and, in doing so, to provide training and employment for residents of Wreck Bay Aboriginal Community (Smyth 2007a: 77).

Although the EPBC Act appears to provide a number of alternative opportunities or building blocks for co-management, these have not been explored thoroughly, and it is beyond the

scope of this paper to do so. Broadly, opportunities may exist under various provisions of the EPBC Act relating to matters of national environmental significance, world heritage sites and property, conservation agreements, natural heritage places, the non-commercial use of species and responsibilities to manage resources for inter-generational equity. Three of the six core principles that underlie the objects of the EPBC Act require accounting for Indigenous interests in biodiversity and Indigenous knowledge (s 3(1)(d)(f)(g)).[13]

Working on Country program

SEWPaC has a Working on Country (WOC) program that, since 2008, has extended opportunities to support a range of Indigenous employment opportunities in protected areas, including non-exclusive native title determination areas. However, the program is currently fully subscribed with 700 full-time Indigenous ranger positions, and SEWPaC is not seeking new applications in 2013–14. Applications for WOC are required to demonstrate genuine partnerships between state and territory governments and traditional owner groups. Governments are expected to provide in-kind and actual contributions to operations and project administration.

The emergence of co-managed Indigenous Protected Areas

As mentioned in the introduction to this paper, SEWPaC has an IPA program that includes what are referred to as 'co-managed IPAs'. The IPA program was established in the mid-1990s within the Commonwealth government department responsible for the environment at the time, as a way of providing financial assistance and advice to Indigenous people to enable them to look after their traditional land and sea country. At a national forum held in 1997 to develop the IPA concept, Indigenous delegates drafted the following definition of an IPA (Environment Australia 2007):

> An Indigenous Protected Area is governed by the continuing responsibilities of Aboriginal and Torres Strait Islander peoples to care for and protect lands and waters for present and future generations. Indigenous Protected Areas may include areas of land and waters over which Aboriginal and Torres Strait Islanders are custodians, and which shall be managed for cultural biodiversity and conservation, permitting customary sustainable resource use and sharing of benefit. This definition includes land that is within the existing conservation estate, that is or has the ability to be cooperatively managed by the current management agency and the traditional owners.

The last sentence of this definition foreshadowed the use of IPAs as a pathway to co-management of existing government-protected areas, the first of which was established in 2011. The Australian government has since developed a somewhat narrower definition of an IPA,[14] but has nonetheless formally recognised the establishment of IPAs over existing protected areas, even though these areas may not be Indigenous-owned.

13 We wish to acknowledge conversations with Melissa George, who is a Wulkurukuba woman from Townsville and a member of the Commonwealth's Indigenous Advisory Committee, whose role is to advise the Minister for Sustainability, Environment, Water, Population and Communities on the operations of the EPBC Act.

14 An Indigenous Protected Area (IPA) is 'an area of Indigenous-owned land or sea where traditional owners have entered into an agreement with the Australian Government to promote biodiversity and cultural resource conservation' (SEWPaC 2013d).

IPAs are: entered voluntarily; Indigenous controlled; dedicated by traditional owners; based on Indigenous values, commitment and acknowledged management capacity; and independent of national, state or territory conservation legislation (Smyth 2012: 32). As noted in the introduction, IPAs are included in the NRS. Management plans, a requirement for the declaration of an IPA, must recognise the unique interests of traditional owners in the area, while also meeting national and international standards for protected area management.

Although IPAs are under the 'sole management' of traditional owners, the latter may also negotiate the assistance of a range of partners, including state and territory government parks and wildlife services. However, such examples do not constitute formal 'co-managed IPAs' as recognised by SEWPaC and explained below.

Until recently, IPAs have been dedicated only on Indigenous freehold land and/or exclusive possession native title land, and on other tenures that are compatible with conservation (e.g. leases) with the approval of any parties that have management rights over the land. A second stream in the IPA program provides for the development of co-management arrangements over existing protected areas within the sum of Indigenous peoples' traditional estates[15] that are managed by other bodies — mostly state and territory governments (Bauman & Smyth 2007: 14). As the IPA program has developed, these two streams have been merging, and IPAs are starting to be dedicated across a range of tenures in 'whole-of-country' planning and management approaches (Ingram 2012: 34–5; Rose 2012: 34–35). Such a dedication requires the agreement of all parties with existing interests in the protected areas covered by the proposed IPA — usually a range of state and territory governments, who co-manage the IPA with traditional owners.

In return for the provision of funding, the IPA program supports the production of management plans that are consistent with IUCN principles. Such management plans are a prerequisite for formal recognition as a protected area by the Australian government. All state and territory governments now also recognise IPAs as part of the NRS (SEWPaC 2009: 23, 43).

In co-managed IPAs, it is the responsibility of traditional owners to: co-ordinate the interests of parties; establish partnerships; negotiate management packages that recognise the sharing of resources for management; and secure funding from the partners for various components of the co-managed IPA. There will often be a need for traditional owners to work with three tiers of government: Commonwealth, state/territory and local. This includes gaining the initial support of all parties for the project. Without such support, the IPA cannot be formally recognised and traditional owners cannot receive ongoing funding from the IPA program. The coordination of a co-managed IPA may occur through a range of models, including multi-agency committees chaired by traditional owners and involving regional delegations.

15 It is rare that native title or land claims can be made over the full extent of a group's traditional country, some of which may be located on areas where native title has been extinguished and is therefore not available for claim.

Traditional owners may access limited short-term funding for a period of one to three years (approximately $100,000 per annum) from SEWPaC's IPA program for an 'IPA co-management consultation project' (SEWPaC 2011). Such funding may support traditional owners to negotiate co-management arrangements with the agencies that hold relevant management responsibilities for protected areas in the proposed area. It may also establish the governance of the co-managed IPA and develop the prerequisite management plans. Specific activities that can be funded during the planning stage include legal advice, meetings with a range of communities and Indigenous organisations, and development of management plans — including the identification of Indigenous values. Where there are pre-existing management plans, the IPA consultation process provides space for traditional owners to comment on original plans; there is also potential for the plans to be revised to incorporate their concerns. Some Indigenous groups have accessed both the IPA and WOC programs to progress aspects of their co-management arrangements. These are separate programs administered by SEWPaC; however, where both programs are funding a project, the funding arrangements are closely co-ordinated.

There are 51 declared IPAs covering over 36.5 million hectares and more than 40 IPA consultation projects across Australia. There are seven IPA co-management consultation projects that are currently funded by SEWPaC to establish a range of co-management and sole management arrangements under the IPA framework and one multi-tenure co-managed IPA has been dedicated (SEWPaC 2013e; SEWPaC 2013f). Three co-managed projects are in Queensland; one is in New South Wales; one is in Victoria; and two are in Western Australia.[16] Most co-managed consultation projects have been established in tandem with native title applications and associated negotiation processes, or after native title have been determined.

The first multi-tenured co-managed IPA, involving the Mandingalbay Yidinji in Queensland, was dedicated in November 2011. It followed the Mandingalbay Yidinji native title consent determination in 2006, which recognised a range of exclusive and non-exclusive native title rights[17] and was accompanied by the negotiation of a number of ILUAs and Memoranda of Understanding (MoUs). In 2009, the Mandingalbay Yidinji developed a strategic plan with a 'whole-of-country' cross-tenure approach for the implementation of various ILUAs with the state of Queensland and the Wet Tropics Management Authority (WTMA), among others (Mandingalbay Yidinji Aboriginal Corporation 2009). The strategic plan provides a comprehensive description of how IPAs can coexist with national parks and other conservation areas across a range of tenures and conservation areas (Mandingalbay Yidinji Aboriginal Corporation 2009: 14–19).

Another innovation of the Mandingalbay Yidinji IPA was the publication of the management plan as a large-format printed poster, supported by additional information on a website hosted by Djunbunji Limited, the Indigenous land and sea management agency responsible

16 For a map detailing current co-managed IPAs in Australia, see <http://www.environment.gov.au/Indigenous/ipa/map.html> (SEWPaC 2013f).

17 *Mundraby v State of Queensland* [2006] FCA 436.

for employing Mandingalbay Yidinji rangers and implementing the IPA Management Plan (Djunbunji Ltd 2011). The poster has been distributed widely among community members and partner organisations. It provides a visual overview of key values, goals, issues, strategies, actions and partners, supported by plain English text. The supporting website displays an interactive version of the poster, allowing additional information, maps, photographs, videos and publications to be downloaded (Djunbunji Ltd 2011). Additional information can be added to the website during the life of the management plan.

The Mandingalbay Yidinji IPA provides a single framework for co-managing protected areas in their traditional estate. This IPA is subject to six separate management regimes — National Park, Forest Reserve, Environmental Park, Reserve, Marine Park, and Fish Habitat Area — as well as some government-owned freehold. Multiple stakeholder engagement partnerships have been formed with the Queensland Department of National Parks, Recreation, Sport and Racing (NPRSR),[18] WTMA, Terrain Natural Resource Management, Fisheries Queensland and the Cairns Regional Council (Mandingalbay Yidinji Aboriginal Corporation 2009: 2).

The potential for the declaration and co-management of IPAs across multiple tenures by multiple parties is only just beginning to be realised. As the discussion thus far illustrates, IPA policy is constantly evolving in response to the new ways in which traditional owners are choosing to use the concept (Ross et al. 2009: 245–7). It may be possible to have a co-managed IPA declared on an area of conservation value on a pastoral lease, for example, where native title rights coexist and where the area is not being used for pastoral purposes. This would require the agreement of state or territory governments and pastoralists. The official purpose of the land may need to be changed on the lease from 'pastoral' to 'conservation', requiring the approval of relevant pastoral boards. Co-managed IPAs may also be possible over forms of freehold land with the agreement of the landowner, possibly (but not necessarily) supported by a conservation agreement.

Co-managed IPAs provide a forum for addressing not only the tensions between environmental management and Indigenous cultural survival and adaptation, but also political and administrative boundaries and inconsistencies across and within Commonwealth, state/territory and local government regimes. A 'country-based' IPA (that is, an IPA covering multiple tenures within the traditional estate or country of an Indigenous group) can create significant opportunities for traditional owner-led co-management. 'Sea-country' IPAs have been more problematic, given tenure issues (see below), although policy in relation to 'sea country' is developing slowly.[19] SEWPaC is currently funding the planning of several sea country IPAs across northern Australia. This follows recommendations for further investigation of the possibilities of IPAs over sea country in the 2006 independent

18 Previously the Department of Environment and Resource Management (DERM).

19 Smyth notes the need for reform to enable co-management criteria for sea country similar to that available in the terrestrial system of protected areas; collaboration between the NRS and the National Reserve System of Marine Protected Areas (NRSMPA) and for the adequate engagement of Indigenous people in policy development and implementation of both protected area systems. While the goals of the NRSMPA relate primarily to the conservation of biodiversity and sustainable and equitable management of human usage, the MPAs that make up the NRSMPA may protect and manage many other important geological, archaeological, historical and cultural attributes (2009: 106).

review of IPAs (Gilligan 2006: 60) and recent moves to develop a National Sea Country Management Framework (de Koninck, Kennet & Josif 2013).

Although the efficiency of the IPA program is considered to be high — that is, the benefits are high compared with its costs (Turnbull 2010: 2–5), the program is vulnerable. Like the WOC program, it has reached a ceiling, with no capacity to support new IPA projects without additional funding. One of the advantages of co-managed IPAs is that they have a range of possible funding sources enabled by multiple partnerships and are therefore not solely reliant on IPA funding. That is, traditional owners may source funding from a range of other partners while still having the IPA recognised by the Australian, state and territory governments. Indeed it is possible to envisage successful IPAs that receive no funding from the IPA program if other funding sources (philanthropic, commercial, carbon offsets, biodiversity offsets, etc.) can be negotiated.

Marine Protected Areas

The Commonwealth's marine jurisdiction takes over from that of the states and territories at about 5.5 kilometres (3 nautical miles) seaward of the Territorial Sea Baseline (TSB), usually defined as the low water mark, but with some complexities around river mouths and bays.[20]

The Great Barrier Reef Marine Park Authority (GBRMPA) has authority over waters within the 345,400 square kilometres of the Great Barrier Reef Marine Park along the Queensland east coast. Day-to-day management is dictated by a MoU between the Queensland and Commonwealth governments.

GBRMPA has a governance structure that allows participation of Indigenous people in decision-making. Arrangements to address traditional owner rights and interests within the marine park, which involves approximately 70 traditional owner groups, include the accreditation of five Traditional Use of Marine Resource Agreements (TUMRAs) under the *Great Barrier Reef Marine Park Act 1975* (Cth) (GBRMP Act). TUMRAs are formal agreements developed by traditional owner groups and accredited by the GBRMPA and the NPRSR (GBRMPA 2011a). Each TUMRA — which describes how traditional owner groups will work with the Commonwealth and Queensland governments to manage traditional use activities in sea country — operates for a set time after which it is renegotiated. The agreements define issues such as traditional owners' take of natural resources and protected species (especially dugongs and marine turtles), their roles in compliance and in monitoring human activities, and in relation to the condition of plants and animals in the park. A TUMRA implementation plan may describe ways to educate the public about traditional connections to sea country areas, and to educate members of a traditional owner group about the conditions of the TUMRA (GBRMPA 2011a). [21]

20 For Australian purposes, normal baseline corresponds to the level of Lowest Astronomical Tide — the lowest level to which sea level can be predicted to fall under normal meteorological conditions (Geoscience Australia 2012). The Commonwealth jurisdiction extends to approximately 22.2 kilometres (12 nautical miles) limit for the territorial sea, 44. kilometres (24 nautical miles) for the contiguous zone and 370 kilometres (200 nautical miles) for the Australian Exclusive Economic Zone (Geoscience Australia 2012).

21 GBRMP Act, s 39ZI: While a plan of management is in force in relation to an area of the Marine Park, the Authority must perform its functions and exercise its powers in relation to the area in accordance with that plan and not otherwise.

An Indigenous Partnerships Liaison Unit was established in 1995 to coordinate the GBRMPA's relationships with traditional owners (ATNS 2011a). There is also the possibility of Indigenous membership of Local Marine Advisory Committees, established to provide formal opportunities for local groups to discuss management arrangements in specific zones of the park. A statutory Indigenous Reef Advisory Committee advises the minister on the operation of the EPBC Act, and has a competency-based committee providing a cross-section of stakeholder expertise and interests that relate to Indigenous partnerships. This includes programs such as the Caring for Our Country Reef Rescue Program[22] and information exchange to build better understandings about the rights and interests of traditional owners and the management of biological and cultural marine resources (GBRMPA 2009, 2011b). Although requirements for Indigenous representation on the board of the GBRMPA ceased in 2007 with an amendment to the GPRMP Act (Bauman & Smyth 2007: 10), they were subsequently reinstated following the change of Commonwealth government in 2007.[23]

The governance structure of the GBRMPA may therefore provide a platform for the more formal co-management arrangements that traditional owners have been seeking for a number of years (Ross et al. 2004). Native title also provides the basis for such arrangements as native title can be and has been recognised from three to twelve nautical miles seaward of the TSB, between which the Commonwealth has jurisdiction.[24] This suggests that the Commonwealth government is not restricted from entering into co-management partnerships at least between three and twelve nautical miles seaward of the TSB and possibly even beyond into the Exclusive Economic Zone.[25] For areas that are subject to international agreements, such as the Great Barrier Reef, the Commonwealth has the capacity to play a particularly strong role in promoting co-management arrangements in tripartite partnerships with relevant state or territory governments and traditional owners.

The Northern Territory

Notwithstanding Commonwealth initiatives in the Northern Territory, the Territory government has the longest exposure of all jurisdictions to joint management. The pathway to the quite sophisticated system now in place has been politically fraught at almost every step. On obtaining self-government in 1978 — and thus throwing off some of the shackles of Canberra-based control — the new Northern Territory government was immediately confronted by the Commonwealth's decision to retain radical title to Kakadu and to Uluru-Kata Tjuta national parks, regarded by most as the best natural areas and tourist attractions in the Territory (Heatley 1990: 130–2). Over the years, the Northern Territory government has been further challenged by traditional owners of both parks, rejecting their proposals for the Northern Territory government to take over as their joint management

22 In December 2008, the Australian Government under the Caring for our Country initiative, committed $10 million over five years towards the Reef Rescue Land and Sea Country Indigenous Partnerships Program.

23 GBRMP Act, s 10(6A): At least one member must be an Indigenous person with knowledge of, or experience concerning, Indigenous issues relating to the Marine Park.

24 *Commonwealth v Yarmirr* (2000) 168 ALR 426.

25 *See Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group v State of Queensland (No. 2)* [2010] FCA 643 at [731].

partner. Nevertheless, as can be seen below, successive Northern Territory governments took gradual steps to establish joint management arrangements in other national parks and traditional owners over time began to see the Northern Territory government as an appropriate joint management partner. While it could be argued that this did not follow the natural disposition of their majority non-Indigenous constituents — but rather was a response to the constraints imposed by the Commonwealth's ALRANT and later the NTA — it has been an impressive achievement.

Today, the Northern Territory government has a complex regime of joint management arrangements, including protected areas that have been ceded to Aboriginal ownership through the ALRANT and leased back to the government; areas over which native title has been recognised; others that have forms of Territory freehold title; and still others where Aboriginal interests are recognised, though the areas may not be available for native title or ALRANT claims. At the time of writing, there are 89 protected areas in the Northern Territory, 32 of which are under some form of joint management (Ledger, Moyses & Phelps 2012: 22).

It was the Northern Territory government that first allowed joint management through a board. In response to a claim under the ALRANT over Cobourg Peninsula, it negotiated this then-novel form of governance with traditional owners and their representative body, the Northern Land Council. The *Cobourg Peninsula Aboriginal Land Sanctuary and Marine Park Act 1981* (NT) (Cobourg Act) was subsequently passed through the Northern Territory parliament. At the time the traditional owners decided not to pursue the claim, and were prepared to give this novel arrangement a chance to work.[26] The Coburg Act provided for the declaration of what is now known as the Garig Gunak Barlu National Park, and allowed the area to be vested as Territory Freehold in its traditional owners and managed by a board (Foster 1997: 5–7; see also Bauman and Smyth 2007: 6–7).

Katherine Gorge National Park became the second national park for which the Northern Territory government entered into joint management arrangements. This was achieved through settling a claim made by its traditional owners, the Jawoyn people, under the ALRANT. Granted as Aboriginal freehold, the park — renamed Nitmiluk (Katherine Gorge) National Park — was leased back to the NT government under the *Nitmiluk (Katherine Gorge) National Park Act 1989* (NT) (Nitmiluk Act) for a period of 99 years (Bauman 2007: 17). By then, the political tide had changed to some degree and the Jawoyn people were consistent in their instructions to the Northern Land Council that they wished to lease the park back to the Northern Territory government and not to the Commonwealth.

Both the Garig Gunak Barlu and Nitmiluk National Parks have boards of management. The Garig Gunak Barlu Board is made up of eight members, four of whom are traditional owners, including the chair (who has a casting vote if required), and four of whom are representatives of the Northern Territory government. The Nitmiluk Board has a traditional owner majority, including the chair. An annual fee is paid by the government to traditional

26 However, at the time of writing, the traditional owners are apparently dissatisfied with the current arrangements and are reconsidering whether they might now pursue the ALRANT claim. It is thus possible that these long standing arrangements might change.

owners of both parks, though only Nitmiluk has a lease-back arrangement. Management plans are provided for under the Nitmiluk and Coburg Acts, and the Northern Territory Parks and Wildlife Commission (NTPWC) undertakes day-to-day management.

Over the years, many other claims over protected areas have been lodged under the ALRANT and after 1993 under the NTA. These claims were resisted by the Northern Territory government or set aside or refused in the courts and none of the claims were realised. However, a decision by the High Court in *Western Australia v Ward*, which held that the declaration of Keep River National Park under section 12(1) of the *Territory Parks and Wildlife Conservation Act 2006* (NT) (TPWCA) was void,[27] triggered moves by the Northern Territory government to resolve native title and ALRANT claims over protected areas in a comprehensive manner not yet seen in any other Australian jurisdiction. The government's internal legal advice suggested that other park declarations were also likely to be invalid, and pointed out that the estimated cost of litigating claims would be high.

Seeking to resolve uncertainties regarding outstanding claims in an economically efficient way, in 2003 the now former Australian Labor Party (ALP) government for the Northern Territory negotiated a comprehensive settlement of protected area claims with the Central and Northern Land Councils representing traditional owners, in return for various forms of joint management.[28] The resulting *Parks and Reserves (Framework for the Future) Act 2003* (NT) (Framework Act), and subsequent amendments to the TPWCA in 2004, established a framework that allocated 28 protected areas to one of three schedules according to tenure.

The Framework Act contains a mixture of provisions for land tenure changes, leasing and management arrangements. Allocations were shown as schedules within the Framework Act. The 13 Schedule 1 parks and reserves that were available for or under claim under the ALRANT were converted to freehold title and leased back to the Northern Territory for 99 years on the withdrawal of claims. Schedule 2 was applicable to four areas which may not have been possible to claim under the ALRANT, or where claims may not have succeeded. These too were converted to freehold title, on the condition that any ALRANT claims be withdrawn, and the land leased for 99 years to the Northern Territory government by the relevant Park Land Trust, which is the legal landholding entity administered by the

27 Strelein comments in relation to *Western Australia v Ward* (2002) 213 CLR 1: 'The Court paid particular attention in Ward to the relationship between extinguishment at common law, the provision of the NTA and the operation of the RDA [*Racial Discrimination Act 1975* (Cth)]. For example, the Special Purposes Lease that gave effect to the Keep River National Park was held to be a grant of exclusive possession. Except for the operation of the RDA, the native title rights would have been extinguished. The lease has been subject of a specific declaration, under s 12(1) of the *Territory Parks and Wildlife Conservation Act* (NT), to be a park in respect of which no person other than the Corporation held a right, title or interest. No doubt, the majority stated, this phrase extends to any surviving native title rights and interests but such a declaration had no extinguishing effect. Indeed, the rationale for the provision is to ensure that no private rights would be affected by the creation of a park, hence the absence of compensation provisions in the Act. In fact, the exercise of the power to make such a declaration was miscarried. The declaration was therefore void.' (Strelein 2009: 70)

28 These arrangements are now in a state of flux, following a change of government since the time of writing.

Land Councils. Leases for Schedules 1 and 2 areas include annual rental calculated by the Australian Valuation Office at current market value, reviewable after 10 years; and provisions for the government to share 50 per cent of all income received with the relevant Park Land Trusts, excluding reasonable administrative charges. Within the Central Land Council region, rent money is used for community development purposes. Significantly, the Framework Act arrangements do not extinguish native title and there is a veto over mining for those parks that are under ALRANT title.

For the 10 Schedule 3 lands, title remains vested with the Northern Territory, but jointly developed management plans are created and native title rights are guaranteed through ILUAs establishing joint management arrangements. Although traditional owners of Schedule 3 lands do not enjoy land ownership or rental benefits, the same Joint Management Principles in section 25AC of the amended TPWCA, including revenue-sharing of 50 per cent of park income, are applied across the tenures in all three schedules. These principles include: recognising, valuing and incorporating Aboriginal culture and knowledge and decision-making processes; utilising parties' combined management skills; addressing the need for institutional support and capacity-building of joint management partners; recognising the importance of community living areas; and sharing revenue.

There are several other Territory-wide features that apply to the areas listed in Schedules 1, 2 and 3, and a number of documents link to the Framework Act and the TPWCA to form the basis for joint management arrangements. These include draft leases, ILUA templates and a document outlining the terms of the Joint Management Agreement, as well as the Joint Management Principles as above. The functions of Joint Management Committees are reflected in Joint Management Plans, which set out how decisions will be made in partnership, including the development of boards or committees as decided by traditional owners through consultation by the land councils, and there is a specific requirement to form an 'equitable' partnership (TPWCA, s 25AB). Joint Management Plans provide for a set of powers to approve annual operational plans, set management priorities, approve annual budgets and be responsible for the management of parks. They may also encompass functions such as identifying management zones and management regimes, identifying the natural and cultural values of the park or reserve, approving works and facilities, and managing sites of Aboriginal spiritual and cultural significance (TPWCA, s 25AE). At the time of writing, 60 per cent of the plans have been completed, with others at various stages of development including some being close to release for public comment.

In addition to Joint Management Committees, two other representative structures are proposed; however, because of limited resources, it may be some time before they become operational. These are Regional Joint Management Groups, which would act as advisory bodies on regional issues with representatives nominated by the joint management partners from specific parks and appointed by the Minister; and a Northern Territory Joint Management Forum, which would be the peak body comprising a majority of Aboriginal representatives as well as representatives from government, land councils, Parks Australia and possibly a tourism representative.

The Framework Act was repealed in 2005 to 'revive' the Act, that is, to ensure its ongoing operation beyond the 31 December 2004, by which time a number of conditions had to be complied with or the framework offer would lapse. One of these conditions was that agreement would be reached on all of the 28 parks and reserves specified in the Framework Act. Successful agreements had been reached with traditional owners of all but one park, the Keep River National Park, which was therefore removed from Schedule 2 of the Framework Act (Parliament of Northern Territory 2005).

