

## 6 Indigenous Land Associations

**This chapter explores the relationship between Indigenous peoples and the land as well as the current extent of Indigenous involvement in land management and ownership. Opportunities to involve Indigenous people, including groups and representative organisations, in future public land management decision-making are examined.**

### HISTORY OF INDIGENOUS LAND ASSOCIATIONS

Indigenous associations with the land are profound and may be difficult for non-Indigenous people to understand. The Terms of Reference for the River Red Gum Forests Investigation specifically direct VEAC to consider possible opportunities for Indigenous management involvement and the Yorta Yorta Co-operative Management Agreement covering public lands within the study area (see Appendix 9). These matters are explored below together with information on public land management options and general models used for Indigenous involvement in land management. Aboriginal cultural heritage and its management are described in chapter 12 Cultural Heritage.

#### Relationship with the Land

For at least the past 50,000 years the River Red Gum forests along the Murray River and its tributaries have supported and nurtured Indigenous people. Resources gathered from the forests include plants, animals, water, minerals and stone. These resources were used to sustain a lifestyle that not only serviced basic needs such as food, clothing, tools, medicine, housing and heating, but also a rich cultural life with jewellery, ornaments, transport, mythology, art and crafts (Atkinson & Berryman 1983).

Understanding the physical environment and managing natural resources formed an important and integral part of the lifestyle patterns of everyday living for Aboriginal people. Accumulated knowledge gathered over hundreds of generations about specific foods, weather conditions, and seasonal patterns played an important role in influencing how Aboriginal people lived and practised their cultural beliefs. Significant forward planning and forethought was given to what plant, other food stocks and natural resources would be available in each location at different times of the year.

One of the best-known and most recorded land management practices was use of fire. Small-scale low-intensity fires were used to clear the landscape of bushy growth, and stimulate a flush of new shoots to attract animals to the local area. This practice formed an important food source for many Indigenous communities, although the specific details of timing and intensity have in many cases been lost (Esplin 2003).

River Red Gum forests supported many Aboriginal peoples including Bangerang, Bararapa Bararapa, Dhudoroa, Dja Dja Wurrung, Jarra Jarra, Jupagulk, Latje Latje, Ntait, Nyeri Nyeri, Robinvale, Tati Tati, Taungurung,

Wadi Wadi, Wamba Wamba, Way Wuru, Wergaia, Yorta Yorta, and Yulupna. Each of these groups had deep spiritual links with the land.

These Traditional Owner groups have spiritual ties with specific tracts of land established over hundreds of generations often based on belief systems, practices, social and ceremonial rules and responsibilities that have developed over hundreds of generations and continue to evolve and exist today. The connection between people and land is expressed in terms of 'being related to' rather than 'owning' the land or country. Aboriginal people often express this relationship as being custodians rather than landowners.

*Country is a place that gives and receives life. Not just imagined or represented, it is lived in and lived with.*

*Country in Aboriginal English is not only a common noun but also a proper noun. People talk about country in the same way that they would talk about a person: they speak to country, sing to country, visit country, worry about country, feel sorry for country, and long for country. People say that country knows, hears, smells, takes notice, takes care, is sorry or happy. Country is not a generalised or undifferentiated type of place, such as one might indicate with terms like 'spending a day in the country' or 'going up the country'. Rather, country is a living entity with a yesterday, today and tomorrow, with a consciousness, and a will toward life. Because of this richness, country is home, and peace; nourishment for body, mind, and spirit; heart's ease.*

*Each country has its sacred origins, its sacred and dangerous places, its sources of life and its sites of death. Each has its own people, its own Law, its own way of life. In many parts of Australia, the ultimate origin of the life of country is the earth itself... (Rose 1996)*

In some locations in the study area, Aboriginal people were also very active in altering the physical landscape to take advantage of natural seasonal events. Stone fish traps found at Barmah forest are evidence that local Aboriginal people had successfully manipulated waterways to provide readily accessible food sources.

Hundreds of other Indigenous cultural heritage sites are recorded from the study area including fresh water middens, scar trees, surface scatters, axe grinding grooves and mounds containing charcoal, burnt clay or stone heat retainers from cooking ovens, animal bones, stone tools and burial sites such as those at Barmah and Robinvale. Aboriginal associations with country are not limited to an interest in these particular sites or places, although the physical evidence found today is nonetheless important (see chapter 12).

Geographical or totemic features such as hills and rivers were (and still are) used to define and confirm tribal boundaries or country (see Map 6.1). Aboriginal people moved frequently between areas and met other groups for purposes of trade, ceremony, social gatherings, marriages, and so on. Highly developed and agreed protocols governed movements between or entering the

traditional area or country of another group. Many of these protocols still apply and tribal boundaries are observed by many Indigenous people today.

