Shared governance of protected areas: recent developments

by Dermot Smyth* with Hanna Jaireth**

Despite the cultural, social, political and legal changes that have occurred since British colonisation, the concept of Country remains central to the identity and cultural authority of many, and possibly most Aboriginal and Torres Strait Islander people throughout Australia. Whether or not traditional land has been alienated or retained, and whether or not Indigenous people continue to live on or near their ancestral territory, Country as a place of origin, identity and belonging remains an enduring cultural, social and political reality. 'Caring for Country' includes long-established cultural practices, such as species-specific ceremonies, seasonal use of traditional resources or use of fire to maintain desired environmental conditions, as well as contemporary practices such as managing feral animals and weeds, surveying biodiversity and tracking the movement of marine turtles and other species, including by satellite.

Caring for Country activities are undertaken by Indigenous rangers employed by local or regional Indigenous organisations with responsibilities for land and sea management in many locations across Australia. Indigenous ranger groups are generally engaged in patrolling, managing and monitoring areas of land that have returned to Indigenous ownership as a result of land claims, state or territory protected area legislation, or the recognition of continuing native title under the *Native Title Act 1993* (Cth). The first few Indigenous rangers groups were established in the 1980s and early 1990s with little or no support from governments. In recent years all levels of government have responded to various extents through policy innovations, partnerships and funding support. Aboriginal engagement in national park management, through formal joint management arrangements and other mechanisms, now occurs or is emerging in all Australian jurisdictions.

The concept of independent Aboriginal and Torres Strait Islander ranger groups and other locally managed Indigenous land and sea management organisations has now extended across Australia and employs several thousand Indigenous people. The Australian Government is currently the major investor in this field, primarily through the Indigenous Protected Area (IPA) and Working on Country programs, but state and territory governments have also developed various strategies to support the management of Indigenous-held lands in their jurisdictions. Recently Commonwealth ministers announced more flexible support for native title and Indigenous Land Use Agreements by allowing parties to form agreements about historical extinguishment of native title in parks and reserves.[1] In recognition of the value of such caring for Country activities, and consistent with a global trend towards the better recognition of traditional knowledge, in June 2012 at Rio+20 the Australian Government launched the development of an International Indigenous Peoples and Local Communities Land and Sea Managers Network in partnership with New Zealand, Norway and Brazil. Australia will host an international conference in Darwin in May 2013 to develop the network.[2]

Increasingly, Indigenous ranger groups engage in land and sea management activities in areas that may not be under Indigenous claim or ownership but which lie within the traditional land and sea estates of the groups involved in terrestrial and marine protected areas. This trend from 'tenure-based' to 'Country-based' Indigenous engagement in land and sea management reflects a growing appreciation by government agencies and the wider community that Indigenous caring for Country rights, interests and obligations are based on cultural connections to traditional estates irrespective of tenure. This trend is also consistent with modern bioregional and landscape-scale approaches to 'connectivity conservation'.[3]

This article discusses the concept of IPAs and shared governance of federal protected areas, the benefits of caring for Country activities generally, and looks in more detail at two recent developments: the dedication of the Mandingalbay Yidinji IPA near Cairns in north Queensland, and the *Traditional Owner Settlement Act 2010* (Vic). Mandingalbay Yidinji IPA provides an example of a protected area voluntarily dedicated

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1 Australian Government, Attorney-General, the Hon Nicola Roxon MP, Minister for Families, Communities and Indigenous Affairs, the Hon Jenny Macklin MP, Joint Media Release 'The future of Native Title' 6 June 2012 http://www.attorneygeneral.gov.au/media-releases/pages/2012/second%20quarter/6-june-2012---the-future-of-native-title.aspx, viewed 11 June 2012.

2 Australian Government, Prime Minister the Hon Julia Gillard MP, Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke MP, Joint media release, 'Australia announces global indigenous network', 21 June 2012 <http://www.environment.gov.au/minister/burke/2012/mr20120621.html>, viewed 27 June 2012.