All Framework parks are now under joint management arrangements, leases have been finalised and ILUAs registered for all 27 parks. Although the Framework boosted the NTPWC budget by $3 million in 2012 to enable implementation of joint management, resources are thinly spread across the significant number of parks and are insufficient. Nevertheless, implementation frameworks include provision for funding for land council staffing, employment and training initiatives, joint management camps, cross-cultural training, monitoring and evaluation, and joint management promotion. The Northern Territory government also agreed to an employment and training strategy and contributed funding for a monitoring and evaluation unit staffed by social scientists at Charles Darwin University for five years between 2007 and 2011 (see Izurieta, Stacey & Karam 2011; Izurieta et al. 2011).

The Central and Northern Land Councils represent traditional owners' interests over a large number of Territory parks, developing related policies and guidelines collaboratively with the NTPWC. The current focus is on working with traditional owners and the Land Councils in the development of governance systems. There is a developing base of policy and procedures to support the implementation of governance frameworks (for example, toolkits, procedures manuals, guidelines for field staff and culture competency training). Anecdotal evidence suggests that employment of traditional owners in a Flexible Employment Program, which has a capacity-building element, is occurring slowly. The NTPWC is developing relationships with Registered Training Organisations (RTOs) to increase the contracting capacity of traditional owners and has established an apprenticeship program.

In the Northern Territory, as elsewhere, co-management initiatives generally provide opportunities for traditional owners to reconnect with their traditional estates, in an otherwise increasing drift towards towns and cities. In the policy context of the Northern Territory Emergency Response, now referred to as 'Stronger Futures',[29] joint management is closely linked to Commonwealth Closing the Gap policy initiatives, which aim to halve the difference between Indigenous and non-Indigenous employment within a decade. In 2012, the previous NT government aimed for 26 per cent Indigenous employment across all Territory parks (R Ledgar, Pers. Comm. 2012).

It remains to be seen how the recent change in government in the Northern Territory will impact on any co-management arrangements. Already, in 2013, there has been some change of staff in key positions; planning positions specifically dedicated to joint management under the Framework Act are now allocated across all parks; and joint management arrangements are under review.

29 See <www.Indigenous.gov.au/stronger-futures> for more information on Stronger Futures.

Marine Protected Areas

There are already examples of the co-management of 'sea country' in the Northern Territory as part of existing national parks and a number of native title applications over the Gulf of Carpentaria, the Bonaparte Gulf and the Central Eastern Arnhem Land Coast (National Native Title Tribunal 2012). Significantly, Garig Gunak Barlu National Park incorporates the adjacent former Cobourg Marine Park, and is the only jointly managed protected area in the Northern Territory that co-ordinates extensive terrestrial and marine components under a single joint management board, though Kakadu also includes small marine areas. It is also likely that joint management arrangements will be established for the Limmen Bight Marine Park, which was declared in July 2012, though it remains to be seen what approach the new Country Liberal Government will take. [30]

In addition, there are a number of legislative provisions that enable co-management arrangements of marine areas in the Northern Territory. Section 73 of the TPWCA enables agreements over areas of land that Aboriginal people occupy or from which they take wildlife in accordance with Aboriginal tradition, with 'land' being defined in section 9 to include the sea above any part of the sea bed (see also Smyth 2009: 103). The ALRANT provides for Aboriginal freehold ownership of inter-tidal land, and the High Court decision in the Blue Mud Bay case[31] has confirmed Aboriginal ownership of water and resources above the inter-tidal mark where Aboriginal freehold adjoins the coast and the land goes to the Mean Low Water Mark. The ruling in *Commonwealth of Australia v Yarmirr* however means that native title rights and interests in the sea and sea-bed are non-exclusive, because the common law guarantees the public rights of fishing and navigation in the sea.[32] The *Aboriginal Land Act 1978* (NT) also enables marine areas out to 2 kilometres offshore and adjacent to Aboriginal land to be declared 'closed seas' (Smyth 2009: 102).

There are thus many opportunities and significant potential for co-management of marine areas in the Northern Territory, depending on the aspirations of traditional owners and the goodwill of the government to enter into such arrangements and to recognise the important contribution that traditional owners can make to the management of 'sea country'. Furthermore, several coastal Aboriginal groups in the Northern Territory are currently developing proposals and plans of management to extend their coastal IPAs into their adjacent marine estates, potentially providing an alternative pathway to joint management of sea country with NT government agencies.

Queensland

Queensland has a range of formal and informal approaches to co-management. These include recently introduced area-specific legislation that should provide the building blocks for strong co-management arrangements (variously referred to in the state as 'co-management', 'co-operative management' and 'joint management') in the future.

30 The now former ALP NT government developed a draft Marine Protected Area Strategy, which included discussion of joint management, but to our knowledge it was not finalised.

31 *Northern Territory of Australia v Arnhem Land Aboriginal Land Trust* (2008) 236 CLR 24.

32 (2001) 208 CLR 1. This may change with the High Court judgement in *Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia & Ors* [2013] HCA Trans 15.

As is the case in the Northern Territory, the political pathway to co-management has met with many barriers; however, as elsewhere, the persistence of traditional owners and their representative organisations has seen incremental gains. The first statutory initiative came from the Goss ALP government, which was responsible for the *Aboriginal Land Act 1991* (Qld) (ALA) and the *Nature Conservation Act 1992* (Qld) (NCA). These Acts allowed for particular national parks to be claimed by traditional owners and, if successful, Aboriginal ownership, with lease-back to the state in perpetuity and joint management. Part 4, Division 3 of the NCA allows for the dedication of a national park as National Park Aboriginal Land (NPAL) or National Park Torres Strait Islander Land (NPTSIL).[33]

Between 1994 and 2001, eight areas were recommended for grant of title by the Land Tribunal established under the ALA. These did not result directly in any joint management arrangements or dedication of new parks — although they played a part in driving new initiatives later on. Traditional owners consistently expressed a number of objections to the requirements, including: lease-back in perpetuity (ALA, s 284), the absence of rental payments; no traditional owner majority on boards of management; appointment of board members by the Minister; and the requirement for preparation of a management plan prior to the dedication of Aboriginal land as a national park. Traditional owners have seen the requirements of what is sometimes dubbed the 'Clayton's Joint Management Model' as not meeting their aspirations, as too exhaustive and as not establishing effective co-management arrangements.

As a result of this standoff between the government and traditional owners, movement towards co-management was piecemeal and slow until a few years ago. The NCA requires complex partnership regimes that involve a range of tenures and management arrangements. Pathways to partnerships include: NCA, s 45 conservation agreements; NCA, s 34 lease agreements that can provide for on-park traditional owner living areas and for the management of protected areas in accordance with Indigenous interests; MoUs that can involve a range of non-tenure based management arrangements — for example, shared decision-making, wildlife management, funding and employment; and management in accordance with tradition and custom of local traditional owners (NCA, ss 18–19A); Ministerial Advisory Committees providing advice to the Minister on how to manage agreements (e.g. the Waanyi Ministerial Advisory Committee for Boodjamulla National Park); and steering committees that provide advice for management planning activities and addressing other specific issues.

In the years before the Queensland ALP governmen lost office in 2012, it made amendments to the ALA and the NCA and introduced new legislation to accommodate new approaches to what the government called 'joint management' on Cape York Peninsula and North Stradbroke Island. In making these legislative changes, it was motivated by a number of factors, including a view that making arrangements for viable co-management was unfinished business, given the failure of the earlier statutory arrangements to provide for tangible

33 Sections 18–19 of the NCA list the management principles of NPAL and NPTSIL requiring that they are to be managed, as far as practicable, in a way that is consistent with any Aboriginal or Island custom applicable to the area, including any tradition or Island custom relating to activities in the area.

outcomes. The previous Queensland government was also seeking greater conservation outcomes across the state, specifically on Cape York Peninsula where it wished to establish more national parks and resolve a number of planning and tenure issues. As in the Northern Territory, the Queensland government was bound by COAG's Indigenous policy of Closing the Gap, which committed governments to partnerships that would reduce Indigenous disadvantage. The government was further influenced by a welfare reform agenda introduced to Cape York Peninsula by Indigenous leader Noel Pearson, which emphasised economic development (Pearson 2005). Acknowledging the links between Indigenous well-being and land ownership, caring for country and conservation management (Altman & Kerins 2012; Bauman, Stacey & Lauder 2012) and seeking opportunities for Indigenous capacity-building and employment opportunities, particularly in tourism (Altman Buchanan & Larsen 2007), the government of the time began to see co-management as an appropriate response to Closing the Gap.

In 2007, the Queensland parliament passed the *Cape York Peninsula Heritage Act 2007* (Qld) (CYA), which created amendments to the ALA and the NCA and provided for 'joint management' in a move which has created widespread support among traditional owners. The legislative changes allowed for a new category of national park called National Park (Cape York Peninsula Aboriginal Land) (NPCYPAL) and the transfer of all 31 existing national parks in the Cape York Peninsula region and any future parks to this new category. In parallel to the transfer of these existing parks as Aboriginal freehold under joint management arrangements, the Queensland government pursued a Cape York tenure resolution program ('State Land Dealings') facilitated by Balkanu Cape York Development Corporation (Balkanu) and the Cape York Land Council. Mostly former grazing properties and unallocated state land, the program is modelled on a blended outcome, as between unfettered (non-national park) Aboriginal freehold and new jointly managed national park (Cape York Peninsula Aboriginal Land). Nature refuges may also be established by agreement over some of the non-national park Aboriginal freehold where significant cultural and ecological values exist, but they differ critically from NPCYPAL in that public (including tourist) access is not permitted into nature refuges, except as the land-owning corporation or land trust might decide to allow.

The Cape York Peninsula Tenure Resolution Branch, which is responsible for negotiating tenure outcomes and joint management arrangements in the region, has recently been transferred to the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA) as part of Queensland's machinery of government changes. However, the Queensland Parks and Wildlife Service (QPWS) (within NPRSR) maintains primary responsibility for implementing joint management in the Cape York Peninsula. Day-to-day operations are undertaken by QPWS as well as by Aboriginal rangers engaged by the Land Trust or Aboriginal Corporation, using park works and services funding negotiated within the framework of an Indigenous Management Agreement (IMA) (see further below).

Joint management and tenure arrangements are defined under an ILUA and an IMA between land trusts and the state government, and the land is to be managed in perpetuity as a national park (ALA, s 170(1)(b)). The IMA provides the framework that establishes the

extent of the ongoing relationship between the parties for the management of the national park and describes their respective roles and responsibilities and strategic management directions. The IMA is attached as a schedule to an ILUA, which provides consent to provisions in the IMA that may affect any native title rights and interests. The ILUA also provides for the native title parties' consent for the transfer of the land to Aboriginal ownership and any other particular arrangements that arise from the negotiations.

Title to the land is generally transferred at the commencement of joint management arrangements, although isolated cases have resulted in agreement to a transfer in title at a later point in time — generally after completion of prerequisite legislative or other legal processes. The Indigenous landholder for the protected area and the departmental Chief Executive must be party to the preparation and implementation of management plans (NCA, ss 111(8), 120). If land is not already Aboriginal land, the grant to a land trust is subject to a condition that the land must become NPCYPAL (NCA, s 42AC(2)(a)). Such areas are to be managed as national parks in a manner compatible with Aboriginal tradition as much as possible.

The CYA provides for two advisory committees to advise the minister on a wide range of Cape York Peninsula land use matters: a Regional Advisory Committee (CYA, s 20) and a Scientific and Cultural Committee (CYA, s 22). At least half the members of the Regional Advisory Committee must be representatives of the Indigenous people of the Cape York Peninsula Region (CYA, s 21(3)). An all-Indigenous third committee, the Regional Protected Area Management Committee, is provided for under the NCA (s 132A(2)) to provide advice to the Minister about matters pertaining to protected areas in the region, but has yet to be convened. Management plans must be jointly prepared by the state and the traditional owner representatives, and a number of financial benefits, employment, institutional support and infrastructure have been negotiated for the traditional owners. DATSIMA has a contract with Balkanu to facilitate negotiations, and Balkanu in turn contracts the Cape York Land Council to provide independent legal and technical advice and representation for traditional owners.

At the time of writing, 13 national parks (NPCYPAL) have been dedicated. One of these, the Errk Oykangand National Park (NPCYPAL), illustrates how co-management might develop in Queensland when traditional owners are given the opportunity to implement management plans based on their own knowledge of the land. Originally gazetted as the Mitchell-Alice Rivers National Park in 1977, this 37,000 hectare park on the western side of Cape York is remote from most services, with the nearest park service ranger station over 400 kilometres away in Chillagoe. Errk Oykangand people from the Kowanyama community entered into negotiations with the state with the clear goal of establishing an agreement that allowed for the day-to-day management of the park by an Aboriginal land management agency. Signed in 2009, the IMA builds on previously established relationships with the Kowanyama Aboriginal Land and Natural Resource Management Office (KALNRMO), established in 1990. It provides for the delegation of a wide range of park service responsibilities to KALNRMO, which KALNRMO has progressively been undertaking for the park service under contract as part of its overall work program. At the time of writing, the arrangement has

allowed for the provision of funding for the employment of one traditional owner ranger, operational equipment including a vehicle, and camping and cultural activities on the park, including measures to protect sites of significance such as fencing-off and signage.

The second piece of legislation introduced by the Queensland government in recent years relates to North Stradbroke Island. The North Stradbroke model was developed in 2011 in association with the Quandamooka native title consent determination of native title rights over parts of North Stradbroke Island.[34] The model takes a similar 'tenure' approach to that of Cape York in the shape of formal binding agreements that consider, in addition to national parks, a range of conservation areas such as resources reserves and conservation parks. Protected areas (Indigenous Management Areas) that fall under the North Stradbroke Island Joint Management Framework are Aboriginal freehold.

Like the CYA, the introduction of the *North Stradbroke Island Protection and Sustainability Act 2011* (Qld) required amendments to the ALA and the NCA to enable joint management. A framework agreed between the state and the Quandamooka Yoolooburrabee Aboriginal Corporation aims to protect and restore environmental values of the region; an object of the *North Stradbroke Island Protection and Sustainability Act 2011* (Qld) is to end most mining over land in the North Stradbroke Island Region by the end of 2019, and mining in the region altogether by 2025, though it remains to be seen if these arrangements will be upheld by the new Queensland government.

The NCA provides for the dedication of land as national park on North Stradbroke on the condition that traditional owners enter into an IMA to manage the land in perpetuity as a national park.[35] The Quandamooka people have negotiated two tiers of decision-making groups, which are set out in the IMA: a Senior Indigenous Working Group (SIWG), to be reviewed after five years, and an Operational Implementation Working Group (OIWG).

The SIWG is composed of government and traditional owner representatives and specialist advisers and consultants as required. Government department representatives include: the Assistant Director-General, the Senior Director (Marine), the General Manager (Sustainable Landscapes) and any other senior officers nominated by the departmental Chief Executive. Senior traditional owner representatives of the Registered Native Title Body Corporate (RNTBC) or other native title bodies are nominated by its Chief Executive. Specialist advisers or consultants may be invited by the state and the RNTBC as required. The SIWG is required by consensus to decide the protocols which are required and their priority, review the first draft of the management plan and consider the final protocols.

The OIWG is also composed of government and traditional owner representatives and specialist advisers. Government representative members include the Operations Manager and the Joint Management Co-ordinator and specialist advisers, consultants or rangers, as invited by the state. Traditional owner representatives include specialist advisers, Elders, consultants or rangers as invited by the RNTBC. The OIWG functions are to prepare the first draft of the management plan, develop protocols and operational works programs and plans, and take direction from the SIWG.

34 *Delaney on behalf of the Quandamooka People v State of Queensland* [2011] FCA 741.

35 NCA, Pt 4, Div 3, Sub-div 3.

Native title negotiations have resulted in a number of other ILUAs that generally provide for advisory roles for traditional owners in management arrangements. Outcomes are often linked to non-exclusive consent determinations under the NTA, for example, the recognition of the Djabugay people's non-exclusive native title rights over the Barron Gorge National Park in 2004. ILUAs can also apply to tenure resolution dealings — leading to the dedication of a new national park and a separate grant of Aboriginal freehold, as happened in the Cape York Peninsula with the creation of the Jack River National Park in 2005 through an ILUA with the Kalpowar people. The Eastern Kuku Yalanji native title settlement of 2007 included a package of 15 ILUAs, which established a co-operative approach to land ownership and management of protected areas and a greater management role in the management of national parks and some reserves. The ILUAs are, however, not considered to provide 'full' co-management arrangements, as there is no recognition of exclusive native title rights or underlying grant of title over the national park lands.

Thusfar, Queensland's Liberal National Party (LNP) Government appears to be following its commitment to continue with a similar approach to co-management or joint management to that of its predecessor, with two new jointly managed NPCYPAL (see below) areas being declared since they came to power — although at the time of writing there appears to be considerable uncertainty surrounding North Stradbroke Island arrangements.

The Wet Tropics

The patterns being set in Cape York and on North Stradbroke Island project possibilities for more uniform approaches to co-management arrangements throughout the state. However, at the time of writing it remains unclear whether such possibilities will be available to other regions such as the rainforest bioregion in northern Queensland, with its significant ecological diversity values. The Djabugay people, for example, had the first consensual native title determination,[36] as opposed to a litigated determination, over the Barron Gorge National Park, yet they have been waiting for years to attain the kinds of arrangements being implemented elsewhere in the state. In the absence of a clear legislative framework for co-management, they negotiated an ILUA with the state over the determination area (Barron Gorge National Park) in 2004, agreeing in good faith to negotiations to reach suitable management arrangements in the future. A condition of the ILUA was that it would expire when a management plan was in place in accordance with section 69 of the NCA or otherwise at the end of 2010. The Djabugay people and the state were unable to negotiate a management plan and so the ILUA expired.

In the Wet Tropics region of Queensland, traditional owner aspirations for co-management are also located in legislation relating to the recognition by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) of Queensland's Wet Tropics as a World Heritage Site. The *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) establishes the WTMA and provides for the entering of 'cooperative' management agreements, including agreements with Aboriginal people.[37] WTMA is responsible to both the Australian and Queensland governments through the Wet Tropics Ministerial Council,

36 *Djabugay People v State of Queensland* [2004] FCA 1652.

37 *Wet Tropics World Heritage Protection and Management Act 1993* (Qld), ss 10(1)(f), 10(3).

and has an independent board of directors appointed by both governments. The WTMA is responsible for engaging in 'on-ground coordination and management that unites regional communities, local land owners, regional councils, tourism and business sectors and Rainforest Aboriginal people in a supportive and collaborative effort' (WTMA 2011).

Over the 25 years since the World Heritage Listing of Queensland's Wet Tropics in 1988, there has been a succession of regional entities representing the strategic cultural and natural resource management interests of Rainforest Aboriginal people. The most recent iteration is the Rainforest Aboriginal People's Alliance (RAPA), established in 2010, which is a peak Indigenous body for land and sea management across the Wet Tropics region. The quorum of the RAPA across the 20 traditional owner groups involves the Jabalbina Yalanji Aboriginal Corporation across the northern third of the Wet Tropics region, the Central Wet Tropics Institute for Country and Culture Aboriginal Corporation, and the Girringun Aboriginal Corporation in the south.

In 2005, a Wet Tropics Aboriginal Cultural and Natural Resource Management Plan was developed by the traditional owners of the Wet Tropics Natural Resource Management region and the Wet Tropics Aboriginal Plan Project Team with the support of various government and non-government organisations over a three-year period (Wet Tropics Aboriginal Plan Project Team 2005; FNQ NRM Ltd & Rainforest CRC 2004). This core traditional owner planning document is complemented by the Wet Tropics of Queensland World Heritage Area Regional Agreement, which provides for the cooperative management of the Wet Tropics of Queensland World Heritage Area by Rainforest Aboriginal people and the Australian and Queensland governments (WTMA 2005). These two documents are further supplemented by the proceedings of the 2010 Rainforest Aboriginal Peoples' Cultural and the Natural Resource Management Summit, and highlight a traditional owner agenda of cooperative joint management, economic development and planning.

The Wet Tropics example illustrates how difficult it has been for the Queensland government, traditional owners, land councils and the NTRBs representing them to reach a policy position on co-management that is acceptable to both parties — despite many attempts to do so. The Mandingalbay Yidinji IPA, described above, provides an example of an alternative and more locally based pathway to co-management within both the Wet Tropics World Heritage Area and the Great Barrier Reef World Heritage Area.

In any event, recent policy developments point to an emerging more common approach in Queensland that emphasises partnerships. Relevant policies and approaches include: Partnerships Queensland: future directions framework for Aboriginal and Torres Strait Islander Policy in Queensland 2005–2010 (Department of Communities 2006) and the 2011 call for submissions from the QPWS to comment on its Draft Master Plan for protected areas, forests and wildlife which is under review (and which refers incidentally to both 'co-operative' and 'joint' management arrangements, though neither is defined) (NPRSR 2012).

How these policies play out in terms of implementation — particularly with a new state government — is a different issue, and many traditional owners in Queensland remain frustrated with progress.

Marine Protected Areas

As in the Northern Territory, there is substantial unrealised potential for co-management, or other forms of cooperation, between the government and traditional owners of marine areas in Queensland. The draft QPWS Master Plan referred to above includes MPAs in its definition of protected areas. There are three major marine parks in Queensland: the Great Barrier Reef (as discussed above in the Commonwealth section); the Great Sandy Marine Park, which surrounds Fraser Island; and the Moreton Bay Marine Park. Most islands in the Torres Strait have native title determinations and the Torres Strait Sea Claim is in progress (see below). TUMRAs, discussed earlier, are an important initiative with both the Commonwealth and the state as parties to the agreement. Significantly, the Madingalbay Yidinji people, as discussed, have co-management arrangements for a 'whole-of-country' IPA, which includes some sections of state and Commonwealth marine park. Although other co-managed IPAs involving marine areas are planned, such as the proposed Girringun Regional IPA, which includes both terrestrial national parks and a portion of the Great Barrier Reef Marine Park, to date the Madingalbay Yidinji arrangement is the only area where more formal 'full' co-management agreements exist over marine areas in Queensland.

Other co-operative advisory arrangements over MPAs are beginning to be considered under ILUAs associated with consent determinations and through IPA models, in recognition of the existence of non-exclusive native title rights in at least some marine park waters. The Kuuku Ya'u people, who have been authorised as state marine park inspectors, trained in compliance and given certain powers of enforcement under an ILUA, are funded by GBRMPA with in-kind support from the Queensland government. The ILUA also provides for information-exchange and wildlife-protection measures (ATNS 2011b). There are a number of other informal agreements with Queensland traditional owner groups. These may involve MoUs and cover hunting and fishing, the use of marine resources, law enforcement training and the delegation of powers to traditional owners to manage aspects of MPAs. For example, there is a MoU that forms part of the North Stradbroke agreement for a partnership in relation to marine park waters, and another in the Gulf of Carpentaria regarding hunting.

In the Torres Strait, there are several initiatives regarding the funding and management of natural resources. Traditional owners, as represented by the Torres Strait Regional Authority (TSRA), play a significant role in fisheries, coastal and marine research and management — including co-ordinating the support for ranger groups. A Land and Sea Management Strategy for the Torres Strait was funded by the Commonwealth Natural Heritage Trust Fund and supported by the Queensland government, Commonwealth government and TSRA (Torres Strait NRM Reference Group 2005). Although a comprehensive regional natural resources management plan was deferred, the strategy provides guidance on the investment of trust funds in the region, and identifies assets, issues, information and potential mechanisms for sustainable land and sea management, to be implemented by the TSRA. The strategy is designed to coordinate approaches for sustainable management of natural resources, improve Aboriginal and Torres Strait Islander consultation, input and decision-making on environmental management, support employment in land and sea management fields, develop community-based programs, and maintain and revitalise traditional knowledge.

At the time of writing, Torres Strait Islanders await the result of an appeal to the High Court in the Torres Strait Island Sea Claim on the issue of native title rights to fish for commercial purposes. The original determination contained a right to take resources 'for any purpose', but on appeal the Full Court of the Federal Court held that the right to fish and take aquatic resources *for commercial purposes* had been extinguished by the passage of Commonwealth and state fisheries legislation (Strelein & Lauder 2012).[38] An appeal against this judgment was heard by the High Court on 12 February 2013 in relation to the extinguishment of the native title right to fish for commercial purposes.[39] At the time of writing, the court has not yet published its decision. The argument advanced by the native title holders (the 'Seas Claim Group') on appeal was that the *Fisheries Acts* and the associated licensing regime do not extinguish the native title right to take aquatic resources for commercial purposes, but merely regulate this right.

In summary, there are many opportunities to build on existing Queensland initiatives to involve traditional owners in co-management of MPAs through native title processes, 'whole-of-country' IPAs and other pathways. Nevertheless, Queensland's focus around the co-management of protected areas, as is the case in other states and territories, is primarily on land based tenures and there is no legislation that provides for formal MPA co-management.

New South Wales

As in Queensland, the New South Wales government relies on a mixture of arrangements to involve local Aboriginal people in protected area management, and the path to these has been difficult. Today, management arrangements vary from those that broadly follow the Kakadu-Uluru model to a variety of written agreements and MoUs. Joint management is integrated in government policy, is recognised in the New South Wales government's 2021 10-year plan (Department of Premier and Cabinet 2011), and is established through a written agreement between the Office of Environment and Heritage (OEH)[40] and traditional owners. The New South Wales Parks and Wildlife Service (NPWS) now manages 24 co-management agreements, locally called 'joint management' agreements covering a wide range of protected areas that make up 21 per cent of the reserve system (1.5 million hectares). It is involved, with the support of the OEH in three types of co-management agreements:

- Part 4A of the *National Parks and Wildlife Act 1974* (NSW) (NPWA): Aboriginal ownership and lease back arrangements (which broadly follow the Kakadu-Uluru model), which are the only agreements that involve land ownership and a statutory board of management with majority Aboriginal owners
- ILUAs under the NTA, which involve the recognition of non-exclusive native title rights are increasingly common
- MoUs which are not legally binding but are agreements between NPWS and traditional owners.