These protocols are of particular relevance for the River Red Gum Forests Investigation because Traditional Owners continue to assert their right to exercise traditional laws and customs including accessing their homelands, decisions regarding who within the group is authorised to 'speak for country' and what can be spoken about. The continued existence of recognised language and clan groups who have responsibility for areas that form part of the study area will be a major consideration in the development of recommendations for River Red Gum Forests public lands. These Traditional Owner groups are recognised by government as having aspirations and authority to participate in discussions and decision-making processes for specific areas of land or country, particularly in relation to cultural heritage matters (DSE 2004g).

### Post-Contact Aboriginal History in Victoria

The first European explorers to travel through the study area were Hume and Hovell in 1824, Sturt in 1830 and Mitchell in 1836, closely followed and in some cases preceded by cattle drovers and squatters who began to settle the region with little regard for the Indigenous inhabitants. Squatting was legalised in 1836 and Aboriginal dispossession increased as more people moved to the area.

By 1838 Aboriginal peoples had started a concerted resistance campaign retaliating against the invasion of their homelands by harassing stock and killing isolated Europeans (e.g. conflicts at Faithfull Creek near Benalla, Rufus River near Lake Victoria in NSW). Europeans responded by attempting to arrest Aborigines, frequently resulting in large numbers of Aboriginal deaths (Clark 1999). There are reports of massacres, abuses and deliberate poisoning—in many cases involving ancestors of the present-day Traditional Owners from the study area (Christie 1979; Clark 1995; Clark 1999).

The official response to these problems was to concentrate the Aboriginal population in missions or reserves. Missions were established and progressively disbanded at Buntingdale near Geelong (1836–1848), Mitchellstown on the Goulburn River (1839–1940), Lake

**Figure 6.1 Canoeing at Maloga (Caire, N.J. c.1884). The River Murray near Echuca and Barmah has always been an important site for Yorta Yorta and Bangerang peoples.**



Source: Reproduced with permission of National Library of Australia, Image: an3096938-3-v.

Boga (1851), Yelta near Wentworth (1869–1885), Coranderrk near Healesville (1863–1924), Gayfield at Kulkyn Station (1874), Maloga NSW (1874–1888), Ebenezer near Dimboola (1859–1904), Cummeragunja near Moama NSW (1881–1953), Wahgunyah or Lake Moodemere (1891–1937) and Moonacullah near Balranald NSW (1916–1961). A number of Aboriginal people and families who originally occupied land in the study area were forcibly moved to other parts of Victoria or New South Wales. Many were relocated to missions at Mitchellstown, Maloga, Cummeragunja and particularly to Coranderrk where many children were sent (Atkinson & Berryman 1983).

Illness and starvation brought about by dispossession forced many Aboriginal people to depend on mission life. Although initially people were free to come and go, others were forcibly removed from their land and families. The social conditions of missions were usually very harsh and at some missions the policy of removing children began almost immediately with rations withheld if the children remained with their parents. Managers had a great deal of control of the movements of people to and from the mission grounds. Typically Indigenous languages and other customs were forbidden. Aboriginal people were frequently exposed to violence and abuse outside and sometimes also within missions (Clark 1999).

What written documentation exists of traditional Indigenous culture was largely prepared by squatters and missionaries, who may have been biased or lacked in-depth understanding of social structures or practices. However, a vast volume of oral history has been passed on by Indigenous communities, consistent with past traditions.

By the end of the 19th century only a small population of Aboriginal people lived on missions and government stations, with most living and working in nearby areas. Most missions and stations were phased out by the 1920s. Some mission lands are now under the control of Aboriginal communities (e.g. Cummeragunja and Coranderrk).

### Present Day

Aboriginal people have continued to live throughout Victoria, often with strong ties to their original clan and tribal areas. Today, Aboriginal people contribute a vibrant and valued aspect of Australia's multi-cultural landscape expressing unique cultural identities, and having an important role to play in providing advice to government about land management issues. Whilst open racism has declined as a result of more enlightened community attitudes and anti-discrimination legislation, Aboriginal disadvantage in health, education and employment remains a challenge for governments and for Aboriginal people (see chapter 8 Current Social and Economic Setting).

For many years, equality and social justice has been the highest priority for Aboriginal people. Recent Australian history has been marked by an ongoing effort to gain official recognition and compensation for Indigenous peoples' individual and collective cultural rights. In 1835, John Batman signed a 'Treaty' with eight Aboriginal 'Chiefs' to acquire large tracts of land in what is now





Source: Reproduced with permission of National Library of Australia, Image: an3096938-2-v. Caire, N. 1884.

the State of Victoria. The British Government repudiated the Treaty asserting that (under British law) Aboriginal people did not have title to or ownership of the land—the notion of *terra nullius* (for further discussion of this complex issue see Borch 2001; Buchan & Heath 2006).

