Exploring engagement between Indigenous communities and government: lessons for Country management

By

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Candidate's Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university. To the best of the author’s knowledge, it contains no material previously published or written by another person, except where due reference is made in the text.

Bronwyn Anderson-Smith

Date: 16-05-2008
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Abstract

This thesis explores engagement between Indigenous communities and governments in the Australian context of Country management. Country management describes a blend of Indigenous caring for Country approaches and mainstream natural resource management activities. Engagement refers to interactions and negotiations between Indigenous people and governments, in particular how each tries to communicate with the other and how power dynamics and historical legacies play into this.

This qualitative examination of engagement utilises interviews with researchers and practitioners as well as an extensive review of the literature. Assumptions about communities are challenged. Romantic ideals of a homogenous united group are rejected. Instead, I argue for the need to develop an appreciation of the heterogeneous range of individuals caught in ongoing struggles for power and influence. Engagement is about effective and meaningful, two-way interaction. Representation, participation and consultation are examined as different means of engagement, each offering stakeholders differing levels of control over negotiation processes. It is argued that each party has an interest in engaging with the other: Indigenous communities need assistance in dealing with new Country management problems; while governments need Indigenous support to expand and manage the conservation estate. Each party’s understandings and expectations of engagement are explored revealing insights into the frequent miscommunication that occurs at the engagement interface.

Examples of engagement processes are examined. Firstly, how Indigenous people have been incorporated into non-Indigenous engagement processes historically, highlighting the one-way intercultural dialogue that has characterised interactions and negotiations from nineteenth century King plates to the 2007 Northern Territory Emergency Response. This is contrasted to various contemporary examples of strategic choices Indigenous people are making to engage at a variety of spatial levels, from Country planning to regional organisations like NAILSMA, MLDRIN and Congress. These contemporary engagement processes reveal interesting choices Indigenous communities are making to provide legitimacy for both stakeholders; securing legitimacy for Indigenous people by working within contemporary Indigenous governances, while often operating as incorporated bodies to provide assurance for governments.

It is argued that effective engagement has a variety of elements. Effective engagement:

1. occurs in a true intercultural space that is sensitive to Indigenous and non-Indigenous ways of ‘doing business’;
2. provides options for people to participate according to their interest and capacity;
3. is built on relationships providing foundations of trust and respect;
4. is aware of power dynamics both within and between parties;
5. develops a working understanding of the expectations of each party and is therefore able to ensure engagement processes are legitimate for everyone; and
6. takes place at a level of spatial scale relevant for each party.
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List of Acronyms and Abbreviations
ATSIC  Aboriginal and Torres Strait Islander Commission
CLC  Central Land Council
CMA  Catchment Management Authority
DKCRC  Desert Knowledge Cooperative Research Centre
ILUA  Indigenous Land Use Agreement
IPA  Indigenous Protected Area
LALC  Local Aboriginal Land Council
MDBC  Murray Darling Basin Commission
MLDRIN  Murray Lower Darling Rivers Indigenous Nations
NAC  National Aboriginal Conference
NACC  National Aboriginal Consultative Committee
NAILSMA  North Australia Indigenous Land and Sea Management Alliance
NIFS  National Indigenous Forestry Strategy
NPWS  National Parks and Wildlife Service
NRM  Natural Resource Management
NSWALC  New South Wales Aboriginal Land Council
Glossary and Terms

**Country**: Country is capitalised for two reasons: firstly I acknowledge the sovereignty of Indigenous people and therefore I treat Country as I would any other sovereign area. Secondly I recognise the way Indigenous people talk about country as a person (Rose, 1996:7). Smyth (1994:2) asserts that Country refers to “place[s] of origin, literally, culturally or spiritually…” ‘Country’ refers to more than just a geographical area: it is a shorthand for all the values, places, resources, stories and cultural obligations associated with that geographical area”. Rose (1996:7) describes Country as a ‘nourishing terrain’.

Country is a place that gives and receives life. Not just imagined or represented, it is lived in and lived with… [C]ountry 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.

**Dreaming**: The Dreaming refers to Indigenous creation stories. It describes the past actions of creation figures who outline present and continuing responsibilities to Country for Indigenous people. Helen Nunggalurr from Arnhem Land (cited in Smyth, 1994:3) explains:

First, all the things in our environment were created by spirit beings which we call Wangarr. They created the different tribes and their languages. During their creation journeys they created animals, plants, waterholes, mountains, reefs, billabongs and so on. Today we can see their tracks in our land and where they stopped we can see their signs. These are the features of our landscape. That is why these places are our sacred areas which we must respect and care for.

**Engagement**: Engagement is about effective and meaningful, two-way interaction. Representation, participation and consultation are all means of engagement.

**Engagement Interface**: ‘Engagement interface’ is a term coined in this thesis referring to the intercultural space where Indigenous communities and governments engage.

**Government**: ‘Government’ includes the wide range of Federal, State, Territory and Local Government bureaucratic organisations that have some form of involvement with, or authority over Indigenous people.

**Indigenous**: The inclusive term ‘Indigenous’ is used in this thesis to refer to both Aboriginal and Torres Strait Islander people recognising the multiethic nature of many Indigenous identities. It is capitalised in recognition of Indigenous sovereignty.
**Intercultural Forum:** An intercultural forum is a cross-cultural communication space where different cultures develop shared understandings.

**Natural Resource Management:** Natural resource management refers to particular ‘Western’ cultural understandings of the environment and the way it should be managed. It draws on Western paradigms including the distinct conceptual separation of nature and culture, people and environment, civilisation and wilderness, and adopts scientific, rational management techniques.

**Scale:** Gibson, Ostrom and Ahn (2000:218) define scale as the “spatial, temporal, quantitative, or analytical dimensions used to measure and study any phenomenon”. They make a distinction between scale and levels, the latter referring to locations along a scale, sometimes hierarchically (2000:219). This thesis explores the spatial scale of engagement, particularly at what level on spatial scale engagement is most effective. The levels of the spatial scale of interest are the local, regional, and to a lesser extent the national levels.

**Traditional Owner:** Traditional Owners are Indigenous people who have rights and responsibilities for land and waters under their own customs and traditions (MDBC 2003 cited in Morgan *et al.*, 2006:139).
Chapter 1: Introduction

This thesis explores engagement processes between Indigenous communities and governments in the Australian context of Country management. Engagement is about effective and meaningful, two-way interaction. This thesis explores processes of negotiation between Indigenous people and governments, in particular how each tries to communicate with the other and how power dynamics and historical legacies play into this. The term *Country management* is adopted to reflect a sharing of perspectives of environment. ‘Country’ is adopted from the Indigenous concept of *caring for Country*, while ‘management’ is derived from mainstream *natural resource management* (NRM).