38 *Commonwealth of Australia v Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group* (2012) 289 ALR 400; *Akiba v State of Queensland (No 2)* (2010) 270 ALR 564.

39 *Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia & Ors* [2013] HCATrans 15.

40 Previously part of the Department of Environment, Climate Change and Water and now part of the Department of Premier and Cabinet.

The search for co-management by Aboriginal groups in New South Wales has a relatively long history, most strikingly illustrated by the struggle for Mutawintji National Park in the state's west in the early 1980s (Larritt 1995). The *Aboriginal Land Rights Act 1983* (NSW) (ALRA), which was passed by the Wran Labor government with bipartisan support and originally introduced by a Coalition government in a slightly different form, allowed Aboriginal groups to claim land but specifically excluded claims to protected areas. This exclusion offended Mutawintji's traditional owners, who immediately confronted the government in a number of strident protests. The government responded with a number of initiatives, including consultation, employment and training opportunities to allow greater involvement of Aboriginal people in the management of Mutawintji and other national parks. This was a period that the Mutawintji consider to be a weaker form of 'co-management' as opposed to a later and current period of 'joint management' (DEC 2006). In 1991, the Greiner Coalition Government introduced a National Parks and Wildlife (Aboriginal Ownership) Bill, but this lapsed.

Subsequently, the Royal Commission into Aboriginal Deaths in Custody became a significant driver for joint management in New South Wales, where the return of land to traditional owners began to be seen as important in reaffirming and strengthening identity. Recommendation 315 of the Royal Commission (the Millstream Recommendation) was cited in the second reading speech when the NSW parliament passed the National Parks and Wildlife Amendment (Aboriginal Ownership) Bill 1996. This Bill made amendments to the NPWA and the ALRA to allow for Aboriginal ownership and lease-back of certain protected areas for periods of up to 30 years (NPWA, s 71AD), to be jointly managed by the Aboriginal owners and the NPWS through the establishment of statutory boards of management with majority Aboriginal owners (NPWA, s 71AN) and usually with a traditional owner chair. Annual rent, payable to land councils, is determined by negotiation (NPWA, s 71AE(3)), and payable out of a consolidated fund appropriated for that purpose. 'Part 4A parks' have differing values that influence the calculation of rent payments (NPWA, s 71AE(4)). Best endeavours are required to implement Aboriginal employment strategies (NPWA, s 71AD(3)).

There are two significant differences between Part 4A parks and the Kakadu-Uluru model: in New South Wales, the board is subject only to the control and direction of the Minister (the Director-General of the department cannot overrule or direct the board); and expenditure of the rent, any revenue from the park and all other funding for the park is supervised by the board (NPWA, s 71AO(1)(c)). Revenue must be spent on the management of the lands (NPWA, s 139(5)), which can include community development and acquisition of land.

In 1998, the Mutawintji area was passed to the Mutawintji Local Aboriginal Land Council, which holds title on behalf of the traditional owners, and the area was leased back to the New South Wales government for a national park for a minimum 30-year term. The NPWA and the Mutawintji lease include numerous provisions for joint management, among them a board of management with a traditional owner majority (NPWA, s 71AN) and a traditional owner chair. The Mutawintji Local Aboriginal Land Council, the Central Darling Shire Council, neighbouring pastoralists and NPWS are represented on the board (NPWA, s 71AN(3); Mutawintji Board of Management & NPWS 2010: 13–14). The board is responsible for the

care, control and management of the park (NPWA, s 71AO(1)(a)); preparation of plans of management (NPWA, s 71AO(1)(b)); training and employment; and rights for traditional access and to cultural property. There are provisions for cultural awareness training in the lease (Hunt & Mackay 2009: 10; Mutawintji Board of Management & NPWS 2010: 21).

Under arrangements similar to those of Mutawintji, seven other protected areas have since become Aboriginal owned and jointly managed under Part 4A of the NPWA (Mt Grenfell Historic Site, Biamanga National Park, Gulaga National Park, Worimi National Park, Worimi Regional Park, Worimi State Conservation Area and Gaagal Wanggaan (South Beach) National Park). Four of these Aboriginal-owned protected areas (the three Worimi parks and the Gaagal Wanggaan (South Beach) National Park) were newly created as a result of negotiations arising out of land claims over Crown land made by the relevant local Aboriginal Land Councils under the ALRA.

Over the last few years, ILUAs have become a major avenue for achieving joint management arrangements, with traditional owners being assisted in their negotiations by NTSCORP Ltd, which is the NTSP for traditional owners in New South Wales and the ACT.[41] However, although ILUAs may provide for the right to practise native title rights and interests within the parks, there is limited funding and little employment, both of which are priorities for traditional owners.

In 2001 the Arakwal National Park, comprising several relatively small parcels of land on the north coast of New South Wales, was the first jointly managed protected area to be established as part of ILUA negotiations with the Bundjalung Arakwal people of Byron Bay (Bauman & Smyth 2007: 9).[42] A further two ILUAs signed in 2007 (the Byron Bay ILUA and the Ti Tree Lake ILUA) expanded the joint management area, and provided for the creation of another new protected area. Arrangements include an advisory Joint Management Committee with three Bundjalung-nominated members out of seven and a Bundjalung chair, and another committee with four Bundjalung-nominated members out of eight and a Bundjalung chair. The Parks and Wildlife Division of OEH and the local shire council are also represented on both committees, which advise the Chief Executive of the OEH. Matters on which they provide advice to the OEH include: the preparation of plans of management by traditional owners in collaboration with the government; Bundjalung people gaining access areas without fees; Bundjalung access for ceremonial purposes, hunting, fishing, gathering, the protection and maintenance of culturally significant sites; employment of Indigenous people in the park; the involvement of Bundjalung people in the selection of non-Aboriginal staff; and cross-cultural training as a condition of employment (DECC & NPWS 2007). The Byron coastal area has 12 Aboriginal people working on country in national parks and reserves, which represents a significant 66 per cent of the area's workforce.

As is often the case, co-management arrangements may be part of a larger package of benefits negotiated through native title. The Arakwal ILUAs also involved the grant of Crown land as freehold, including the area on which the Broken Head Caravan Park is situated.

41 This increase in ILUAs seems to have occurred since 2009, when Hunt and Mackay (2009) reported little ILUA activity.

42 See also DECC & NPWS (2006); Hunt, Altman & May (2009); OEH (2011).

In 2007, the Githabul people received a non-exclusive native title consent determination recognising their native title rights and interests over 1120 square kilometres in nine national parks and 13 state forests in northern New South Wales and straddling the New South Wales–Queensland border.[43] Githabul ILUA negotiations have resulted in arrangements such as agreements to consult with and involve traditional owners, the exercise of native title rights in parks, protection of significant sites and employment of Githabul people. As well, a jointly prepared plan of management is proposed. A Joint Management Committee with a majority of Githabul representatives and a Githabul chair may refer specific issues to the Githabul Nation Aboriginal Corporation**,** the consent of which is required for the creation of new national parks. As is the case for the Arakwal, there were also additional benefits in Githabul ILUA negotiations — for example, a commitment to grant certain Crown lands in freehold.

The third kind of joint management arrangement in New South Wales is through MoUs between traditional owners, local Aboriginal people and the government. At the time of writing, there are approximately 11 such agreements that include provisions requiring the government to consult about matters such as the preparation of plans of management, protection of culturally significant sites, annual works programs and the establishment of advisory committees. Whilst MoUs appear to be working well in terms of enabling people to be on country, they do not automatically enable traditional owner access to funding or confer rights in the manner of most native title determinations. Nevertheless, co-management arrangements in New South Wales, commonly referred to in the state as 'joint management' appear to have encouraged more traditional owners, assisted by parks managers, to be at least periodically 'on country', including through initiatives such as 'culture camps' (Wale & Allen 2012).

An Aboriginal Joint Management Network, which meets regularly and provides recommendations to the OEH and Minister for Environment, is supported through the Joint Management Custodians of NSW group (OEH 2012). Administrative arrangements are primarily based in regional NPWS offices, which aim to promote the development of relationships between government staff on the ground and local Aboriginal communities. The role of the centralised Aboriginal Co-management Unit in the OEH is to support regional offices in entering agreements, set the parameters of those agreements, and liaise with and support the local staff and committees that represent the co-management agreements.

Marine Protected Areas

The Marine Park Authority in New South Wales is located in the Fishing and Aquaculture section of NSW Department of Primary Industries, and operates under the *Marine Parks Act 1997* (NSW). This does not have provision for co-management. Marine parks have been politically contentious in New South Wales, especially relating to issues such as zoning plans, public fishing rights, traditional owners' fishing rights and illegal fishing (which many traditional owners would prefer to police themselves).

Although there is no legislative basis for co-management of marine parks, there are a few initiatives that could provide the bases for the incremental recognition of the marine

43 *Trevor Close on behalf of the Githabul People v Minister for Lands* [2007] FCA 1847.

management rights of traditional owners in New South Wales. The Arakwal people, for example, have a MoU with the NSW Marine Parks Authority for involvement in the management of Cape Byron Marine Park, and there are a few marine-related cultural resource use agreements. The NSW Marine Parks Authority also has an Aboriginal Engagement and Cultural Use of Fisheries Resources Policy (Marine Parks Authority 2010). As in other jurisdictions, there is also potential for traditional owners to pursue a pathway to co-management of marine areas through integrated land and sea IPAs.

South Australia

South Australia was at the forefront of the land rights movement in Australia, granting ownership of existing reserves to traditional owners through the passage of the *Aboriginal Lands Trust Act 1966* (SA) a decade before Commonwealth legislation was enacted for the Northern Territory. Successive South Australia governments moved cautiously to enact legislation conferring land ownership over protected areas with the first transfer of title not occurring until 2004 under the *Maralinga Tjarutja Land Rights Act 1984* (SA) and the *National Parks and Wildlife Act 1972* (SA) (NPWA SA), under which the Mamungari Conservation Park (formerly known as the Unnamed Conservation Park) was established. Nevertheless, since the 1980s, officers of the South Australia National Parks and Wildlife Service have set up working relationships with traditional owners of a number of areas. In 1983, for example, the service established an Aboriginal ranger training scheme (with the assistance of the then Australian National Parks and Wildlife Service) in what is now called the Vulkathunha-Gammon Ranges National Park in the state's mid-north, and in 1986, a similar program was established in the Coorong, south-east of Adelaide.

In 2000, the South Australia government provided funding to the Aboriginal Legal Rights Movement (ALRM), which was the NTRB at the time, to facilitate native title groups' involvement in a proposed state-wide ILUA negotiation process. This involved the establishment of a number of Native Title Management Committees, which subsequently formed a state-wide representative body called the Congress of South Australian Native Title Management Committees. It also involved the participation of a number of other peak bodies representing the interest of miners, pastoralists, fishers, local government and the state government. With these foundations in place, and particularly in 2012, there has been a significant increase in the numbers of non-exclusive consent determinations accompanied by ILUAs, which provide the context for co-management negotiations.

Such negotiations may be brought to fruition in tight timeframes, though they are often preceded by periods of protracted negotiations and, as elsewhere, involve an array of interconnected agreements and documents. They are led by the state's Department of Attorney-General working closely with the Department of Environment, Water and Natural Resources (DEWNR), which is responsible for the day-to-day operations of parks established under the NPWA SA. Traditional owners are usually represented in these negotiations by the South Australian Native Title Services (SANTS), which is a successor to the ALRM. Agreements are implemented and operations managed by DEWNR's Regional Services Directorate.

South Australia has now developed what Leaman (2008: 1) has described as a three-tiered scheme for the involvement of traditional owners and other local Aboriginal people in the management of national and conservation parks and, as of March 2013, of Wilderness Protected Areas under the *Wilderness Protection Act 1992* (SA).[44] DEWNR is responsible for management of the scheme, which provides options under the NPWA SA and Co-management Agreements between traditional owners and the Minister for Sustainability, Environment and Conservation (NPWA SA, s 43F) for the lands to be:

- owned by an Aboriginal group, managed by a co-management board representing traditional owners and the government with an Aboriginal majority and 'chaired by a person nominated by the registered proprietor of the land' (NPWA SA, s 43G(3))
- owned by the state and co-managed by a board, usually with equal representation between traditional owners and DEWNR
- owned by the state with an advisory committee that includes Aboriginal representatives.

Where native title has been extinguished, traditional rights including co-management arrangements can still be recognised through ILUAs.

From DEWNR's perspective, the following criteria guide the 'level' of agreement, such as the structure of boards or committees and their advisory or decision-making powers, employment arrangements and other elements — all of which are negotiated on a case-by-case basis (Nicolson, Anderson & Magor 2012: 16; Bauman, Stacey & Lauder 2012). The implications and merit of such criteria as to the 'level' of co-management can, however, be hotly contested by native title groups and SANTS in negotiations with the state. The criteria include:

- *complexity of park management:* taking into account issues such as biodiversity, visitation levels, risks, competing interests, location and infrastructure
- *management capacity:* the capacity of traditional owners and the DEWNR to contribute to park management at both strategic and operational levels
- *effective relationships:* the nature of the relationship between DEWNR, traditional owners and their representative organisations
- *resources:* the resources available to negotiate and implement successful co-management agreements.

There are two parks that are Aboriginal freehold, which have boards of management with Aboriginal majorities, roughly following the Kakadu-Uluru model: the Mamungari Conservation Park and the Breakaways Conservation Park, which have not yet been proclaimed at the time of writing. A number of other negotiations have commenced, including with groups on the Far West Coast and with the Ngarrindjeri people over Coorong National Park, where traditional owners are seeking a co-management board and progression to an Aboriginal-owned co-managed park.

44 The SA government passed the Wilderness Protection (Miscellaneous) Amendment Bill 2012 in March 2013, which provides for the co-management of wilderness protection areas under an inserted s 33A of the *Wilderness Protection Act 1992* (SA).

There are four areas owned by the state and co-managed by a board: Witjira National Park; Vulkathunha-Gammon Ranges National Park (where significantly, by 2010, all park staff were Adnyamathanha traditional owners — G Leaman, Pers. Comm., 2010); Flinders Ranges National Park; and Lake Gairdner National Park. By way of example, the 770,000 hectare Witjira National Park in the state's north-west was initially leased in 1995, providing for traditional owners to reside in and use the area and establishing some co-management arrangements. In 2006, following the establishment of a Co-management Agreement and a native title determination,[45] the lease to the Irrwanyere Aboriginal Corporation, representing the native title holders — the lower southern Arrente and Wangkangurru[46] — was amended to reflect the new arrangements (which contrast with the direct ownership and subsequent granting of lease rights in Mamungari). The Witjira ILUA operates concurrently with the Witjira National Park Co-Management Agreement between the Minister for Sustainability, Environment and Conservation and Irrwanyere Aboriginal Corporation, which is subject to the NPWA SA, the plan of management and the provisions of the lease. All these instruments allow for a permanent area of residence on the park (ATNS 2009a). The Witjira Board is the main instrument for policy development and decision-making, and is made up of seven members, four of whom are Aboriginal people nominated by their representatives, the Irrwanyere Aboriginal Corporation and three by DEWNR.

There are four examples of the third form of Co-management Agreement: state-owned land with Advisory Committees: Ngaut Ngaut Conservation Park with the Mannum Aboriginal Community Association Incorporated (MACAI); Coongie National Park with the Yandruwandha/Yawarrawarrka Traditional Land Owners Aboriginal Corporation; Gawler Ranges National Park with the Gawler Ranges Aboriginal Corporation; and Wamba Kadabu Conservation Mound Springs Park Co-management Agreement with the Arabana Aboriginal Corporation RNTBC. The Gawler Ranges Advisory Committee has the same membership as the Lake Gairdner National Park Co-management Board (see above), and its Co-management Agreement outlines a process for progressing to a similar board. The Wamba Kadabu Advisory Committee also has an advisory function over Lake Eyre National Park and Elliot Price Conservation Park. The relatively small (49 hectare) Ngaut Ngaut Conservation Park near Mannum is zoned to include areas that are set aside for cultural purposes, and into which general visitors are allowed only with a guide approved by MACAI. The 2008 Co-Management Agreement for Ngaut Ngaut Conservation Park provides for a management committee that advises the state on amendments to the management plan and implementation of the plan. A co-management board with greater decision-making powers is currently being considered, although decision-making power would still ultimately reside with the state.

45 *Eringa, Eringa No. 2, Wangkangurru/Yarluyandi and Irrwanyere Mt Dare Native Title Claim Groups v The State of South Australia* [2008] FCA 1370.

46 Traditional owners of Vulkathunha-Gammon Ranges National Park are represented by the Adnyamathanha Traditional Lands Association; traditional owners of Flinders Ranges National Park are represented by the Adnyamathanha Traditional Lands Association; and traditional owners of Gairdner National Park are represented by the Gawler Ranges Aboriginal Corporation.

As is the case in other states and territories, the South Australia government has linked the potentially positive outcomes of co-management with Aboriginal well-being and the Closing the Gap policy as part of the National Indigenous Reform Agreement. South Australia's Strategic Plan uses the number of national parks under co-management agreements as an indicator of the overall well-being of Aboriginal South Australians, noting in 2012 that 10 agreements had been negotiated (Department of the Premier and Cabinet 2012). Also, as is the case elsewhere, South Australia has implemented a number of other initiatives, which provide building blocks for more co-management arrangements in the future. However, with at least 20 other registered native title claims, covering two-thirds of the state and potentially involving about three-quarters of the state's protected areas, South Australia may benefit from a more comprehensive approach.

Marine Protected Areas

The focus for co-management in South Australia, as is the case in other states and territories, has been on terrestrial areas, and there has been little discussion around the possibilities of co-management of marine parks. Whilst the *Marine Parks Act 2007* (SA) indicates that consideration should be given to Aboriginal heritage and other natural resources, it does not allow for the government to enter into co-management arrangements. As is the case in other jurisdictions, there are signs of good faith upon which such arrangements might be built — for example, an agreement between the Great Australian Bight Marine Park (GABMP) and Yalata Community Incorporated (YCI) (through Yalata Land Management (YLM)) to advance cooperation between GABMP and YLM in relation to visitor management, research and monitoring, surveillance and reporting, collection of marine debris and cliff rescue assistance.

As has already occurred in Queensland, and is developing in the Northern Territory, the opportunity exists in South Australia for traditional owners to pursue their own pathway to co-management through developing integrated land and sea IPAs.

Western Australia

Joint management arrangements between the government and the traditional owners have been in place in some national parks in Western Australia since the 1980s. Although these have paved the way for more formal agreements and legislative changes, the pathway to more secure joint management arrangements, has, as in other jurisdictions, been politically difficult — involving traditional owners and their representatives in a long and protracted struggle, and having their hopes raised and dashed on many occasions (Yu 2000). Recent amendments to the *Conservation and Land Management Act 1984* (WA) (CALM Act) in 2012 and the signing of ILUAs delivering substantial benefits to the Ngardangarli of the Burrup Peninsula near Karratha, the Miriuwung Gajerrong people of Kununurra and the Yawuru people of Broome nevertheless indicate that positive change is occurring.

In 1985, the Burke ALP government introduced an Aboriginal Land Bill into parliament. Although it fell far short of the joint management provisions for protected areas that had been recommended by Paul Seaman QC (1984), the lawyer appointed by that government to investigate how land rights might be provided in the state, the Bill was heavily contested

by conservative forces in the parliament and did not pass. Foreshadowing the 'bundle of rights' approach taken under the NTA nearly a decade later,[47] many of the provisions of the Bill — for example, over access, residence, hunting and ceremonial use — nevertheless were successfully adopted into management plans for national parks where Aboriginal interests were strong — notably Purnululu National Park (Bungle Bungles) in the Kimberley region and Karijini National Park in the Pilbara.

The management plans provided for management committees called 'Park Councils', comprising Aboriginal and state representatives with a majority of traditional owners; however no rent was payable to traditional owners. The Western Australia government also increased its employment of Aboriginal rangers, building on programs that had been in place with previous governments and, like South Australia in this period, initiated Aboriginal ranger training with Commonwealth government assistance. These arrangements were reasonably acceptable to some groups — for example, the traditional owners of Karijini National Park in the Pilbara — but not to others, for example, those at Purnululu National Park in the Kimberley region where traditional owners and their supporters were critical of their lack of real powers (Woenne-Green et al. 1994). Nevertheless, the arrangements provided the means for meeting and negotiating, and gave both officials and traditional owners experience of the others' world-views and ways of doing business. These arrangements paved the way for later initiatives like the MoUs struck between the now Department of Environment and Conservation (DEC)[48] and traditional owners of the former Lorna Glen (*Matuwa*) and Earaheedy (*Kurrara Kurrara*) pastoral stations in 2004, and the Gibson Desert Nature Reserve in 2005.

The bargaining power of native title holders improved with the passage of the NTA as successive judgements of the Federal Court and the High Court indicated that native title could be proved over a significant area of Western Australia — even if only as 'a bundle of rights' (see above). Over the years, the government has also been forced to confront the possibility of litigation seeking compensation for any extinguishment of native title since the enactment of the *Racial Discrimination Act 1975* (Cth), leading to comprehensive settlements in negotiations managed by the Department of the Premier and Cabinet, first with the Ngarluma and Yindjibarndi, Yaburara Mardudhunera and Wong-Goo-Tt-Oo of the Burrup Peninsula near Karratha in 2003 and then the Miriuwung Gajerrong in 2005, and later with the Yawuru in 2010. The Burrup agreement, the first of its kind in Western Australia, was negotiated under severe time pressures, and was marred to some extent by disputes among claimants and a range of other issues (Guest 2009).

Following the Miriuwung-Gajerrong native title consent determinations in 1998 and 2000, an ILUA was negotiated for the expansion of the Ord Stage 2 scheme (the Ord Final Agreement (OFA) (ILUA 2006). The OFA provided for financial compensation and employment as well as access and other native title rights (ATNS 2012; Guest 2009). It also provided for a mixture of leased and other reserved lands, including six new protected areas (see Hill

47 *Fejo v Northern Territory of Australia* [1998] HCA 58; *Western Australia v Ward* [2002] HCA 28.

48 The DEC is still in existence at time of writing but the Liberal-National Government in Western Australia, re-elected in March 2013, indicated during the election campaign that it was likely to make changes to the department and to use another name.

et al. 2008), also referred to by the Miriuwung Gajerrong as 'conservation parks' totalling around 160,000 hectares. These areas ultimately will be transferred to the Miriuwung Gajerrong people under freehold title and leased back to the state to be jointly managed by the Yawoorroong Miriuwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation (MG Corp) and the Director General of DEC, at a peppercorn rent, for up to 200 years. An interim approach for creating conservation reserves under the *Land Administration Act 1997* (WA) (LAA) was established, vesting these areas jointly with the Conservation Commission and the MG Corp pending the new CALM Act, when they would become freehold (see discussion below).

The joint management package also involved financial benefit with the Western Australia government providing $1 million for DEC and MG Corp for the joint development of management plans and joint management structures; $1 million for infrastructure; and $1 million per year over four years for management of the conservation areas. A similar arrangement for joint management was made with the then Waters and Rivers Commission[49] with a smaller amount of funding, $119,700 over four years, for management and planning relating to a large reserve adjacent to Lake Argyle including waters and wetlands where native title had been extinguished (Guest 2009: 15–16). This agreement does not involve freehold lease-back arrangements.

The Yoorooyang Dawang Regional Park Council (with a majority of traditional owners and three DEC representatives) was established in 2006, its role being to facilitate the development of a management plan, develop local Indigenous training and employment opportunities, and the ongoing management of the Conservation Parks. In 2008, MG Corp published a Cultural Planning Framework representing the views and aspirations of the Miriuwung Gajerrong people for the long-term co-management of the new conservation areas (Hill et al. 2008).

In 2010, the Yawuru native title holders also negotiated co-management arrangements through the Joint Management Agreement (JMA) forming part of the Broome ILUA native title settlement (ATNS 2011c; ATNS 2011d). The JMA is between the Minister for Lands, the Minister for the Environment, the Conservation Commission, the Marine Parks and Reserves Authority, the DEC Executive Body, the Broome Shire and Yawuru RNTBC (ATNS 2011c).

Part of this settlement was for a total of $5.5 million over 4 years for the Yawuru Conservation Estate management: $4.5 million for developing the joint management plans and $1 million for implementation and capital works. The funds are considered to be an equal contribution by the state and Yawuru and are administered by DEC but overseen by the Yawuru Park Council. In addition to these funds an allocation of $500,000 was made to Yawuru directly for the development of a Yawuru Cultural Management Plan to inform the joint management plans. The funding also supports a program to train and employ Yawuru people as accredited triple badged rangers and to implement the plans.

The Yawuru Conservation Estate includes out of town freehold areas (to be managed by Yawuru and DEC); in town reserve areas under the LAA (to be managed by Yawuru and the Shire with assistance from DEC); Roebuck Bay inter-tidal area (to be managed by DEC and

49 Water responsibilities now fall to the Western Australia Department of Water (DEC).

Yawuru); and the Cable Beach inter-tidal area (to be managed under a tripartite arrangement between Yawuru, DEC and the Broome Shire). Roebuck Bay and Cable Beach intertidal areas will be Class A Reserves under the LAA.