Successive generations of Aboriginal people have used the legal system and other means to gain recognition for their rights and to regain control and title over their traditional lands. Significant events include:

- Correnderrk Indigenous community petition to the State government (1886) requesting permission to leave the premises for work and the good of their health;
- Cummergunja 1939 walk-off in which over 200 Indigenous residents protested the poor conditions—the first mass strike of Aboriginal people in Australia;
- the 1967 Referendum to alter the Australian Constitution conferred legal responsibility for all Aboriginal people in Australia on the Commonwealth Government;
- the Land Rights Movement in the 1960s which led to the 1968 Yirrkala Aboriginal people (Arnhem Land, NT) claim seeking recognition of traditional title to land;
- the Aboriginal Tent Embassy set up on lawns of Parliament House (Canberra) in 1972;
- the first motion in the new Parliament House (Canberra) in 1988 acknowledging Aboriginal and Torres Strait Islander people as ‘the original occupants of Australia’;
- the 1992 ruling by the High Court of Australia rejecting the doctrine that Australia was *terra nullius* (land belonging to no-one) at the time of European settlement confirming that the common law of Australia recognised the existence of native title to land (*Mabo v. Queensland*);
- the 1993 High Court majority decision which held that Queensland pastoral leases under consideration in the *Wik* case did not confer exclusive possession upon the lessees;
- the Commonwealth *Native Title Act 1993*,
- Yorta Yorta Native Title claim and appeal (described in more detail below); and
- in Victoria, the 2005 Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk native title claim negotiated agreement which confirmed that native title exists in parts of the determination area comprising some 45 ha of public land in western Victoria.

Access to natural resources on public land remains a commonly expressed aspiration of Indigenous people within the study area. This includes take and use of wildlife, fish and plants for personal, domestic and under certain conditions commercial use. Aboriginal people are subject to the same laws or policies as other people in relation to use of resources. However, the *Native Title Act 1993* allows native title holders to carry out certain activities under certain conditions, including hunting, fishing, gathering and camping. Similarly, the *Wildlife Act 1975* allows the Secretary of DSE to permit the take, use and so on of wildlife for Aboriginal cultural purposes while the *Fisheries Act 1995* enables a special permit to be issued for fishing associated with a cultural or ceremonial event.

## CURRENT AND POTENTIAL INDIGENOUS INVOLVEMENT IN LAND MANAGEMENT

### Indigenous Land Ownership in Victoria

Indigenous policy, strategies and resources are fragmented and distributed across various government and non-government bodies. There is no central database or land registry containing specific information about the amount of land owned by Victorian Aboriginal people, groups and organisations or by Victorian Aboriginal businesses (private).

The total area Aboriginal people ‘own’ and manage in Victoria is approximately 11,340 ha equating to approximately 0.05 percent of the state (228,138 km<sup>2</sup>) (Strategy for Aboriginal Managed Lands in Victoria Project team 2003). This land comprises the following:

- 8158 ha (68 percent) is used primarily for non-commercial activities. Except for Lake Tyers the seven largest blocks of land are in southwest Victoria:
  - > Lake Condah 1820 ha
  - > Lake Tyers 1627 ha
  - > Framlingham Forest 1120 ha
  - > Deen Maar Indigenous Protected Area 453 ha
  - > Framlingham 248 ha
  - > Tyrendara Indigenous Protected Area 480 ha
- 3770 ha (32 percent) is used mainly for commercial purposes.

These figures do not include land purchased by the Commonwealth under the Community Housing Infrastructure Program (CHIP) or land purchased by the Aboriginal Housing Board of Victoria. Approximately 1000 ha at Cummergunja Mission is owned by the NSW Aboriginal Land Council and occupied by Aboriginal people—the majority of whom are from Victoria—and 4047 ha of land at the Warrakoo property in NSW near Mildura owned by Mildura Aboriginal Corporation.

Properties ‘owned’ by Indigenous communities or groups purchased through Commonwealth and State or Territory governments and the Aboriginal and Torres Strait Islander Commission (ATSIC) have caveats on the title which constrain or restrict the sale or mortgaging of property subject to approval by the relevant agency. The existence of caveats means that, in most cases, the land cannot be used by Aboriginal land holders to secure finance for enterprise development.

**Table 6.1 Summary of area in Victoria owned by Indigenous people.**

Land Acquisition Method	Area (ha)	% of Total
Land acquired through Victorian Legislation	1710	15
Land acquired through Commonwealth Legislation	1163	10
Land acquired through ILC purchases	4273	38
Land acquired through Government Department grants*	4196	37
<b>Total</b>	<b>11,342</b>	

Note: Asterisk denotes that ATSIC land is included in this category

The Indigenous Land Corporation (ILC) has purchased 28 properties on behalf of Indigenous people or groups in Victoria. In limited circumstances, the ILC has allowed land holders to seek loans using the land as security, and in some instances provided security on behalf of the land holder.