Perceptions of land and how it should be looked after are shaped by cultural understandings of the world. Rose (1996:7) explores Indigenous cultural understandings of Country, describing it as a ‘nourishing terrain’. “Country is a place and gives and receives life… a living entity with a yesterday, today and tomorrow, with a consciousness, and a will toward life.” Indigenous people ‘manage’ country by maintaining relationships with it. This is typically contrasted with non-Indigenous cultural interpretations of the environment. Binary understandings of nature and culture, people and environment, require rational, scientific management methods. Looking after Country is not NRM, but nor are these perspectives necessarily antithetical in practice. If these two perspectives are placed at opposite ends of a continuum, the space between provides an intercultural forum creating the blend of Country management techniques that characterise environmental management in Australia today.

This thesis explores this intercultural space where two parties attempt to interact and negotiate with each other. Engagements have tended to favour non-Indigenous management paradigms at the expense of Indigenous management strategies. It will be argued that this has been the result of ineffective listening stemming from an inadequate understanding of each others’ values, uneven power relations and the legacy of colonial rule. Engagement processes have been imposed onto Indigenous people starting in the nineteenth century with appointment of Indigenous Kings through to the 2007 Northern Territory Emergency Response. Contentious issues that influence engagement processes will be explored – including debates about the ‘right to speak’ and the nature of the Indigenous ‘community’. Both matters are shaped by the history of Indigenous migration, whether by force or by choice. This thesis will move from a historical overview of how engagement has occurred, to examine contemporary Indigenous engagement choices such as Country planning and regional organisations. It will argue that effective engagement is possible when:

1. negotiations occur in a true intercultural space that is sensitive to Indigenous and non-Indigenous ways of ‘doing business’;
2. processes provide options for people to participate according to their interest and capacity;
3. engagement is built on relationships which provide foundations of trust and respect;
4. processes take account of power relations both within and between parties;
5. each party develops a working understanding of the expectations of the other and processes are legitimate for all; and
6. engagement occurs at the relevant level of the spatial scale.

However it is first necessary to take a step back and conceptualise what this process of engagement is about and how it occurs.

1.1 Theorising Engagement with an ‘Imagined Community’

Let us begin by imagining an Aboriginal community of a small town engaging with a government NRM agency to manage a protected area. In order to ‘consult’ with the government, a new organisation is created to be ‘representative’ of the community. This Community Organisation (as it shall be called hereafter) follows the rules of an incorporated body with formal elections and business-style meetings.

Discussions with members of the Community Organisation reveal that there is a high degree of unity amongst members, common goals for Country management, and satisfaction with the leadership of the organisation. The small group partake in a range of management activities. They assert that by participating, their sense of ‘community’ is strengthened. Several people are employed fulltime and have developed new skills and confidence through managing Country. The perception amongst these community members is that benefits from the protected area are shared.

It seems that people feel ‘represented’ and satisfied with their engagements with government, which they argue are delivering benefits to the whole Indigenous community. However if we spend a more time in this small town it will become apparent that there are actually many more people who identify as ‘Indigenous’ but who feel excluded from the Community Organisation.

This second group tell a very different story about the protected area and the people who manage it. They say that the meetings are not open to everyone – they have been told that their opinions are not welcome and have been asked to leave. These people were highly involved in the early days of the Community Organisation, but now feel that they are excluded. They feel that the Community Organisation is dominated by particular families and their friends.

It becomes apparent there are long standing divisions within the community. These divisions form barriers to working together, and to the government engaging with the ‘Indigenous community’.
This is the story of a real community. The complex relationships detailed above were observed in a community in settled\(^1\) Australia in 2007. It would be unfair to claim that one group’s experience of the protected area is more valid or ‘true’ than the others. People experience things in different ways; any single event or phenomenon will have numerous interpretations. This creates a challenge for governments aiming to consult with groups. Each individual will have different experiences and opinions. This example demonstrates some of the inherent difficulties of engaging with the ‘community’. There are power dynamics and conflicts that colour community life and make ‘engaging’ with the ‘whole community’ difficult. The rest of this thesis will explore the issues raised above, including the means of engagement, the nature of the ‘community’ and exactly who is involved.

1.2 Research Questions

The primary research question is: How can Indigenous communities and the government effectively engage in the context of Country management?

Secondary questions that need to be explored to answer the above question are:

1. Why should Indigenous communities engage with government and conversely, government with Indigenous communities?
2. What has been the nature of engagement in the past? What does this tell us about power relations between the two groups?
3. How is contemporary engagement occurring?
4. How is engagement changing?
5. What is ‘effective’ engagement? What does, or would, it look like?

To answer these questions some key terms and issues to consider are: Indigenous identity, the ‘community’, ‘government’ and who can/should be engaged.

1.3 Thesis Outline

Table 1 outlines the structure and argument of the thesis.

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\(^1\) I use the term ‘settled’ in contrast to ‘remote’ Australia following Rowley (1970). The terms capture cultural and historical differences in the way colonisation has been experienced in different parts of Australia. Settled Australia (largely Southeast and Southwest Australia) has had a much longer history of colonisation. Indigenous people in settled Australia are typically more integrated into mainstream society. Remote Australia (primarily Central and Northern Australia) has experienced dispossession and colonisation more recently, (as late as the 1970s). Indigenous people in remote Australia tend to live as minority populations in or on the fringes of settlements. These different experiences have implications for engagement, as will be explored in this thesis.
### Table 1 Thesis Chapters and Main Line of Argument

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<th>Chapter</th>
<th>Main Line of Argument</th>
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<td><strong>Part 1: Introduction and Methodology</strong></td>
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<tr>
<td>One - Introduction</td>
<td>Introduction to the research topic and outline of argument.</td>
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<tr>
<td>Two - Methodology</td>
<td>Overview of the theoretical approach and research design.</td>
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<tr>
<td><strong>Part 2: Examining key terms and issues</strong></td>
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<tr>
<td>Three - Challenging Myths of Community</td>
<td>Indigenous identity is explored, contrasting the pan-Indigenous identity with the local identities of Nations, language groups etc. The community is defined and its capacity for Country management is explored. Communities of place and interest are discussed, demonstrating how individuals belong to multiple, overlapping communities. Finally, it is argued that the community is a heterogeneous group with differing interests and levels of power.</td>
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<tr>
<td>It is then important to examine how:</td>
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<td>Four - Understanding Engagement</td>
<td>‘Government’ is defined as the bureaucratic organisations that have involvement with or authority over Indigenous people. Representation, participation and consultation are means of engagement. The basis for engagement is established: Indigenous people are seeking management solutions to problems created by the colonisers, while governments are seeking Indigenous support to expand and manage the conservation estate. Each party’s understanding of engagement and the task of finding the ‘right people’ to engage are explored.</td>
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<td>This frames the discussion for:</td>
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<td><strong>Part 3: Exploring engagement choices</strong></td>
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<tr>
<td>Five – A Selected History of Indigenous Representation in Australia</td>
<td>This section demonstrates a shared willingness to work together. Historically Indigenous people have been obliged to participate through processes legitimate to non-Indigenous stakeholders but not necessarily sensitive to the way Indigenous people ‘do business’. Historical engagement has been a one-way intercultural dialogue; effective engagement requires a two-way intercultural forum.</td>
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<tr>
<td>This leads to:</td>
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<td>Six - Contemporary Engagement Choices</td>
<td>A discussion of the importance of relationships and an exploration of contemporary ways Indigenous people are representing their interests to government. It is argued that effective engagement is about options. Power relations are being challenged. Engagement is legitimised in diverse ways at multiple spatial levels. Organisations are making strategic choices about the communities they choose to represent.</td>
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<td>Hence I argue that:</td>
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<td><strong>Part 4: Discussion</strong></td>
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<td>Seven – Bringing it all together</td>
<td>Engagement is occurring at multiple levels. Planning processes are scaling-down to the local Country level. Organisations are emerging that secure legitimacy from their constituents and scale-up to work at the preferred levels of government. This polycentric governance has great potential for mainstream community NRM. The criteria for legitimate processes is becoming clearer; compromises like incorporation are being made to provide confidence for governments, however more work is needed to move towards a true intercultural dialogue.</td>
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<td>In conclusion:</td>
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<td><strong>Part 5: Conclusion</strong></td>
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<td>Eight – Where to from here?</td>
<td>Effective engagement is multifaceted. The Rudd Government has demonstrated a commitment to symbolic issues like the National Apology; however a true test will be how effectively they engage with Indigenous Australia. Engagement must take place with real people in real communities with their inherent complexity.</td>
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Chapter 2: Methodology