The Yawuru Park Council was established under the Yawuru PBC ILUA (ATNS 2011c) and comprises representatives from the three joint management partners: the Yawuru RNTBC, DEC, and the Shire of Broome with voting rights according to their joint management role and interests in specific areas of the Yawuru Conservation Estate. The Yawuru Park Council's main charter is the development and implementation of the joint management plans but it will also monitor and evaluate implementation of the plans as prescribed in the JMA. At the time of writing it is expected that the draft management plans will be released for public comment in 2013.

Yawuru have also received funding from SEWPaC's IPA program to work towards the development of an IPA on non-conservation areas to enhance the connectivity of Yawuru interests in land.

Late in 2010, the WA government introduced a Bill that led to the *Conservation Legislation Amendment Act 2011* (WA). This Act now allows protected areas to be vested in bodies other than the state, including Aboriginal bodies, and managed jointly with the state. Moving that the Bill be read a second time in the Legislative Council, the Hon. Helen Morton, then Parliamentary Secretary for the Environment, noted that the amendments would give force to several already discussed agreements made between the state and Aboriginal native title holders on the Burrup Peninsula, over part of the successfully claimed Miriuwung Gajerrong lands in the Ord River area, and the Yawuru agreements around Broome. She also noted that the Bill would make possible formal joint management agreements throughout the state:

> The Bill will also provide formal recognition of the importance of land and waters to the culture and heritage of Aboriginal people … [and] put in place the legislative framework to build greater partnerships with Aboriginal Western Australians and recognise the important role they have in protecting and conserving lands of cultural and environmental significance. (Parliament of Western Australia 2010: 8944).

The legislation was passed in September 2011. It amended the CALM Act and the *Wildlife Conservation Act 1950* (WA) to enable joint management on:

- conservation estate vested in the Conservation Commission of WA or the Marine Parks and Reserves Authority[50] ('s 56A CALM Act agreements')
- land held by or vested in other bodies — for example, Crown Land, Aboriginal land, exclusive possession native title land and other private land ('s 8A CALM Act agreements').

Sections 8A and 56A of the CALM Act lay out the procedures for joint management over land held by or vested in other bodies, including establishing a JMA, the 'joint management body', and production of a plan of management to be approved by the Minister for Environment (CALM Act, s 60). Amendments to the CALM Act included a revised objective

50 Soon to be replaced by a combined Conservation and Parks Commission (Premier of Western Australlia 2013).

for plans of management: 'protecting and conserving the value of the land to the culture and heritage of Aboriginal persons' (CALM Act s 56(2)(a)).[51] The suite of amendments also facilitated the conduct of Aboriginal customary activities on protected areas, subject to some regulations (CALM Act, s 103A) including regulations to deal with issues of public safety and environmental risks.

The CALM Act now provides broad parameters to:

- establish the joint management body
- identify the members of the body
- establish the joint management body's procedures (CALM Act, ss 8A(13), 56A(6)).

Section 8A agreements do not affect the operation of exclusive or non-exclusive native title determinations, and must be agreed in writing by an RNTBC if they involve exclusive possession native title land (CALM Act, ss 8A(2), 8A(11)). Day-to-day park operations are generally carried out by DEC.

The amendments to the CALM Act are particularly significant, given that the effect of the decision in *Western Australia v Ward* is that native title has been fully extinguished over much of the conservation estate.[52] The amendments enabled the declaration of Murujuga National Park in January 2013. This was Western Australia's 100th national park, and the first to be jointly managed under the terms of the amendments. The Murujuga National Park covers an area of almost 5000 hectares of the Burrup (Murujuga) Peninsula, a highly significant area that has been national heritage listed and encompasses over 2300 Aboriginal sites. This park is owned in freehold by the Murujuga Aboriginal Corporation and leased back to the state for 99 years, with an option to renew for a further 99 years. It is jointly managed by the Murujuga Park Council, which includes majority traditional owner membership as well as membership from DEC and the state Department of Indigenous Affairs. The transfer of ownership and joint management arrangements give effect to an ILUA over the Burrup Peninsula agreed to in 2003. The management plan for the park was prepared by the Murujuga Park Council and will guide operations for the next 10 years.

While not addressing all conservation or protected areas and potential native title claims, the CALM Act provides a welcome framework for building on existing and effective informal arrangements, as well as offering the chance to revisit some of those arrangements that have been less effective over the last two decades.

A range of other negotiations, motivated by the need for native title settlements as well as the amendments to the CALM Act, are currently occurring between DEC and traditional owners throughout the state. In the Kimberley region, such settlements are being driven through the Kimberley Science and Conservation Strategy, which seeks to provide additions to the conservation estate, as well as providing for joint management and Aboriginal employment. In the south-west of the state, a comprehensive settlement (called the South West Native Title Settlement process) is currently being negotiated with

51 Land that is subject to mining tenements is specifically excluded from co-management arrangements in amendments to the CALM Act in s 8A but not in s 56A agreements.

52 (2002) 213 CLR 1.

the South West Aboriginal Land and Sea Council (SWALSC) on behalf of Noongar people, and includes the joint management of protected areas. It remains to be seen how these negotiations will unfold.

Marine Protected Areas

Given the length of its coastline, there is significant potential for the joint management of marine areas in Western Australia, and some embryonic arrangements are in place. For example, the Yawuru are developing with DEC the proposed Roebuck Bay Inter-tidal Zone Joint Management Plan. The Roebuck Bay Marine Park is vested in the Marine Parks and Reserves Authority, pursuant to the CALM Act (s 7(5)). The Cable Beach inter-tidal zone will have a tripartite management arrangement with DEC, the Yawuru RNTBC and the Shire of Broome.

The Kimberley Science and Conservation Strategy includes commitments to joint management, and proposes the establishment of four other marine parks in addition to Roebuck Bay: Camden Sound (created 19 June 2012); Eighty Mile Beach (created 29 January 2013); North Kimberley; and Horizontal Falls (DEC 2013). There is scope for joint management of marine areas under the recent CALM Act amendments by way of a section 56A management agreement.

The recent growth of IPAs in WA, especially in the Kimberley — many of which include coastal areas and the prospect of integrated land and sea IPAs — also pave the way for increased recognition of traditional owner rights in marine areas and their co-management.

Victoria

Although Victoria has been employing Aboriginal rangers since the 1980s, the Victorian government was confronted by the need to address joint management later than the jurisdictions discussed above. An increased exposure to joint management arose as native title claims came up for determination in the late 1990s. The Victorian government previously dealt with claims to protected areas on their individual merits and within the policy discourses of the time. This approach changed with the introduction of an alternative settlement procedure to the NTA in 2010, which has had significant co-management ramifications for traditional owners (see below). At the time of writing, the Department of Sustainability and Environment (DSE) has overall responsibility for the management of Victoria's public land estate. Native title negotiations are led by the Department of Justice, working with the Lands Division of DSE. DSE sets strategic policy direction for public land management, while Parks Victoria, a statutory body, is the operational land manager for parks and reserves.

There are five formal management agreements between traditional owners and the state, each of which has been struck after, or in the course of, negotiating native title consent determinations. Three of these are referred to as Cooperative Management Agreements (CMAs) under the *Conservation, Forests and Lands Act 1987* (Vic) (CFLA). The other two settlements discussed later in this section are Traditional Owner Land Management Agreements (TOLMAs).

CMAs relate to the management, use, development, preservation or conservation of land under section 69 of the CFLA. They provide for the establishment of a co-operative advisory committee within the meaning of section 12 of the CFLA. The three CMAs are:

- Yorta Yorta Co-operative Management Agreement (2004)
- Wotjobaluk (Wimmera) Co-operative Management Agreement (2005)
- Gunditjmara Co-operative Management Agreement (2007).

The Yorta Yorta CMA was the first agreement following the ultimate rejection by High Court of its native title claim. In 1998, the Federal Court determined that the 'tide of history' had washed away the observance by the Yorta Yorta of their traditional laws and customs; and determined that native title did not exist.[53] The Yorta Yorta Nation Aboriginal Corporation appealed to the Full Court of the Federal Court and the High Court, but it was unsuccessful in both instances.[54] Nevertheless, an agreement was struck between the state of Victoria and the Yorta Yorta in 2004, which covers about 50,000 hectares of significant protected areas and other public lands in the state's north, adjacent to the Murray and Goulburn Rivers. Under the CMA, an entity called the Yorta Yorta Joint Body was established, comprising five Aboriginal members and three members representing the state. The body has advisory status, with executive power resting with the state, but it nonetheless provides the capacity for community members to be involved in planning and acts as a conduit between the parties, providing advice and recommendations to the Minister and funding for ongoing positions.

Settled in 2005, the second CMA is between the state and the Barengi Gadjin Land Council Aboriginal Corporation, now also the RNTBC following a native title consent determination in that same year.[55] The CMA establishes the Winyula Council, and applies to land where non-exclusive native title rights have been determined to exist, including parts of the Little Desert National Park and other reserves along the Wimmera River in the state's north-west. The state also committed to providing funding for administrative support.

The third CMA is between the state and the Gunditj Mirring Traditional Owners Aboriginal Corporation, and was settled in 2007, also following a native title determination.[56] This CMA created the Budj Bim Council, a land management council with a traditional owner majority. The Budj Bim Council provides advice and makes recommendations to the Minister for Environment and Climate Change about the management of Mount Eccles National Park near Hamilton, and the Lake Condah and Tyrendarra areas. The Gunditj Mirring and the State of Victoria ILUA included agreement to transfer ownership in fee simple of the Lake Condah Wildlife Reserve to the Gunditj Mirring traditional owners. Lake Condah is a small reserve of high cultural significance because of its traditional eel traps, and traditional owners aim to restore its water levels.

53 *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606.

54 *Members of the Yorta Yorta Aboriginal Community v Victoria* [2001] FCA 45; *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58.

55 *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v Victoria* [2005] FCA 1795.

56 *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474.

In 2009, the Victorian government and the Victorian Traditional Owner Land Justice Group, assisted by Native Title Services Victoria (NTSV), agreed to the Victorian Native Title Settlement Framework ('the Framework').[57] The Framework provides an alternative pathway for dealing with native title claims, and aims to settle traditional owner claims to as much state Crown land as possible, including through joint management arrangements over reserve land, national park, state forest, vacant Crown land, nature reserve and state wildlife reserve. The *Traditional Owner Settlement Act 2010* (Vic) (TOSA), passed in the Victorian parliament in 2010, gives legislative effect to the Framework.

The approach emphasises agreement-making, and has the key objectives of bypassing lengthy and expensive contests in the Federal Court. Rather than the exhaustive processes around proving native title connection under the NTA, required before the government enters into negotiations with native title claimants, the Framework proposes acceptance of a 'Threshold Statement' to demonstrate attachment to the land and the organisational capacity of claimants to sustain an agreement with the state. The Framework aims to form stronger partnerships between the government and Indigenous Victorians; provide better outcomes that are fair for both traditional owners and government parties, including increased economic opportunities and environmental and cultural protection; and provide more access for Indigenous Victorians to their traditional lands (ATNS 2009b).

It is hoped that there can be some consistency in joint management arrangements throughout the state through use of the principle agreement, the Recognition and Settlement Agreement (RSA) under section 4 of the TOSA, which enables the state to enter into an agreement with traditional owners to recognise their associations to certain Crown lands and waters. An RSA may be supplemented by ancillary land agreements, land use activity agreements, funding agreements and natural resource agreements. The RSA may be wholly or partly constituted by an ILUA (TOSA, s 10). The settlement may include an ILUA to provide certainty for the state that the question of native title and/or compensation over the areas contained within the RSA is permanently resolved. The CFLA enables the Minister to establish Traditional Owner Land Management Boards (TOLMBs) by determination (CFLA, s 82B) or agreement (CFLA, s 82P). Section 19 of the TOSA makes provision for a distinctive kind of Aboriginal freehold title to be granted under an RSA, provided that agreement for the establishment of a TOLMB has been struck under section 82P of the CFLA. The arrangements do not involve lease-back or rental; however, an RSA may further provide for ongoing financial support for the TOLMB, community benefit payments for work done in jointly managed areas and the costs of Indigenous ranger and other park positions.

TOLMBs are a significant development in joint management in Victoria. They have a traditional owner majority nominated by the traditional owner entity that is the signatory to the settlement, and a chair who is a traditional owner. Traditional owners and the state collaboratively appoint members, although the minister ultimately makes the appointment

57 In June 2009, the then Deputy Premier and Attorney-General of Victoria, Rob Hulls, announced a *Victorian Native Title Settlement Framework*. The ministerial statement marked the culmination of work by a steering committee chaired by an informed outsider, Professor Mick Dodson of the Australian National University, and including the Department of Justice, the Land Justice Group, the National Native Title Tribunal and other state government officials.

(CFLA, s 82M). The TOLMB is primarily responsible for the preparation and implementation of the joint management plan, assisted by the Secretary of the DSE (CFLA, s 82PA). A TOLMB is a stand-alone entity, distinct from the RNTBC, although it may contract the RNTBC to conduct works in the jointly managed areas. TOLMBs manage Aboriginal Title land that has been transferred to Aboriginal corporations on the proviso that it is managed to achieve the conservation outcomes in place prior to transfer (TOSA, s 21). TOLMBS also advise the government on issues such as Aboriginal employment and access for hunting and other traditional uses. The TOLMB model allows for additional functions and powers to be conferred or delegated (CFLA, ss 82H, 82I and 82Q) over time in response to changing aspirations, circumstances and capabilities of traditional owners and the government. TOLMBs may also provide training and capacity-building opportunities to traditional owners through board membership and through the position of executive officer to the board.

To date, there are two TOLMAs, with TOLMBs in the process of negotiation:

- the Yorta Yorta Traditional Owner Land Management Agreement (2010)
- the Gunaikurnai Traditional Owner Land Management Agreement (2010).

In the case of the Barmah National Park in Yorta Yorta country, a TOLMB has been established by exception, as the park is not vested as Aboriginal Title due to the adverse findings of the High Court mentioned above. The Gunaikurnai TOLMB is now responsible for preparing joint management plans over 10 parks and reserves that have been issued to Gunaikurnai as Aboriginal Title land. The Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) and NTSV are preparing to undertake a whole-of-country planning process as a first step to ensure clarity around the community goals and objectives of joint management, and the high level principles needed to inform priority setting and implementation. As part of the Gunaikurnai settlement, there is funding for up to seven Gunaikurnai people to work as rangers as employees of GLaWAC on the lands being jointly managed.

Despite a comprehensive regime with significant benefits for traditional owners, there appear to be a few potential problems. Although TOLMBs are the government's preferred pathway for dealing with joint management arrangements in Victoria, some RNTBCs are concerned that TOLMBs have no responsibility to report back to or engage with the governance and representative structure of the RNTBC. This has the potential to lead to conflict, competition and misunderstandings. Nor do TOLMBs have clear lines of accountability to Parks Victoria, which is not a member on any of the TOLMBs, another possible cause for misunderstanding and friction. A third issue could arise in relation to section 20 of the TOSA, which prescribes that grants of fee simple of Aboriginal Title are subject to the relevant Aboriginal corporation agreeing to transfer to the state the right to occupy, use, control and manage the whole of any land — although these state-retained rights are somewhat circumscribed in the following section, which dictates that the land must be used for the purposes for which it was dedicated before the transfer (TOSA, s 21). It is hoped that the spirit of the new regime will prevail, and that real advances for traditional owners' interests will be made and conservation interests maintained.

As in other jurisdictions, there is potential for an intersection between 'government' protected areas and IPAs — particularly in the Lake Condah and Tyrendarra areas, where there are both national parks and IPAs. It is also worth noting that traditional owners in south-western Victoria have taken the lead in having their country listed on the Register of the National Estate, and are currently leading a campaign for World Heritage Listing of Lake Condah. These are important examples of traditional owners leading the pathway to co-management, rather than simply responding to government initiatives.

Marine Protected Areas

As in other jurisdictions, co-management of marine areas is an emerging area in Victoria where resources have been directed so far to terrestrial, rather than to marine management. Nevertheless, although there are no direct provisions for co-managed marine parks under the *National Parks Act 1975* (Vic),[58] there seems to be a provision in the TOSA to facilitate this. Section 11(1)(b) of the TOSA defines public land as including any 'park' within the meaning of the *National Parks Act 1975*, which includes marine national parks and marine sanctuaries as per section 3. This suggests that a TOLMA can be entered into in relation to a marine national park or marine sanctuary. If a TOLMA is in place, the Minister may grant Aboriginal Title in respect of a marine national park or marine sanctuary under the TOSA, subject to the joint management provisions of the CFLA.

Many protected areas abut oceans in Victoria, and the Parks Victoria 2003 to 2010 Management Strategy for Marine Parks (Parks Victoria 2003) provides the foundations for joint management partnerships, including: committing to working in partnership with Indigenous communities towards the long-term protection and conservation of marine national parks and sanctuaries; acknowledging traditional ownership of marine areas; stating a commitment to improved consultation and involvement; developing an Indigenous Cultural Awareness Program; helping Indigenous communities to build capacity; and increasing Indigenous employment opportunities within the department.[59]

As in other jurisdictions, the opportunity exists in Victoria for traditional owners to pursue their own pathway to joint management through developing integrated land and sea IPAs.

Australian Capital Territory

In 2001, an agreement to involve traditional owners in the 'management arrangements' of Namadgi National Park, was signed by the Australian Capital Territory (ACT) government and some ACT Native Title Claim Groups.[60]

An Interim Namadgi Advisory Board, consisting of five Aboriginal members nominated by Aboriginal parties to the agreement and five non-Aboriginal members (appointed on the basis of expertise), was established, its role being to prepare a new draft plan of management

58 This Act was amended by the National Parks (Marine National Parks and Marine Sanctuaries) Bill in 2002.

59 We understand that, at the time of writing, Parks Victoria has recently launched a new Marine Park Strategy, but to date we have been unable to access it.

60 'Agreement between the Australian Capital Territory and ACT Native title Claim Groups, April 2001'.

under the *Land (Planning and Environment) Act 1991* (ACT) and to make decisions about activities in the park under the *Nature Conservation Act 1980* (ACT).[61] The Interim Board contributed to the 2007 Draft Plan of Management (Department of Environment and Recreation 2007) and a set of cultural protocols was developed (Department of Environment and Recreation 2007: 10–11; Land Management and Planning Division 2010: 22).

Information from the 2007 plan is replicated in the final 2010 Namadgi Plan of Management (Land Management and Planning Division 2010), although the Interim Board ceased meeting some years ago. Both plans refer to the rights of the Ngunnawal people to be acknowledged as people with historical associations to the park, to participate in management, and to be consulted on specific regional issues and on the development of any legislation affecting the park (Department of Environment and Recreation 2007: 9–10; Land Management and Planning Division 2010: 21). Matters that are the subject of ongoing negotiation in future 'co-operative' arrangements include: recognition of Aboriginal society, past and present; restoration of tradition and community identity; and community development (Department of Environment and Recreation 2007: 9–12; Land Management and Planning Division 2010: 21).

Co-operative management arrangements over the Namadgi National Park have stalled for some years as they have become subject to disputes among the local Aboriginal community concerning the identification of traditional owners in the ACT. This has given rise to uncertainty as to whom the government should negotiate with regarding such arrangements. However, there are a number of other Representative Aboriginal Organisations that are recognised under the *Heritage Act 2004* (ACT), and consulted in regard to heritage matters in the ACT: the Buru Ngunnawal Aboriginal Corporation, the King Brown Tribal Group (formerly the Consultative Body Aboriginal Corporation on Indigenous Land and Artefacts in the Ngunnawal Area), the Little Gudgenby River Tribal Council and the Ngarigu Currawong Clan.

There are also a number of initiatives in place that form the basis of more formal co-operative arrangements, including an employment and training program for Aboriginal rangers to work in the Namadgi Park with the ACT Parks and Conservation Service. This program is assisted by funding from the ACT Natural Resource Management Council, which has been active in providing short-term opportunities for young Aboriginal men and women through its youth programs, which seek to develop in participants a basic level of land management skills, offer mentoring in becoming good leaders and provide opportunities to assist Aboriginal Rangers in various projects. The program is overseen by Murumbung Yurung Murra (Ngunnawal for *'*Good, Strong, Pathways*'*), a group of Aboriginal people working in land management, conservation, heritage and cultural interpretation for the ACT government, which received the 2011 ACT NAIDOC Caring for Country Award**.**

61 The Land (Planning and Environment) Act 1991 (ACT) has since been repealed, and Plans of Management for public land are now prepared in accordance with the P*lanning and Development Act 2007* (ACT), Pt 10.4.

Tasmania

The negotiation of co-management of protected areas is emerging as highly significant for achieving land justice in Tasmania, especially as almost half of Tasmania will be protected area within the next few years. Despite a late start to serious recognition by the Tasmanian government of Aboriginal interests in Tasmanian protected areas and an absence of any regulatory co-management arrangements, there have been a number of recent initiatives that have provided the building blocks for committed co-management (see below).

Until recently, the struggle for recognition of Aboriginal interests has been difficult for proponents, as Aboriginal involvement in land management has been opposed by the general public and successive state governments. Over the years, one view among Aboriginal communities has been that protected areas should be solely Aboriginal managed and that no co-management arrangements should be entered into with the state government. The 1980s and 1990s were a critical period: following the rejection of the Aboriginal Lands Bill 1991 (Tas), Aboriginal people in Tasmania occupied a number of conservation areas in protest, including part of Rocky Cape National Park, established in 1967, and Wybalenna on Flinders Island. Archaeological sites in Rocky Cape National Park were also reclaimed in 1992 in an assertion of rights and ownership.

Following the introduction of the NTA, there was a seemingly widely held view among traditional owners and government alike that Tasmanian Aboriginal people would not be able to prove native title connection according to the requirements of section 223 of the NTA. Rather than pursuing native title determinations and ILUAs, the Tasmanian government initiated a lands transfer process. The *Aboriginal Lands Act 1995* (Tas) enabled the grants of around 13 parcels of land of 'historic or cultural significance' to be held in trust for Aboriginal persons in perpetuity. These included historic reserves such as Oyster Cove and Risdon Cove (Smyth 2001: 83). The *Aboriginal Lands Amendment Act 2004* (Tas) then provided for the cessation of the reserved status of some areas of Crown land, enabling the return of parcels of land on islands, including the Clarke Island Nature Reserve, Goose Island and Wybalenna on Flinders Island, and Cape Barren Island.

Titles are vested in the Aboriginal Land Council of Tasmania (ALCT), a statutory body consisting of eight Aboriginal people elected to represent five regions and having power under section 18(1)(c) of the *Aboriginal Lands Act 1995* (Tas) to prepare management plans in respect of Aboriginal land. The Tasmanian Aboriginal Land and Sea Council (TALSC), a community not-for-profit organisation established in 1989 to create a formal voice on how Aboriginal heritage sites and places should be managed, also manages some lands, provides advice to the Tasmanian Parks and Wildlife Service (TPWS) which is located in the Department of Primary Industries, Parks, Water and Environment and carries out heritage work (for example, Preminghana and World Heritage Area Caves).

In the last decade or so, government officers and others have worked towards rebuilding and regaining trust with Aboriginal Tasmanians, and there has been a slow shift towards co-management. In the late 1990s, the ALCT produced a framework for ongoing dialogue,

partnership and respecting Aboriginal values over the Tasmanian Wilderness World Heritage Area which is one of Australia's largest protected areas, and is managed by the TWPS with funding from the Commonwealth government (Corbett et al. 1998: 16). While no comprehensive co-management arrangements have been finalised, negotiations have been moving towards a number of MoUs. Initiatives also include the dedication of eight IPAs, although these are solely managed, not co-managed in the sense discussed in the above section titled 'The emergence of co-managed IPAs'. There is also Aboriginal membership on advisory bodies for the TPWS, partnerships in the award-winning Needwonnee interpretative walk, ranger training programs and a MoU at a regional level to better protect cultural heritage places. The TPWS is currently developing a position for an Aboriginal Community Development Officer to assist in development of co-management, and several key foundation programs are being established to work towards an agreed management approach. This includes projects from the Northern and Southern regional units within TPWS.

The Northern Region encompasses the Mt William National Park and adjoining lands of *larapuna* within the Eddystone Point Lighthouse precinct. At the time of writing, it is proposed that *larapuna* be handed back through the Aboriginal Lands Amendment Bill 2012 (Tas), introduced into parliament in June 2012, although at the time of writing the Bill has not yet passed both houses of parliament. Discussions are ongoing between ALCT and the government as to appropriate models of land transfer and co-management. ALCT has held a lease on the precinct since 2006, which was the first step in gaining full title to the area. In a new initiative for TPWS, two Aboriginal Field Officer Positions have been created. The field officers are based in St Helens, and will work across the array of Aboriginal titled lands in a range of functions, building a network of partnerships.

In the Southern Region, the first formal MoU towards co-management was signed in 2012 between TPWS and the South East Tasmanian Aboriginal Corporation. The MoU covers on-ground management of lands, predominantly within TPWS along the Huon Channel and on Bruny Island. A pilot Junior Rangers program was trialled during 2012 at Bruny Island.

