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Rights or Containment? The politics of Aboriginal cultural heritage in Victoria

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Abstract

Aboriginal cultural heritage protection, and the legislative regimes that underpin it, constitute important mechanisms for Aboriginal people to assert their rights and responsibilities. This is especially so in Victoria, where legislation vests wide-ranging powers and control of cultural heritage with Aboriginal communities. However, the politics of cultural heritage, including its institutionalisation as a scientific body of knowledge within the state, can also result in a powerful limiting of Aboriginal rights and responsibilities. This paper examines the politics of cultural heritage through a case study of a small forest in north-west Victoria. Here, a dispute about logging has pivoted around differing conceptualisations of Aboriginal cultural heritage values and their management. Cultural heritage, in this case, is both a powerful tool for the assertion of Aboriginal rights and interests, but simultaneously a set of boundaries within which the state operates to limit and manage the challenge those assertions pose. The paper will argue that Aboriginal cultural heritage is a politically contested and shifting domain structured around Aboriginal law and politics, Australian statute and the legacy of colonial history.

Introduction

Since 1983, the cultural heritage of Aboriginal communities in Victoria has been protected by comprehensive legislation that adopts a wide definition of cultural heritage and aims to involve local communities in its management. Given the lack of wider recognition of Aboriginal land rights in Victoria, cultural heritage management and protection constitute one important way by which Aboriginal communities have been able to have their voices heard in land use and management decisions. One example of the importance of this legislation is the case of the Nyah Forest in north-west Victoria, where in 1997 the Wadi Wadi traditional owners successfully placed an Emergency Declaration on the forest, under the provisions of the *Aboriginal and Torres Strait Islander Heritage Protection Act (1983) (Cwth)*, to stop logging activities from destroying further cultural heritage sites. No logging has been undertaken in the forest since this action, and the dispute remains unresolved.

This case highlights the importance of Aboriginal cultural heritage protection and the legislative regime that provides its statutory backing, as powerful mechanisms for Aboriginal people to assert their rights and responsibilities for their country.¹ This is particularly the case in Victoria, where specific provisions of the *Commonwealth Act* cited above vest control of cultural heritage with designated Aboriginal communities, with associated specific and wide-ranging powers (including the power to invoke Emergency Declarations). Cultural heritage, then, has become a critical strategic tool for Aboriginal communities.

Yet alongside its strategic importance to Victorian Aboriginal communities, the politics of cultural heritage highlights how Aboriginal rights and responsibilities in Victoria become highly circumscribed by the state through its invocation of a 'sites

discourse'. Enduring colonial tropes about cultural loss and degradation amongst Victorian Aboriginal communities continually surface in locally specific (post)colonial relations, serving to limit the locations where Aboriginal rights and interests are seen to have legitimacy in state-based decision-making processes. Further, the discourse of sites and their protection comes to literally manage the Aboriginal sacred in postcolonial landscapes in Victoria, in ways that, on deeper reading, transgress Aboriginal rights and responsibilities. Through the case study of Nyah Forest, this paper shows how Aboriginal cultural heritage is a politically contested and shifting domain structured around Aboriginal law and politics, Australian statute, and the legacy of colonial history, and how that contest is actively used as a technology of state power to manage the Aboriginal sacred. In the next section, the paper sets out important context concerning the Wadi Wadi people, the local politics of Nyah Forest and the trajectory that the research underpinning this paper took, including some reflections on ethical considerations. Following this, the paper theorises cultural heritage as a political and cultural construct, and its management as a craft of the state. It then goes on to explore the manner by which a 'sites discourse' has been constructed in and around Nyah Forest, Wadi Wadi challenges to that discourse, and the politics of postcolonial relations in Victoria's north-west surrounding cultural heritage management.

Context and research trajectory

Many of the voices that will be heard in this paper are those of Wadi Wadi people, most (though not all) of whom are party to a native title claim lodged in 1997 for lands within Nyah and nearby Vinifera Forests. The extended family involved in the Wadi Wadi claim are also claimants to a larger native title claim with a wider group of traditional owners of the North West Nations. Swan Hill and the surrounding region is also home to a wider Aboriginal community, made up of people from neighbouring Aboriginal national groups (particularly the Wemba Wemba people, whose country lies just to the south of Wadi Wadi country), people from elsewhere who have settled in the township, sometimes over many generations, and others who have settled more recently. As a result, Swan Hill has a large Aboriginal population, such that 3.65 per cent of the total population of Swan Hill identified as Indigenous in the 2001 Census, compared with 0.5 per cent of the population identifying as Indigenous across the whole of Victoria (Australian Bureau of Statistics 2001). The Swan Hill and District Aboriginal Cooperative (SHDAC) is a key local body servicing this diverse community, with representation from Wadi Wadi, Wemba Wemba and the wider Aboriginal community on the Board. Wadi Wadi, Wemba Wemba and other Aboriginal nations with traditional country in the region have formed a regional cooperative organisation to represent their native title and wider rights as traditional owners, known as the North West Nations Aboriginal Clans Corporation (NWNACC).

Knowing Nyah Forest as a place structured by Wadi Wadi meaning and association, and as broadly significant to a wider Aboriginal community in the region, underpins the argument of this paper. By re/presenting these meanings and associations here, the paper aims to show not just the importance of this place to Wadi Wadi and other local Aboriginal people but also to highlight how these meanings and associations are ultimately excluded from cultural heritage management discourse and practice. It is not the intention of this paper to provide anthropological evidence of land tenure

systems of Wadi Wadi people or any other group, nor to assert any particular conclusion about the native title claims with which some Aboriginal participants in the research underpinning this paper are involved. The contribution of the paper is to question the interaction between rights-based claims made by Aboriginal people and the epistemological and ontological assumptions underpinning the continued dominance of the anthropological, and land management, canon.

The material presented in this paper was generated through field observation and in-depth interviews with participants as part of a larger PhD research programme (see Porter 2004a). The fieldwork was commenced in 1999 and the author spent the following 4 years (but most intensively between 2001 and 2003) with Wadi Wadi, other Aboriginal people, and non-Aboriginal forest managers, environmental planners, and decision makers in the region following the Nyah Forest case. This was achieved through attending meetings and events, visiting the forest regularly with participants, conducting interviews, participating in the local Friends of the Forest group and undertaking other desk-based research in the region. The research was conducted under a framework of research ethics. This was governed by a code of conduct, developed by the author (see Porter 2004a), which bound the researcher to certain protocols and responsibilities in managing and using the material provided by each individual participant. This included ongoing consultation regarding publication of data in academic papers, including this one (for further reflection on cross-cultural research issues see Porter 2004b).