When compared with land owned or controlled by Indigenous peoples in most other Australian States and Territories, the amount of land owned by Victorian Aboriginal people, groups and organisations is small (Table 6.2). This partly reflects higher Indigenous population numbers interstate, both numerically and as a proportion of the general population, and the existence of more Aboriginal specific communities in these States and Territories (many of which are overseen by Aboriginal Local Governments).

It should be noted that information contained in Table 6.2 is a minimum estimate. The actual extent of land holdings by Aboriginal people has increased since these calculations were made as a result of land purchases by the ILC and governments, and under various management agreements, although detailed information is difficult to obtain and no nationwide summary has been prepared for more than ten years e.g. Mutawintji National Park (NSW) was returned to its Traditional Owners in 1998 and comprises 68, 912 ha.

#### Native Title

On 20 May 1982, Eddie Mabo and others of the Meriam people began their legal claim for ownership of the island of Mer in the eastern Torres Strait. It was not until 3 June 1992—by which time Eddie Mabo had died—that the case was decided. The High Court determined that the Meriam people did have traditional ownership of their land and that British possession had not eliminated their title—‘the Meriam people are entitled as against the whole world to possession, occupation, use

and enjoyment of the lands of the Murray Islands’ (Mabo and Others v. QLD (No. 2) 1992).

The judgments of the High Court in the Mabo case inserted the legal doctrine of native title into Australian law. In recognising the traditional rights of the Meriam people to their islands, the Court also held that native title existed for all Indigenous people in Australia prior to Captain Cook’s declaration of possession in 1770 and the establishment of the British Colony in 1788 (AIATSIS 2004). The new doctrine of native title replaced the doctrine of *terra nullius* (no-one’s land) on which British claims to possession of Australia were based. In recognising that Indigenous people in Australia had prior title, the Court held that this title exists today in any portion of land where it has not legally been extinguished. This decision altered the foundation of Australian land law.

Following the High Court decision, the Federal Parliament passed the *Native Title Act 1993*, enabling Indigenous people throughout Australia to claim traditional rights to unalienated Crown land. The Act adopts the common law definition of ‘native title’ as a recognition of rights and interests over land and water possessed by Indigenous people in Australia under their traditional laws and customs.

The Act was extensively amended in 1998 (the ‘Ten Point Plan’) following the 1996 *Wik v Queensland* High Court native title decision, which clarified that native title rights and interests may co-exist over land which is or has been subject to a pastoral lease, and possibly other forms of leasehold tenure.

The main objectives of the *Native Title Act 1993* are to:

- provide for the recognition and protection of native title;
- establish ways in which future dealings affecting native title may proceed and to set standards for those dealings;

**Table 6.2 Area owned in Australia by Indigenous people (areas are in thousands of square kilometres).**

Category	NT	WA	SA	QLD	NSW	Vic	Tas	ACT	Total	% of Aust
Freehold	516.8	-	189.0	20.5	0.4	<0.1	-	-	726.7	9.5
Leasehold	19.2	126.1	0.6	18.9	1.1	<0.1	-	-	165.9	2.1
Reserve	-	199.4	-	2.8	-	-	-	-	202.2	2.6
<b>Total</b>	<b>536.0</b>	<b>325.5</b>	<b>189.6</b>	<b>42.2</b>	<b>1.5</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,094.8</b>	<b>15.24</b>
% of Total	49.0	29.7	17.3	3.9	0.1	<0.1	0.0	0.0		

Source: Land Tenure database 1993, Geoscience Australia, ©Commonwealth of Australia

- establish a mechanism for determining claims to native title; and
- provide for the validation of developments invalidated because of the existence of native title.

The Act also established the National Native Title Tribunal and governs how native title applications are administered across Australia. A number of Aboriginal groups have submitted claimant, non-claimant and compensation applications to the National Native Title Tribunal. A 'Claimant Application' made to the Tribunal over land owned by Commonwealth or State or Territory governments does not confer land ownership to the applicant. The Tribunal may confirm that 'native title' exists to a specific area of land, however, this usually relates to the applicant having the right to continue to practice their law and customs over traditional lands and waters while respecting other Australian laws. This could include visiting an area to protect important places, making decisions about the future use of the land or waters, hunting, gathering, and collecting bush medicines (NNTT 2000).

Victorian Traditional Owner groups have continuously stated that they and previous generations have never sold, traded or freely given their traditional lands to European settlers or any Australian government. This includes all public land within the River Red Gum Forests study area. To date, Victorian Aboriginal people have lodged 73 native title applications with the Tribunal (NNTT 2006c).