The following details the theoretical approach and research design that guide this thesis.

2.1 Theoretical Approach

This thesis uses adaptive theory, which is the ‘interchange of dialogue’ between existing theory and the theory that emerges from research:

The word ‘adaptive’ is meant to convey that the theory both adapts to, or is shaped by, incoming evidence while the data itself is simultaneously filtered through, and is thus adapted by, the prior theoretical materials (frameworks, concepts, ideas) that are relevant to their analysis. (Layder, 1998:5)

As Layder states, “it is not possible to approach research in a theory-neutral manner, and thus it is better to acknowledge, harness and attempt to control the inputs of prior theory and concepts as they intrude or otherwise make themselves felt in the research process” (1998:5).

My research has been influenced by Howitt’s (1996) book Rethinking Resource Management calling for a new way of seeing, thinking and practising resource management. Howitt encourages the ‘peripheral vision’ of social theory in order to appreciate different views of, and relationships with, the environment. This encouraged me to draw on my own background in social science to develop my perspective on engagement processes. I also drew on my own experiences of work and travel with Indigenous people in central Australia, Southern Africa and Thailand, which have taught me much about my own cultural and theoretical background.

At the same time I attempted to engage with the interviewees and the issues they identified using the grounded theory element of adaptive theory which “demands much more rapport and empathy with the people it studies in order to represent their understandings and social experiences faithfully” (Layder, 1998:18). I let people in the community define the key issues and tried not to impose my preconceived ideas. I then explored these central issues in a second round of interviews with researchers and practitioners to develop an understanding of how they deal with issues of engagement. I immersed myself in the relevant theory and literature on community, engagement, power, legitimacy and scale. This process employed the strength of adaptive theory’s second element: utilising, being informed by, and re-interpreting existing theory.

2.2 Research Journey

The Desert Knowledge Cooperative Research Centre (DKCRC) supported this project by providing a scholarship to cover fieldwork costs. This research is part of the larger Core Project 1: Livelihoods inLand™. Originally my research focused on examining the livelihood

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¹ Livelihoods inLand™ aims to produce: design principles for systems that will deliver livelihoods (health, wellbeing, income) for Aboriginal people through natural and cultural resource management; guidelines from implementing such systems; an investment model to show the
outcomes for Indigenous people involved in NRM. I conducted fieldwork for approximately two weeks in a community in settled Australia in October 2007, interviewing 27 people (see Appendix 2 for interview schedule). However, given the issues raised, I chose not to continue my original research as I did want to further inflame issues within the already tense community. To protect the privacy of my informants, I worked instead with the issues they raised and developed a new research direction. I feel this was the ethical choice and in line with my theoretical approach as I was responsive to the data and let the issues articulated by the community members guide the research process. I rephrased my research questions to focus on the topic of engagement. I conducted the second round of interviews between December 2007 and March 2008 (see Appendix 3 for interview schedule) with seven practitioners experienced in Country management negotiations (see Appendix 1).

2.3 Research Design

2.3.1 Qualitative Research

A qualitative research approach was employed to capture the richness of people’s experiences. The Australian National University Human Research Ethics Committee granted Ethics Approval for this research. Consideration has also been given to ethical issues as laid out in the National Statement on Ethical Conduct in Human Research (2007), AIATSIS guidelines for ethical research in Indigenous Studies (2000) and the DKCRC Protocol for Aboriginal Knowledge and Intellectual Property (2008).

2.3.2 Methods

All interviews were semi-structured and informal to deliver some consistency for comparison between participants but also to allow the flexibility to pursue issues important to each participant. Virtually all interviews were taped (with permission from interviewees) which freed me from taking detailed notes and in doing so allowed me to engage in a more interactive dialogue.

For the community interviews I used snowball sampling and some targeted sampling to involve relevant agency staff. I spoke to members of the Community Organisation, Aboriginal residents not involved in the Community Organisation, and representatives from government agencies. Interviews with agency staff were used to triangulate responses from Community Organisation members about benefits they identified from NRM activities. For example I spoke to a nurse to assess if there had been observable health benefits for Indigenous participants.

value to Australia of such systems, compared with alternative ways of managing natural and cultural resources; and people/organisations who want to invest in implementing such systems. The transcripts from my fieldwork in the community are also part of the participatory modelling component of Livelihoods inLand™.
For the practitioner interviews I selected individuals with experience in a range of consultation processes. Participants were chosen to include a range of ages, organisational affiliations, theoretical backgrounds, work experiences and a balance of men and women.

2.3.3 Interpretation, Analysis and Literature Review

This thesis has developed through an iterative process. Literature has been reviewed throughout the thesis to assist the interpretation of the findings. A literature review of Indigenous involvement in NRM in Australia and livelihood approaches, informed the community fieldwork. The findings from my fieldwork led to new research questions (outlined in Chapter 1), new bodies of literature and a new set of interviews with practitioners. The key issues from the community fieldwork have remained the cornerstone of the research. At each stage of analysis I have returned to these key issues to see what new perspectives the literature or practitioner interviews provided.
Chapter 3: Challenging Myths of Community

This chapter discusses the Indigenous identity then examines the concept of ‘community’: starting with its origins; exploring geographic communities of interest and place, illustrating how cultural disruption and increased mobility have influenced contemporary communities; and concluding by developing a realistic understanding of the heterogeneous nature of communities.