In publishing material provided by participants, the author is conscious of the great sensitivities surrounding the mediation of various native title claims in the region, including the Wadi Wadi claim. Due to those sensitivities, and a desire not to prejudice any of the claimants, or non-claimants, who were involved in the research, the anonymity of participants is respected in this paper. The material presented here is not intended as evidence one way or another concerning the recognition of Aboriginal property rights in country. The research underpinning the paper was not undertaken in this context, and as such cannot be considered to be an anthropological account of Wadi Wadi traditional law and customs. Rather, the material demonstrates that Nyah is conceptualised by the Wadi Wadi (and other Aboriginal) people as a place structured within their own ontological and epistemological philosophies. Knowing Nyah Forest as an Aboriginal place, structured by Wadi Wadi ancestral law, Creator spirits, knowledge and continuing cultural practices is crucial to understanding the postcolonial politics surrounding cultural heritage management in the forest.

Nyah Forest as an Aboriginal place

Nyah is a Wadi Wadi name meaning 'big river bend', designating a circular bend in the Murray River alongside which lies Nyah township and the forest, in north-western Victoria (see Figure 1). For Wadi Wadi people, who claim to be the traditional owners of this place, Nyah Forest holds great meaning, and is a place with an important social history. It is an interconnected, living landscape, its cultural and spiritual meanings structured by Wadi Wadi law and knowledge, handed down from an ancestral past.² Wadi Wadi people claim to be continually caring for the forest, as they utilise its resources when they camp and fish there, visit the important and numerous burial

mounds in the forest, and continually monitor the management and protection of particular cultural places of importance.

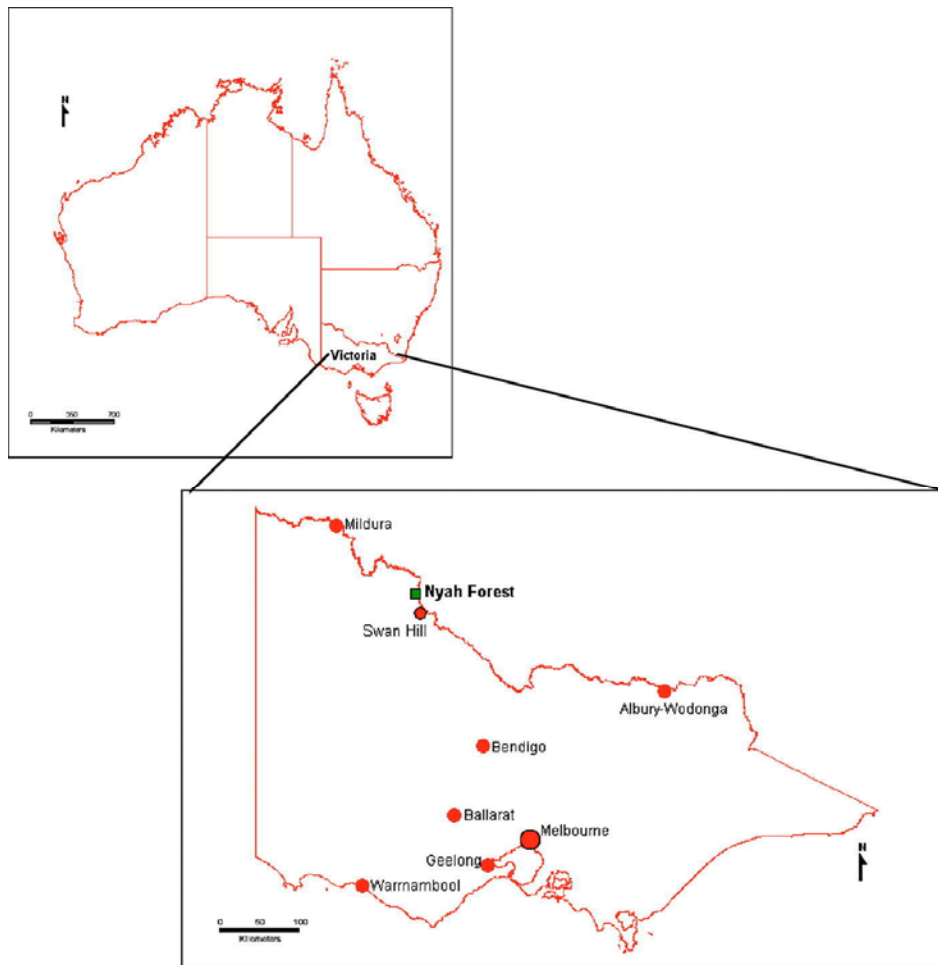


FIGURE 1. . Regional location map of Nyah Forest.

Wadi Wadi people have been expressing clear aspirations regarding Nyah Forest (and Vinifera Reserve) for many years. Through their native title claim mediation, they have stated their preference for a resolution through a formal land management arrangement with the Department of Sustainability and Environment (DSE), the Victoria government department responsible for planning and land management (formerly the Department of Natural Resources and Environment, but referred to as DSE throughout this paper). This is important to Wadi Wadi people, because they feel they have been excluded from management decisions and processes in the past. Such an agreement would recognise Wadi Wadi people as the Aboriginal people with the right to speak for Nyah and Vinifera Forests, and seek to develop a long-term partnership between Wadi Wadi and the state government to develop and implement management plans and works programs, as well as undertake works to protect cultural heritage. In 1997, the Wadi Wadi people, together with the Friends of the Nyah-Vinifera Forest (FONVF) prepared a statement of management principles for the forests. The statement declared that:

Given the high value of the Nyah-Vinifera forest as a place of cultural and Natural Heritage and the vital role it plays as the most easily accessible meeting place between Forest and River for the River and Mallee Communities, including Nyah and

Swan Hill; **both sections of the Forest need to be given a firmly recognised status that prohibits large-scale wood harvesting and restricts grazing rights.** (North West Nations and Friends of Nyah-Vinifera Forest 1997, p. 3; original emphasis)

This statement was prepared as part of a campaign by North West Nations and the Friends group to stop government-licensed logging in Nyah Forest. This controversy erupted in 1996 when the then Department of Conservation and Natural Resources (now split to form the DSE, and the Department of Primary Industries, hereafter DPI) published its Wood Utilisation Plan (WUP) with three forestry coupes planned in Nyah Forest. The forest is made up of predominantly river redgum trees, and is a floodplain of the Murray River. River redgum timber has been historically harvested heavily from Nyah Forest and other areas along the Murray River. In the early colonial period, the timber was used for building and fuel, and then later for the building and fuelling of paddle steamers, which became a major form of travel and trade along the River (DNRE n.d; University of Ballarat 1997). Under the current state public land management framework, Nyah Forest is zoned as 'S2 state Forest', and as such is designated as 'available for timber harvesting'.