Two national parks (Rocky Cape and Mt William) are in the initial stages of developing co-management agreements. Work is also being undertaken on building capacity for co-management activities — for example, the training of four or five Aboriginal rangers. The program at Mt William is a shared initiative between ALCT and TPWS, and is funded by the Commonwealth's Caring for Country program. One of the trainee rangers is working on the *larapuna* tourism project, which will provide an interface between adjoining TPWS and Aboriginal owned lands. This is an important step to co-management, where TPWS encourages Aboriginal cultural heritage tourism alongside ranger skills training. Eight IPAs have been declared in Tasmania — three on the mainland (*preminghana*, Risdon Cove, *putalina*) and five islands in the Bass Strait (Badger Island, Mount Chappell Island, Babel Island, Great Dog Island and *lungatalanana*). Most of the IPA funding has come from the Commonwealth government (see below).

The National Parks and Wildlife Advisory Council of Tasmania (NPWAC) has functions under the *National Parks and Reserves Management Act 2002* (Tas) (NPRMA) to provide independent advice to the Minister and Parks Executive Branch. In May 2012, the functions of the Tasmanian Wilderness World Heritage Area Consultative Committee (WHACC) were merged with those of the NPWAC, now providing advice on World Heritage issues. Although the Council has no specific provision for Aboriginal membership, it has two Aboriginal members, one male and one female, after not having Aboriginal representation for a number of years. One of these representatives[62] has advised that, since approximately 39 per cent of Tasmania is managed under the NPRMA, it is especially important that the 12-member NPWAC is informed on issues of importance to the Aboriginal people of the state (Emma Lee, Pers. Comm.).

Some significant steps towards co-management have thus been made in recent times in Tasmania, as elsewhere. There is nevertheless a need for more formal and strategic commitments, and for increased funding and capacity-building for both Aboriginal and non-Aboriginal staff and volunteers.

Marine Protected Areas

Aboriginal people in Tasmania have historically been excluded from management of marine resources, with little recognition from government agencies of their unique rights and interests to the sea. In the absence of legislative provisions to support Tasmanian Aboriginal people's engagement in the management of marine parks or fisheries, traditional owners have focused on the enforcement of recreational and commercial fisheries legislation to support their interests in sea country (Smyth 2004: 180).

Nevertheless, the Tasmanian Marine Protected Areas Strategy (Marine and Marine Industries Council 2001) aims to cater for the management of marine areas and species in partnership with Indigenous communities, to recognise the interests of Australia's Indigenous people and to incorporate Indigenous people in decision-making. As in other jurisdictions, there is also potential for traditional owners in Tasmania to pursue a pathway to co-management through integrated land and sea IPAs.

62 Emma Lee, who is embarking on a PhD on co-management in Tasmania, provided this and other information in this section. We gratefully acknowledge her assistance.

Native title and the progression of co-management arrangements

The evolving pathways to co-management outlined above illustrate that many legal, administrative and policy factors have played a part in determining how Indigenous people have been, or might be, involved in the co-management of Australia's conservation estate. The heterogeneity of arrangements points to not only political exigencies and the inclinations of political parties and their governments, but also to popular sentiments and individual and collective agency, including that of traditional owners, their representative bodies and support groups, as well as the leadership of politicians and public servants.

The leadership of the then Attorney-General Don Dunstan in South Australia in 1966, for example, was instrumental in the first symbolic recognition of Aboriginal land ownership in Australia. Prime Minister Whitlam's championing of land rights in the Northern Territory in the 1970s and that of his successor, Malcolm Fraser, who resisted antagonistic elements within his own Liberal government to enact the ALRANT (Peterson 1982), paved the way for joint management at Kakadu. The agency of Indigenous people and their representative bodies also influenced how priorities and informal policy approaches have been set within governments since the 1960s. In some cases, this was notorious — for example, the activism seen at Mutawintji in New South Wales (Larritt 1995). Lesser known, but also important, are the actions of individual public servants, at all levels, who have had a major influence in the shaping of programs over long periods (e.g. Haynes 2009: 159–70).

The major interventions of the 1970s and 1980s — for example, the Commonwealth's ALRANT — were also made possible because the Northern Territory was remote from most of the Australian polity. The joint management initiatives in Kakadu and Uluru were enabled because of this Commonwealth legislation and the political will of Prime Minister Fraser, in particular, who stood up to the antagonism of the non-Aboriginal majority in the Northern Territory. Co-management certainly did not capture the imagination of most Australian states in this period (Toyne 1994; Woenne-Green et al. 1994). Aboriginal rights were better received by the non-Aboriginal population when they were enacted far away, as historian Tim Rowse (1988) has shown. Yet each state and territory government has also dealt with the transformed (and transforming) legal and political terrains in its own way. To some extent, their actions have been governed by the histories of past actions, as in New South Wales where amendments to the NPWA were eventually passed in 1996, enabling joint management along the lines of the Kakadu-Uluru model; and in South Australia where similar amendments allowed co-management for the already-leased Witjira National Park in 1995.

Overall, however, it seemed as if joint management — and for that matter any but minor forms of Aboriginal involvement in park management — would remain the preserve of the Commonwealth and Territory government partnerships in the Northern Territory. This was even the case in the face of the Royal Commission into Aboriginal Deaths in Custody's recommendations for stronger government support for Aboriginal involvement in national park management (Royal Commission into Aboriginal Deaths in Custody 1992).

The *Mabo* decision, the NTA and its amendments, and subsequent jurisprudence — notably the decision in *Wik* and *Ward v Western Australia* discussed above — progressively changed the way in which states and territories viewed and had to accommodate the rights of Indigenous owners in relation to national parks and other protected areas.[63] The NTA (despite strong resistance by some jurisdictions, notably the Western Australian government of Premier Richard Court) became the framework through which Indigenous people could begin to leverage legal rights. After an initial period of suspicion among some segments of the population, popular sentiment has shifted in recent years and governments appear more willing to deal with the rights or potential rights of Aboriginal people over protected areas.

While the trend of native title and co-management agreement-making has provided a significant entry point to Indigenous people having some say in managing their traditional lands, native title, as Strelein and Weir (2009: 126) point out, 'continues to enforce discriminatory frameworks that undermine Indigenous peoples' rights and responsibilities to their lands', including through the extinguishment of native title rights. Rather than declaring culturally meaningful traditional ownership, native title determinations over protected areas are, as noted in the Introduction, largely restricted to providing bundles of rights that coexist with the already established rights of the Crown and the general population. In such circumstances, the rights of the latter — to general access and specific activities such as bushwalking, camping, fishing and swimming — will usually prevail. Public rights may be in conflict with traditional owner rights, as seen recently in New South Wales.[64] Further restrictions seem to be apparent in the ways in which governments do not approach native title as a form of tenure (Strelein 2009; McIntyre 2010). Even where exclusive possession native title is determined to exist, the denial of tenure seems to exclude the possibilities available for forms of Aboriginal freehold, including lease-back arrangements.

The overview of jurisdictions in the previous section also demonstrates significant inconsistencies, inequalities and an overall lack of fairness in the institutional workings of the NTA, and in particular the ILUAs that accompany consent determinations. Often relatively proximate areas within the same jurisdiction have manifestly different settlement agreements, and accordingly give rise to relative disadvantage for some traditional owners.

Yet, despite these problems and inconsistencies, the NTA has provided formal institutional pathways to co-management that would not otherwise exist. Current proposals by the Commonwealth government to amend the NTA to insert a new section 47C would provide parties with greater flexibility to agree to disregard historical extinguishment of native title over protected areas that were vested by an act of the Crown. This would go at least some

63 *Mabo v Queenland (No 2)* [1992] HCA 23; *Wik Peoples v Queensland* (1996) 187 CLR 1; *Western Australia v Ward* (2002) 213 CLR 1.

64 See the *Game and Feral Animal Control Further Amendment Act 2012* (NSW), which amends existing legislation such that a person who holds a game hunting licence and who is authorised or permitted to kill a native game bird under the authority conferred by a native game bird management licence does not, in connection with that killing, commit any offence under the *National Parks and Wildlife Act 1974* (NSW).

way towards ameliorating the effect of the High Court's decision in *Ward* (Strelein & Scanlon 2010: 4–7) — although it is noted there is no mention of sea-country or freshwater in the proposed section.

Overall, the NTA has made a considerable difference to the development of co-management arrangements in Australia, even where the quality of those arrangements has been the result of the serendipitous meetings of a range of factors. Although day-to-day co-management operations can be stressful for those involved (Bauman, Stacey & Lauder 2012), at least some government officers and traditional owners seem to be gaining confidence in the possibilities co-management has created, particularly as agreements become normalised through native title processes.

Nevertheless, it must be noted that native title has failed to meet Indigenous rights to lands and seas as they might be understood within international human rights declarations and conventions, including the rights to self-determination and to free, prior and informed consent.[65] Native title falls short of the expectations of many traditional owners, and often leaves them bewildered as to the meaning of 'non-exclusive possession' and the rights which accord through such determinations. It also leaves them questioning the inequalities which have arisen both within and across jurisdictions in the negotiation of native title rights and co-management agreements, as discussed in the following section.

65 It is beyond the scope of this paper to address the issues of rights, native title and co-management agreements. See Maclean et al (2012: 31–6) for the kinds of international conventions and declarations relevant to joint management — for example, the United Nations Convention on Biological Diversity 1992 and the United Nations Declaration of the Rights of Indigenous Peoples 2007. See also Bauman and Smyth (2007: 141–8) for the IUCN 'Durban Accord' at its 5th World Parks Congress in 2003. Rights can provide significant entry points of negotiation to co-management partnerships, and the realisation of rights can then provide indicators in evaluating the effectiveness of co-management. See also Campese et al. (2009: 8); Strelein & Weir (2009: 125); Filmer-Wilson & Anderson (2005: 29) for the importance of rights-based approaches in conservation.

Comparing co-management institutions within and across jurisdictions

As noted in the Introduction, jurisdictional comparisons of co-management institutions cannot be made wholesale or at face value. There are two reasons for this. The first relates to the complexities of various co-management regimes,[66] and the second relates to the fact that institutional arrangements tell us little about how these arrangements are actually playing out on the ground and the many factors in operation, as we discuss in following sections. In this section, we compare the institutions employed in state and territory jurisdictions as they appear at face value.

Before the advent of native title, the Commonwealth, Northern Territory, and Queensland governments had passed laws that allowed Aboriginal ownership, with lease-back, of protected areas and co-management through boards of management. Lease-back periods varied: Commonwealth parks were leased back for 99 years, as was Nitmiluk in the Northern Territory (note that there is no lease-back for Garig Gunak Barlu National Park). In Queensland, traditional owners objected to the absence of a requirement of Aboriginal majorities on boards of management, to the lease-back in perpetuity on offer and to the absence of rental payments and of revenue-sharing, available in the Northern Territory. Despite a number of successful land claims, they chose not to enter into co-management arrangements. In the 1980s, New South Wales, South Australia and Western Australia created packages that offered employment, training and various forms of co-operative management to traditional owners, but none of these could be called 'co-management' in the sense that Borrini-Feyerabend et al. (2004a) use the term to describe **'**real**'** institutional power-sharing.

Over time, as states and territories have sought to address native title claims, there have been an increasing number of co-management arrangements. Most states and territories, with the exception of Tasmania and the ACT, have amended their existing conservation legislation and Indigenous land rights legislation to deal with native title and enable co-management. The New South Wales government, for example, made amendments to its NPWA and ALRA, and in 1998 the traditional owners of Mutawintji, after a long period of struggle, leased back their freehold land for 30 years and entered into a form of co-management that included a board of management with a traditional owner majority and rental payments. In 2004, the Mamungari Conservation Park, under mechanisms available in the NPWA SA and the *Maralinga Tjarutja Land Rights Act 1984* (SA), provided the first example of a board of management with Aboriginal majorities and lease-back of Aboriginal freehold in South Australia.

66 In the process of compiling the jurisdictional comparative table of co-management arrangements, included as Appendix 1, we came to realise that it is beyond the scope of this paper to carry out the detailed and methodical comparative legal analysis of institutions that is essential to identify, for example, how particular sections within a single piece of legislation impact on each other as well as on sections in other related legislation. Nor is it possible to make truly informed comparisons without comprehensive details of ILUAs, MoUs and management agreements and plans, most if not all of which are context specific, and some of which are not readily available.

Queensland has gone down the path of introducing area-specific legislation in Cape York Peninsula and on North Stradbroke Island. This 'singling out' approach has left other Queensland traditional owners, such as the Wet Tropics groups, with a sense of unfairness, and wondering whether they might achieve similar arrangements. In this context, the boundary of the Cape York Peninsula region is currently being revised to consider extending the boundary to include Eastern Kuuku Yalanji land interests to the south, which would see relevant protected areas included in the Cape York joint management framework.

The Northern Territory is, however, the only jurisdiction to have created legislation that deals with all protected areas and native title and land claims as a package. These arrangements are tenure based, as set out in three schedules to the Framework Act, mostly dependent on whether Aboriginal freehold would be available under the ALRANT and the perceived success of native title determinations. Victoria and Western Australia have now enacted laws that enable greater consistency for co-management and ILUAs throughout the state, but each protected area is still negotiated on a case-by-case basis.

Under Victoria's alternative settlement framework, as in the Northern Territory, native title is not extinguished and freehold title will be provided, though the agreements are regarded as final in terms of negotiating native title. There is a further qualification in Victoria, under section 20 of the TOSA, that freehold grants are subject to the relevant Aboriginal corporation agreeing to transfer to the state of Victoria the right to occupy, use, control and manage the whole of any land. Although, as noted above, these state-retained rights are somewhat circumscribed in the following section of the TOSA which dictates that the land must be used for the purposes for which it was dedicated before the transfer (TOSA, s 21). Unlike the Northern Territory, where traditional owners entered into 'joint management' arrangements upon the Framework Act coming into force (and some form of joint management arrangements may have already been in place[67]), in Victoria, traditional owners have to pass a 'threshold test' before entering into any negotiations with the government. It remains to be seen how this will be applied by the state, and how much groundwork will be required of NTSV on behalf of traditional owners.

With the exception of Tasmania, all jurisdictions are employing ILUAs (or have attempted to employ ILUAs, as is the case in the ACT) to arrive at co-management agreements, mostly, but not always, accompanying native title determinations. In South Australia, the Witjira ILUA, signed in 2006 and registered in 2008, provided for co-management arrangements under the NPWA SA with a board of management with a majority of traditional owners. Traditional owners did not receive tenure; rather, they recieved a leasehold from the South Australia government. In Western Australia in 2006, the Miriuwung Gajerrong negotiated ILUAs that created freehold title and lease-back to the state; and in 2010, the Yawuru negotiated ILUAs that involved a substantial settlement package for co-management of a conservation estate that includes a marine area. There have been an increasing number

67 In the Northern Territory, the government already had a significant amount of information regarding traditional ownership from claims that had been made under the ALRANT. There is a view, however, that more detailed research prior to the arrangements being put in place may have been useful to avoid disputes.

of ILUA negotiations in New South Wales where ILUAs are often negotiated independently of native title determinations, and in South Australia there has been a significant increase in native title determinations and co-management related ILUAs. In the ACT, a willingness to enter into co-management arrangements has been hampered by the dynamics of traditional owner groups. At the other end of the spectrum, Tasmania appears to be slowly moving towards addressing Indigenous land rights in the form of co-management, and has a range of initiatives that may provide the foundation for more formal co-management.

Native title, through ILUAs, MoUs and IPA-related processes, is also beginning to have some impact on the willingness of states and territories to recognise sea rights across Australia, but again with some inequality in outcomes. In the past, the Northern Territory usually has been seen as more advanced than other jurisdictions in recognising traditional owner rights to marine areas (Smyth 2008). Section 73 of the TPWCA, for example, paves the way to joint management over marine areas and it seems likely that the recently declared Limmen Bight Marine Park in the Roper River area will come under some form of joint management. There are, however, signs that other jurisdictions are also moving in this direction — for example, the Roebuck Bay Marine Park in Western Australia will be co-managed with the Yawuru; part of the North Stradbroke Island agreement involves an MoU for a partnership in relation to marine park waters; and the Madingalbay Yidinji IPA involves co-management of parts of the Trinity Inlet (including part of a Queensland state marine park). In addition, section 11(1)(b) of the TOSA in Victoria and s 56A agreements under the Western Australian CALM Act also contain provisions for the co-management of marine areas.

In addition, substantial research work has been undertaken in relation to inland water resource management rights. This research offers examples of relevant collaborations and points to possibilities for the co-management of rivers and lakes and the regulation of recreational activities on them (Smyth 2009; Sheehan 2001; Murrumbidgee Catchment Management Authority 2013; see also Jackson & Altman 2009; Weir, Stone & Mulardy 2012; NAILSMA 2009).

Overall, most states and territories have taken a 'horses for courses' approach to protected areas based on tenure, with Aboriginal freehold and exclusive possession native title attracting 'stronger' co-management arrangements. This approach reflects the machinations of tenure and statute in relation to parks more broadly, as the *Ward* decision demonstrated only too well.[68] As Strelein and Scanlon note (2009: 6), this decision affected not only the validity of the Keep River National Park, which straddles the border of the Northern Territory and Western Australia; the validity of many other parks in the Northern Territory was also thrown into question, leading the Northern Territory government to take a comprehensive approach to protected areas. On the Western Australian side of the border, some national parks 'were found to extinguish native title if the instrument used to create the reserve effectively constituted a grant of exclusive possession to the Crown' and 'some reserves created under the same legislation, simply by placing them under the control of a board of management, were found not to extinguish native title' (Strelein & Scanlon 2009: 6).

68 *Western Australia v Ward* (2002) 213 CLR 1.

The limitations of tenure-related approaches, ever impacted by political dynamics, may also be exacerbated by the way in which subjective criteria is applied by states to determine what institutional arrangements may be available. In South Australia, the criteria for determining the 'level' of traditional owner decision-making powers include the complexity of park management, management capacity, effective relationships and adequate resources. This raises questions about how such criteria are negotiated, interpreted, applied, and by whom, and the meanings of criteria are often contested by SANTS. The negotiation of ILUAs raises similar issues, in that outcomes can be dependent upon subjective criteria, such as the quality of traditional owner representation, the political dynamics at the time and the individual subjectivities, predilections and capabilities of those involved (see Bauman 2010, where similar issues are described in relation to the assessment of connection by states and territories). In Western Australia, although legislation now allows for co-management in a range of contexts, it remains to be seen whether other traditional owner groups will be able to negotiate the significant benefits and arrangements that the Miriuwung Gajerrong and Yawuru have done.

Overall, 'strong' legislative schemes operate alongside different and perhaps less binding management arrangements within a single jurisdiction, as governments negotiate each area on a case-by-case basis within the political constraints of the time. This has given rise to an uneven patchwork of institutional arrangements, and created issues of inequity amongst traditional owners within jurisdictions and across Australia. With many native title claims yet to be determined or settled, states and territories may wish to consider moving from a park-by-park approach to more comprehensive regional approaches, along the lines adopted in the Northern Territory — an approach that, on the whole, represents a major investment in traditional owners. Support for such an approach, however, must be tempered by the need to respect the authority of each traditional owner group to negotiate its own outcome.

In a later section, we discuss how the kinds of institutions which are in place in states and territories are only one measure of success in co-management. The exigencies of historic power imbalances, for example, the dynamics of board and committee meetings, personal influences, day-to-day interactions, the capacities of both traditional owners and governments and the nature of engagement processes are only some of the contingencies which must be considered. As we discuss in the following section, the 'fit' of institutions with the capacities, interests and needs of the local group involved also needs to be taken into consideration.

Negotiating flexible institutions in progressive co-management pathways

The institutional arrangements that frame co-management arrangements create the basic frameworks through which power is shared and decisions are made. There are multiple and evolving pathways to co-management, many of which have been discussed in this paper. This section considers some of the tensions between negotiating flexible arrangements that fit local needs, interests and capabilities and achieving apparently 'stronger' institutional arrangements, such as those described below.

In the past, the institutional arrangements that have been regarded by a number of observers as providing the best overall safeguarding of Aboriginal interests in Australian co-management arrangements have included a strong legal framework, freehold tenure, boards of management with traditional owner majorities and chairs, and rent for lease-back as provided for in the Commonwealth co-managed parks and in the NSW Aboriginal ownership and lease-back arrangements (de Lacy & Lawson 1997; Smyth 2001; Woenne-Green et al. 1994; Wellings 2007). Although these arrangements have often presented difficulties — some boards of management have had operational problems (Haynes 2009: 79–110; Foster 1997; Power 2002) — there are case studies where such arrangements have been effective, at least at the time of investigation (Bauman & Smyth 2007).

Such benchmark institutions, including the legislation of rights, can assist in empowering traditional owners where they previously have been marginalised, to provide a focus for change from the *status quo* (as discussed below), provide certainty in the face of the vicissitudes of public opinion and changes of government. On the other hand, there is also emerging evidence that a one-model-fits-all approach is unlikely to be universally effective (c.f. Plummer et al. 2012).

Traditional owners have a range of capacities and aspirations. Some who already have 'joint management' may aspire to 'sole management' in the near future, as is the case for the traditional owners of the Booderee National Park (Smyth 2007a: 83). Others may not wish to take on the demanding responsibilities associated with formal boards of management and their imposed Western notions of governance that are time consuming, often poorly understood by traditional owners, costly and consume limited resources (Foster 1997; Haynes 2013). Still others — traditional owners and government staff alike — may be ill-prepared to make the shift from the mindset required in negotiations to that required for implementation or they may not have the skills required for executing agreements. In addition, those involved in carrying out activities on the ground may not have been involved in the negotiations, and may be unaware of the intent of aspects of agreements.

There are also examples where more co-operative 'advisory' and apparently 'weaker' arrangements appear to satisfy the traditional owners involved, at least for the present: in New South Wales, for example (Hunt & Mackay 2009); and in South West Victoria, where the Gunditj Mirring Traditional Owners Aboriginal Corporation that sits on the Budj Bim Council appears to have been comfortable with its role and level of responsibility. Although, as discussed below, it is now seeking additional responsibilities and increased roles.

Borrini-Feyerabend et al. (2004a: 304) have suggested that there is a greater chance of success 'with a single-tenure area of moderate size and a relatively limited number of management issues and parties to the agreement'. Rather than committing at the outset to formal regulatory structures, with their array of issues, some traditional owners may prefer, at least initially, to identify and work towards more limited priorities, such as visits to country (which some of the NSW MoUs enable). Such an approach may be preferred over engaging with the more common priorities of protected areas, such as the managing of visitors and other conservation issues as identified in formal plans of management (see Kerins 2012: 27).[69] Others may prefer to focus on only a part of a protected area or on a single protected area rather than assuming responsibilities for a number of protected areas simultaneously.

This kind of approach may be more akin to 'collaborative' management arrangements, as defined at the beginning of this paper, whereby specific arrangements are negotiated 'as appropriate for each context, [including] the authority and responsibility for the management of specific area or sets of resources' (Borrini-Feyerabend et al. 2004a: 66). It also mirrors what is described in the literature as 'adaptive' co-management which emphasises economies of scale (e.g. Plummer et al. 2012), participatory processes, ongoing learning, multi-level governance and staged approaches (e.g. Armitage, Berkes & Doubleday 2007; Berkes 2009). In the broader context of natural resource management, Sullivan & Stacey (2012: 3) recommend that governments 'negotiate flexibly with Aboriginal regional and local environmental organisations over activities, targets and outcomes'.[70]

Collaborative and adaptive approaches might thus be seen as addressing the negotiation of co-management arrangements with flexibility in an incremental approach, with traditional owners progressively taking on additional responsibilities and greater decision-making powers at a scale that allows for the best fit with local governance structures and the capabilities of all parties at any given time. To participate effectively in such negotiations, traditional owners and governments would have to share an understanding of co-management as an ongoing pathway of serial capacity-building, problem solving, dialogue and the negotiation of meaning. Such an approach could provide all parties with the time and opportunity to build and strengthen relationships and gain better understandings of each other's values, priorities, interests and modes of thinking, and for the public to gain confidence in the benefits of co-management at specific locations.

A flexible approach may better accommodate changing traditional owner and government aspirations, as each experiences the implementation and realities of agreed arrangements, as well as accounting for changes over time to traditional laws and customs. As partnerships progress, traditional owners would be more aware of the implications of decisions open to them and better equipped to make decisions about taking on additional

69 Kerins (2012: 27) points out that co-management arrangements generally remain within the existing park management structure and rationale. This tends to emphasise visitor management and conservation, and it remains to be seen whether Indigenous land owners in the Northern Territory will be able to assert their own priorities and rights within this.

70 Although Sullivan and Stacey (2012) are not specifically talking about 'co-management', many of the activities to which they refer are carried out in partnerships.

responsibilities. Over time, the capacity of traditional owners, governments and protected area staff alike should increase, as demonstrated by their management performance, especially where both groups are offered suitable intercultural training and mentoring (Haynes 2009: 289).

In Victoria, there are examples where traditional owners appear to anticipate this kind of progression. Gunditj Mirring in Victoria is now working within the processes available to it, using them as 'stepping stones' to move into a 'stronger' joint management model, with a TOLMB and the increased authority that goes with such a regime — that is, majority traditional owner representation and a traditional owner chair, and responsibility for setting the strategic direction for management. Also in Victoria, protected areas that are handed back as part of native title agreements under the TOSA are seen by many traditional owners to represent only the first stage of joint management, as traditional owners generally aspire to jointly manage all of their Crown land estate in the future. Other states and territories, including the Northern Territory and South Australia, also have examples where arrangements appear to anticipate a staged progression from advisory responsibilities to greater decision-making powers. In the Northern Territory, traditional owners, guided by principles set out in section 25AC of the TPWCA, define the kind of partnerships they wish to enter on case-by-case exigencies, allowing for the most appropriate governance model at the local level to be reflected in management plans. The emphasis is on traditional decision-making rather than the establishment of formal regulatory structures such as boards of management — although these are not mutually exclusive.