3 See generally T Sandwith and M Lockwood 'Linking the landscape' in M Lockwood, GL Worboys and A Kothari (eds), *Managing Protected Areas: A Global Guide* (2006) 574–602

over multiple tenures, including government-declared terrestrial and marine protected areas, and involving voluntary collaborative management amongst Aboriginal Traditional Owners, government conservation agencies and other stakeholders. The *Traditional Owner Settlement Act 2010* (Vic) allows agreements to be negotiated in relation to Crown land provided native title claims are not pursued.

Collectively Australia's terrestrial protected area network constitutes the National Reserve System of Protected Areas (NRS). The NRS includes more than 9 400 protected areas covering nearly 14% of the country – almost 106m hectares. It is made up of federal, state and territory reserves, Indigenous lands and protected areas run by non-profit conservation organisations, as well as ecosystems protected by farmers on their private working properties. There is a separate National Reserve System of Marine Protected Areas (NRSMPA).

Indigenous Protected Areas (IPAs)

IPAs are recognised by federal, state and territory governments as part of the NRS, and government funding is provided to support their planning and management. During the 1990s, the concept of IPAs emerged from a coincidence of interests between government and Indigenous people: governments wanted a comprehensive system of protected areas that included all bioregions across Australia (some of which only exist on Aboriginal-owned land) and Indigenous people wanted support for managing their traditional country. Indigenous people have responded to this opportunity with enthusiasm – there are now 50 declared IPAs across Australia, with a similar number being planned. Demand for support for establishing new IPAs currently outstrips the capacity of the Australian Government's IPAs Program budget and alternative mechanisms for funding new IPAs are being explored.[4]

A feature of the history of these caring for country initiatives is their origins as Aboriginal initiatives rather than government policies. Previously, government agencies had maintained a monopoly on employing rangers and managing national parks. Many of the early Indigenous ranger groups relied exclusively on Community Employment Development Program (CDEP) (work for the dole) funding; some of the groups supplemented their income through fee-for-service contracts and funding from non-government sources, while others struggled to maintain continuity of ranger employment, lacked adequate coordination and closed down.

Today, Indigenous landowners are able to pursue sustainable development opportunities on their land, including ecotourism activities, and to use natural and cultural resources, subject to statutory restrictions. Some landowners are pursuing carbon credit trading opportunities under the Carbon Farming Initiative (CFI).[5] Program and project funding for conservation management activities can also be accessed by Indigenous landowners.

In recent years Indigenous ranger groups and independent researchers have reported that involvement in caring for Country projects has resulted in significant enhancement in Indigenous wellbeing, including:

- financial independence
- increased pride, self-esteem, independence and respect from peers
- improved organisational skills
- increased involvement in the community, including sports and governance
- improved skills in interacting with the wider community
- improved outlook on work, life and family
- better nutrition, increased physical activity and fitness
- weight loss, giving up smoking, reduced consumption of alcohol
- reduced expenditure on health services
- increased access to healthy bush food resources
- improved contemporary life skills, including obtaining drivers licences.[6]

These findings indicate that caring for Country initiatives may make a significant contribution to closing the gap between Indigenous and non-Indigenous populations with respect to many social indicators, including health, education, poverty, employment and life expectancy – all measures for which Indigenous people rate poorly in comparison with the general Australian community.

4 For case studies see (2011) 19(4) *Australasian Plant Conservation* 1–26, special theme issue Plant Conservation on Aboriginal/ Indigenous lands.

5 *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)

6 Stephen Garnett and Bev Sithole, *Sustainable Northern Landscapes and the Nexus with Indigenous Health: Healthy Country, Healthy People*, Land and Water Australia (Australian Government, 2007); D Campbell, C Burgess, S Garnett and J Wakermand 'Potential primary health care savings for chronic disease care associated with Australian Aboriginal involvement in land management', (2011) 99 *Health Policy* 83–9.

Governance of Country

In pre-colonial times, caring for Country was undertaken by individuals and clan groups with inherited rights and responsibility to particular land and sea estates, under the guidance of initiated elders and other knowledge-holders. These cultural rights and practices still underpin all contemporary land and sea management activities, but they have adapted and evolved over time and are delivered under various local and regional governance arrangements.