3.1 Exploring Indigenous Identity

To discuss Indigenous community engagement, it is important to examine understandings of the Indigenous identity. It is generally accepted that the term “Aboriginal” applies to the pre-European people of mainland Australia and Tasmania, while people from the Torres Strait are referred to as “Torres Strait Islanders”; the term “Indigenous” captures both groups. However in reality, the terms refer to a multitude of nations and language groups. As Feary (2007:45) states, modern Aboriginal [and Torres Strait Islander] society and culture is probably best understood as many cultures and societies, bound together by a common thread. They have been constructed, defined and imagined in a variety of ways by the dominant culture… These cultures and societies are neither frozen in the past nor overwhelmed by the dominant culture, but are a product of enduring traditional cultural beliefs and social behaviours, colonial history and its associated policies towards Indigenous peoples and, of modernity.

The terms actually convey more about the coloniser’s identity than that of the people they describe. By classifying people as ‘primordial’ or ‘primitive others’ (Attwood, 1992:iii), “whites also asserted the superiority of their own collective European identity” (Stokes, 1997:158). The only thing that various Indigenous societies really had in common was how different (and in the eyes of the colonisers, inferior) they were to the Europeans.

Nevertheless, this constructed Indigenous identity which implies a homogenous group of First Nations people, has remained. Jackson asserts ‘[t]here is a certain symmetry in the sound of Indigenous voices. A symmetry born of an ancestral birthright in the land, a common core of collective interests, and a painful shared history of dispossession in the process of colonisation’ (1995 cited in Johnson et al., 2007:2). The Indigenous identity has been adopted and re-interpreted by many Indigenous people. Reworking this identity remains an ongoing challenge of continually reconstructing a previously absent general identity, while devising strategies that accommodate the diverse Aboriginal identities associated with place or region… [A]lthough Aboriginal political ideas draw upon previously alien cultural categories, it is arguable that Aboriginal people have creatively adapted white political discourse to their own ends (Stokes, 1997:170).

Stokes (1997) argues that the Aboriginal flag and the Tent Embassy are two potent symbols that have fostered ownership of pan-Aboriginality. The flag – created in 1971 and adopted
nationally when flown at Tent Embassy in 1972 (Ausflag Ltd, 1995) – is “a new cultural artefact that symbolised unity against white society” (Stokes, 1997:166). However the broad national Indigenous category is rejected by some who assert that local identities are more important. Scale (discussed Chapter 7) is one debate that strongly influences engagement processes as discussions about the Tent Embassy (Chapter 5), MLDRIN and NAILSMA (Chapter 6) will demonstrate.

3.2 An “Imagined Community”?

More rhetorical fluff attaches to ‘community’ than most other words in the social science lexicon (with the possible exception of ‘empowerment’). We still seem to have a romantic conception of community; all unitary values and communitarianism. (Edwards, 1997: 831)

The concept of ‘community’ was developed at the turn of the nineteenth century by scholars attempting to understand processes of urbanisation and industrialisation (Agrawal and Gibson, 1999). Sir Henry Main “saw the world moving from relationships based on status, kin networks and joint property to one based on contract, territory and individual rights” (1871, 1905 cited in Agrawal and Gibson, 1999: 631). Writings of this time discuss the ‘disappearance’ of community and the rise of new forms of social organisation. Understandings of community were originally a romanticisation of what was deemed to be lost in the new industrialised world. Like ‘Indigenous’, ‘community’ was defined by what it was not. Bauman asserts that this romantic notion of community still exists. Community “stands for the kind of world which is not, regrettably, available to us – but which we would dearly wish to inhabit and which we hope to repossess” (2001:3). He argues that ‘community’ remains the ideal which people continue to imagine and strive towards, but which does not exist.

3.2.1 Created Meanings

Nevertheless, the expression ‘community’ remains popular and has been imbued with new meanings. Community continues to be a term used to describe groups, but is laden with particular assumptions about the functioning of these groups. Multidisciplinary literature describes community as a small spatial unit, a homogenous social structure, and shared norms (Agrawal and Gibson, 1999:630). There are also particular assumptions about the capabilities of communities. The postulation that local people, using local knowledge are best positioned to care for their natural resources is entrenched in Principle 10 of the Rio Declaration on Environment and Development. It states: “(e)nvironmental issues are best handled with participation of all concerned citizens, at the relevant level” (UNEP 1992). Identifying the ‘relevant level’ requires a subjective value judgement. However the principle of subsidiarity unambiguously states that decisions should be made by the lowest-level competent authority. The community is generally considered to be this ‘relevant level’ or ‘competent authority’. It is “held up as a rational and accountable instrument, which is capable of building social justice and wider patterns of inclusion” (Shirlow and Murtagh, 2004:58) as well as “decentralization, meaningful participation, cultural autonomy and conservation” (Chambers and McBeth 1992;
Chitere 1994; Etzioni 1996 cited in Agrawal and Gibson, 1999:630). This tall order is debunked in the discussion of the reality of diversity below.

Geographical theory identifies two main types of community of relevance in the context of Country management: communities of place and communities of interest. The following discussion will explore geographical communities using examples from Indigenous Australia.

**3.2.1.1 Communities of place**

Communities of place are groups of people who live in a particular place. This can be settlements or areas of Country. However, in terms of Country management, Country communities of place rarely correspond to the NRM boundaries such as catchments or bioregions. For example, as demonstrated in Figure 2, a Catchment Management Authority (CMA) would consult with Aboriginal groups encompassed by the boundaries of a catchment, a system imposed upon existing Indigenous communities of place. This means that the CMA will have to deal with numerous communities of place, and within these communities of place, numerous communities of interest (see below). Dealing with all the interests within this ‘catchment community’ can make ‘community engagement’ very difficult. This is one of the very real challenges which occur at the engagement interface.

**3.2.1.2 Communities of Interest**

Communities of interest are groups of people who have a common interest or concern. An important community of interest in Country management is ‘Traditional Owners’, people “who have rights and responsibilities for land and waters under their own customs and traditions” (MDBC 2003 cited in Morgan et al., 2006:139).

Figure 1 shows a stylised map of the classical\(^1\) community of interest for the area to be managed.

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\(^1\) I avoid the term ‘traditional’ and use *classical* as Sutton (1988) does, referring to practices that occurred before colonisation as classical in the same way researchers refer to the Greek or Roman classical era, which identifies practices of the past while acknowledging Greek and Roman society continues in the present.
Figure 1 Classical Communities of Interest
This stylised, simplistic map shows a range of relationships with the area to be managed that exist in classical communities of interest. People have interests in the area to be managed through birth, marriage and shared cultural responsibilities for Dreamings, even if they may live in neighbouring communities.

Colonisation has influenced the dispersion of Indigenous people, whether by force or choice. This means that many contemporary settlements or Countries may be home to Indigenous people with classical connections and responsibilities to that place, as well as people who have migrated there, including those who maintain strong connections to other places. Indigenous people often belong to several communities, living in one place and having responsibility to several other areas of Country.

Consequently, contemporary Indigenous communities of interest for a particular area of Country often extend beyond settlements. Indigenous people who do not live in settlements near proposed areas of management need to be part of engagement processes. For example, the majority of Traditional Owners for Uluru live in a vast arc of communities 100-500km away, not in the recently developed settlement of Mutitjulu within the National Park. Engagement regarding park management has been marked by tensions between these recognised Traditional Owners and the residents of Mutitjulu who are generally not recognised as Traditional Owners.