As the overviews demonstrate, many jurisdictions — regardless of whether they have formal co-management arrangements — have the foundations for more comprehensive co-management arrangements as traditional owners are already assuming a range of co-management activities. On the Great Barrier Reef, for example, activities such as monitoring dugong and turtle numbers and attending to ghost nets are incorporated into management plans, and there are increasing opportunities for traditional owner-driven management of their countries through TUMRAs.[71] Smyth has also set out a range of legal and non-legal mechanisms that could provide the foundations for co-management of MPAs (2009: 102).[72]

71 See Zurba 2009 for the Girringun example.

72 Existing or potential examples of these legal mechanisms include:
- customary ownership and other rights under customary law (for management of access and resource use rights within and between Indigenous groups)
- native title rights and interests — although marine native title rights are coexisting rights, they are legal rights under Australian law and do provide native title holders with at least a seat at the table when decisions are being made about marine areas
- ILUAs over marine areas and/or other components of IPAs where Indigenous people do not have exclusive title, to achieve management outcomes negotiated with government agencies and other stakeholders with legitimate interests in the area
- registration of sacred sites and other cultural areas under state and territory heritage legislation
- Indigenous fisheries rights and interests, now recognised to varying extent in all state and territory fisheries legislation

In any event, it is not necessary for the technical and legal limitations of tenure and non-exclusive native title determinations to be reflected formulaically in 'lesser' arrangements, as compared with those arrangements that may be achieved through exclusive native title determinations or freehold title. With good will, governments can work as they wish with traditional owners. This appears to be the case in the Northern Territory, where, while Schedule 3 parks appear to be 'lesser' arrangements (in that they don't have freehold tenure, as is the case for Schedule 1 and 2 parks), across all parks, on-the-ground decisions are conferred by the establishment of Joint Management Committees under Joint Management Plans that have been constructed according to Joint Management Principles developed with traditional owners. The functions and composition of boards and committees are decided by traditional owners in consultations with the Land Councils and in negotiations with the TPWS.

Notwithstanding, flexible and incremental approaches should be treated with caution. 'Weaker' collaborative and co-operative institutions may not provide sufficiently meaningful power bases from which traditional owners can negotiate shared meanings with governments on an equal footing. 'Weaker' institutions have the potential to undermine Indigenous interests insofar as they reinforce power balances and can make traditional owners increasingly dependent upon political goodwill and individual proclivities. Flexibility in institutions should not be used as an argument to justify inequitable arrangements. Agreements should be consistent and equitable (even as a staged progression), if only to avoid practical management difficulties.

Incremental and flexible arrangements will only work if: (a) traditional owners want them; (b) they do not close off the 'full' possibilities of co-management, including legislated rights; and (c) they are recognised by governments in formal agreements as building the foundations for increasing the formal powers of traditional owners and allowing them to assume greater responsibilities in the future.

The discussion in this section highlights the critical nature of the engagement processes whereby traditional owners agree to the conditions under which they enter co-management arrangements, and subsequently implement them. These initial negotiations set the tone for future engagements and co-operation, and determine whether the arrangements agreed to are realistic and achievable. How negotiations are managed is a highly significant element of engagement processes, as is discussed in the following section.

- formal agreements under state or territory legislation (such as s 73 agreements under the TPWA, or TUMRAS under the GBRMP Act and the Marine Park Act 2004 (Qld)) to support IPA management over sea country
- negotiation with governments to declare a marine park over marine components of sea country IPAs and arrangements that complement and support the authority of traditional owners to achieve agreed goals of both the IPA and the government declared marine park, and
- IPA governance arrangements to provide for, or contribute to, the governance of a government-declared marine park over the marine component of an IPA (Smyth 2009: 102).

Brokering partnerships and the terms of recognition

The initial brokering of partnerships and the way in which negotiations take place are critical to future success. They set what Appadurai (2004) calls 'the terms of recognition', establishing 'the conditions and restraints under which the poor negotiate the very norms that frame their social lives'. In turn, these arrangements impact their 'capacity to give voice [and] to debate directions for collective social life' (Appadurai 2004: 66–8).

Through these initial negotiation processes, co-management arrangements should be tailored to specific subjects, contexts, scales, local histories, geography and community needs, but also formalised in flexible institutions that provide for the possibilities of change. Ideally, the aspirations of traditional owners and governments and their understandings and expectations of each other's roles and responsibilities would be carefully future-mapped as milestones over the short and long term in anticipation of a staged progression to 'full' co-management. These milestones would be incorporated into management agreements with regular reviews.

Identifying the 'fit' of agreements with local circumstances is a complex negotiation, and requires skilful management, because it involves a range of stakeholders. The negotiation must be honest, fair, equitable, transparent and inclusive, and reflect and accommodate not only traditional owner views and interests, but also those of governments and their departments, the broader community and a range of other stakeholders. Partners must share a mutual understanding of the roles and responsibilities they are assuming, and of the issues that may arise in practice in order to make informed decisions about the kinds of partnerships they wish to enter.

At the same time, traditional owners have unique rights under various United Nations Conventions and Declarations such as the United Nations Convention on Biological Diversity 1992 and the United Nations Declaration of the Rights of Indigenous Peoples 2007 (UNDRIP) (see note 51), as well as native title rights and interests under the NTA. Ideally, the recognition of these rights and interests, including the right to self-determination, would provide the entrance point to such negotiations, as well as the basis of the planning processes that often accompany or immediately follow negotiations. With such rights clearly recognised in initial co-management agreements, management and implementation plans could then set out how rights are to be realised in practice. The actualisation of rights on the ground could also provide benchmarks for future monitoring and evaluation processes.

Such a rights approach would enable greater traditional owner confidence and assist in balancing what is often an uneven playfield. Ideally, negotiations would be managed by a third party independent facilitator with specialised communication skills in processes that account for not only substantive outcomes, but also the 'how' of engagement, the building of relationships and the power differentiations between and among all parties. A skilled facilitator would ensure that issues are explored thoroughly and understood and that the implications of decisions are reality-checked, including inter-generational

and implementation issues. In a rights framework or self-determination, it would be the facilitator's duty to ensure that decisions are made with the free, prior and informed consent required in the UNDRIP in a paradigm of self-determination.[73]

Highlighting engagement processes in the initial brokering of partnerships and management planning suggests the importance of engagement processes to come — the 'how' — which in turn impacts on the overall success of co-management arrangements (Bauman & Smyth 2007). Tangible outcomes such as the nature of institutions and legislated rights do not alone define practice or ensure success. In the final section of this paper, we turn to the relationships between people and organisations and broader governance issues — what we call 'co-management meaning in practice'. In doing so, we rely upon observations from our work over a long period of time in specific co-management situations (see Notes on Authors) and on information provided by traditional owners, NTRBs and NTSPs, and government staff at a number of AIATSIS workshops.

73 See Hales et al. 2012 for a discussion of issues in obtaining free, prior and informed consent in a World Heritage nomination process in Cape York.

Meanings in practice of co-management arrangements

There are many factors involved in how co-management 'operates as a lived interaction between people, politics and place' (Haynes 2009: 7) and it is not within the scope of this paper to address all of them. Matters such as the simple sharing of a uniform, the way technology and bureaucratic procedures are incorporated into park life, the way work is performed, the way common experiences are talked about and the way meetings and consultations are conducted all bear on how co-management 'works'. Symbolic changes such as new park names and emblems can cause antagonism and hostility among parties. The relationships between and among the staff of bureaucracies and Indigenous organisations and traditional owners are also important factors.

Ultimately, the effectiveness of co-management is as much dependent upon the willingness of individuals to share power and engage with and listen to each other in activities on the ground (c.f. Altman 2008: 182–93; Haynes 2009: 112–23) as it is upon the formal structural and administrative arrangements that have been described. Governance arrangements that give an appearance of being stronger and better than others, including legislated rights and having a majority of traditional owners on boards of management, do not necessarily lead to 'actual' power sharing. If they do, it may be power sharing that is tortuous and difficult to comprehend, or that may involve traditional owners in issues in which they have little interest. Boards of management may operate at a political strategic level with little on-ground involvement, and therefore lose touch with the aspirations of traditional owners (Haynes 2013). They can also be rendered powerless in the bureaucratic complexities of board governance over which they may feel they have little influence. When a board of management with traditional owner majorities cannot summon sufficient influence to convince a park operator to stock their preferred brand of tea at a park kiosk, causing traditional owners living adjacent to the park to make a 30 kilometre drive into the nearest town, co-management cannot be said to be successful.

Success is also contingent on the commitment, attitudes and capabilities of individuals — both Indigenous and non-Indigenous subjectivities. Socialities play a very important role in co-management outcomes, institutional arrangements notwithstanding. Public servants, staff of Aboriginal organisations and traditional owners alike may not be temperamentally suited to working in co-management. An effective ranger is not always an effective co-management ranger — especially where there is a history of antagonism. For instance, two senior rangers wore black armbands to mourn what they perceived as the loss of Nitmiluk (Katherine Gorge) National Park when it was handed back to traditional owners in 1989 and leased to the government under joint management arrangements (Bauman & Smyth 2007: 17).

There may be histories of antagonism between traditional owners and governments which make it confronting for traditional owners to 'move on' and enter into co-management partnerships, and which cause the beginnings of a new regime to be fraught. There may also be histories of antagonism between and amongst traditional owners, their representative organisations, political parties, and ministerial and government departmental staff, all of which can create a difficult working environment.

In addition, changes to governments and protected area policies can cause significant issues. New legislation or the signing of an ILUA will almost certainly mean changed management objectives, the need to recognise and account for a set of cultural issues, and corresponding shifts in operational requirements. Even after co-management has been bedded down for a while, changes in personnel can cause significant disruption and reorientation. Changes to protected area staff at all levels can mean that the relationships — so integral to co-management success — are lost and that new relationships have to be built and negotiated over time. Relationships are inevitably emotional on occasion, and can be vexed whether between or among traditional owners, staff or others, and the dynamics of difficult relationships can permanently impact other relationships and any substantive outcomes (Haynes 2009: 207–40; Mills 2009). In short, the most elaborate administrative structures and legal arrangements can be totally undermined by 'bad blood' in relationships; and, conversely, inadequate legal safeguards can be ameliorated by positive interpersonal relationships.

Working in co-management requires not only selection of the 'right people', as discussed above, but also a serious commitment on the part of the individuals involved. It is common across jurisdictions that traditional owners and park staff alike suffer from 'burnout' in operating in what can be highly stressful work environments. Traditional owners are often 'meeting weary', and some can be particularly burdened in wearing the two hats of traditional owner and protected area staff member. Staff — both Indigenous and non-Indigenous — carry a burden of responsibility to make co-management work as they go about the business of delivering agreements at the day-to-day level (Bauman, Stacey & Lauder 2012: 25–9). Often inadequately resourced, parks staff juggle a range of pressing issues that can come from many directions: the need to manage conflict between staff and traditional owners or within co-management boards and committees; accountability to their own government departments; accountability to RNTBCs and other Indigenous representative organisations; the demands of individual traditional owners; the demands of an array of other government departments such as those concerned with fisheries, land care, and training — not to mention the requirements of the tourism industry and, of course, park visitors.

These are just a few examples of the issues faced at the day-to-day level by those involvedin the co-management partnership. As new and often costly co-management projects are introduced — driven chiefly by agreements to provide employment and training and new management activities for Indigenous people — governments face the challenge of meeting existing operational funding requirements as well as the costs of implementing the new arrangements. Although some funding, including for ongoing operations, may be committed through the agreements, co-management budgets in most jurisdictions are negotiated annually, on a case-by-case basis.[74]

74 It is not possible to make thorough comparisons across jurisdictions in the absence of detailed information about the funding and resources for co-management, including employment programs. Funding for co-management may not be provided from a single budget line or solely from states and territories (the Commonwealth supports co-management, for example, through its WOC program), and the information required to match budgetary allocations against specific

It is a matter of particular concern that states and territories are entering management agreements without secured resources to implement them. Few jurisdictions have reliable long-term funding for co-management. Across all jurisdictions, there is a lack of adequate funding for the promised employment of Indigenous rangers and, while management agreements might express 'support' for Indigenous employment and tourism activities, it is often the case that matching funds are not available. Often the burden of consultation falls on traditional owner organisations, such as RNTBCs, and their representative bodies, such as NTRBs, NTSPs and land councils, all of which have obligations under the NTA to consult native title holders but may have little or no funding to do so, and insufficient resources for capacity development. This includes the ability of RNTBCs to fulfil their functions to carry out prescribed conservation tasks, such as weed management (Duff & Weir 2013: iii). Most Indigenous management committees and their RNTBCs also need urgent assistance in improving their governance arrangements if co-management is to be successful.

The factors outlined above all contribute to a tendency for the *status quo* to prevail. Thus, where co-management may be enunciated as a new paradigm, it may well be 'business as usual' in park management structure and rationale (Kerins 2012: 27): the same departments (though sometimes renamed) with long-held views of how conservation areas should be managed; tired and repeated references to that little understood term, 'capacity building'; the lack of funding for co-management as a priority; and management plans based on entrenched and outdated ideas of conservation and biodiversity values. Traditional owners and non-Indigenous staff alike may proceed as if nothing has changed, reproducing long-established management practices that are useless to Indigenous involvement in land management. That is, the change to co-management is in name only. New and innovative possibilities that could deliver satisfying results for both parties can be cauterised at the outset.

All these factors have the potential to lead to the 'implicit silencing of alternative narratives' and to 'ontologically privilege non-Indigenous ways of being-in-place' (Howitt & Suchet-Pearson 2006: 323). They remind us of Appadurai's concern about the 'capacity to voice', which we raised earlier in this paper, and the need to identify Indigenous interests in specialised communication processes. To enable the capacity to voice, there is a need to consider 'how' things are done (the procedural) as well as the 'what' (the substantive) in the myriad decision-making processes of park management — how boards and committees make effective and realistic decisions, how traditional owners gain access to local offices, how and where feral animals are destroyed, and so on. Attention must be paid

institutional arrangements is rarely available — if at all. Funds marked for 'native title' may be used in negotiating native title as well as in implementing and maintaining co-management arrangements. Program funding for Indigenous corporations may not be distinguished in terms of its co-management activities. Large one-off settlement payments can inflate jurisdictional figures and funding attracted by co-management arrangements may come from overall native title budgets and be difficult to distinguish from other payments in a settlement. Rentals for lease-backs may be tied to 'values' of the park, as is the case in New South Wales (and not necessarily Indigenous-specific values); formulae for rentals vary across jurisdictions; and figures on revenue-sharing are difficult to obtain.

to the quality of engagements and relationships as emotional, procedural and substantive interests impact on each other in a never-ending cycle (Bauman & Williams 2004: 9).[75]

The careful identification of the full range of traditional owner emotional, procedural and substantive interests is thus a critical aspect of engagement. These interests should not be assumed. For example, where park management may be seen to be successful in eradicating feral animals, traditional owners may be upset that they have not been involved in associated decisions or benefited from employment. On the other hand, employment, at least in the particular context in which it is being offered, may not be a significant issue for traditional owners at that time and they may not want to be involved in decision-making about feral animals and feel coerced into such activities.

We thus see that the overall quality of co-management will depend in turn on the quality of participation, process, partnership and relationship. And, in order to evaluate its effectiveness, there is a need to follow processes over time, observing relationships and their histories (Haynes 2009: 17; Ross et al. 2009: 249) and decision-making processes as they occur.

Ultimately, the success of co-management arrangements will depend on the commitment and leadership of traditional owners in the engagement processes which are on offer. Hopefully these processes are not dominated by the state and allow for the full range of traditional owner opinions to be heard and negotiated amongst themselves. The current state of co-management arrangements has been the product of a long struggle by Indigenous people for recognition of their land and other cultural rights. Many traditional owners may not yet fully realise that the successful implementation and further development of co-management is likely to depend primarily on their day-to-day commitment to make it work and make it better. In other words, co-management is not a result; it is a process. Other parties (government and non-government), as the perpetrators and beneficiaries of previous Aboriginal dispossession and marginalisation, cannot foster the next phase of co-management development without such commitment from traditional owners themselves.

Building such a commitment will depend upon the governance arrangements, on whether the capacity-building of traditional owners and governments alike has been an integral aspect of the co-management process, and most importantly, on the nature of engagement processes. Such processes must ensure that traditional owners can influence and have ownership of decisions affecting them, which in turn will determine the sustainability of outcomes and the commitment of traditional owners.

75 Moore (1996), from Colorado Dispute Resolution Associates, developed the 'Satisfaction Triangle' to describe emotional, procedural and substantive interests. Substantive interests include the content of native title and other matters being negotiated. In this context, this means legal rights, policy frameworks and connection. Procedural interests are concerned with how parties talk about things, whether they are being given a 'fair go' and whether they have had the opportunity to put their point of view. Emotional interests are concerned with how parties feel about what is being negotiated and about themselves as parties during and after negotiations.

Conclusion

The evidence of this paper points to an invigoration of co-management arrangements as a result of native title processes and changed political attitudes, as Australia's experience of 'managing co-management' now spans more than three decades. All governments are now dealing with the claims of traditional owners over protected areas, and are legally compelled to do so. Despite the problems apparent in Australia and in other countries,[76] there are currently no serious policy alternatives and fewer moral alternatives to co-management. Traditional owners would usually prefer to hold title outright,[77] but they also know that where protected areas have been established, or where they are likely to be established, co-management is an almost certain consequence — and they want to make it work in their own interests.

Today, many parties are working within new legal and policy frameworks. By so doing, they are learning how to develop systems and processes to support effective partnerships as they move beyond negotiation to implementation, and work with others whose paths they would otherwise be unlikely to cross. In some areas, there is growing confidence on the part of government staff and Indigenous communities and their representative organisations that the outcomes of co-management agreements are being delivered, particularly where they have facilitated access to traditional lands; in others, there is significant dissatisfaction, often where co-management is not seen as delivering employment outcomes, funding is inadequate and unreliable, and/or relationships are unproductive as partners are not meeting each other's expectations. There is also evidence that, over time, initially established goodwill can become corrupted, can dissipate or can even be destroyed through misunderstandings and disagreements, even where apparently ideal models and legal protections for both parties are in place (c.f. Haynes 2013; Spaeder & Feit 2005; Stevenson 2006).

By setting out some of the histories and details of the co-management institutions in Commonwealth, state and territory jurisdictions in Australia, and by comparing them, we have highlighted the inequities in these heterogeneous arrangements. They differ from jurisdiction to jurisdiction, and often within them. Governments have tended to deal with claims on a case-by-case basis, until they see the advantage in creating more comprehensive packages that offer relative predictability and consistency throughout their area of responsibility — as the Northern Territory and, to a lesser extent, Victoria and Western Australia have now done.[78]

76 See Galvin & Haller (2008); Nadasdy (2003, 2005); Nietchmann (1997); Stevenson (2006); West, Igoe & Brockington (2006) for international examples and additional discussion of where co-management is seen as failing to deliver for its participants.

77 Dermot Smyth commented in reviewing this section on policy alternatives as follows: 'There is a growing privately owned protected area estate in Australia run by conservation-minded philanthropists and conservation NGOs. We have yet to see where the expressed desire for Aboriginal sole management leads, but it is possible that what are now co-management protected areas could become Indigenous-owned private protected areas.' (Pers. Comm.).

78 In July 2009, then Victorian Premier John Brumby and Attorney-General Rob Hulls, in a media release, spoke enthusiastically of the benefits to both native title claimants and the people

Many of the institutional arrangements discussed in this paper fall short of what traditional owners might consider just compensation for sharing their land and the realisation of rights — such as the conferral of rights, interests and decision-making powers by Australian law, power sharing and equal partnerships, involvement in policy formulation, planning, management and evaluation in a paradigm of self-determination. However, as noted, institutions do matter, providing a level of official engagement that is often difficult to create via other means, setting agendas and impacting on what is possible locally, and there is no doubt that legislated rights can provide traditional owners with greater confidence and certainty. We have also highlighted that the entrance point of negotiations, as well as of planning and implementation, may well be made through a self-determination and international rights based paradigm. Yet, as we have argued, co-management institutions do not always dictate practice, and should not be taken at face value. In this regard, we have described some of the on-ground issues that arise in practice, often regardless of the kinds of institutions that are in place. The importance of ensuring the commitment of traditional owners and other partners through effective engagement processes is also critical.

The thesis of this paper, if nothing else, is that sustainable outcomes depend upon the micro processes of communication and whether they enable Indigenous voices. Co-management is not an 'object' with a finite end, but an ongoing process and practice of partnership and relationship-building, of the negotiation and co-production of meaning and the serial capacity-building of all partners involved. These attributes are as important as the institutions that frame them. No matter how theoretically sound and legally enforceable the negotiated institutional arrangements might be, personal and inter-group relationships can easily undermine a robust legal 'deal' — just as these same relationships can create a spirit of trust and goodwill in a less than ideal legal arrangement.

In negotiating co-management partnerships and the formal institutions that frame them, we have noted that no one size fits all, and that traditional owners will have a range of capacities and aspirations. Not all of these may require the majority boards and lease-back arrangements and broad decision-making powers that have been held up as optimal. Some may wish to start 'small', in 'collaborative' processes engaging jointly in particular interest projects. These can foster the relationships of familiarity and mutual understandings of the meanings of 'co-management' that provide building blocks, along a pathway of milestones and flexibility. Regimes might offer a range of possibilities, allowing traditional owners to aspire to stronger and more comprehensive roles progressively, but only on the proviso that this reflects traditional owner aspirations, and from a secure agreement base that allows modification, not only as traditional owners, but also as government partners.

Providing the space for this kind of flexibility and workability can be a vexed issue. The creation of consistent, fair and comprehensive legislative and policy regimes requires significant resources and much political will. Neither governments nor traditional owners

of Victoria (Premier of Victoria 2009); and Helen Morton, in her second reading speech that introduced the Bill to amend WA conservation legislation, spoke not only of the manifest practical benefits to the state but also of the state honouring its obligations to Aboriginal people (Western Australia 2010).

need be restricted by formal institutions of recognition: with goodwill, they can enter into co-management agreements over protected areas — including marine areas and freshwater — regardless of whether formal claims have been lodged or native title has been all or partly extinguished. Yet, as can be seen, especially in the early days of co-management, governments also have to pay heed to a public that has often been reluctant to embrace such a palpable expropriation of their perceived rights. In 'managing co-management', they also have to find scarce resources to make such projects work. Often these two important factors interact, and compound the disinclination of governments to foster co-management. In particular, there is a need for explicit political direction and the ongoing commitment of resources through established budgetary procedures, forward estimates and the approval of treasury, regardless of the political party in power. There is also a need to look beyond governments to generate funding from external investors and in other business areas, such as education, tourism and carbon abatement. This requires better public promotion of the benefits of co-management to ensure that it is outward looking and embraced by the wider community, and not simply weighed down in processes and bureaucracy.

Links being made at a policy level between social and emotional well-being, access to traditional country, Closing the Gap policies and co-management activities have the potential to offer a wider range of funding opportunities and innovative approaches. Co-management across a range of protected areas and other tenures might attract multilateral partnerships for managing country, crossing departmental boundaries and providing cultural management-planning tools for more coherent 'whole-of-country' approaches to the managing of terrestrial and marine estates. This kind of planning can include country beyond protected area boundaries, yet still within a group's traditional estate, and inform more realistic biodiversity approaches such as the management of fire, weeds and feral animals.

Finally, although not specifically discussed in this paper, there is a need to foster a co-management discourse that is genuinely constructed jointly, a new form of social capital where meanings are produced out of doing things together amicably and co-operatively, and in which partners share responsibility for outcomes. There may always be a certain amount of 'us' and 'them' in co-management. After all, each group is likely to come to the table with quite different histories and cultures — often influenced by structural and historical power imbalances. Yet those involved are also multi-positioned individuals who, at least at times, may share more values across the 'partner divide' than within it — as is the case in all partnerships. Agency in an intercultural field 'is exercised by all social actors according to their interests and power' (Hill 2011: 82).

In this paradigm, we see co-management as a unique kind of governance[79] that will contribute to the benefit of all, including native title holders, and where there is no longer a need to distinguish between 'management' and 'co-management' — or 'governance' and 'co-governance' for that matter — as the interests of partners are mutually understood,

79 See Graham, Amos & Plumptre (2003) for sets of governance principles for protected areas.

appreciated and integrated into overall management and decisions are owned by all.[80] The governance of co-management is located as much in the dynamics of Indigenous laws and customs, in the Indigenous organisations that represent traditional owner interests and in the bureaucracies of implementing government departments, as it is in the formal institutions that frame it.[81] In this paradigm, change involves not only the participatory community development processes advocated in 'bottom-up' self-determination consultation frameworks. Change requires the meeting of 'bottom up' with a 'top-down' commitment to publicise the importance of co-management, provide adequate resources and issue forward-thinking instructions and policies that reflect practice on the ground.

Evaluations of 'co-management' would be made not only from Indigenous rights-based and traditional owner perspectives,[82] but also from a range of other perspectives, including those of representative Indigenous organisations and bureaucracies. In doing so, evaluations would take into account not only how local dynamics are influenced by, and intersect with, administrative and bureaucratic policies and their implementation, but also how Indigenous rights and interests, as set out in formal conventions and declarations and native title determinations, have been actualised.