Since about 1975, there has been growing recognition within governments and the wider Australian community of the continuing cultural and economic relationship between Indigenous Australians and the continent's landscape, fauna and flora. This, in turn, has led to the development of various mechanisms for the involvement of Indigenous Australians in the management of protected areas, including the transfer of ownership of some national parks to Indigenous groups and the development of formal co-management arrangements (usually referred to in Australia as 'joint management').

These developments have occurred at different rates in different jurisdictions but legislation and policies are now in place in all Australian states and territories to provide some roles for Aboriginal people in protected area governance and/or management, though their implementation remains patchy within and between jurisdictions. Typically, where legal recognition of Aboriginal rights to traditional lands is strong, protected area joint management arrangements provide for significant Aboriginal involvement in decision-making, accompanied by rights to live within and use resources of protected areas, albeit subject to provisions of plans of management. Where such legal recognition is weak or unresolved, Aboriginal input into decision-making tends to be advisory only, and rights to living areas and resource use are often constrained.

The various approaches to joint management in different states and territories reflect local histories and differing legal recognition of Indigenous peoples' rights in each jurisdiction. Joint management arrangements represent both an attempt to find common ground and a trade-off between the rights and interests of Indigenous people and the rights and interests of government conservation agencies and the wider Australian community.

Typically, but not always, joint management arrangements involve the transfer of ownership of a national park to Aboriginal people in exchange for continuity of national park status over the land in perpetuity and shared responsibility for park management.

A key element in these arrangements is that the transfer of ownership back to Aboriginal people is conditional on their support (through leases or other legal mechanisms) for the continuation of the national park. While many Aboriginal Traditional Owners have benefited from and are proud of their involvement in joint management arrangements, they may not have been free to choose whether or not their land should become a protected area. It is an arrangement that can be described variously as a mutually beneficial partnership, or as a partnership of convenience, or as a partnership based on coercion, depending on one's views. Joint-management brings the benefits of recognition and involvement, but can be accompanied by the tensions that stem from contested authorities and cross-cultural partnerships not freely entered into.

Community level arrangements

There are several hundred community managed Indigenous land and sea management groups or organisations around Australia. Some are employed by local community councils, while others are more fully developed Indigenous land and sea management agencies employing specialist planning and research staff as well as operational rangers, often with Indigenous governance arrangements separate or complementary to local community councils. Governance arrangements for IPAs vary from place to place – sometimes undertaken by longstanding land-owning groups or organisations and sometimes by new organisations established specifically for IPA management with input from the landholding group. While the majority of these groups and organisations are located in remote communities in northern and central Australia, Indigenous ranger groups and other caring for Country initiatives occur throughout Australia, including the southern mainland states and Tasmania.

Regional level arrangements

Regional level arrangements include Indigenous organisations that coordinate or support local ranger groups and other land and sea management initiatives, as well as mainstream regional organisations, such as natural resource management bodies, that have explicit policies and programs to support Indigenous engagement in environmental, natural resource management or cultural heritage management. Regional Indigenous organisations include Aboriginal land (and sea) councils and native title representative bodies which coordinate a wide range of policy, research, planning and on-ground activities, including the training and employment of rangers. Other examples of regional organisations include the:

- North Australian Land and Sea Management Alliance (NAILSMA), comprising the Northern Land Council, Carpentaria Land Council and Balkanu Cape York Development Corporation, which supports land and sea management activities across northern Australia
- Girringun Aboriginal Corporation, which coordinates land and sea management activities on behalf of nine tribal groups in north Queensland between Ingham and Innisfail
- Murray Lower Darling Rivers Indigenous Nations (MLDRIN), an alliance of 10 Traditional Owner groups from along the River Murray and its tributaries in southern Australia
- Torres Strait Regional Authority (a statutory body established under Commonwealth legislation) which coordinates support for island-based ranger groups and plays a significant role in fisheries, coastal and marine research and management, including measures aimed at achieving the sustainable harvest of dugong and marine turtles and combating coastal erosion associated with climate change and sea level rise.