Nyah Forest is statistically important to government-licensed commercial logging in the region. Within the forests of the region, there are 23000 hectares of redgum. Of this, 2300 ha (or 10 per cent) is available for timber harvesting under the current forest management zonings. Nyah's current forestry coupes constitute 600 ha of redgum forest, making Nyah an important 25 per cent of the total available area (2300 ha) of redgum for timber harvesting by the Victorian government.

Many residents (both Aboriginal and non-Aboriginal) were angry at the proposed logging plans for Nyah Forest, whilst others were relieved that a source of domestic firewood would be made available closer to their homes. The Wadi Wadi community remained opposed to the proposal, whilst others in the wider Aboriginal community (people from other traditional owner groups, and from Aboriginal residents with historical associations with the region) felt that proposals to log might benefit the community through employment and training prospects, and also the funding of further cultural heritage studies and protection. DPI moved ahead with its decision to harvest timber in Nyah Forest in 1997, and sent in bulldozers to widen the tracks to allow access for the logging trucks. In the process, two Wadi Wadi burial mounds were bulldozed and damaged. In response, Wadi Wadi representatives placed an Emergency Declaration on the forest, under the *Aboriginal and Torres Strait Islander Heritage Protection Act (1983) (Cwth)*, an action which continues to halt logging activity today while a management plan is in preparation. The *Proposed strategy for the floodplain state forests of the Mildura Forest Management Area* is currently in draft form and without final approval, and thus no further logging activity has taken place. However, DSE considers that it is only a matter of time before logging becomes a reality (pers. comm., Forest Manager, DSE 24 February 2003), so that timber harvesting remains very much on the agenda. The FONVF group in conjunction with the Wadi Wadi are currently campaigning as part of a wider regional coalition to have the forests declared as National Park.

Cultural heritage, then, has been crucially important in the story of Nyah Forest and the struggle between Aboriginal people and the local state about the meaning, value and potential use of the forest. Under the new *Aboriginal Heritage Act (2006) (Vic)*, a

person can only be considered for appointment as an inspector if they are an employee pursuant to Part 3 of the *Public Administration Act (2004) (Vic)*, or an authorised officer or inspector recognised under other Victorian legislation. As a result of this new legislation, Wadi Wadi representatives have recently had their cultural heritage inspector status revoked, meaning that they are more restricted in legal terms from protecting their cultural heritage and other values in Nyah Forest (pers. comm. 19 July 2006). The next section theorises cultural heritage as a political and cultural construct and in particular as a governmental strategy of the state with particular implications for Aboriginal people seeking rights and recognition to traditional country.

Cultural heritage and state power

Smith *et al.* (2003, p. 67) define cultural heritage management as 'the process that, amongst other things, formalises conflicts over the use and disposition of heritage places and how they should be used'. Far from being a mere technical exercise, then, cultural heritage management concerns struggles over identity, history, place and meaning. In postcolonial contexts such as south-eastern Australia, cultural heritage is thus part of a wider 'struggle for control over territory' (Said 1995, p. 332).

In Victoria, especially, that struggle is shaped by powerful and enduring colonial discourses about Aboriginality. Popular understandings of Aboriginal relations to place in south-eastern Australia are shaped by powerful notions of primitivism, a 'back then' attitude that constructs an ahistorical existence, without capacity for change and without capacity to survive modernity in any authentic way. As Langton (1996) shows, this manifests in a romanticisation of a perceived 'closeness' of Aboriginal people to land and nature, and a continued focus on traditions as an immutable body of culture. In Victoria, where Aboriginal traditions are perceived as having been irretrievably interrupted by colonialism, and in some popular discourses 'lost', this becomes particularly powerful in shaping contemporary debates about cultural heritage management and Aboriginal land management (see English 2002, p. 219; Smith 2001, p. 100, 2004, p. 18).

When Aboriginal communities claim rights and responsibilities for their cultural heritage and its protection, popular notions of Aboriginality, identity and place in Victoria are unsettled. Of particular importance is the extent to which those claims unsettle long taken-for-granted assumptions about the use of natural resources and the occupation of space in Victoria. Cultural heritage management has become one of the technologies by which the state and others (including Aboriginal communities themselves) attempt to redress those conflicts. Yet the generation of archaeological knowledge, produced by expert archaeologists based on scientific criteria—the 'processual' approach to archaeology as identified by Smith (2004)—continues to operate, in order to underline its privileged position as 'an expert, neutral and value-free practice' (Smith 2004, p. 3). These widespread, institutionalised and pervasive approaches to cultural heritage management depoliticise identity and land-based conflicts, so that they become merely a technical question to be solved rather than a question of political and socio-cultural rights (Smith 2001, 2004).

In this way, cultural heritage becomes an 'object of regulation' (Smith 2001, p. 97), whereby Aboriginal cultural interests are reduced to a feature of place requiring management in the broader context of land use planning practices. As an object of

regulation, Aboriginal cultural heritage management can also be conceptualised as a 'statecraft', following Scott (1998), a method of designing problems in their simplest and most legible terms in order to render state action possible. Defining the world in terms legible to the state requires a narrowing of vision to include certain ontological and epistemological categories that allow action based on standardised possibilities. Statecrafts, then, are profoundly myopic, only ascribing value to knowledge when it is legible to the state (Scott 1998, p. 47).