#### *Yorta Yorta People Native Title Claim*

One of the first native title applications was submitted on 21 February 1994 by Victoria's Yorta Yorta people. The claim area covered 1140 sq km of land and waters along the Murray, Ovens and Goulburn Rivers in Victoria and 720 sq km of land and waters in New South Wales bounded roughly by Albury, Finley, Deniliquin, Cohuna, Shepparton, Benalla and Wangaratta. A significant portion of public land within the study area lies within traditional country claimed by the Yorta Yorta people. The Yorta Yorta people sought (among other rights):

- the right to use, occupy, inhabit and possess the area and the natural resources;
- the right to restrict access to the claimant area;
- the right to exercise their rights, obligations and duties in accordance with their traditional laws and customs; and
- the right to use mineral and natural resources found in or below the area.

On 18 December 1998, Justice Olney of the Federal Court determined that native title did not exist in relation to the claimed land and waters because a continuity of acknowledgment and observance of traditional laws and customs could not be demonstrated. On 28 January 1999 the Yorta Yorta people appealed this decision asserting, among other things, that an incorrect test was applied to decide whether native title existed. The Yorta Yorta people also argued that Justice Olney had erred in his evaluation of the oral evidence of the native title claimants. The appeal made to the Federal Court in February 2001 and a subsequent appeal made to the full bench of the High Court in December 2001 were both dismissed, albeit not unanimously. The

determination issued by the National Native Title Tribunal stated that 'native title does not exist' in areas claimed by the Yorta Yorta people. Yorta Yorta people continue to pursue land justice and compensation for loss of their traditional country.

This process of litigated native title determinations has proven to be extremely long, expensive, resource-intensive, with long-term uncertainty for all parties involved. It has also proved painful and divisive with many assumptions and interpretations of past Indigenous relationships to country made by non-Indigenous people, and places modern legal judgements upon what current practices are 'traditional' in order to demonstrate continuity with country. In essence native title is a legal concept that has developed a specific legal meaning as cases have been pursued through the courts. The anthropological meaning of native title—traditional law and customs and connection to country—is likely to be in many cases very different to the legal definition that has evolved under the *Native Title Act 1993* (Ellemor 2003).

The very slow progress with Victorian native title claims through the courts is evident. Current Victorian Government policy is to mediate rather than litigate native title applications and to comply with the provisions of the *Native Title Act 1993* (DoJ 2000). Government has developed Guidelines for Proof of Native Title, Victoria (DoJ 2001).

The native title process has been the main mechanism used by governments to determine whether the rights of Indigenous people still exist for specific Crown land areas. There are, however, a number of other options that can be implemented which will significantly reduce the costs associated with a native title claim and recognise the relationship that Indigenous people have with country.

#### *Negotiated Agreements Approach —Yorta Yorta Co-operative Management Agreement*

On the June 10, 2004, the Victorian Government signed a Co-operative Management Agreement with the Yorta Yorta People which established a formal and on-going role for Yorta Yorta people in the management of 50,000 hectares of Crown land and waters. The agreement covers Kow Swamp, Barmah State Park, Barmah State Forest, and public land and waters along the Murray and Goulburn Rivers. The Agreement does not affect fees or access arrangements to parks, forests or reserves. An extract from the agreement is presented in Appendix 9. The Joint Body was formally appointed in December 2005 at which time the agreement commenced. There is an opportunity for ongoing internal review of the Joint Body role and structure and review by the Minister after two years.

The Yorta Yorta Co-operative Management Agreement is a partnership based on recognition, mutual respect and shared goals under which the State of Victoria recognises the cultural connection Yorta Yorta people have to areas covered by the Agreement. Key points under the Agreement include the establishment of a committee known as the Yorta Yorta Joint Body to provide advice to the Minister for Environment in relation to management of designated Crown land and

waters. The Joint Body is funded to employ staff for work outlined under the agreement and provides a forum in which ideas may be exchanged, management issues discussed and recommendations made for the future use of land and water under the agreement.

Government decision-making processes and management outcomes involve Traditional Owners, and the Minister must consider recommendations of the Joint Body as well as other bodies with management responsibilities. The Minister for Environment retains ultimate decision-making authority.

#### *Indigenous Land Use Agreements (ILUA)*

Aboriginal native title groups may enter into voluntary Indigenous Land Use Agreements (ILUA) with land holders over the use and management of land and waters as well as about matters such as exploration and mining developments, sharing land and exercising native title rights and interests. ILUAs can be made separately or as part of a formal native title determination. Courts are not involved in the ILUA process which is conducted entirely between the parties and may relate to specific issues such as future developments, coexistence of native title rights with other rights, access to an area, extinguishment of native title, and compensation.