Governance issues

Successful governance of Indigenous lands is one of the greatest challenges facing Indigenous people in Australia. In areas where good governance arrangements have developed, there are currently many opportunities for training, employment, partnership-building and support for maintenance of cultural knowledge and practices. In areas where governance remains weak, it is more difficult to access these opportunities, which in turn contributes to less capacity building and weaker governance. The challenges facing good governance include:

- balancing the conflicting priorities and expectations of kin-based customary governance arrangements with contemporary democratic governance
- meeting the sometimes competing interests of funding agencies (which tend to focus on management outcomes and financial accountability) and community expectations (which tend to focus on engagement processes and compliance with cultural protocols)
- negotiating the complex layers of legal and cultural authorities that result from co-existing regimes of Indigenous cultural law, statute law, multitudes of tenures and native title. In some areas the same Country may be subject to the authority of an elected Community Council, a Land Trust established under state land rights legislation and a Prescribed Body Corporate established under national legislation to manage native title
- managing the diaspora of Indigenous people with inherent cultural rights and interests in Country. Many Indigenous people now live far removed from their traditional Country for which they retain customary rights, interests, obligations and responsibilities, making it very difficult for under-resourced Indigenous organisations to ensure the ongoing engagement of the appropriate Indigenous people in decision-making for Country.

Protected areas

Several terrestrial and marine protected areas in Australia are established under federal legislation (primarily the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)), but most are established under state and territory legislation.[7] The Director of National Parks is a corporation established under the EPGBC Act with the function of managing Commonwealth reserves. The Director is assisted in performing this function by the staff of Parks Australia (a division of the Department of Sustainability, Environment, Water, Population and Communities).

Some Commonwealth protected areas are managed with a Board of Management; in others advisory committees provide advice to the Director on management issues.

Under the EPBC Act, the Director of National Parks is responsible for:

- the administration, management and control of Commonwealth reserves and conservation zones
- the protection, conservation and management of biodiversity and heritage in Commonwealth reserves and conservation zones
- the protection, conservation and management of biodiversity and heritage in areas outside Commonwealth reserves and conservation zones

7 The diversity of approaches to the engagement of Indigenous people in Australian protected areas has been summarised in: D Smyth and G Ward (eds) *Indigenous Governance and Management of Protected Areas in Australia* (2009) AIATSIS e-book <http://www.aiatsis.gov.au/research/protectingcountry.html>; T Bauman and D Smyth, *Indigenous Partnerships in Protected Area Management in Australia: Three Case Studies (*2007). The policy implications are discussed in T Bauman and D Smyth, *Outcomes of three case studies in Indigenous Partnerships in Protected Area Management: Policy Briefing Paper for the Australian Collaboration,* 2—7, <http://www.aiatsis.gov.au/ntru/docs/researchthemes/ntlw/jointmanagement/policysuccess.pdf>, and historical overviews of Indigenous engagement in terrestrial and marine protected areas are available in: D Smyth, 'Joint management of national parks' and D Smyth, 'Management of sea country' in R Baker, J Davies, E Young (eds), *Working on Country: Contemporary Indigenous Management of Australia's Lands and Coastal Regions (*2001) 75–91, 60–74 respectively.

- consulting and cooperating with other countries with regard to matters relating to the establishment and management of national parks and nature reserves in those countries
- the provision of training in the knowledge and skills relevant to the establishment and management of national parks and nature reserves
- research and investigation relevant to the establishment and management of Commonwealth reserves
- making recommendations to the Australian Government Minister for the Environment and
- the administration of the Australian National Parks Fund.