This legibility of the world to the state is what Foucault terms the *governmentalisation* of the state, which he conceptualises as a *type* of power that has emerged as the pre-eminent type of power over others throughout the Western world (Foucault 1991, p. 103). It results in the formation of a complex series of governmental apparatuses and forms of knowledge that support those apparatuses 'which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security' (Foucault 1991, p. 102). Apparatuses, for Foucault, extend beyond (and also include) the institutions of the state to the very 'procedures, analyses and reflections, the calculations and tactics' that generate and allow a governmentalised state to emerge (Foucault 1991, p. 102).

If governmentality is the 'tactics of government' as they operate through and outside of the state, then it is possible to trace how those tactics emerge and where they become myopic. Their myopia is a condition of the power/knowledge relationship, as theorised by Foucault (see Gordon 1980), and developed in postcolonial terms by Said (1978), whereby certain forms of knowledge (such as Aboriginal knowledge, or other forms of supposedly 'non-scientific' knowledge) are excluded from the discourse that establishes what is knowledge and what is truth (Foucault 1980). As Foucault observed, relations of power 'cannot themselves be established, consolidated, nor implemented without the production, accumulation, circulation and functioning of a discourse' (Foucault 1976, as cited in Gordon 1980, p. 93). Thus, knowledge and power together produce discourse, or the means by which what is truth can be determined (Rabinow 1984).

Rendering the world legible through the technologies of statecraft or the tactics of government, underpins the nature and actions of bureaucracy as the administrative arm of the state. Scientific knowledge is the mechanism for this legibility. Management plans for places like forests are designed based on knowledge of place generated by such techniques as counting and classifying flora and fauna, analysing soil compounds, measuring distances and boundaries, radio-carbon dating rock art, and mapping terrain using computer-aided technology. The task of land management becomes one of dividing nature into discrete objects, ascribing a value and prescribing actions upon that place. The development of a technical knowledge and language to support this thus becomes fundamental to the power of state-based planning and land management. The importance and value of this knowledge as a method to underpin action is not to be denied. Rather, this paper questions the totalising discourse that coalesces around this form of knowledge, adopting utilitarian values noting only what is in the state's official interest and identifying which 'things' (as Foucault 1991 identifies as the principal target of government) should be the subject of regulation, and how they should be regulated.

In the case of Aboriginal cultural heritage management, this knowledge is generated through the domain of archaeology (see Smith 2004 for an excellent theorisation of archaeology as a practice of governmentality). The practice of Aboriginal cultural heritage management produces what I describe in this paper, and has been described elsewhere (Smith 2001), as a 'sites discourse'. Coupled with a specific colonial legacy and enduring popular perceptions of a 'lost' Aboriginal tradition, that discourse is currently performed by the state as the primary location for recognition of Aboriginal rights and interests in land management in Victoria, as this paper will show.

That discourse, however, has profound material effects and outcomes beyond the discursive or conceptual domain. The institutionalisation of archaeological knowledge comes to govern debates about what cultural heritage is (how it is defined), and this becomes policy and action-relevant because it is the primary source of knowledge about Aboriginal cultural heritage used by decision makers in resolving land use and management questions. Attending to the real outcomes and consequences of powerful discursive constructions is a critical addition to Foucault's theorisation of governmentality. As Smith (2004) demonstrates, it is important not only to expose the privileged position of scientific fields such as archaeology but also to discern how such discourses *become* privileged and the actual material outcomes or 'doings' of archaeology beyond the discipline (p. 9 and also Chapter 4). As will be shown in this paper through the case of Nyah Forest, the technology of cultural heritage management, underpinned by archaeological scientific knowledge, *manages* the unsettling nature of the Aboriginal sacred in the landscape.

Yet cultural heritage management, and the specific regulations governing its practice in Victoria, also constitute an important means by which Aboriginal voices are heard in key decision-making forums. Numerous cases in Australia and other settler countries highlight how Indigenous communities have used Western laws and regulations in their various struggles, and increasingly seek to institutionalise control over their cultural heritage through these means (see Fourmile 1989; Smith 2001). In the case of Nyah Forest, the Wadi Wadi people successfully utilise cultural heritage, and a raft of other legislation and policy, in the ongoing struggle for recognition of rights, traditional ownership and a critical stake in land use and management decision making. It is this politics of cultural heritage, and its use in everyday relations between the state and Aboriginal communities, that is the central question of this paper.

Nyah and the 'sites discourse'

Aboriginal cultural heritage has clearly been crucial to how the logging dispute around Nyah Forest has played out. The codification of a field of government, or a 'governmentalisation' of state action (following Foucault 1991) called cultural heritage management, has become the primary place where Aboriginal interests can be recognised in state planning terms. As a result, it is the primary strategic tool for Aboriginal people to assert their rights and interests in relation to their cultural materials and knowledge. Thus, cultural heritage is the site of both the 'freedoms and unfreedoms' of Aboriginal people, to paraphrase Scott's apt observation of the modern state in general (Scott 1998, p. 7). This section will trace the nature of the sites discourse in relation to Nyah Forest and analyse how it constructs specific locations

within which Aboriginal interests can be recognised, and the particular mechanisms and knowledge that underpin that recognition.

Each of the documents that frame planning decisions and actions for Nyah Forest recognises Aboriginal interests only in terms of cultural heritage sites. For example, the Land Conservation Council (LCC) report for the Mallee area discussed Aboriginal interests in its planning recommendations only in the context of site protection:

Sites of significance associated with Aboriginal culture of occupation throughout state forest need to be identified and protected (their management should involve the local Aboriginal community). Among these are the sites associated with the spring line along the northern fringe of the Big Desert and mounds and scarred trees along the riverine plain, in particular Nyah forest. (Land Conservation Council 1989, p. 133)

The *Proposed management strategy for the floodplain state forests of the Mildura Forest Management Area* (within which Nyah is located) also produces the intersection between land use management activities and Aboriginal interests within the 'protection of sites' discourse. Aboriginal interests are represented only in the last chapter of the *Proposed strategy*, with a general aim to:

protect sites with significant cultural and historical values ... [and] ... maintain regular and effective dialogue with Aboriginal agencies and communities on forest management in the floodplain forests. (DNRE 2000, p. 21)

I describe this here as a 'sites discourse', maintaining critical interest in *how* powerful interests (such as the state's in this case) actively produce realities or apparent truths, highlighting the crucial relationship between knowledge and power (see Foucault 1984 and as cited in Gordon 1980). In this case, there are two primary 'things' to be governed: cultural heritage in its various forms, and the Aboriginal population including its historical relations and contemporary rights claims. There is an intersection here of territory and population, elements that Foucault theorises as central to the interest of state governmentality.