By making agreements, Aboriginal people have in some places gained benefits such as employment, compensation and recognition of their native title whilst other parties to the agreement may obtain the use of land for development or other purposes. Since the *Native Title Act 1993* was amended in 1998 the Native Title Tribunal has registered 229 ILUAs (area agreements) throughout Australia between Indigenous groups and others—including pastoralists, miners, state, federal and local governments (NNTT 2006a) (Table 6.3). A broad range of agreements has been reached over national parks, exploration areas, local government areas and pastoral leases (NNTT 2006a). Examples of recent agreements are provided below.

#### *Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalak Native Title Determination*

The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk native title determination (finalised in December 2005) was the first to be made by agreement or consent in Victoria. All parties agreed, through mediation, that the native title claimants have non-exclusive rights under traditional laws and customs over part of the area they claimed in the Wimmera region of western Victoria. These rights are also subject to the laws of the State of Victoria and the Commonwealth of Australia and the terms and conditions of co-existence protocols between the parties established under the agreement (NNTT 2006d).

The consent determination is limited to approximately 26,900 hectares of Crown reserves along the banks of the Wimmera River, and does not include the waters of the river. This represents about two to three per cent of the original claim area. Part of the agreement comprises the grant of freehold title to three parcels of land (15.7 ha in total) over which the native title holders demonstrated a strong cultural and historical connection (including land near the former Ebenezer Mission site). The terms of the settlement involve a determination that native title does not exist over the remainder of the claim area, although native title holders will have other rights and benefits in the remaining area (see below).

The ILUA sets out how and when the native title holders will engage with the Victorian and Australian Governments about future dealings in the agreement area. The rights of others, whether covered by the agreements or where native title exists, have not changed. All non-native title interests within the area are recognised and protected by the determination. For example, a person with a grazing licence in the area is able to continue to operate according to their grazing licence and there will be no change to current public access to the area.

Among other things, the ILUA ensures that the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples will continue to have a say about certain types of developments in the area where their native title rights have been recognised. The ILUA acts as an umbrella agreement for several other related agreements that form part of the settlement package between the native title claimants and the Victorian Government but which are not part of the consent determination. These related agreements provide for a range of other measures, including:

- recognition (including signage) of the cultural ties the native title claimants have to the area;
- establishment of a consultation process for certain types of developments;
- streamlined processes for the approval of licences and permits for Traditional Owners to hunt, fish, gather and conduct cultural events;
- co-operative management of some areas e.g., national parks; and
- funding to support administrative expenses, capital funding for a cultural centre and freehold land improvements.

#### *Adnyamathanha Native Title Claim (South Australia)*

A recent ILUA and associated co-management agreement negotiated between the South Australian Government and the Adnyamathanha native title claimants provides for the Traditional Owners to co-

**Table 6.3 The numbers of Indigenous Land Use Agreements (Areas) registered to 30 June 2006 in each State or Territory.**

ILUA	QLD	NT	Vic	NSW	SA	WA	ACT	TAS	Total
Total	117	73	22	5	9	3	0	0	229

Source: NNTT website last updated 30-6-2006, ©Commonwealth of Australia

manage the Vulkathunha-Gammon Ranges National Park in the northern Flinders Ranges (NNTT 2006b). This is the first such agreement relating to a national park in South Australia. As part of the agreement, the native title claimants excised the park from the claim area in exchange for recognition of traditional rights and interests, and equal representation on the board appointed to manage the park. Public access to the area encompassing about 128,000 ha will not be affected by the ILUA.

Resolution of the native title claim covering the national park via an ILUA process has allowed the claim over the remaining area to proceed. This process has been facilitated by a statewide ILUA strategy (SAMLISA Steering Committee 2000) and supported by the 2004 amendments to the legislation governing national parks in South Australia (NNTT 2006b).

**Models of Indigenous Involvement in Land Management**

Indigenous people are involved to varying degrees in land management throughout Australia. Various models of land management have been used to describe the level to which Aboriginal people are involved.

A spectrum of arrangements exists for the involvement of Indigenous people in land and resource management. These can be divided into several categories, with a grouping of three categories commonly referred to as co-operative management (Figure 6.2).

The difference between the various co-management and consultative arrangements, in particular, is not always distinct. Consultative management is considered by some to be a lower-level decision-making structure than forms of co-management and joint management. However, this is largely dependent upon the relationship established between Traditional Owners and land management bodies.