Figure 2 shows contemporary communities of interest who could be engaged in the management of the area to be managed. This simplistic diagram demonstrates how contemporary interests in Country are influenced by cultural disruption and increased mobility. Classical community structures are often still largely intact in remote Australia, where structures of Traditional Ownership can still be used relatively uncontested to identify the ‘right people’ to engage with. In contrast, the complicated relationships to Country illustrated in Figure 2 are more akin the situation of many parts of settled Australia. Most communities will fit somewhere
on a continuum between the two extremes illustrated in Figures 1 and 2. One of the greatest challenges for engagement is establishing who has a ‘right to speak’ for Country, this dilemma is explored in Chapter 4.

**Figure 2 Contemporary Communities of Interest**

The relationships via Dreaming responsibilities, migration and marriage detailed in Figure 1, apply to Figure 2. However, as a result of colonisation Figure 2 shows increases in the scale of population and distribution of communities of interest. Some residents will maintain classical connections to the area to be managed. However, due to increased mobility (for work, education, medical care, marriage etc) and cultural disruption (in the form of a mission in this example), there are also new residents from much further afield who do not have classical connections to the area to be managed, but may wish to be engaged. Furthermore, new boundaries, such as the capital city, regional centre, cattle station, state border and catchment area are imposed over the hexagons representing Countries. This transects Countries in such a way that one Country may fall under the jurisdiction of two different State or local governments.

### 3.3 Myths vs Reality of Diversity

This complicated reality of communities, challenges the myths and assumptions that engagement is frequently built upon. It is necessary to move beyond the illusion that communities are groups of “similarly endowed (in terms of assets and incomes), relatively homogenous households who possess common characteristics in relation to ethnicity, religion, caste, or language” (Agrawal and Gibson, 1999:634). As has been demonstrated, communities can be defined in different ways capturing a wide range of people.
Regardless of how they are defined, communities are made up of individuals competing for influence and resources, and are divided by social composition (Shirlow and Murtagh, 2004:60-61, 68, Lane and Corbett, 2005:144). It is too simplistic to assume that “the views held by members of a particular community are internally consistent or that certain individuals are able to ‘speak for’ the interests of the people as a whole” (Thorley, 1996:10). While there may be some issues around which a community of place or interest will unite, there will be other issues within the same community over which members may be in dispute. It is unrealistic to expect every individual in a group to share the same interests and opinions. As Bauman (2001:14) notes,

all homogeneity must be hand-picked from a tangled mess of variety through selection, separation and exclusion; all unity needs to be made; concord ‘artificially produced’ is the sole form of unity available.

In a group of people with differing interests and levels of power, it is often the already powerful local elites who are further empowered through processes of community representation (Lane and Corbett, 2005:, Agrawal and Gibson, 1999:, Edwards, 1997). Edwards (1997:832) argues that in heterogeneous communities,

either someone has to exercise a bit of paternalistic influence over who gets empowered [and represented] (with any luck, not self-styled ‘community leaders’) or you allow a hands-off, free market in internal power struggles and let the weakest go to the wall (again).

Gerritsen’s (1982) powerful exploration of community dynamics in Aboriginal communities in the Katherine Region, particularly the control that ‘dominant men’ have over their communities and bureaucrats, adds weight to Edwards assertions. McConnell asserts that small constituencies “tend to enforce conformity, to discriminate in favor of elites” (McConnell, 1966:6) thereby strengthening inequality. Shirlow and Murtagh (2004:58) found it very rare that “neighbourhood residents identify their local community groups as relevant, legitimate and trustworthy gatekeepers of their collective interests… many residents believe that the community sector is self-serving and opportunistic”. When discussing communities it is important to use realistic notions that “acknowledge different interests, competing groups, and negotiated consensus” (Little, 2001:357). In reality, the community (of place or interest) is a heterogeneous group with differing interests and levels of power.

This understanding of the Indigenous community shapes the rest of the thesis. This is not to argue that subsidiarity is incorrect, but rather it must work with accurate understandings of the capabilities of communities. Not ‘everyone’ can or should be included in engagement processes. The following chapter will continue this debate by examining the malleable criteria for the ‘right people’. It also develops an understanding of engagement and what each party expects from it.
Chapter 4: Understanding Engagement

Engagement is about interaction. This thesis explores interactions between Indigenous people and government. The term government is used broadly, referring to Australia’s Federal, State or Territory and Local Governments, and government agencies such as National Parks and Wildlife Services (NPWS). I acknowledge that the term captures an assortment of individuals and organisations. However, I follow Arnstein’s (1971:4) observations that marginalised groups tend to perceive governments as monolithic systems. Smith (2005:7) argues that establishing relationships between Indigenous organisations and government bodies in Cape York allowed some Indigenous people to develop an understanding of the dynamic workings of government. However for many others the “administrative realm remains relatively opaque, and government remains a set of forces and institutions that impact on their lives with little or no control by those subject to its projects”. Consequently the term ‘government’ includes the wide range of bureaucratic organisations that have some form of involvement with, or authority over Indigenous people.

This chapter explores firstly the means by which engagement can occur. Concepts of representation, participation and consultation are all aspects or means of engagement. Each will briefly be examined to assess the power dynamics at play. Then, the basis for engagement will be established, followed by an exploration of what the term means to each party, including a discussion about identifying the ‘right people’.

4.1 What Does Representation Mean?

Representation is linked to democratic theory. Democracy is literally ‘government by the people’. A functioning democracy is “founded on a belief in social equity [where] every person should have a say in choosing the government of a community or country” (Corcoran, 1997:59). Originally there was ‘direct democracy’ where all eligible citizens would meet to collectively make decisions. However this became impractical as the political franchise expanded and ‘representative democracy’ was born. In representative democracies, representatives are elected to speak on behalf of their constituents. They must be accountable to their constituents; “representatives must be not just influenced but, in some crucial sense, controlled, by those whose interests [they] represent – otherwise [they] will represent the state to its subjects, but not the subjects to the state” (Scruton, 1982:40).

Interest groups represent themselves through representative bodies. In this context, Weaver (1985) identifies three interdependent meanings of representation. Firstly, a representative body is seen to represent the views, needs and aspirations of its constituency; a “reliable vehicle for communication” to government and the public:

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Understandings of democracy relate to franchise or suffrage which determine who is and who is not allowed to participate. Women, slaves, and metics (resident foreigners) were excluded from Greek democracy.
It is understood that the organisation is *authorized* to convey views and is held *accountable* to its constituents for this conveyance... According to this meaning the structure and procedures of the organization are stressed because it is through them that the organizations maintain their contact with, and secure their legitimacy from, their constituencies. (1985:114 emphasis in original)

Secondly, a body can be *representative of* its constituency, i.e. a social microcosm of the people it represents. By replicating the constituency, representative organisations are perceived to be more sensitive to people’s needs and able to accurately articulate them to government (Weaver, 1985:114, Bogdanor, 1991:531). Weaver (1985:114) also highlights a third aspect of representativeness as *responsiveness*, that is, whether a body actually responds to the needs and demands of its constituency in a timely manner.