Parks Australia is responsible for the management of the following national parks:

- Kakadu National Park, a World Heritage Area located in the north of the Northern Territory that is managed jointly with the Aboriginal Traditional Owners of the area
- Uluru-Kata Tjuta National Park, a World Heritage area located in central Australia that is managed jointly with its Aboriginal Traditional Owners
- Booderee National Park, in Jervis Bay Territory on the southeast Australian coast, that is managed jointly with the local Aboriginal community
- Norfolk Island National Park and Botanic Garden, in the Pacific Ocean off the east Australian coast
- Christmas Island National Park, in the Indian Ocean off the north-west coast of Australia
- Pulu Keeling National Park, on North Keeling Island in the Indian Ocean off the Western Australian coast.

Parks Australia is also responsible for managing a network of marine parks and research in Commonwealth (Federal) waters beyond three nautical miles from the Australia coast.

The Great Barrier Reef Marine Park, established under the *Great Barrier Reef Marine Parks Act 1975* (Cth), is managed by the Great Barrier Reef Marine Park Authority in collaboration with Queensland Parks and Wildlife Service, local Indigenous groups and other stakeholders. The Act contains several provisions for Indigenous engagement in the management of the marine park, including:

- representation Great Barrier Reef Marine Park Authority board
- representation on area-based and issues-based advisory committees, including the Indigenous Reef Advisory Committee
- the accreditation of Traditional Use of Marine Resource Agreements (TUMRAs), which are developed by local Traditional Owner groups to prescribe the traditional use of cultural significant marine resources, including dugongs and marine turtles.

Of Australia's World Heritage sites, two (Kakadu National Park and Uluru Kata-Tjuta National Park) are owned and jointly managed by Aboriginal Traditional Owners. Others, such as the Wet Tropics of Queensland and the Great Barrier Reef, have specific legislation that prescribes Aboriginal representation on management boards and advisory committees and a degree of recognition of Aboriginal cultural values in management of the sites. However, the designation of these areas as World Heritage did not occur with the free, prior and informed consent of the Aboriginal peoples associated with these areas. Such consent was not required by the World Heritage Committee at the time these properties were added to the World Heritage List. Three current initiatives indicate the development of new approaches to addressing Indigenous interests in World Heritage nomination:

- in the Wet Tropics of Queensland extensive research and consultation has taken place to initiate the possible re-listing of the area for its Aboriginal cultural values, in addition to the natural and scenic values for which it was originally listed
- in Victoria the Gundijmara Traditional Owners are leading the development of a World Heritage nomination for part of their traditional country[8] over which they have already succeeded in achieving national heritage status
- in Cape York Peninsula, the Queensland and Australian Governments are leading a consultation and assessment process for the nomination of parts of the Peninsula for World Heritage, with assurances that no areas will be included in a nomination without the consent of the Traditional Owners.

Native title and joint management

As noted above, the determination of native title over national parks has stimulated the development of joint management legislation in several jurisdictions. But even in the absence of that, recognition of native title, typically through the development of an Indigenous Land Use Agreement (ILUA) under the *Native Title Act 1993* (Cth), provides an additional opportunity for Indigenous people to negotiate

8 An area of lava flow and wetlands in which Aboriginal people have maintained a complex system of weirs and other management strategies to sustainably harvest freshwater eels, which formed a key resource for permanent Aboriginal settlements in the area.

joint management or other involvement in the management of protected areas. By 21 May 2012 the number of ILUAs registered with the National Native Title Tribunal had reached 628, but not all involved protected areas.[9]

In 2001, Arakwal National Park, on the north coast of NSW, was the first protected area in Australia to be established under an ILUA. The Arakwal ILUA recognises Aboriginal rights to use traditional resources within the park (subject to a plan of management) and provides for a joint management committee that advises the NSW National Parks and Wildlife Service about the management of the park. Unlike the boards of management in statutory joint management arrangements, however, the Arakwal Joint Management Committee does not have decision-making powers.

The determination of Djabugay people's native title in 2004 led to the negotiation of an ILUA outlining Djabugay native title rights and interests in Barron Gorge National Park in north Queensland, including the rights to hunt, fish, camp, conduct ceremonies and protect cultural sites. The ILUA also provides for the involvement of Djabugay people in the development of a plan of management, but falls short of delivering comprehensive joint management arrangements.