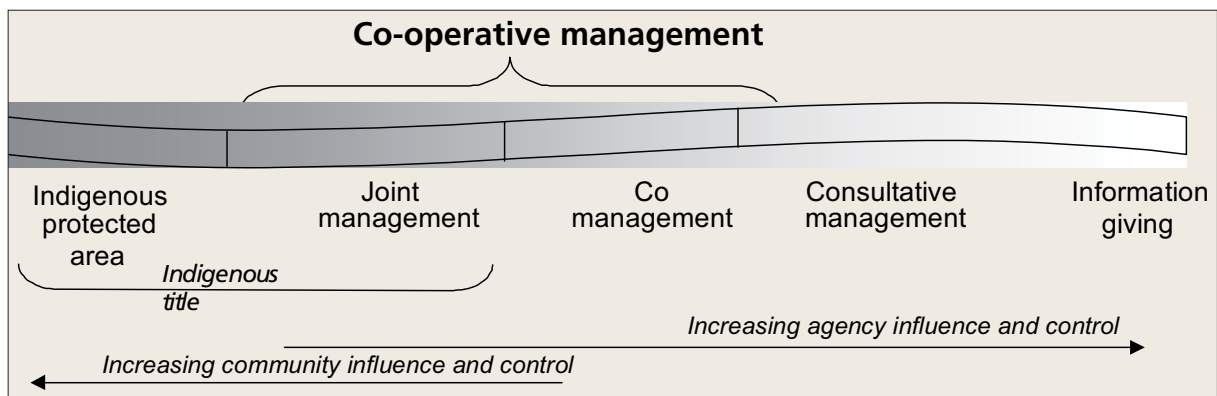
While there is no blueprint for successful arrangements, the arrangements offer an important and flexible mechanism to test and develop cooperative relationships between management partners, making long-lasting agreements easier to achieve. It is possible a Traditional Owner group may initially become involved in land and resource management through a consultative model and progress to another model with more decision-making power as partnerships, capacity and capabilities develop.



This staged approach perhaps offers a way of limiting the disappointment felt by Traditional Owners when aspirations for governance and decision-making powers have not been met because plans for increased involvement have progressed only where community capacity and management relationships have become established. It also limits outside criticisms that target a perceived inability for a ‘new’ Indigenous land management regime to meet mainstream expectations or standards.

Described below are examples of existing arrangements under Consultative, Co-management, Joint management and Indigenous Owned or Managed Land models, with examples provided for each. Possible approaches for Indigenous land management and the way in which these models have been used is described in chapter 19.

**Figure 6.2 Current arrangements for Indigenous involvement in public land management.**



Source: Modified after Borrini-Feyerabend (1996).



### *Consultative Management*

Consultative Management involves consulting Indigenous people and groups about management matters, but without any formal role in decision-making and limited recourse if a decision is unfavourable or contrary to Traditional Owner practices or desires for land management. This is the main model used by the Department of Sustainability and Environment (DSE) and Parks Victoria (PV) in its dealings with all stakeholders, including Indigenous groups. Consultative management arrangements provide an entry into public land management that may progress to arrangements with greater decision-making responsibilities over time.

The Yorta Yorta Co-operative Management Agreement is an attempt to establish a model for Indigenous Community participation in public land management in a more structured and formal way. While called a co-management arrangement, there is no authority vested in the Joint Body with regard to land management decision-making.

### *Co-Management*

Co-management enables certain public land management issues to be addressed in a close working relationship between government and one or more Aboriginal groups, in accordance with a memorandum of understanding or other forms of agreement. Management decisions are shared to varying extents between the Aboriginal group or groups and the state agency commonly through a body such as a board, committee of management or advisory body, with ultimate decision making powers remaining with the jurisdiction. In other forms of co-management, the body could also include other interest groups in, for example, an advisory group or committee of management comprising representative interests.

In Victoria, management arrangements with the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk

and Yorta Yorta peoples are restricted to an advisory capacity under the current provisions of the *National Parks Act 1975*. Management responsibility, including resource allocation, remains with the government land management agency and overall responsibility with the Minister. These examples are more clearly *consultative* than *co-management* models of land management.

*The Forests Act 1958* and the *Crown Land (Reserves) Act 1978* contain provisions that enable increased levels of involvement and shared decision-making with Indigenous groups in State forests and Crown reserves. Recently a co-management arrangement has been established between government and Latji Latji Traditional Owners and other key community members for two areas of cultural heritage significance in Wallpolla West State Forest. The area will be managed as an Archaeological and Natural Interests Reserve under the *Forests Act 1958*. The committee of management has evolved from a working group established in 2003 to undertake rehabilitation and protection works for Aboriginal burial sites located on the floodplain forests west of Mildura.

An example of co-management is the recent agreement between the South Australian Government and the Adnyamathanha native title claimants to jointly manage the Vulkathunha-Gammon Ranges National Park (see above). Under the ILUA the Traditional Owners will be involved in all management decisions and have equal representation on the board appointed to operate the park (NNTT 2006d). In NSW the National Parks and Wildlife Service (NPWS) has established at least nine co-management arrangements in which the government and local Aboriginal groups share responsibility for management and decision-making.