Representation can be a contentious issue for Indigenous people and consequently, engagement with government. Under customary law only people related to Country can ‘speak for’ it. Representative structures must take this into account: Chapter 6 examines organisations founded on this principle. In many parts of Australia, Indigenous people still reach decisions by consensus, in a process similar to direct democracy. This can be frustrating for government staff as representatives may come to meetings but be unable to make decisions without first returning to their communities to discuss the options and reach a collective decision.

### 4.2 What Does Participation Mean?

*Participation* is akin to direct democracy, involving people in processes, rather than representatives acting on their behalf. Arnstein (1971) and Pimpert and Pretty (1995) have detailed typologies of participation and each level’s associated distribution of power. Arnstein’s ladder (Table 2), moves from *non-participation* where the ‘powerholders’ aim to educate participants, to *citizen control* where citizens hold a majority stake or monopoly over decision-making power.

<table>
<thead>
<tr>
<th>Table 2 Arnstein’s Ladder of Participation</th>
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<tr>
<td>1</td>
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<td>7</td>
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<td>8</td>
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</tbody>
</table>

Source: adapted from (Arnstein, 1971:3)

At the lowest level of Pimpert and Pretty’s typology (Table 3), *passive participation*, participants are informed about, but largely uninvolved in processes. At the higher levels, participants work in partnership with project managers or, like citizen control, have monopoly over decision-making power.
Table 3 Pimbert and Pretty's Typology of Participation

<table>
<thead>
<tr>
<th>Typology</th>
<th>Components of each type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passive participation</td>
<td>People participate by being told what is going to happen or what has already happened. It is [a] unilateral announcement by an administration or by project management; people's responses are not taken into account. The information being shared belongs only to external professionals.</td>
</tr>
<tr>
<td>Participation in information giving</td>
<td>People participate by answering questions posed by extractive researchers and project managers using questionnaire surveys or similar approaches. People do not have the opportunity to influence proceedings as the findings of the research or project design are neither shared nor checked for accuracy.</td>
</tr>
<tr>
<td>Participation by consultation</td>
<td>People participate by being consulted, and external agents listen to views. These external agents define both the problems and the solutions, and may modify these in light of people's responses. Such a consultative process does not concede any share in decision-making and professionals are under no obligation to take on board people's views.</td>
</tr>
<tr>
<td>Participation for material incentives</td>
<td>People participate by providing resources, for example, labour, in return for food, cash or other material incentives. Much <em>in situ</em> research and bioprospecting falls in this category, as rural people provide the resources but are not involved in the experimentation or the process of learning. It is very common to see this called participation, yet people have no stake in prolonging activities when incentives end.</td>
</tr>
<tr>
<td>Functional participation</td>
<td>People participate by forming groups to meet predetermined objectives related to the project, which can involve the development or promotion of externally initiated social organization. Such involvement does not tend to be at early stages of project cycles or planning, but rather after major decisions have been made. These institutions tend to be dependent on external initiators and facilitators, but may become self-dependent.</td>
</tr>
<tr>
<td>Interactive participation</td>
<td>People participate in joint analysis, which leads to action plans and the formation of new local groups or the strengthening of existing ones. It tends to involve interdisciplinary methodologies that seek multiple perspectives and make use of systematic and structured learning processes. These groups take control over local decisions, and so people have a stake in maintaining structures or practices.</td>
</tr>
<tr>
<td>Self-mobilisation</td>
<td>People participate by taking initiatives independent of external institutions to change systems. Such self-initiated mobilisation and collective action may or may not challenge existing inequitable distributions of wealth and power.</td>
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</table>

Source: (Pimbert and Pretty, 1995:26)

Both of the above examinations of participation demonstrate the difference between tokenistic and effective participation. Decision-making power and control over processes can be considered as a scale, or ladder, where different models of engagement deliver different levels of power to participants. Dovers (2000:6) asserts participation is more complex than this, “people may wish to participate but at different levels of intensity at different times (climbing up and down and jumping on and off the ladder)”. Dovers (Table 4) conceptualises participation as a wide range of activities.

Options are needed for people to participate at different levels at different times relative to their interests and other commitments. A flexible range of participation options can facilitate effective engagement by allowing people to choose the means of engagement most meaningful to them.
Table 4 Range of Activities Constituting Participation in NRM Issues and Policy Processes

<table>
<thead>
<tr>
<th>Activity</th>
<th>Commitment required</th>
</tr>
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<tbody>
<tr>
<td>Voting (at federal, state and local levels) to give governments a mandate</td>
<td>Legal requirement to vote except for local level elections</td>
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<tr>
<td>Informed, critical consumption of goods and services</td>
<td>Ongoing participation</td>
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<tr>
<td>As employees in industries, trades or professions implementing new</td>
<td>Ongoing participation with remuneration</td>
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<tr>
<td>environmental practices</td>
<td></td>
</tr>
<tr>
<td>Involvement in community-based cooperative management arrangements</td>
<td>More defined role, entailing higher level of participation</td>
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<tr>
<td>(co-management) where actual management responsibilities are defined</td>
<td></td>
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<tr>
<td>and devolved (such as Indigenous rangers in National Parks)</td>
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<tr>
<td>Inclusion on statutory management boards (such as Catchment Management</td>
<td></td>
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<tr>
<td>Authority boards)</td>
<td></td>
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<tr>
<td>Inclusion in short-term policy processes (such as Regional Forestry</td>
<td>One-off commitment</td>
</tr>
<tr>
<td>Agreements)</td>
<td></td>
</tr>
<tr>
<td>Participating as lobbyists or members of pressure groups</td>
<td></td>
</tr>
<tr>
<td>Participation on ongoing advisory boards or committees</td>
<td>Flexible participation, ability to opt in or out over time</td>
</tr>
<tr>
<td>Recipients of information about policy choices or changes, and providers</td>
<td></td>
</tr>
<tr>
<td>of information through participation in research to inform policy</td>
<td></td>
</tr>
<tr>
<td>Participation in community-based monitoring programs (such as Frogwatch)</td>
<td></td>
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<tr>
<td>Participation in community-based management programs (such as Landcare)</td>
<td></td>
</tr>
</tbody>
</table>

Adapted from (Dovers, 2000:6-7)

4.3 What Does Consultation Mean?

In Arnstein’s and Pimbert and Pretty’s analyses of participation, consultation falls within the middle range of control over processes. Participants have little if any decision-making power. Although people’s opinions are sought,

external agents define both the problems and the solutions, and may modify these in light of people’s responses. Such a consultative process does not concede any share in decision-making and professionals are under no obligation to take on board people’s views. (Pimbert and Pretty, 1995:26 emphasis added)

Kelly (2005:20) asserts that consultation employs a one-way flow of information between a government agency and a community, “local people have no, or limited, influence over agency decisions”. Therefore consultation has the potential to be a tokenistic exercise that “allows the power-holders to claim that all sides were considered but makes it possible for only some of those sides to benefit” (Arnstein, 1971:3). Consultation, informing and placation (rungs on Arnstein’s ‘ladder of citizen participation’, see Table 2) allow citizens to be seen and heard but do not account them the “power to ensure that their views will be heeded by the powerful… [who] retain the continued right to decide” (1971:3). Consultation gives people little, if any, power to genuinely influence outcomes.
Having examined different means of engagement, this chapter now explores the basis for a relationship, and what each party expects from the process.