According to state-based planning, a cultural heritage 'site' is that point on a landscape at which material evidence is visible and archaeologically classifiable as evidence of the prior occupation of lands by Aboriginal groups. A midden, burial mound or scarred tree becomes a site when it is seen, known and can be made visible on the various planning instruments that govern their management. Sites thus have specific scientifically defined archaeological characteristics, classifiable through size, age, and possible (past) use, which influences 'the meanings given to the site and subsequently the assessment of its significance' (Smith 2004, p. 106). In Victoria, sites are listed on a register managed and owned by Aboriginal Affairs Victoria (AAV3). They are recorded according to assessed characteristics, and given a registration number and location on a cadastral map.

The *Proposed management strategy for the floodplain state forests of the Mildura Forest Management Area* documents, for example, the existence of 170 Aboriginal cultural heritage sites listed on the AAV register that occur within the floodplain state forests of the Mildura Forest Management Area, as well as others that are as yet 'unknown' in archaeological terms. The background study underpinning the *Proposed*

strategy categorises these 170 sites into various types—'14 burial sites, four surface scatters, six isolated hearths, 12 shell middens, 24 scarred trees and 124 mounds' (University of Ballarat 1997, p. 19). It further notes that 52 per cent of the sites occur in the Nyah State Forest, these being recorded in the late 1970s during an intensive archaeological survey conducted by the Victorian Archaeological Survey (VAS) (Coutts *et al.* 1979). Those sites recorded in the Nyah Forest mainly occur, says the study, in one area that has become known as the 'Nyah Forest Mounds Area' which is listed on the Register of the National Estate as a significant Aboriginal area.

What is the purpose of this definition of cultural heritage and its governance through a range of apparatuses and techniques by the state? Knowing Aboriginal cultural sites through their codification and registration on a map is essential to the efficacy of land management decisions, including logging. Knowing sites allows for their protection and management—not bulldozing over them, for example. That knowledge provides certainty to other interests undertaking activities in a particular place with an increased level of certainty that they will not be subject to claims by Aboriginal people. When sites are not 'known' to the state through their codification and registration, they can potentially interrupt the structure and certainty of land use decision frameworks. Figure 2 shows how sites are mapped by AAV and its archaeological consultants for the purposes of making land use decisions. The map shows registered sites for Nyah Forest in one of the forestry coupes.

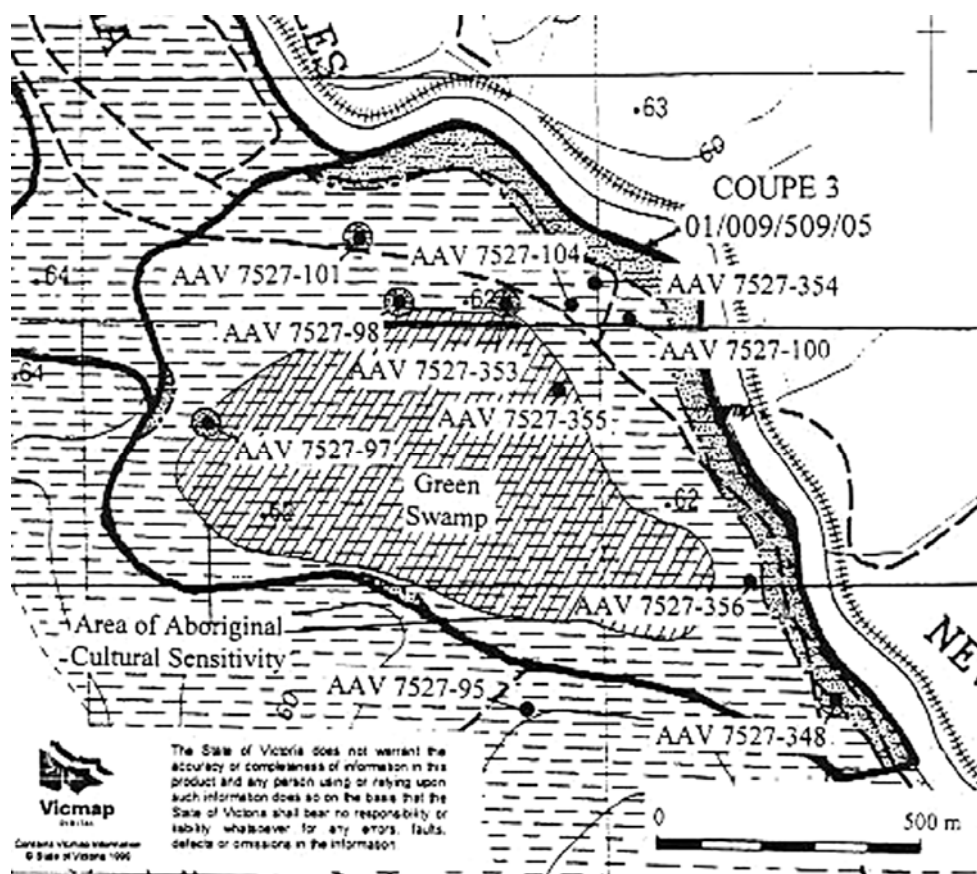


FIGURE 2. Registered Aboriginal cultural sites recorded in Forestry Coupe 3 in Nyah Forest, showing sites and buffer zones (stippled areas). *Source:* Cusack (2000, p. 33).

These places of significance to Aboriginal people are mapped as points on a two-dimensional landscape. They have significance in archaeological and land management terms by virtue of their status as 'known' sites and the archaeological recording (by an archaeologist, an expert in their field of knowledge) of the characteristics that supports such a status. The sites 'fit' with the agreed technical definition of what constitutes cultural heritage and how it can be seen and classified in the landscape (see Smith 2004). Here, Aboriginal cultural heritage becomes an object of management—something that is tangible and thus able to be classified, mapped and recorded on a site register.