Indigenous Protected Areas

Indigenous Protected Areas (IPAs) emerged from the Australian Government's 1992 commitment to establish a system of protected areas that is comprehensive, adequate and representative of all the terrestrial bioregions of Australia. As some of the bioregions occur only on Aboriginal-owned land, a program was developed in collaboration with Indigenous representative organisations to provide funding and other support to enable Indigenous groups to establish protected areas on their lands. IPAs are planned, voluntarily declared (or dedicated) as protected areas managed by Indigenous people themselves. The IPA Program is an Australian Government initiative to support these activities, and to formally recognise IPAs as part of the NRS; but the IPAs are not government protected areas.

In recognition that many government protected areas had already been established on traditional estates without Indigenous peoples' consent, the IPA program also includes funding to enable Indigenous peoples to negotiate enhanced engagement in the management of existing government-declared national parks and other protected areas.

The first IPA was established in Nantawarrina in South Australia in 1998 and there are now 50 IPAs across all Australian states and mainland territories (except the Australian Capital Territory). There are currently an additional 34 IPA projects being planned, as well as seven 'co-management' IPA projects focusing on enhanced Indigenous engagement in existing protected areas. Funding and advice to support the planning and management of IPAs is provided by the Australian Government, but IPAs are established by Indigenous people independently of legislation, in accordance with the IUCN protected area *Guidelines* which state that protected areas can be managed by '*legal and other effective means*'. In practice, IPAs are typically managed by a combination of legal means (land ownership, community by-laws, legislated rights to use natural resources etc.) and other effective means (customary law, ranger patrols, liaison, education, signage, partnerships with conservation agencies, research etc.). IPAs are a form of community conservation area that formally contribute to the national and international protected area system.

A national meeting of Indigenous representatives in 1997 defined an IPA in the following way:

> *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.*

IPAs 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.

For the first 13 years of the program, IPAs were established only on Indigenous-owned land. IPAs now comprise over 25% of the total terrestrial protected area estate in the NRS. More recently, some Indigenous groups whose traditional estates have been alienated by the establishment of government national parks, forest reserves, and marine protected areas have been exploring the idea of establishing IPAs that can co-exist with those designations. The first of these IPAs based on Indigenous Country rather than Indigenous tenure was dedicated by Mandingalbay Yidinji people over their traditional estate near Cairns in north-east Queensland in November 2011, discussed further below.[10]

9 Australian Government, National Native Title Tribunal media release, 'Indigenous land use agreements surpasses the 600th milestone' 21 May 2012 <http://www.nntt.gov.au/news-and-communications/media-releases/pages/native_title_institutional_reforms.aspx>,viewed 21 May 2012

10 See <www.environment.gov.au/indigenous/ipa/declared/mandingalbay>.

While the Australian Government's IPA Program is initially the main source of funding for IPA planning and contributes to ongoing IPA management, most IPAs also develop partnerships with other government agencies, conservation NGOs, research institutions, philanthropic organisations and commercial corporations, and engage in fee-for-services activities, such as undertaking surveys for the Australian Quarantine and Inspection Service (AQIS). In the Northern Territory the government conservation agency has developed a program to co-locate its rangers or scientists on IPAs by invitation of the IPA managers, thereby providing additional day to day resources for managing the IPAs without threatening the autonomy of IPA managers.

Mandingalbay Yidinji Indigenous Protected Area

Mandingalbay Yidinji Country lies just east of Cairns across Trinity Inlet in North Queensland and includes marine areas, mangroves, freshwater wetlands, rainforested mountains, coastal plains, beaches, reefs and islands. Much of Mandingalbay Yidinji country has been divided into several protected areas managed by multiple government agencies:

- Great Barrier Reef Coast Marine Park
- Grey Peaks National Park
- East Trinity Environmental Reserve
- Malbon Thompson Forest Reserve
- Giangurra Council Reserve
- Wet Tropics World Heritage Area.