Taking responsibility for shared outcomes means that all parties will have to accept and define tasks in new ways as they are challenged by shifting roles and status, and organisational changes. It also means challenging 'business as usual' approaches — not only to enable Indigenous aspirations, to recognise the uniqueness of Indigenous rights and knowledge and to reflect Indigenous ideas about looking after country — but also to account for the rights of others in the co-management of protected areas for the benefit of all.

All of this makes for a complex terrain in which it is often difficult for individual actors to change deeply embedded but unworkable social and policy structures that constrain the realisation of native title and other rights, and that dampen enthusiasm and aspirations (Haynes 2009: 15–16). Moreover, all actors — traditional owners, rangers and other managers — are subject to difficult, often countervailing, structural forces. Some of these forces tend to draw the actors together; others repel.[83] Between them, the actors are

80 More broadly, the paradigm of 'management' itself might be questioned as Eurocentric, as ontologically privileging non-Indigenous ways of 'being-in-place' (Howitt & Suchet-Pearson 2006: 323), 'alongside development and conservation', and as privileging management as the 'foundational concept for organizing social and environmental relationships on ground' (2006: 324).

81 Such a form of governance is also located in an intercultural field, where meaning is co-produced by all parties. As many anthropologists are now recognising and recording (see e.g. Merlan 1998; Hinkson & Smith 2005a, 2005b), Aboriginal lives are heavily influenced, and often radically changed, by attributes that are not solely located in a distinct Aboriginal domain — all the more so where Aboriginal people and others are working closely together. Similarly, bureaucratic cultures are influenced and changed by Indigenous cultures, rights and interests.

82 Charles Darwin University in partnership with the TPWS has carried out some highly significant work in evaluating parks under the Framework Act from a traditional owner perspective under the themes of governance, managing country, business operations and managing visitors, which shows a remarkable degree of similarity across parks (Izurieta, Stacey & Karam 2011; Izurieta et al. 2011).

83 Such forces approximate Janet Hunt's description of Indigenous governance generally, in that it involves 'contestation and negotiation over the appropriateness and the application of policy,

required to manage not only the tensions between the protection of the environment and recreational use, but also those that arise out of individual and group histories, cultural identities, world-views, powers of the state and the rights and interests and obligations of native title holders (Haynes 2009: 292).

One way of influencing the discourse of co-management, addressing these forces and providing support for those involved in co-management is through 'a community of practice' (see Reed 2005; Bankhead & Erlich 2005). This could allow for the exchange of ideas and experiences across local, regional, national boundaries, challenge hierarchical restrictions and be informed by all the reports and recommendations that have been made over the years (e.g. Grant et al. 2008; Ross et al. 2004). In the first instance, it might involve strategically directed and facilitated dialogues at the local, regional, state, and national levels between and among traditional owners and the full array of government people in a top-down meets bottom-up approach (see Bauman, Stacey & Lauder 2012: 44–7 for further discussion of a co-management community of practice).

Such a community of practice should also be informed by the international context. While the Australian co-management journey over the last several decades has paralleled similar initiatives occurring in other countries, international developments in this field, as is the case for participatory community development generally, have had little impact on co-management practice here. With Australia hosting the first World Indigenous Network Conference of Indigenous Land and Sea Managers in Darwin in May 2013, followed by the IUCN's World Parks Congress in Sydney in November 2014, we can anticipate growing global interest in our co-management arrangements. Many traditional owner and government co-management practitioners will also have opportunities to learn from and build relationships with thousands of their visiting counterparts from around the world. It remains to be seen the extent to which these events bring new ideas and momentum to the co-management debate and practice in Australia — perhaps mirroring or eclipsing the stimulus that native title has provided to the journey thus far.

institutional and funding frameworks within Indigenous affairs' (Hunt et al. 2008: 4) and 'evolving processes, relationships, institutions and structures by which a group of people, community or society organise themselves collectively to achieve things that matter to them' (2008: 9).

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Australian Capital Territory

Heritage Act 2004 (ACT)

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Planning and Development Act 2007 (ACT)

Northern Territory

Aboriginal Land Act 1978 (NT)

Cobourg Peninsula Aboriginal Land, Sanctuary, and Marine Park Act 1981 (NT)

Nitmiluk (Katherine Gorge) National Park Act 1989 (NT)

Parks and Reserves (Framework for the Future) Act 2003 (NT)

Territory Parks and Wildlife Conservation Act 2006 (NT)

New South Wales

Aboriginal Land Rights Act 1983 (NSW)

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Marine Parks Act 1997 (NSW)

Queensland

Aboriginal Land Act 1991 (Qld)

Cape York Peninsula Heritage Act 2007 (Qld)

Nature Conservation Act 1992 (Qld)

North Stradbroke Island Protection and Sustainability Act 2011 (Qld)

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South Australia

Aboriginal Lands Trust Act 1966 (SA)

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Marine Parks Act 2007 (SA)

National Parks and Wildlife Act 1972 (SA)

Wilderness Protection Act 1992 (SA)

Tasmania

Aboriginal Lands Act 1995 (Tas)

National Parks and Reserves Management Act 2002 (Tas)

Victoria

Conservation, Forests and Lands Act 1987 (Vic)

Crown Land (Reserves) Act 1975 (Vic)

Land Act 1958 (Vic)

National Parks Act 1975 (Vic)

Traditional Owner Settlement Act 2011 (Vic)

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Appendix 1: Australian co-management comparative table

Responsible government authorities								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Department of Sustainability, Environment, Water, Population and Communities Director of National Parks	Territory Municipal Services Parks and City Services	Office of Environment and Heritage, Aboriginal Co-Management Unit New South Wales National Parks and Wildlife Service	Territory Parks and Wildlife Commission	Department of National Parks, Recreation, Sport and Racing Queensland Parks and Wildlife Service Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (for Cape York Peninsula) Department of Natural Resources and Mines (native title negotiations)	Department of Environment, Water and Natural Resources, Aboriginal Partnerships Unit Attorney General's Department, Crown Solicitor's Office (native title negotiations)	Department of Primary Industries, Parks, Water and Environment Parks and Wildlife Service Tasmania	Department of Sustainability and Environment, Forest and Parks Division, DSE Regional Services Parks Victoria Department of Justice, Native Title Unit (native title negotiations)	Department of Environment and Conservation Department of the Premier and Cabinet (native title negotiations)
Land councils, native title representative bodies or service providers, national bodies								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Northern Land Council (Kakadu) Central Land Council (Uluru-Kata Tjuta) National Native Title Council Indigenous Advisory Committee under EPBC	NTSCORP Ltd Ngunnawal Local Aboriginal Land Council United Ngunnawal Elders Council Ngambri Local Aboriginal Land Council Ngambri Incorporated	NTSCORP Ltd NSW Aboriginal Land Council Local Aboriginal Land Councils	Northern Land Council Central Land Council	Queensland South Native Title Services North Queensland Land Council Cape York Land Council Balkanu Cape York Development Corporation Carpentaria Land Council Torres Strait Regional Authority	South Australia Native Title Services	Aboriginal Land Council of Tasmania Tasmanian Aboriginal Land and Sea Council Tasmanian Aboriginal Centre National Parks and Wildlife Advisory Council has 2 Aboriginal members	Native Title Services Victoria	Goldfields Land and Sea Council Aboriginal Corporation Yamatji Marlpa Aboriginal Corporation Kimberley Land Council South West Aboriginal Land and Sea Council Central Desert Native Title Services

Indigenous representative organisations								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Nil	Representative Aboriginal organisations recognised under the *Heritage Act 2004* (ACT) Murumbung Yurung Murra	Aboriginal Joint Management Network Joint Management Custodians of NSW	Regional joint management groups and Northern Territory Joint Management Forum (mooted but not yet in existence)	Cape York Peninsula Regional Protected Area Management Committee (yet to be convened) Rainforest Aboriginal People's Alliance Balkanu Cape York Development Corporation	Aboriginal Lands Trust established by the *Aboriginal Lands Trust Act 1966* (SA) Congress of Native Title Management Committees	South East Tasmanian Aboriginal Corporation	Requirement in the Victorian Investment Framework for Natural Resource Management collaborative body	Nil
Legislation								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Aboriginal Land Grant (Jervis Bay Territory) Act 1986 (Cth) (Booderee) *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) *Environment Protection and Biodiversity Conservation Act 1999* (Cth) *Great Barrier Reef Marine Park Act 1975* (Cth) *National Parks and Wildlife Conservation Act 1975* (Cth) *Native Title Act 1993* (Cth)	*Heritage Act 2004* (ACT) *Nature Conservation Act 1980* (ACT) *Planning and Development Act 2007* (ACT)	*Aboriginal Land Rights Act 1983* (NSW) *Marine Parks Act 1997* (NSW) *National Parks and Wildlife Act 1974* (NSW) *Native Title Act 1994* (NSW)	*Aboriginal Land Act 1978* (NT) *Cobourg Peninsula Aboriginal Land, Sanctuary and Marine Park Act 1981* (NT) *Nitmiluk (Katherine Gorge) National Park Act 1989* (NT) *Parks and Reserves (Framework for the Future) Act 2003* (NT) *Territory Parks and Wildlife Conservation Act 2005* (NT)	*Aboriginal Land Act 1991* (Qld) *Cape York Peninsula Heritage Act 2007* (Qld) *Marine Parks Act 2004* (Qld) *Nature Conservation Act 1992* (Qld) *North Stradbroke Island Protection and Sustainability Act 2011* (Qld) *Wet Tropics World Heritage Protection and Management Act 1993* (Qld)	*Aboriginal Lands Trust Act 1966* (SA) *Maralinga Tjarutja Land Rights Act 1984* (SA) *Marine Parks Act 2007* (SA) *National Parks and Wildlife Act 1972* (SA) *Wilderness Protection Act 1992* (SA)	*Aboriginal Lands Act 1995* (Tas) *National Parks and Reserves Management Act 2002* (Tas)	*Conservation Forests and Lands Act 1987* (Vic) *Crown Land (Reserves) Act 1975* (Vic) *Forests Act 1958* (Vic) *Land Act 1958* (Vic) *National Parks Act 1975* (Vic) *Traditional Owner Settlement Act 2010* (Vic) *Wildlife Act 1975* (Vic)	*Conservation and Land Management Act 1984* (WA) *Land Administration Act 1997* (WA) *Wildlife Conservation Act 1950* (WA)

Policy								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Council of Australian Governments National Indigenous Reform Agreement ('Closing the Gap') Australia's Strategy for the National Reserve System 2009–30 Working on Country program Indigenous Protected Areas Program	National Capital Plan (National Capital Authority 2007) Territory Plan (ACTPLA 2008)	NSW 2021 10-year Plan	Territory 2030 Strategic Plan: aims to increase marine protected areas and Indigenous employment	Draft Master Plan for Protected Areas, Forest and Wildlife 2011 (under review) Future Directions Framework for Aboriginal and Torres Strait Islander Policy in Queensland 2005–10 Wet Tropics Aboriginal Cultural and Natural Resource Management Plan (2005) Land and Sea Management Strategy for the Torres Strait	SA's Strategic Plan 2011 (The plan includes Target 44: Aboriginal lands — native title. This aims to resolve 80 per cent of native title claims by 2020)	Corporate Plan 2011–13, Department of Primary Industries, Parks, Water and the Environment Tasmanian Marine Protected Areas Strategy (Marine and Marine Industries Council 2011)	Indigenous Partnership Strategy and Action Plan (Parks Victoria 2005) 2003–10 Marine Parks Strategy (Parks Victoria 2003)	Kimberley Science and Conservation Strategy (2011)
Tenure and leaseback								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Booderee, Kakadu and Uluru-Kata Tjuta: 48 per cent of Kakadu is Aboriginal owned* and Uluru-Kata Tjuta and Booderee are 100 per cent Aboriginal owned **Kakadu and Uluru-Kata Tjuta:** Title is vested in land trusts	Agreement Between the Australian Capital Territory and ACT Native Title Claim Groups, April 2001 (2001 Agreement) 2001 Agreement includes 99-year Namadgi Special Aboriginal Lease over Namadgi on condition that all native claims	Leaseback of Aboriginal freehold to Minister for 30-year term and renewal with mutual consent for minimum of 30 years (NPWA s 71AD) May enter into lease under NPWA pt 4 for Crown land under claim by	**Nitmiluk:** Aboriginal freehold under ALRANT; leaseback 99 years **Garig Gunak Barlu:** Territory freehold; no leaseback **Framework Act:** Schedule 1: Aboriginal freehold leased	Fee simple over Crown land (ALA s 43) Leaseback in perpetuity to state for management under NCA (ALA s 284) Available state land includes any national park (ALA s 30)	CMA may occur over land that is Aboriginal-owned or through recognition of traditional rights (NPWA s 43F) No leaseback	Grants of Crown land of 'historic or cultural' significance to be held in trust for Aboriginal persons in perpetuity (*Aboriginal Lands Act 1995* (Tas) pt 3, sch 3) Title vested in ALCT (*Aboriginal Lands Act 1995* (Tas) s 27)	**Settlement Framework:** Grant of 'Aboriginal title' over public land under TOSA, provided there is agreement to establish TOLMB (TOSA s 19) Definition of 'public land' being reserve land, national park, state	Section 8A agreement to jointly manage land may occur over freehold or certain Crown land, including for e.g. pastoral leases held by an Aboriginal or other party (CALM s 8A) Section 8A or 56A agreement to jointly manage

Tenure and leaseback cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Booderee: Title is vested in Wreck Bay Aboriginal Community Council All parks have 99-year lease to Cth Director of National Parks with five-year reviews *This figure has not been recalculated to include Koongara (some 1228 ha), part of Kakadu as of February 2013	be withdrawn (Agreement did not come into effect)	by Aboriginal Land Council with special conservation value, as an alternative to claim refusal (*Aboriginal Land Rights Act 1983* (NSW) s 36A)	back to NT government for 99 years Schedule 2: Converted to 'parks freehold title' and leased back to NT government for 99 years Schedule 3: title vested with NT government Chief Minister to establish Park Land Trust for purpose of holding park freehold title on trust (s 9(3))	**NPAL/NPTSIL:** Upon dedication of national park as NPAL or NPTSIL it becomes Aboriginal land (NCA s 40) **CYP and NSI:** Upon dedication of national park as NPCYPAL or prescribed protected in NSI region as IJMA, it becomes Aboriginal land (NCA ss 42AA, 42AH)		No co-management arrangements over sch 3 parks	park, state forests, vacant Crown land, nature reserve, state wildlife reserve (TOSA s 11) Grant of 'Aboriginal title' subject to traditional owner group entering contract for the transfer to the state of right to occupy, use, control and manage the land (TOSA s 20) Grant of 'Aboriginal title' subject to land being managed to achieve conservation purposes for which it was dedicated (TOSA s 21)	land may occur over native title determination area if the underlying tenure is Crown land, subject to ILUAs.
Pathways to co-management								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Agreements for lease of 'Indigenous people's land' to Cth	Aboriginal signatories to 2001 Agreement identified matters to be considered for future co-operative agreements	Aboriginal ownership and leaseback with statutory board (NPWA pt 4A) ILUAs that recognise non-exclusive native	**Nitmiluk:** Nitmiluk Act and lease in sch 1 of Act **Framework Act:** Chief Minister may execute joint management	**NPAL/NPTSIL:** Dedication of national park, Aboriginal land or leasehold as NPAL and NPTSIL (NCA pt 4 div 3)	Minister may enter CMA over national park or conservation park (NPWA s 43F) or wilderness protection area (*Wilderness*	First co-management MoU signed in 2012 between TPWS and SETAC (2012 MoU) 2012 MoU covers operational	**CMAs:** Agreement between TOs, Secretary of DSE and advisory committees over conservation areas (CFLA s 69)	**Section 8A agreement:** CEO may enter into an agreement to jointly manage an area of eligible land (CALM s 8A)

Pathways to co-management cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
	Until agreements finalised, interim arrangements give signatories to 2001 Agreement right to: – be acknowledged as people with historical association to area – participate in management of park – be consulted on regional cultural issues – be consulted on legislation that affects park	title rights and interests over parks MoUs between NPWS and TOs may enable greater access to country but do not necessarily confer rights	agreement over parks in schs to Act (s 8(d)) Chief Minister may execute ILUA to enable joint management over parks in schs to Act (s 8(e)) Leases finalised and ILUAs establishing joint management registered over 27 parks in Framework Act **TPWCA:** Minister may re-declare parks and reserves to resolve uncertainty re past s 12 declarations (s 24) Minister may execute joint management agreement (s 23A(1))	Leaseback agreement but no management agreement in existence **CYP and NSI:** Dedication of land in CYP as NPCYPAL and land in the NSI region as IJMA, on condition that IMA has been entered into (NCA pt 4 div 3) IMA requires that land is managed in perpetuity as national park or IJMA (ALA s 170(1)(b)) Conservation Agreement (NCA s 45) Lease, agreement, licence, permit or other authority over national park (NCA s 34) ILUAs providing advisory roles for TOs or tenure resolution MoUs for non–tenure based arrangements	*Protection Act 1992* (SA) s 33A) Three types of CMAs: (1) Aboriginal-owned and co-managed by board (2) Crown-owned and co-managed by board (3) Crown-owned with advisory committee ILUAs for co-management associated with consent determinations	management, predominantly within TPWS, along Huon Channel and Bruny Island	**Settlement Framework:** RSA between state and TO group for recognition of traditional owner rights in relation to certain public land (TOSA s 4) RSA may include ancillary land agreement, funding agreement, natural resource agreement (TOSA pt 2 div 1) TOLMA, agreement to establish TOLMB, entered into between corporation and state (attached to RSA as schedule) (CFLA s 82P) RSA may be wholly or partly constituted by whole or part of ILUA (TOSA s 10)	Eligible land can be managed as state forest, timber reserve, national park, conservation park, nature reserve or 'for a public purpose' consistent with the Act (CALM s 8A) **Section 56A agreement:** MP may require the Conservation Commission or the Marine Parks and Reserves Authority (soon to be replaced by combined Conservation and Parks Commission) to manage land jointly with other persons or controlling bodies (CALM s 56A) 'Land to which this Act applies' is defined in CALM s 5 Aboriginal persons may conduct customary activities on protected areas,

***Pathways to co-management* cont.**								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
				Multi-tenure IPA agreements based on a combination of ILUAs, MoUs and various collaborative arrangements **Wet Tropics:** WTMA can enter into joint management agreements with Aboriginal people (Wet Tropics Act s 10(1)(f))				subject to some limitations (CALM s 103A) Native title agreements to transfer areas to freehold, which could then be jointly managed MoUs between DEC and TOs that establish mechanisms for cooperative and consultative management
Native title								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Act does not affect the operation of the Native Title Act (EPBC s 8) Scope for native title holders (GBRMPA s 39V) to enter into agreement with Authority to jointly manage area of the GBRMP (GBRMPA s 39ZA)	2001 Agreement, 99-year lease over Namadgi on condition that all native claims be withdrawn (Agreement did not come into effect)	**Aboriginal land:** Vesting, leaseback and dedication does not affect native title (NPWA ss 71C(4), 71AO(2)(b)(i), 71P(2)(a), 71Z(3)(a), 71BI) Lease provision acknowledging no effect on native title Non-commercial traditional hunting etc. subject to board control (lease provision and NPWA s 71AD(1)(i))	**Nitmiluk and Garig Gunak Barlu:** No specific provisions **Framework Act:** Lease of parks and reserves must not extinguish native title rights or interests (sch 4) ILUA may deal with compensation for effect of declaration on native title rights and interests and for facilitating future	ILUAs usually linked to consent determinations; provides consent to any IMA provisions affecting native title, as well as associated transfer of ownership of park to Aboriginal corporation or land trust; provide for the dedication of new protected areas including an Indigenous managed nature refuge	Non-exclusive native title determinations and associated co-management ILUAs, but some extinguishment of native title agreed to Dedication or addition of national park after 1 January 1994 'subject to' native title existing at the time (NPWA s 34B)	No native title determinations and all claims rejected or withdrawn Lands transfer process instead of native title	**CMAs:** Arising out of consent determination for non-exclusive native title rights (Yorta Yorta exception) **Settlement Framework:** Settlement package may include ILUA to provide certainty that question of native title and/or compensation over the areas contained within the RSA is resolved	Section 8A or 56A agreement to jointly manage land may occur over native title determination area if the underlying tenure is Crown land, subject to ILUAs. If exclusive native over Crown land, the RNTBC must be party to or give written approval to a s 8A agreement (CALM s 8A(11)) Section 8A agreements do not affect

Native title cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
		ILUAs: Linked with consent determination of native title; may involve non-exclusive native title rights and interests in parks	development in park (s 10(1)(b))	Native title determinations used as a basis for development of co-managed IPAs NSI: 2011 non-exclusive native title determination provided basis for joint management	Non-exclusive native title determinations and associated co-management ILUAs, but some extinguishment of native title agreed to Dedication or addition of national park after 1 January 1994 'subject to' native title existing at the time (NPWA s 34B)		Cannot enter into land use activity agreement under TOSA pt 4 div 2 unless there is a determination that native title does not exist or there is an RSA of which the ILUA forms a part (TOSA s 30(4)(b))	operation of exclusive or non-exclusive native title claims or determinations (CALM s 8A(2)) Native title agreements have been reached to transfer areas to freehold, which could then be jointly managed
Rent, revenue, funding								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Annual rent for the leasing of all three parks is paid by Cth Director of National Parks to Aboriginal interests TOs receive proportion of revenue derived from activities in the park (entry fees, camping fees and income from commercial operations) Remuneration for board members (EPBC s 381)	Nil	**Aboriginal land:** Rent payable under lease determined by negotiation (NPWA s 71AE) Parties negotiating rent to have regard to certain values (NPWA s 71AE(4)) Rent paid into separate account in National Parks and Wildlife Fund and paid out for joint management with authorisation of	**Nitmiluk:** Lease provisions, annual rental, revenue from tourism activities **Garig Gunak Barlu:** Annual fee for use of park **Framework Act:** Schs 1 and 2 parks, nominal rent for lease back Annual rent reviewable after 10 years 50 per cent of park income is	No rent payable (ALA s 200) Subject to specific IMA/ILUA commitments **CYP and NSI:** No leaseback, therefore no rent and funding subject to IMA and ILUA	Funding can be allocated in ILUA, or CMA may make provision for funding arrangements (NPWA s 43F(3)(f))	2012 MoU — funding available (awaiting project details)	**Settlement Framework:** RSA may include a funding agreement under pt 5 for financial support for TOLMB, office support, ranger positions, economic development opportunities (TOSA s 7) A land use activity agreement may include payments of community benefits by state	ILUA provisions

Rent, revenue, funding cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
		board (NPWA ss 71AE(9), 138(1B)) **ILUAs:** Limited funding	park income is shared with TOs across all parks in Framework Act ILUAs may deal with compensation for effect of declaration on native title rights and interests (s 10(1)(b))				under TOSA pt 4 for acts done in jointly managed areas	
Establishment and the roles of boards, committees and statutory discretions								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Minister must establish a board for a Cth reserve that is wholly or partly on Indigenous people's land if parties agree there should be a board (EPBC s 377) The board's role is to prepare MPs and make decisions under plans, in conjunction with the Director (EPBC s 376) Exercise of statutory discretion with Director (however MPs prescriptive	Interim Namadgi Advisory Board (operational 2001–06) Role of board to advise on: – preparation of MP – decisions about activities in park under *Nature Conservation Act 1980* (ACT) s 67 – issues related to management and protection of Namadgi	**Aboriginal land:** Establishment of board with majority TOs (NPWA s 71AN) Board responsible for care, control and management of lands, preparation of MP, supervision of payments with respect to land (NPWA s 71AO(1)) Board is subject to control and direction of minister but there is a lease provision that Director-General will not exercise powers without consent of board (NPWA s 71AO(4))	**Nitmiluk:** Board decisions consistent with MP (Nitmiluk Act s 16) **Garig Gunak Barlu:** Board; MP; decision making (Coburg Act s 24) Conservation Commission has 'control and management' subject to directions of board (Coburg Act s 25) **Framework Act:** MP sets out how decisions will be made through an 'equitable partnership' (s	**NPAL/NPTSIL:** Minister to prepare MP in cooperation with board (NCA ss 41(4), 42(4), ALA s 284(6)) Board to implement MP (NCA ss 284(9)(b), 120(1)(a)) **CYP:** No board, MP must be prepared jointly with lands trust, consistent with any ILUA and the IMA (NCA s 111(8)) Lease, agreement, licence, permit and other authority granted by CEO and land	CMA may provide: – for establishment and constitution of board (NPWA s 43F(3)(a)) – that no board is established (NPWA s 43F(3)(b)) Board established by regulation (NPWA s 43G) Minister may establish advisory committee (NPWA s 19E)	No co-management bodies as of yet	**CMAs:** Establishment of advisory committee by minister (CFLA s 12) **Settlement Framework:** Minister and TO group agree: to establish TOLMB; to the variation of the functions; to powers or duties or related or incidental matters (CFLA s 82P) Minister establishes TOLMB by determination (CFLA s 82B)	Sections 8A and 56A agreements must establish a joint management body and establish body's procedure (CALM ss 8A(13), 56A(6)) Joint management bodies have a management role rather than day-to-day operational role Park councils (partnerships between TOs and DEC which may also be joint management body) have an advisory role for the joint management