Despite the emphasis on place (rather than sites) in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwth)*, and more importantly that non-material evidence of Aboriginal association with place is also protected under this act, the discipline of archaeology and its practice in the case of Nyah Forest has been slow to move beyond the discourse of sites and material evidence. One of AAV's senior field officers describes how cultural heritage is discursively produced in Victoria in terms of its physical, tangible and archaeologically classifiable characteristics:

The perception of cultural heritage in the more remote areas [of Australia] is places like sacred sites and places of spiritual significance. While in Victoria and the rest of south-east Australia, there's a history of dispossession, and it's more focused on archaeological heritage, so physical, tangible material evidence, rather than spiritual or sacred. We operate under the concept of place, which could include an archaeological site, it could include a place of historical or contemporary significance, but most of the records that we hold and the way most people perceive cultural heritage as a result of the history of administration in Victoria is archaeological sites. (Pers. comm. 30 January 2003)

This quote highlights the power of administrative and bureaucratic practices to determine management practices concerning places and landscapes of great cultural and spiritual significance to Aboriginal people. In south-east Australia, the state's view of cultural heritage management is powerfully shaped by colonial histories of dispossession and the discursive production of Aboriginal cultures in this region as tainted, corrupted or even lost.

Producing Aboriginal cultural heritage in planning frameworks as solely about sites and their archaeological characteristics is an integral part of how contemporary environmental planning visualises and performs its relationship with Aboriginal communities and their interests. Aboriginal interests remain invisible within the rest of the planning framework for Nyah Forest. For example, other chapters in the *Proposed strategy* cover issues such as water catchments, timber harvesting, endangered species and biodiversity protection. Nowhere are Aboriginal interests mentioned in these sections of the plan, those interests being confined to the 'sites discourse' of the last chapter in the document. Thus, through this mechanism, the state produces a discourse about how and where Aboriginal rights and interests can be recognised in land management frameworks. It is the codification of Aboriginal interests inside the cultural heritage management apparatus that performs the governance of Aboriginal people, their rights, interests and relations with non-Indigenous polities.

Challenging the sites discourse: Wadi Wadi cultural heritage values

Wadi Wadi people, however, express the importance of their cultural heritage in ways that demonstrate quite different associations with place from those demonstrated by the archaeological recording and mapping of cultural heritage sites. Wadi Wadi people regularly use the term 'sites', particularly when lobbying for their interests in planning forums, in acknowledgement of the discursive structure of the relevant legislation. Nevertheless, Wadi Wadi traditional owners describe their important sites as *places* structured in the landscape by Wadi Wadi ontological structures and ancestral connections, as the following quotes from two Wadi Wadi traditional owners show:

They are not sites, they are places of importance to us. They are landscapes, not just a site here and a site there and a site over there. We've got very important places where you go in under our rules and jurisdictions, when it comes to our heritage ... And we're still out there. They're not old sites! They're living ... We're descendants of the people who made them, we're still making them. (Pers. comm. 1 September 1999)

[These] special sites and places of significance hold many memories and lots of information. (Pers. comm. 26 June 2001)

In Wadi Wadi terms, sites are positioned in a wider sense of connection between people, place, ancestors and law. Sites are not simply 'dots on a map', as conceptualised in archaeological and planning terms, but are intimately connected, together with other features, to form landscapes of power, meaning and significance. Thus, the connections between sites are 'predetermined by pathways which are the stretching of the being of conscious-place' (Swain 1993, p. 33). Sites literally appear (are created) in the landscape, and change across time and place (see Jacobs 1993; Anderson 1989). These landscapes are constantly being created and acted upon by continuing Wadi Wadi law structures and presence, and hold knowledge about the country and people's activities within it.

Sites are powerful and significant both because they 'hold memories' and are connected to the continuing presence of Wadi Wadi ancestors, and also because they form part of continuing Wadi Wadi practices and changing law structures. Sites, then, are 'still being made', as noted in the above quote from Wadi Wadi traditional owners. Of further importance from these quotes is how Wadi Wadi position those law structures as a separate domain from state-based cultural heritage management frameworks. According to these traditional owners, people must come into the presence of sites and landscapes according to Wadi Wadi 'rules and jurisdictions', not according to modern Australian cultural heritage protection statutes. Thus, the Wadi Wadi people and state-based planners discursively produce and know sites in profoundly different ways.

One example of how places are structured within Wadi Wadi country, and yet remain unrecognised in state-based cultural heritage management terms, is some culturally significant trees that occur in Nyah Forest and adjacent Vinifera Forest, and elsewhere in the region. These are known locally as the ring trees (see Plate [1](#)). Ring trees are very large, old river redgums whose branches have been intertwined together at a

young age, according to Wadi Wadi cultural practice, so that as large trees their branches and trunk appear as a series of rings (pers. comm. 22 August 2002).



PLATE 1. . A ring tree in Vinifera Forest, adjacent to Nyah Forest. Photograph by the author.

Ring trees are generally located facing towards where water would normally flow during flood season. Thus, the trees are understood to mark out camping areas and provide signposts on the landscape as to other important places (pers. comm. 22 August 2002). The ring tree pictured in Plate 1, for example, is located next to a wide, shallow riverbed that would carry water during flood, and is surrounded by large burial sites.

When conducting the archaeological study of the forestry coupes in Nyah Forest, AAV's consultant archaeologist spoke at length with Wadi Wadi representatives and other Aboriginal stakeholders about the ring trees. Her study confirmed that there was substantial oral history about the ring trees within the local Aboriginal community and that Wadi Wadi people in particular regarded the trees as significant (Cusack 2000). As an archaeologist bound by the methodological constraints of her trade, the archaeological consultant in the case of Nyah Forest was prevented from recording and registering the ring trees because there were no set archaeological criteria for doing so (pers. comm. 19 February 2003). The archaeologist's study recommended that:

an arborist or botanist should be consulted regarding the formation of ring features within branch structures of mature river red gum trees and/or other mature native vegetation identified during the survey. This investigation was particularly requested by the Aboriginal community representatives so that issues relating to the identification of ring tree sites could be resolved. (Cusack 2000, p. 34)