### 4.4 Why Should ‘We’ Engage?

As Davies *et al.* (2000:3) state Australian landscapes have been transformed since colonisation. Environmental degradation from land clearing, the establishment of introduced species and the disruption to fire management regimes present new challenges for Country management. Indigenous people now need to engage with NRM solutions to address problems instigated by the colonisers.

Furthermore, despite representing less than three percent of the population, as a result of statutory Land Rights schemes and the recognition of Native Title, Indigenous Australians currently own or control approximately 20% of the continent (DFAT 2007). Entire bioregions, particularly in Central Australia, Arnhem Land, North Queensland and the Kimberley, are under Indigenous ownership (Davies, 1999:5). These bioregions are of interest to the Federal Government’s National Reserve System, which aims to protect a network of areas that are ‘comprehensive, adequate and representative’ of terrestrial Australia’s ecosystems (Gilligan, 2006:4).

Consequently, each party needs the other. Indigenous people need support to deal with new land management challenges and governments need to engage with Indigenous people because they seek to include parts of the Indigenous estate in the wider conservation estate, and encourage Indigenous management for conservation purposes.

If each party has recognition of, and respect for, the others’ interests, there is the potential for a strong working relationship. As David Mowaljarlai (1992:189) states:

> We are happy to work together with government to manage country… But only if the government recognises our marriage to the land and the responsibilities we have to care for the land as we have been taught through our Aboriginal culture. If the government comes and works with us to help carry out our responsibilities then we will be happy. But, if government comes in, and tries to take these responsibilities away from us then we will be hurt and shamed and the land will die. When the land dies we too, will die!

Engagement processes have been far from perfect. Many of the barriers stem from the failure of each party to understand the other’s perspective. Having established the basis for engagement, the following discussion examines the different understandings and expectations Indigenous people and government have of engagement.

### 4.5 Government’s Understanding and Expectations

By virtue of sovereign authority, governments have a history of controlling the conservation agenda through bureaucracy. Community participation is a relatively new addition to environmental management. Governments are used to controlling the agenda, despite the fact
that “attempts to involve local communities in protected area management usually fail when initiated and directed by outsiders” (Colchester, 1996) (see Box 1).

The dilemma for authorities is that they both need and fear people’s participation. They need people’s agreement and support, but they fear that this wider involvement is less controllable, less precise and so likely to slow down the planning process. But if this fear permits only stage-managed forms of participation, distrust and greater alienation are the most likely outcomes... Nonetheless, it is rare for professionals to relinquish control over key decisions on protected area design, management and evaluation. Participation is still largely seen as a means for achieving externally desirable goals. This means that while recognising the need for people’s participation, many conservation professionals place clear limits on the form and degree of participation that they will tolerate in protected area management.

**Box 1 Government’s Engagement Dilemma**  
Source: (Pimbert and Pretty, 1995:25)

It is difficult to devolve power whilst fearing conservation will suffer, yet Indigenous desires for increased power in Country management represent exactly this challenge. Sturgess (2001) asserts that governance is a struggle for power. There are power struggles from within the bureaucracy and increasing demands to devolve power to the community level. However he argues that the latter challenges the foundations of bureaucratic governance: bureaucrats are meant to be impartial and divorced from the local context. Bureaucracy is systemised and specialised, entailing a necessary lack of flexibility and the need to follow uniform rules and procedures (Sturgess, 2001; Enrique et al., 1999). Sturgess (2001:197,203) argues that policymaking has no role for local knowledge and improvisation. Indeed it is the “very antithesis of self-governance”. This is at odds with Indigenous demands for recognition of sovereignty and the right to self-governance and self-determination. Allowing real input from communities requires genuine change from the way conservation was performed in the past.

### 4.6 Indigenous Understandings and Expectations

Indigenous people expect to be involved in Country management. Jon Altman suggests “Indigenous people really want to be heard in terms of their rights and their aspirations and their prior interests; they want an equitable go in Australian society” (2008 pers comm.). Indigenous people want respect and recognition as people with relationships to Country pre-dating colonisation, and as effective land managers.

Engagement is also meaningful due to the material incentives it provides. Thorley has found that the economic incentives make engagement attractive in the NT. “In situations where Aboriginal groups are to some extent dependent economically on ‘outsiders’, there is far more at stake than the outcomes of the research or the accuracy of the representation” (1996:10). Feary commented that employment is often an expected outcome of engaging with NPWS in NSW (2008 pers comm.). The immediate or short-term benefits of engagement (sitting fees, Country visits, access to vehicles, short-term employment) are just as valuable, and in some cases more valuable than the final outcome of engagement processes (such as Plans of Management). This is what Pimpert and Pretty (see Table 3) categorise as ‘participation for material incentives’.
4.7 The ‘Right People’?

One of the most contentious issues in engagement is the question of who government should be talking to. The criteria for finding the ‘right people’ needs to be localised, flexible and adaptive. Government relies on organisations with familiar bureaucratic structures, such as Land Councils. Feary’s (2007) exploration of the National Indigenous Forestry Strategy (NIFS) provides many insights about the engagement interface across state forestry institutions. In NSW, Land Councils were the only Indigenous organisations to receive specific mention in Forests NSW’s Operational Guidelines (2005). Although obtaining input from other groups is encouraged, Land Councils remain the primary body to consult with as they provide the perception of clarity. This is despite the fact that Aboriginal people have frequently accused the NSW Land Council system of not representing the customary system of land tenure (Feary, 2007:127) and undermining the role of Traditional Owners (see Chapter 5). Nationally, Feary found that agency staff were aware that engaging solely with Land Councils was insufficient, but were unsure of who to talk to:

[Land Councils] are not the only group. We are aware there are other local groups. The consultation process is probably not adequate, but I would not be sure what [the Aborigines] would expect to be done differently. We often find some difficulty in pinpointing who represented which families, who had some ‘elder’ recognition. Sometimes its contrary, one representative will say we can speak on behalf of these people and some will say, well no you can’t. There’s a bit of that uncertainty, so staff involved in formal transactions don’t quite know where to go. (quote from Forests Products Commission WA official cited in Feary, 2007:128)

Capturing interests that fall outside formal incorporated organisations which provide clarity and the convenience of names and contact details, is an ongoing challenge. However, the question of who to talk to is contentious not just for government but also among Indigenous people.