Establishment and the roles of boards, committees and statutory discretions cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
EPBC ss 353–359B) Uluru-Kata Tjuta joint management partnership team — works closely with board, community and TOs		**ILUAs:** Generally include agreement to consult and involve TOs but may also include decision-making powers Advisory joint management committees work with NPWS in managing national park estates and make recommendations regarding management, funding and employment on the park	25AB), including the development of boards or committees if appropriate	trust jointly (NCA ss 42AD, 42AE, 42AN, 42AO, 42AP) Land trust and chief executive give effect to MP (NCA s 120(1)(b) Ministerial advisory committees (NCA ss 132, 132A, *Cape York Peninsula Heritage Act 2007* (Qld) ss 20, 22) **NSI:** IMA requires parties to establish senior implementation working group, reporting to RNTBC/ operational implementation working group, which takes direction from SIWG SIWG: determine and consider final protocols to apply in IJMA; review MP OIWG: prepare draft MP; determine protocols;			Additional functions and powers may be conferred or delegated (CFLA ss 82H, 82I, 82Q)	of certain areas of conservation estate

Establishment and the roles of boards, committees and statutory discretions cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
				develop operational work programs and plans **Wet Tropics:** A joint management agreement may make provision for financial, scientific, technical or other assistance in relation to the management of the wet tropics area (Wet Tropics Act s 10(3))				
Composition of boards and committees								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Land council or TOs and minister must agree on qualification for appointment to board (EPBC s 377(2)(d)) Majority of board members must be Indigenous persons nominated by the TOs of the land (EPBC s 377(4))	Interim Namadgi Advisory Board (operational 2001–06) with five Aboriginal members and five non-Aboriginal members	**Aboriginal land:** Majority TOs and must have Aboriginal chair **ILUAs:** Management committees consist of TOs and sometimes include other stakeholders; chairs must be Aboriginal **MoUs:** Committee members are Aboriginal; OEH representative may be non-Aboriginal.	**Nitmiluk:** Majority TOs and Aboriginal chair **Garig Gunak Barlu:** Four TOs, including chair, and four representatives of NT Government **Framework Act:** Joint management committees decided in consultation, usually majority TOs or native title holders	**NPAL/NPTSIL:** Board composed in way approved by minister; Aboriginal people concerned with park or, if granted to RNTBC, must be represented (NCA ss 284(3)-(5)) **CYP:** No board, land trust/corp executive meet with QPWS in regular joint management meetings	CMAs provide for constitution of board (NPWA s 43F(3)(a)) Board for Aboriginal-owned parks must have Aboriginal majority and chair (NPWA s 43G(3))	No co-management bodies as yet	**CMAs:** Minister determines membership and functions of committee, generally majority TOs (CFLA s 12) **Settlement Framework:** Members of TOLMBs appointed by minister, but must be majority TOs (under TOLMA, TO group will nominate TO positions, which the minister will	Sections 8A and 56A agreements must state the members of joint management body; must include CEO or person nominated by CEO and a person to represent each party (CALM ss 8A(13)(b), 56A(6)(b))

Composition of boards and committees cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
			Regional joint management groups nominated by TOs/native title holders and appointed by minister (not yet in existence)	**NSI:** SIWG composed of reps of department, senior reps of RNTBC nominated by CEO, other specialist advisors/ consultants invited by RNTBC or state OIWG composed of operations manager, joint management coordinator, other specialist advisors/ consultants, elders, rangers invited by RNTBC or state			confirm by formal appointment) (CFLA s 82M)	
Management plans								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
MP must be consistent with Commonwealth lease obligations (EPBC s 367(1)(d)) MP must provide for protection and conservation of the park (EPBC s 367(1)) Prepared, and amended, by board 'in conjunction	Interim Namadgi Advisory Board made contribution to development of Namadgi National Park MP* 2010 *MPs for public land are now prepared in accordance with the *Planning and Development Act 2007* (ACT) pt 10.4	**Aboriginal land:** Prepared by board 'in consultation with Director General', normally in partnership with NPWS (NPWA s 72(1C)) Adopted, with or without alteration, by minister or referred back to	**Nitmiluk and Garig Gunak Barlu:** Planning provisions subject to TPWCA **Framework Act:** MP developed with Territory and TOs (TPWCA s 25AD) MPs must be consistent with relevant	**NPAL/NPTSIL:** Minister to prepare MP in cooperation with board (NCA ss 41(4), 42(4); ALA s 284(6)) Parks to be managed, as far as practicable, in a way that is consistent with any Aboriginal	MP must be prepared by minister as soon as practicable (NPWA s 38(1)) MP developed in collaboration with the board (if there is one) and 'after consultation with' the other party to CMA (NPWA s 38(2a)(c))	No co-management agreements as yet	**Settlement Framework:** TOLMB responsible for preparation of MP with assistance of DSE Secretary (CFLA s 82PA) MP comes into effect on being approved by minister (CFLA s 82PI)	MP mandatory for section 8A agreement land (CALM s 54(1)(b)) Must be prepared by responsible body through the agency of DEC (CALM ss 54(1), 54(2)) For section 8A agreement, joint management body is

***Management plans* cont.**								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
with' Director of National Parks (EPBC ss 366(3),(4)) Dispute resolution procedures available if there is disagreement between board and Director in planning process (EPBC s 369) Approval power for MP resides with minister (EPBC s 370)		board (NPWA s 73B(1)) **ILUAs:** Some ILUAs propose jointly prepared MP Normally management committees would be invited to draft the MP, or at least asked to review and comment	agreements, objective of joint management (s 25AB) and joint management principles (s 25AC), and must contain processes for, e.g., identifying natural and cultural values of park, managing Aboriginal sites, establishing community living areas in close proximity to park as part of natural and cultural resource management, giving preference to TOs in considering development in park, providing for hunting and resource use by TOs (s 25AE)	or Island custom applicable to that area (NCA ss 18, 19) **CYP:** MP must be prepared jointly with lands trust, consistent with any ILUA and the IMA (NCA s 111(8)) IMA states responsibilities of the trustee re. its management (ALA s 170(1)(f)) **NSI:** OIWG prepare draft MP SIWG reviews MP	Minister may not adopt MP without board agreement and until other CMA party consultation (NPWA s 38(9a)) CMA may provide for MP preparation/ implementation (NPWA ss 43F(3)(c), 43F(3)(e))		Subsidiary management agreements between DSE Secretary and TOLMB (*Crown Land (Reserves) Act 1978* (Vic) s 18B)	responsible for preparing MP (CALM s 8A) For section 56A agreement, the Conservation Commission or Marine Parks and Reserves Authority prepares MP which specifies that joint management will take place (CALM s 56A) MPs have objective of protecting and conserving Aboriginal cultural and heritage values (CALM s 56(2), although exemption may be given under s 57A) MPs approved by minister (CALM s 60)
Day-to-day management responsibilities								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Parks Australia	Parks and City Services	NPWS Aboriginal Co-management office in OEH support regional offices	Parks and Wildlife Commission	QPWS **CYP and NSI:** IMA states the responsibilities of the trustee re. its management (ALA s 170(1)(f))	Regional Services Directorate of DEWNR Some powers delegated to the Director of National Parks	TPWS manage statutory national parks and reserved lands	Parks Victoria, unless delegated to TOLMB (e.g. Gunakurnai for some activities) Subject to TOLMA	DEC

Day-to-day management responsibilities cont.								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
		Aboriginal land: Operational duti es of NPWS subject to plan in force and directions of board (lease provision and NPWA s 71AD(1)(h))		IMAs can delegate range of park service responsibilities	(e.g. Witjira for scientific permits, commercial operator licences and park fees)	No specific TPWS team dedicated to Aboriginal land management issues		
Indigenous employment and training								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Parks Australia employs Indigenous staff of Cth co-managed protected areas WOC Program MPs include employment and training priorities Lease provisions	Aboriginal employment and trainee program	**Aboriginal land:** Lease must make provision for best endeavours to implement Aboriginal employment strategies (NWPA s 71AD(3)) **ILUAs:** May outline employment of Indigenous park rangers, but generally limited employment opportunities **MoUs:** May identify employment and training priorities	**Framework Act:** MP must contain processes for developing relevant training and employment strategies (s 25AE(3)(f)) ILUA and/or lease provision Apprentice Ranger Program (2012–13) and flexible employment programs (paid casual work in park management programs)	**CYP and NSI:** Subject to IMA	CMA may provide for employment of staff (NPWA s 43F(3)(i)) Staffing arrangements for board determined by minister in consultation with Aboriginal group and thereafter by the board with approval of minister (NPWA s 43J) Aboriginal ranger employment projects	Aboriginal trainee ranger program shared initiative between ALCT and TPWS, funded by WOC Program Pilot junior ranger program 2012 Two newly created Aboriginal field officer positions TPWS currently developing Aboriginal community development officer position	**Settlement Framework:** RSA may include funding agreement under TOSA pt 5 to cover costs of Indigenous ranger and other positions The TOLMB may also contract the TO group entity or related entity to conduct works required in the jointly managed areas	No specific provisions, subject to ILUAs and other agreements Aboriginal ranger employment projects

Cultural competence training of parks staff								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Lease provision — also concerns 'operational practices'	All board members (Aboriginal and non-Aboriginal) participated in cultural awareness workshops with Indigenous communities	General OEH cultural awareness training **Aboriginal land:** Cross-cultural training may be condition of employment under lease provisions **ILUAs:** May have provisions for cultural awareness training **MoUs:** Identify cultural awareness training as priority	Implementation framework for Framework Act includes cross-cultural training ILUA/lease provisions	**CYP:** subject to IMA **NSI:** function of SIWG is to determine cross-cultural training to be provided by department	Subject to specific CMAs and ILUAs	No specific provisions, but staff induction includes cross-cultural training	Subject to CMAs and TOLMAs	General DEC cultural awareness training Specific cultural awareness programs for Miriuwung Gajerrong and Yawuru joint management arrangements
Co-managed IPAs and co-managed consultation projects								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Nil	Nil	One IPA co-managed consultation project	Nil	Mandingalbay Yidinjy whole-of-country multi-tenured IPA Three IPA co-managed consultation projects	Nil	Nil	One IPA co-managed consultation project	Three IPA co-managed consultation projects

Co-managed marine parks								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Scope for a 'community group having a special interest' (GBRMPA s 39V) to enter into agreement with Authority to jointly manage area of the GBRMP (GBRMPA s 39ZA) Kakadu and Booderee both include jointly managed marine areas TUMRAs accredited under the *Great Barrier Reef Marine Park Act 1975* (Cth) describe how TO groups will work with Cth and Queensland governments Four TOs on Indigenous Reef Advisory Committee Great Barrier Reef Marine Park Authority must have at least one Indigenous member (EPBC s 6A)	Nil	No legislative basis for co-management of marine parks Some cultural resource use initiatives, e.g. MoUs with Marine Park Authority Aboriginal Engagement and Cultural Use of Fisheries Resources Policy	Scope for agreement between TOs and the Parks and Wildlife Commission relating to management of marine parks (TPWCA s 73) Definition of 'land' includes the sea above any part of the sea bed of the Territory (TPWCA s 9) Garig Gunak Barlu is an integrated park with MP for marine area Possibly Limmen Bight Marine Park (TPWCA s 23A)	Mandingalbay Yidinji ILUA exclusive native title rights over part of Trinity Inlet (which includes part of the state Great Barrier Reef Coast Marine Park) and co-management agreement Most islands in Torres Strait have determinations over sea country, and the Torres Strait Regional Seas Claim Group await judgment from HCA on whether their native rights include the right to take aquatic resources for commercial purposes TUMRAs accredited under the *Marine Parks Act 2004* (Qld) (see also Cth section) Local Marine Advisory Committeest	No legislative basis for co-management of marine parks Informal agreements in place which could advance cooperation in marine park management	No legislative basis for co-management of marine parks Tasmanian Marine Protected Areas Strategy provides for partnerships with Indigenous communities in marine areas and species management	Scope for RSA over marine parks (TOSA s 4) Definition of public land includes land in any park within the meaning of the NPA (TOSA s 11(1)(b)) Park means a national park, state park, marine national park, marine sanctuary or land that, by reason of section 17A or 18, is a park for the purposes of this Act (NPA s 3) Marine sanctuary means any land that, by reason of NPA s 17D, is a marine sanctuary for the purposes of this Act (NPA s 3)	Scope for section 56A agreement over marine parks (CALM s 56A) Definition of 'land to which this Act applies' includes marine nature reserves, marine parks and marine management areas (CALM s 5) Commitment to jointly manage Roebuck Bay Marine Park under the Yawuru ILUA and Kimberley Science and Conservation Strategy Negotiations for joint management of Kimberley marine parks under the Kimberley Science and Conservation Strategy underway

Co-managed marine parks cont								
Cth	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas.**	**Vic.**	**WA**
Guidelines for the NRSMPA state that only marine protected areas established by Act of Parliament can be included in the NRSMPA – hence marine IPAs are currently not recognised as part of the NRSMPA				TSRA coordinates support for island-based ranger groups ILUAs, MoUs and other informal management agreements which could advance cooperation in marine park managemen				

Abbreviations and acronyms

ACT – Australian Capital Territory

ALA – *Aboriginal Land Act 1991* (Qld)

ALC – Aboriginal Land Council

ALCT – Aboriginal Land Council of Tasmania

ALRANT – *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)

Board – board of management

CALM – *Conservation Legislation Amendment Act 2011* (WA)

CFLA – *Conservation Forests and Lands Act 1987* (Vic)

Cobourg Act – *Cobourg Peninsula Aboriginal Land, Sanctuary and Marine Park Act 1981* (NT)

CMA – co-management agreement (SA)

CMA – co-operative management agreement (Vic)

Cth – Commonwealth

CYP – Cape York Peninsula

DEC – Department of Environment and Conservation (WA)

DEWNR – Department of Environment, Water and Natural Resources (SA)

DSE – Department of Sustainability and Environment (Vic)

EPBC – *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

FFA – *Parks and Reserves (Framework for the Future) Act 2003* (NT)

Framework Act – *Parks and Reserves (Framework for the Future) Act 2003* (NT)

GBRMP – Great Barrier Reef Marine Park

GBRMPA – *Great Barrier Reef Marine Park Act 1975* (Cth)

IJMA – Indigenous joint management area

ILUA – Indigenous land use agreement

IMA – Indigenous management agreement

IPA – Indigenous Protected Area

MoU – memorandum of understanding

MP – management plan

NCA – *Nature Conservation Act 1992* (Qld)

NSW – New South Wales

Nitmiluk Act – *Nitmiluk (Katherine Gorge) National Park Act 1989* (NT)

NPA – *National Parks Act 1975* (Vic)

NPAL – national park (Aboriginal land)

NPCYPAL – national park (Cape York Peninsula Aboriginal land)

NPTSIL – national park (Torres Strait Islander land)

NPWA – *National Parks and Wildlife Act 1974* (NSW)

NPWA – *National Parks and Wildlife Act 1972* (SA)

NPWS – New South Wales National Parks and Wildlife Service

NRSMPA – National Representative System of Marine Protected Areas

NSI – North Stradbroke Island

NT – Northern Territory

OEH – Office of Environment and Heritage (NSW)

OIWG – Operational Implementation Working Group

Qld – Queensland

QPWS – Queensland Parks and Wildlife Service

RNTBC – Registered Native Title Body Corporate

RSA – recognition and settlement agreement

SA – South Australia

SETAC – South East Tasmanian Aboriginal Corporation

SIWG – Senior Implementation Working Group

Tas – Tasmania

TO(s) – traditional owner(s)

TOLMA – traditional owner land management agreement

TOLMB – traditional owner land management Board

TOSA – *Traditional Owner Settlement Act 2010* (Vic)

TPWS – Parks and Wildlife Service Tasmania

TPWCA – *Territory Parks and Wildlife Conservation Act 2005* (NT)

TSRA – Torres Strait Regional Authority

TUMRA – traditional use of marine resource agreements

Vic – Victoria

WA – Western Australia

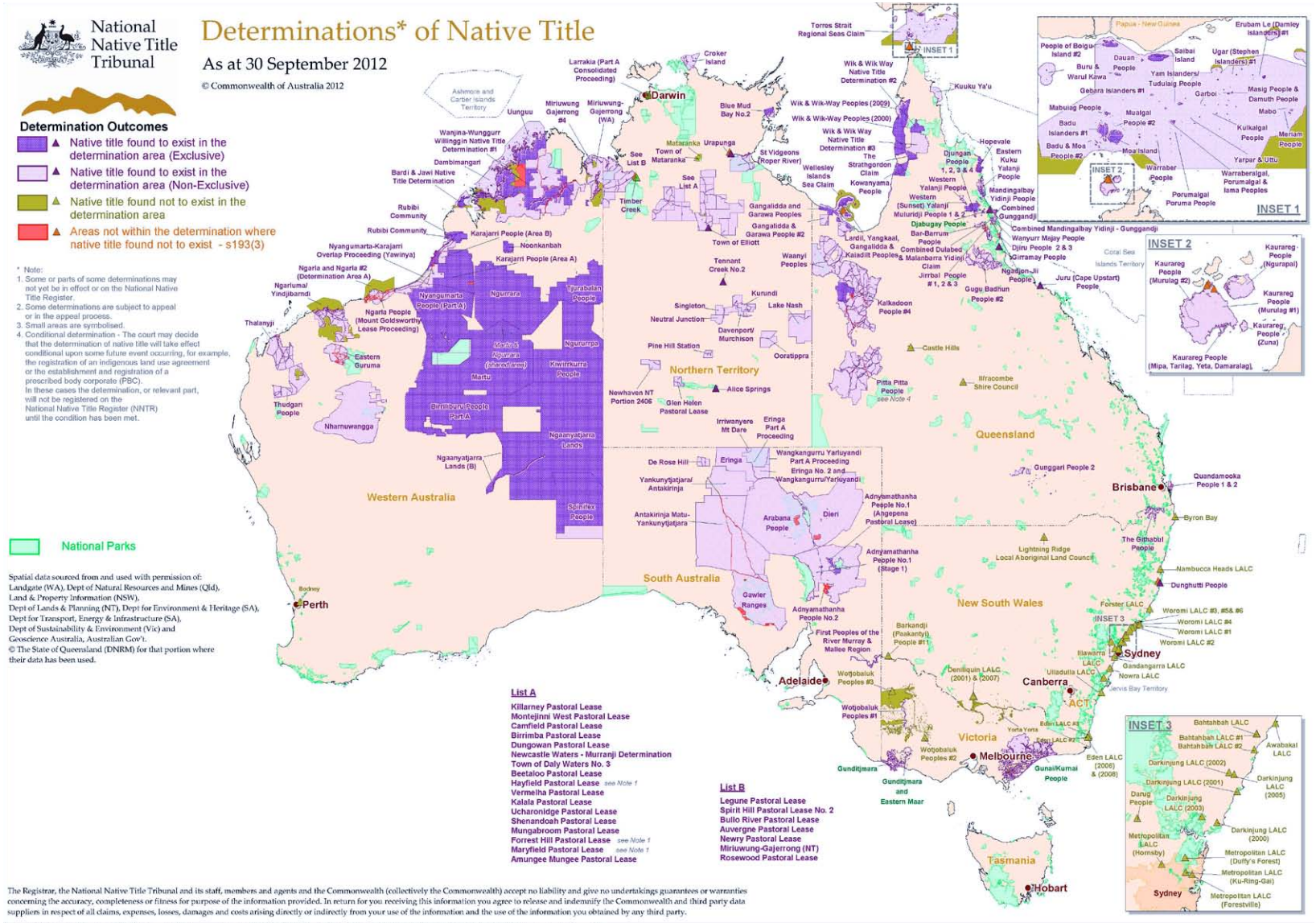
Wet Tropics Act – *Wet Tropics World Heritage Protection and Management Act 1993* (Qld)

WOC – Working on Country program

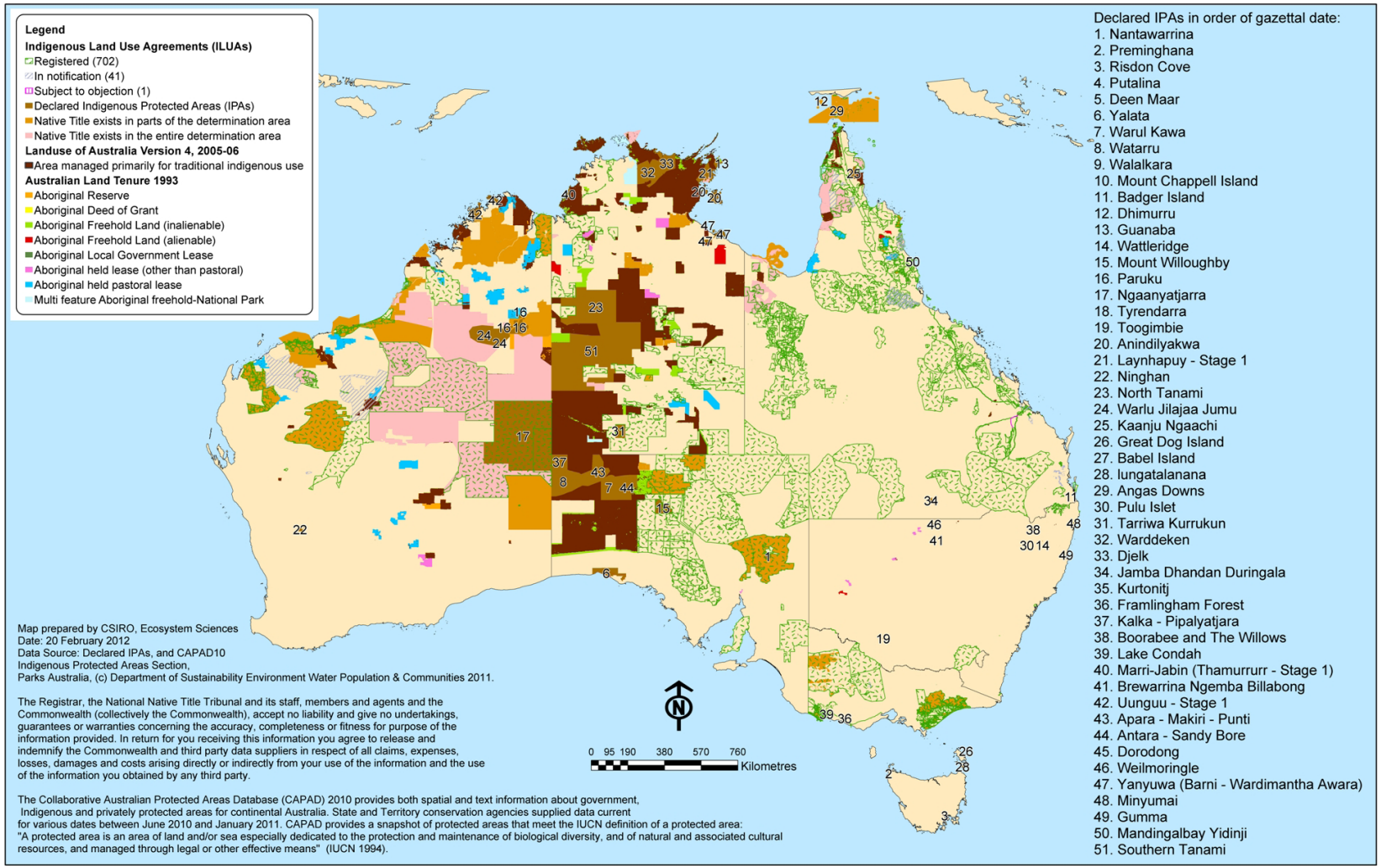
WPA – *Wilderness Protection Act 1992* (SA)

WTMA – Wet Tropics Management Authority

Appendix 2: Map of determinations of native title and national parks



Appendix 3: Map of Indigenous Land Use Agreements, IPAs and land tenure



In recent decades, the co-management of protected areas by Indigenous traditional owners and Commonwealth, state and territory governments in Australia has received considerable attention as many new and evolving arrangements have been put in place. This has occurred as traditional owners have demanded land justice and as governments have come to terms with these demands and various legal requirements, notably the *Native Title Act 1993* (Cth). This paper provides an overview of the range of co-management institutional arrangements in place in Commonwealth, state and territory jurisdictions. It notes not only the variability in political, legal and economic histories, but also considerable variation in the institutions themselves which appears to give rise to significant inequities both within and between jurisdictions. Notwithstanding, comparisons between institutions should not be made on legal and administrative arrangements alone, and the paper discusses 'the meanings in practice' of co-management as it is played out on the ground.

The most successful forms of co-management are likely to be the result of both legal and administrative structures, and of the quality of human relationships established and maintained in the protected areas themselves. The paper suggests that in the pursuit of the full possibilities of co-management, at least some traditional owners might prefer an incremental collaborative approach — provided that it does not close off the possibilities of more formal 'full' arrangements in the future, with traditional owners taking on greater responsibilities. The achievement of shared outcomes will require the meeting of 'top-down' bureaucratic policy and decision-making with expressions of needs and interests that come from the field, 'bottom up'. It may also require a change in the common conceptualisation of partners as 'us' and 'them' to one which recognises that all those involved are also multi-positioned individuals who, at least at times, will share more values and views across the 'partner divide' than within it — as is the case in all partnerships.

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AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES
NATIVE TITLE RESEARCH UNIT

AIATSIS Research Publications
ISSN 1323-9422
ISBN 978-1-922102-11-9