No further investigations into the ring trees have taken place and they remain unprotected by Australian cultural heritage regulations. This appears to be a major oversight by the state and its reliance on scientific archaeological categorisations of heritage and its 'significance' despite some attempts within current legislation to ensure that communities have a greater say in defining what is significant and how to define cultural values. As Smith *et al.* illustrate in relation to the Waanyi Women's History Project:

the traditional emphasis on the material nature of heritage may obscure the cultural and social processes that give context and meaning to heritage objects. The significance of heritage does not lie in its materiality or its fabric, but in the cultural and historical processes that give it meaning. (Smith *et al.* 2003, p. 75)

Managing the sacred: the technology of buffer zones

Once 'sites' are known and mapped in cultural heritage management terms, they come under specific protective management regimes, especially in areas where activities such as logging are allowed. The state-based technique employed to manage this Aboriginal sacred within the landscape is buffer zones—an environmental and cultural heritage management extension of that most important planning tool of zoning. Buffer zones constitute an area around a site which is excluded from other forestry activity, and are widely used in Victoria to protect cultural heritage sites during timber production and other forest management activities. Buffer zones are also widely used for natural conservation values—such as protection of waterways, billabongs or habitat trees. They are considered by Forestry Victoria, DSE, DPI and AAV to be an efficient method of Aboriginal cultural heritage site protection because of the scattered nature of sites throughout a landscape. Generally, the minimum buffer zone requirement for a midden (burial site) or oven site is 50 m and for a scar tree it is 20 m. Where additional protection is deemed necessary, this is negotiated at the local level between Aboriginal cultural heritage officers and Forestry Victoria staff. Forestry Victoria consults with AAV and the cultural heritage officers in the region regarding the location of sites, and the manner of their protection through buffer zones.

Buffer zones are a technology developed in part by archaeological requirements for sensitive areas, and as such are a standard recommendation in archaeological or cultural heritage studies. The archaeological study of the three proposed forestry coupes in Nyah Forest recommended the use of buffer zones to protect the sites identified in the study. That study, its management recommendations, and the proposed forestry coupes within Nyah, have all been endorsed by AAV. Once a site is known in planning and management terms, and its location mapped, it can be marked out with an exclusion zone of a certain diameter around the site. In the case of forestry operations, DPI field staff mark trees on the outer edge of the buffer zone with blue spray paint to indicate where logging is prohibited (pers. comm., Senior Forester 13 February 2003).

Buffer zones, however, do not feature as part of the legislated prescriptions for timber harvesting operations. A brief reference to 'cultural values' amongst a list of other environmental values is the only mention that Aboriginal cultural heritage receives in the key document governing commercial timber harvesting practices in Victoria—DPI's *Code of forest practices for timber harvesting*. Further, the *Management prescriptions for timber harvesting in the Mildura Forest Management Area* (a key prescriptive document for timber harvesting in the region) remains absolutely silent on cultural heritage issues or broader Aboriginal interests in timber harvesting operations. Given that this latter document is the primary means of operationalising the state-wide code and ensuring that its standards are appropriately varied to reflect the particular circumstances of a specific forest (such as responding to knowledge that a place like Nyah Forest has a high number of sensitive cultural sites), this silence is remarkable. There are no other guidelines published for planners and land managers (or timber harvesters) regarding the use of buffer zones, despite their widespread use across the state.

According to Wadi Wadi people, buffer zones profoundly disrupt the meaning of place because they fail to see that 'sites' are linked together in a network of cultural activity and meaning. The lack of respect for the connections between places that Wadi Wadi people perceive in the response from DSE and DPI management staff about their cultural heritage interests is a failure of knowledge, as one Wadi Wadi representative points out in the following quote:

Now's the time to question what is heritage value, how important it is to us, now we want to [get] out and show them where the buffer zones are going to exist by the cultural landscape, not by what they say back in the '70s!4 (Pers. comm. 21 August 2002)

Here, this Wadi Wadi spokesperson invokes the idea of buffer zones as a mechanism to achieve cultural heritage protection (and in recognition of their discursive power within the context of this particular planning meeting), but extends their conceptualisation by reading them through Wadi Wadi ontological and epistemological structures. Here, then, buffer zones are re-created as part of Wadi Wadi practices so that how buffer zones are defined (their size, shape, location and so on) would occur by virtue of Aboriginal law (in his terms the 'cultural landscape'), not by the designation of AAV consultant archaeologists and previous archaeological studies.

As the primary tool for managing Aboriginal sacred sites in forestry operations, buffer zones became the centre of contested (post)colonial relations between DSE and DPI staff and Aboriginal community representatives. Protection of cultural heritage sites from timber harvesting activities was raised as a key issue at a meeting in August 2002 to discuss logging and cultural heritage management in Nyah Forest. As a result of the discussion, DPI's Senior Forester sought to work out buffer zones and fencing around sites with the regional Aboriginal cultural heritage officer, to afford the required protection. This kind of consultation is standard procedure for determining buffer zones in forestry coupes, as outlined above. It was this very 'standardisation' of consultation processes that became a key issue in (post)colonial relations in Nyah.

According to the DPI's Senior Forester, the organisation had fulfilled all its obligations when developing the Wood Utilisation Plan and designing the forestry coupes in Nyah, because it had consulted with the Aboriginal community through the regional cultural heritage body. In Victoria, cultural heritage is managed through a system of regional Aboriginal Cooperatives, which were originally set up without any understanding or acknowledgement of the differences in rights between traditional owners and Aboriginal people who have historical (rather than traditional) associations with an area. The Swan Hill and District Aboriginal Cooperative is that body for the Nyah district and it was the body consulted, as was officially required, in this instance. However, at the time of consultation the Cooperative was under independent administration and did not include any Wadi Wadi representation on its Board. DPI also sought to consult, via submission, the then native title representative body in Victoria, Mirimbiak Nations Aboriginal Corporation (MNAC). However, Wadi Wadi people had been experiencing a series of issues with the processing of their claim through MNAC, and had generally poor relations with the MNAC Board.