An IPA management plan[11] provides the framework for the recognition of Mandingalbay Yidinji cultural rights, interests and values across all the tenures within the IPA. The IPA has been recognised by each of the government agencies with legal responsibility for the management of the various tenures within the IPA, and collaboration occurs through an implementation committee chaired by a representative of Mandingalbay Yidinji people. Further Country-based, multi-tenure IPAs are expected to be declared or dedicated[12] by other Indigenous groups in the coming years.

The Mandingalbay Yidinji IPA joins Country back together by providing a framework for coordinating the management of land and sea protected areas requiring collaboration amongst Traditional Owners and government management agencies.

The anticipated resolution of additional native title claims by the end of 2012 will enable additional land and sea areas to be added to the IPA.

The voluntary nature of the Mandingalbay Yidinji IPA framework provides a degree of uncertainty about the long term viability of this approach to joint management. On the other hand the absence of legislative constraint has so far resulted in the development of multiple funding and other partnerships that may provide a robust co-management framework that is equal to or better than the joint management arrangements based on legislation.

In summary, the innovative aspects of this IPA include:

- the IPA is established over multiple tenures based on traditional Aboriginal estates (country), rather than being limited to land wholly owned by Indigenous people (as was the case for previous IPAs)
- the IPA incorporates existing government protected areas – the first time a national park, marine park and other government protected areas have been included in an IPA
- the IPA represents a new pathway to co-management of existing government protected areas, based on recognition of a Traditional Owner group's cultural connection and responsibility to country, rather than a legislatively based joint management agreement
- management planning and coordination is led by Traditional Owners, with voluntary collaboration by various government conservation agencies and other stakeholders.

The *Traditional Owner Settlement Act 2010* (Vic)

Other shared governance arrangements in the absence of Aboriginal land title have become possible in Victoria following the enactment of the *Traditional Owner Settlement Act 2010* (Vic).

Until 2010 Aboriginal people in Victoria had secured scant practical recognition of their social economic and cultural rights despite protracted litigation through the native title system. No formal joint management arrangements were in place for any national parks, although Aboriginal people were extensively involved in cultural site management and were represented on some advisory committees and had responsibilities for the management of cultural centres (such as Brambuk Cultural Centre at Gariwerd National Park).

In 2004, Victoria's Aboriginal people were recognised as the 'original custodians of the land' in the state Constitution, and in 2006 Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) included rights to identity and culture.

11 See <www.djunbunji.com.au>.

12 The first 49 IPAs were declared by their respective Indigenous groups; Mandingalbay Yidinji people chose to use the term 'dedicate' when establishing their IPA because it engendered greater acceptance among their government agency partners and was consistent with the IUCN protected area definition.

A significant reform was enacted in 2010 when the Traditional Owner Settlement Act provided for the recognition of traditional owner groups in Victoria, and for agreements to give effect to traditional land and natural resource rights. The legislation was enacted in response to perceived difficulties with the native title system, which required assessments of whether previous dealings with parcels of land had extinguished native title, which was a complex and expensive process that created uncertainty for many stakeholders and created often insuperable hurdles for traditional owners.

In 2008, the Victorian Government established a Steering Committee for the Development of a Native Title Settlement Framework comprising key government agencies, traditional owner representatives from the peak Victorian Traditional Owners Land Justice Group, and representatives from Native Title Services Victoria. It was chaired by prominent Indigenous Australian and 2009 Australian of the Year, Professor Mick Dodson. In 2009 the Government accepted the committee's report and recommendations, subject to Commonwealth funding.

The *Traditional Owner Settlement Act 2010* (Vic) enables the Victorian Government to negotiate Indigenous Land Use Agreements registrable under the *Native Title Act 1993* (Cth) directly with traditional owner groups, and to recognise traditional rights in relation to access, ownership, management, use, and development of certain public land, provided native title litigation is not pursued. Under the Act, overarching 'recognition and settlement' agreements sit above sub-agreements. 'Land agreements' deal with land grants or the joint management of land, including national and state parks. Registrable 'land use activity agreements' recognise and protect traditional owner rights in public land, as well as existing third party rights in relation to four types of future acts. The Victorian Civil and Administrative Tribunal (VCAT) has jurisdiction to resolve disputes where a proponent and a traditional owner group entity have been unable to agree about activities proceeding. 'Funding agreements' establishing income-earning trusts are negotiable to support traditional owner corporate entities to perform their functions. 'Natural resource agreements' deal with non-commercial forms of access and use of natural resources such as traditional hunting and gathering for personal, domestic or non-commercial communal needs.[13]

13 Victorian Parliament, Premier John Brumby MP, 'Second reading speech Traditional Owner Settlement Bill', *Hansard*, 28 July 2010, 2750–55.