### *Joint Management*

Joint Management transfers title to Crown land to an Aboriginal group or groups and then leased back to the

State for a finite period or some other form of agreement where existing rights and interests are guaranteed. This is sometimes referred to as a 'hand-back lease-back' model of land management. Management decisions are shared between Traditional Owners and the relevant land management agency of government (the lessee) normally through a body of management. The lease agreement continues beyond its agreed term until a new lease is negotiated. This guarantees the continuation of existing rights and interests, including those of the State's for decision-making authority, and is usually secured by legislation.

An example of Joint Management is Kakadu National Park and World Heritage Area in the Northern Territory comprising approximately 50 percent Aboriginal land under the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976*. Key features of this agreement are the lease arrangements between the Aboriginal owners and the Commonwealth Government over a 99-year term. A breach in the lease conditions will return full control of the land to the Aboriginal owners and the termination of the lease. An annual rental and percentage of park revenue is returned to the Traditional Owners as well as enterprise development opportunities including tour operators' induction schemes, Aboriginal involvement in park management, encouragement in business and commercial initiatives. The original lease agreement did not provide for formal joint management structures, but this was subsequently incorporated. Other examples exist at five NSW national parks at Mutawintji, Biamanga, Gulaga, Mount Grenfell Historic Site (NSW), Booderee and Booderee Botanic Gardens near Jervis Bay (Commonwealth Territory) and some 30 further parks and reserves in the Northern Territory including the Nitmiluk National Park encompassing Katherine Gorge.

To date, no joint management arrangements for national parks have been entered into between Traditional Owners and the Victorian Government. Amendment to the *National Parks Act 1975* would be required to enable this management arrangement to be established over any Victorian land scheduled under the Act.

#### **Indigenous Owned or Managed Land**

An example of Indigenous owned or managed land can be found at the *Tyrendarra Indigenous Protected Area*, which is owned and managed by the Winda Mara Aboriginal Trust (see detail below).

In Victoria, such lands may have been acquired through site-specific legislation (e.g. *Aboriginal Land (Ebenezer, Ramahyuck and Coranderrk) Act 1991*), a restricted Crown grant or through funds provided from the Commonwealth Indigenous Land Fund. In the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Native Title settlement the State Government has allocated funds and three parcels of culturally significant land totalling some 45 ha and \$2.6 million over five years to meet costs associated with land management activities.

For protected areas, agreements may be reached with government agencies for support in areas such as pest plant and animal control, fire protection, threatened species management and management planning. Such

arrangements enhance the opportunities for increased Indigenous participation in the management of government-controlled protected areas, including through contracted services or co-management arrangements.

Examples of Aboriginal owned or managed land in Victoria include:

- Deen Maar Indigenous Protected Area (428 ha) which is a nationally significant ephemeral wetland system on the southwest Victorian coast near Yambuk. Purchased in 1993 by ATSIC (the now abolished Aboriginal and Torres Strait Islander Commission) for the Framlingham Aboriginal Trust, the area is culturally significant having connections with Deen Maar Island and the Creator Spirit Bunjil. It is also a site where numerous battles were fought with colonists during the Eumeralla wars in the 1840s and 1850s.
- The Tyrendarra Indigenous Protected Area (480 ha) owned and managed by the Winda Mara Aboriginal Trust was purchased in 1997 by ATSIC. The site contains archaeological remains of a large-scale pre-contact aquaculture system of the Gunditjmarra people which is still visible today.
- Wallpolla West State Forest contains a number of culturally significant sites. Government land management agencies have established a joint committee of management with the Latji Latji Traditional Owners under the *Forests Act 1958* to formalise working relationships established during rehabilitation and management of Aboriginal cultural heritage sites.

In other states, Aboriginal communities have freehold ownership of land. In Queensland, 55 Land Trusts have been established under the state's *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*. In this case the grantees may restrict access to the land, however it can never be sold or transferred, and any lease issued to a non-Indigenous person or group for more than 10 years must be approved by the Queensland Minister responsible for Natural Resources.

#### **Public Land Use Categories**

VEAC and predecessor bodies have in the past encouraged government and Indigenous peoples to work together in public land management (VEAC 2004). However, to date there has been no public land use category that specifically requires Indigenous management. In some cases, Indigenous people have been more concerned with the level of Indigenous involvement in management than the underlying land use category (e.g. VEAC 2004). Implications of increased Indigenous involvement for the existing public land use system are explored in chapter 19 Emerging Themes.

VEAC will undertake a special consultation program to pro-actively seek the views of Indigenous people and groups in the study area on opportunities for increased involvement in public land management. The models described above will serve as the basis for this consultation, but should not limit the development of variations to the models—or indeed entirely new models—to suit particular local circumstances.