According to the Wadi Wadi people, neither the Cooperative nor the MNAC had communicated with the Wadi Wadi native title claimant group about the WUP or their approval of the coupe locations. This is perhaps not surprising, given the significant local political issues which at the time were fundamentally important to relations between Wadi Wadi and Aboriginal organisations. According to DPI's Senior Forester, this situation was known and understood. Yet it was not considered to be a relevant concern to the officer or the Department. He considered his team had followed appropriate standard procedure by contacting those organisations with jurisdictional and legislative responsibility for site protection and implemented the buffer zones they approved (pers. comm. 13 February 2003). It is startling that such an action is possible to defend, after the careful and continuous campaign waged by Indigenous Australians over so many years to have the profoundly unjust, violent and disruptive forces of colonialism recognised as the defining element of their contemporary circumstances. Such a recognition should entail an understanding that the procedure of dispossession enacted by the colonial state actually resulted in the complex local politics found today within and between Aboriginal communities.

This is an example of the highly contested and difficult situation faced by many Aboriginal people in Victoria seeking to have traditional ownership recognised, whether that be through native title processes or other means. The decision of Olney J in the Yorta Yorta native title determination, and the upholding of that decision on appeal to the High Court, is a particular testament to the devastation that can be revisited upon Aboriginal people by non-Indigenous misunderstandings of

contemporary Aboriginal society and politics. In this decision, Olney J was unable to recognise Yorta Yorta continued connection to country because of the application of a narrow conceptualisation of tradition and culture. Strelein (2003, p. 2), in her examination of the findings, concluded that in fact:

The Yorta Yorta did not shy away from asserting that they maintained a continuing system of custom and tradition incorporating a traditional relation to the land through which they asserted the relevant connection supported by continuous physical occupation. However, contemporary practices that the Yorta Yorta saw as cultural traditions, such as the protection of sites of cultural significance and involvement in the management of land and waters in their traditional areas, were rejected by Olney J because they were not of a kind that were exercised by, or of significance to, the pre-contact society.

This decision is clearly shaping the extent to which native title claims, and more broadly traditional owner rights and interests, are able to be recognised in Victoria. An inability to appreciate the effect that dispossession activities continue to have on local Aboriginal communities and their politics is surely fundamentally unjust. Yet, in the case of Nyah Forest, it was possible for the state, through its individual officers, to subvert Aboriginal rights by excluding native title claimants from consultative processes in favour of organisations which were created and authorised by the very state institutions that dispossessed Wadi Wadi people in the first place. Attitudes driving the DPI's manipulation of local, divisive politics are fundamentally linked to the approach and attitude taken by the state judiciary in the Yorta Yorta case.

Conclusion: cultural heritage as rights or containment?

The specific legislation governing Aboriginal cultural heritage in Victoria represents the winning of crucial gains by Aboriginal communities. The specific provisions under Part IIA of the *Aboriginal and Torres Strait Islander Heritage Protection Act (1984)* (*Cwth*) concerning Aboriginal cultural heritage protection in Victoria provide Aboriginal people with considerable powers, as has been shown in the case of Nyah Forest. Cultural heritage in Victoria remains the primary means whereby Aboriginal people can gain some foothold into land development decision-making processes, and as such constitutes a key enabling mechanism for the recognition of certain Aboriginal rights and aspirations (although these opportunities appear to have been rolled back with the enactment of new cultural heritage legislation in Victoria, the effect of which requires further research). This paper has identified how this crucial mechanism has operated for the Aboriginal community concerned with the future of Nyah Forest, in Victoria's north-west. The case of Nyah highlights the inherent paradoxes of the cultural heritage management regime, as it has served sometimes to empower Aboriginal traditional owners, and other times to undermine their rights and responsibilities.

Underpinning the analysis of the Nyah Forest and the politics of cultural heritage presented in this paper has been a reading of cultural heritage as a form of state governmentalisation (Foucault 1991). In this way, the paper has shown that the identification and subjectification of cultural heritage, and an Aboriginal populace, renders those two accessible to governmental tactics. The production of a 'sites discourse' is fundamental to this governmentalisation. This discourse establishes the

parameters for where an Aboriginal interest in the management of state territory can be recognised. It determines that a true Aboriginal interest is recognisable in the scientific identification of physical places and material things that can be recorded and known through the application of archaeological knowledge. The analysis has shown that this discourse can very powerfully shape the possibilities for Aboriginal action and responsibility for country in north-west Victoria, such that their rights and aspirations can be seen to be contained within the sites discourse and more specifically the mechanisms of the cultural heritage management regime. Constructing Aboriginal association with place as the material remnants of a *past* occupation continues to both literally and figuratively 'settle' Nyah (and more generally Victoria) as a place unmarked in contemporary terms by the disturbance of the Aboriginal sacred.

The complex politics surrounding the cultural heritage management regime and the discourse of sites in Victoria marks that regime as a field of shifting 'rights and containments'. It is the site where powerful statements of Aboriginal rights and interests can be made—notably the Wadi Wadi Emergency Declaration placed on the forest which has halted logging activity and has the potential to change the fortunes of Nyah Forest. It is also the place where powerful state interventions can be justified that serve to marginalise Aboriginal rights and interests—notably the DPI's approach to 'consultation' with Aboriginal groups in the region which deliberately capitalised on divisive local politics and past injustices to marginalise Wadi Wadi interests. The politics of these cultural heritage 'rights and containments', as identified in this paper, is a constantly shifting terrain between and within Aboriginal communities, and with their relations with the non-Indigenous state and its officers. Analysing the forms of governmentality that are present in the very construction of this terrain is helpful in unravelling the forms and relations of power in operation at various moments, and the nature of the mechanisms, apparatuses and techniques being employed. At present, those mechanisms fail to appreciate the Wadi Wadi ontological and epistemological philosophies regarding Nyah Forest, and operate to continue the 'settlement' of Victoria's north-west region.

Notes

1. Country is an Aboriginal English word that refers to 'the collective identity shared by a group of people, their land (and sea) estate' (Palmer 2001). It includes all the 'values, places, resources, stories, and cultural obligations' associated with that estate (Smyth 1994).
2. The author respectfully acknowledges and gratefully accepts the permission of Wadi Wadi representatives to speak about Nyah Forest and its cultural and spiritual importance to Wadi Wadi people.
3. Aboriginal Affairs Victoria is a department of the Victorian government responsible for the administration of cultural heritage protection legislation, and a range of other Aboriginal welfare, employment and justice programs. The AAV Register is a database of all recorded Aboriginal cultural heritage sites in the state.

4. This is a reference to the archaeological study of Nyah Forest conducted by Coutts *et al.* where Wadi Wadi human remains were excavated from a large burial mound.

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