This legislation was enacted to redress the challenges, constraints, frustrations and disappointments that had been experienced pursuing native title land and sea claims in Victoria, including the:

- high financial cost of pursuing claims
- excessive time required to achieve an outcome – 10 years and more
- emotional trauma of providing evidence about cultural connection to country as part of land claim hearings
- passing away of knowledgeable elders before land claims have been finalised
- disappointment and grief when a claim is unsuccessful (such as the Yorta Yorta case) despite years of emotionally draining court proceedings
- lack of resources and capacity to manage or benefit from land once it is successfully claimed
- social and economic divisions created within Indigenous communities as a result of successful claims benefitting some groups and not others.

To date only the Gunaikurnai Settlement Agreement has been reported as having been concluded under the Act.

Conclusions

The exponential growth in Indigenous engagement in protected area management and other forms of community conservation results from government policy responses to pressure. It also follows Indigenous groups' reassertion of their rights and responsibilities to culture and country, enabling the forging of a new economic niche within contemporary Australian society as managers of the Australian environments – something their ancestors and cultures had done successfully for millennia. Though there are many statutory land claims and native title claims yet to be settled, Australia is currently undergoing a transition from an era dominated by rights-based Indigenous legal claims and conflicts, to an era focused on the sustainable development of Indigenous communities and the pursuit of opportunities that successful land claims may or may not have opened up. Such a transition requires not only a refocus of effort from the legal to the economic, but it also requires a psychological shift from contestation to collaboration. It also requires a change of mindset from Indigenous people as victims of history to leaders of their own destiny.

There remain several fundamental challenges within joint management frameworks that may limit their achievement even if and when they become uniformly available across Australia, including that:

- joint management arrangements are prescribed by government legislation and constrained by government budgets, resulting in an inevitable power imbalance between government conservation agencies and joint management Indigenous partners
- resulting from this imbalance and exacerbated by often limited capacity within Indigenous groups, there is a tendency for government agencies to take the lead in planning, agenda-setting and management, and for Indigenous partners to be more reactive than proactive
- there remains a degree of coercion in almost all joint management arrangements, in that the return of land ownership to Aboriginal people is contingent on their acceptance of a protected area on their traditional country.

IPAs, being voluntarily established by Indigenous people themselves, are less coercive and less constrained by legislation. But without a legislated government partner, IPAs are potentially less financially stable. On the other hand, IPAs have the freedom to include multiple partners which, under effective leadership, may result in a more secure funding base.

Some of the more successful IPAs have budgets, personnel, equipment and other resources equivalent to or exceeding those found in government protected areas.

The Mandingalbay Yidinji represents a new stage in the development of the IPA concept in Australia. IPAs established over one or more protected area, such as the Mandingalbay Yidinji IPA and others currently being planned, offer both the independence of an IPA and an alternative pathway to joint management. Without underpinning legislation, however, the long-term security of these arrangements depends on ongoing leadership by Indigenous people themselves.

Indigenous landowners who have custodianship and stewardship responsibilities for areas of land or water in community conservation areas are likely to benefit from the provision of adequate resources and training, enabling them to develop and implement appropriate and culturally-sensitive records of traditional knowledge and management practices and caring for Country plans and compliance frameworks. Enhanced enforcement powers and regular monitoring and evaluation would be an expected part of this.

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Contributions to the NELA Bulletin may be submitted to the NELA Secretariat at any time and need to be received in the last week of each even-numbered month (Feb/Apr/Jun/Aug/Oct/Dec).