Feary (2007) found nationally that Indigenous people were critical of the governments engaging with the ‘wrong people’.

One of the things with the CMA that’s creating the problems is that they enlist people that’s very junior – Aboriginal people, but they know nothing about [Country]. I’m 70, people half my age claim to be the authority, but have never worked in that country. (cited in Feary, 2007:128)

Similar concerns were raised at a NIFS consultation workshop in WA, about young Aboriginal people being placed on committees because they were well educated in the ‘white mans’ ways. Several senior Aboriginal men stated that young people had no right to represent Aboriginal interests because they had not acquired any status according to customary laws. (Feary, 2007:128)

Aboriginal women with specialist training in cultural and natural heritage management criticised Forests NSW exclusive reliance on an Aboriginal Liaison Officer. Despite membership of a prominent Aboriginal family, the women claimed he had no right to represent the larger Aboriginal community on the NSW far South Coast:
[Archaeology] is a specialised field and Aboriginal people need to be qualified … not just anyone who says I am the eldest of elders, but needs to be people who know what they are doing, they may not even know they are destroying a site by doing what they are doing… Forestry should have a structure to consult with Aboriginal people who do have qualifications in that area and not just anybody. But any organisation that takes notice of one person is being irresponsible [thinking] that [they] speak for the whole of the south coast. It’s their responsibility to put something in place so that they are actually getting direction. (cited in Feary, 2007:129-130)

This last quote tells us several important things about Indigenous expectations of engagement. Firstly, the criteria for the ‘right people’ is evolving to include non-Indigenous knowledge: “the ‘right to speak’ must be bestowed from two sources; status in local Aboriginal social structures and knowledge of the science of modern cultural heritage management” (Feary, 2007:129 emphasis in original). Secondly, the issue is contested amongst Indigenous people; people who claim to be elders may not have legitimacy amongst their community. Thirdly, it is expected that government agencies have in place structures to adequately engage. This requires an understanding of what Indigenous people expect of engagement. Finally, engagement with one individual, even considered to be a ‘representative’, is insufficient. In my own fieldwork, many of the people who felt excluded from the Community Organisation commented that because of classical Aboriginal political structures, people are loyal to their families and clans first and foremost, at the expense of representing the interests of other families and clans.

Traditional Owners are typically regarded as the ‘right people’ – in many parts, particularly remote Australia the only people – who can speak for Country:

It is only those persons who have such a substantive relationship with ‘country’, often based in having lived in a particular area, as well as being a member of a group whose forebears are from that area, who can ‘talk for’ the area in question. (Smith, 2005:8)

This can create tensions for regional organisations who claim to represent large areas of land that may include numerous Traditional Owners or even several Indigenous nations. This issue of scale is a central theme of the thesis and will be explored thoroughly in Chapters 5, 6 and 7.

Craig Elliott details how he identifies the ‘right people’ in the Northern Territory:

The starting point is social relationships – beyond the physical community or linguistic community. Shared interests based on family, kinship, marriage, ceremonial connections. That provides a framework for how people place themselves in their physical communities – within communities of interest… A sense of community goes beyond physical settlement where people are presiding… the land interest is derived predominately from ancestral connections. Residential location, social relationships and ancestral connections may coincide, may overlap, but increasingly that’s in a minority of cases. Most people have or create substantive connections with several places, and social acknowledgement of these connections may vary over time. (2008 pers comm.)

Altman argues that Indigenous institutions are very inclusive. “If you are a long term resident on Aboriginal land, there are mechanisms that people invoke to include you”, although the exact
nature of rights endowed varies (2008 pers comm.). As this discussion has demonstrated the flexible and location-specific criteria of the ‘right people’ present challenges for engagement.

4.8 The Engagement Interface

What actually occurs at the coalface of interaction? Government representatives are required to search for certainty, consistency, clarity and accountability in engagements. While Indigenous people are also searching for these, they want flexibility and often recognition of a broader rights agenda as well.

The engagement interface is frequently the domain of government agency staff, consultants, lawyers or Indigenous organisations all speaking on behalf of larger bodies (the government or the Indigenous community). This can distance Indigenous people from the government staff who make decisions or policies that affect them. It denies both parties the primacy of relationships. The importance of relationships has been a key finding of this thesis (discussed in Chapter 5).

A key question to consider is whether we are talking about two mutually-exclusive political systems. Referring primarily to remote Australia, Altman states:

Under customary law, democratic principles weren’t of foremost importance... it’s not that Indigenous people aren’t aware of democratic principles, its not that they don’t participate in Western corporations or Western representative institutions, they know about them and they participate in them sometimes, but it’s not necessarily something that they are comfortable with, or something that necessarily properly accommodates their way of doing business. (Altman 2008 pers comm. emphasis added)

As Altman argues, we are not dealing with unrelated systems; furthermore participation in democratic institutions is higher in settled Australia. There is space for engagement to occur but this thesis argues that the space needs to be widened to incorporate a greater appreciation of the diversity of Indigenous expectations and ways of ‘doing business’. As Colchester (1996) notes in the case of protected areas established on Indigenous lands, non-Indigenous people fail to recognise that such interventions are political in that they impose state control over Indigenous political structures. The playing field needs to be levelled, and one aspect of this is increasing knowledge of Indigenous political structures among those who operate at the engagement interface. Until each party can understand the fundamentally different places the other is coming from, they will continue to talk past each other and engagement will continue to be frustrating, rather than effective.

This chapter has examined different means of engagement focusing on power dynamics. It has established why both parties should engage and what each expects from the process, including a discussion of the complicated matter of identifying the ‘right people’ to engage with. The thesis will now examine how engagements have occurred in the past, and contrast this with current practice developing the themes of power, legitimacy and scale.
Chapter 5: A Selected History of Indigenous Representation in Australia

Attempting to establish a dialogue between Indigenous and non-Indigenous interests is not a new phenomenon. The following selected historical overview will briefly detail the trends of representation employed to facilitate engagement between Indigenous and non-Indigenous people in Australia.

5.1 Declaring Royalty

Since the beginning of colonisation, governments and other powerful interests have attempted to engage with Indigenous people. Some of the earliest accounts of this are ‘King plates’ awarded to Aborigines favoured by white settlers. On Nap Nap station in NSW, good relations led the landholder to give an Aboriginal man a European name and appoint him ‘King’ of Aborigines in the area:

The old black man, the chief of the tribe, was particularly expert at fishing, and not only abundantly supplied his own wants, but had always plenty to bring to Nap Nap station. From his skill in fishing he soon came to be known by the name of Izaak Walton, and it was not long before Mr. Hobler presented him with a brass plate, on which was engraved the inscription “Izaak Walton, King of Nap Nap.” (‘Lower Murrumbidgee’ correspondent, 25 March 1857:2)

Rather than learning the social organisation of Indigenous tribes to understand existing systems of authority, it was common for landholders to impose the non-Indigenous title of ‘King’ onto individuals whose behaviour they found agreeable. Indigenous individuals were appointed as representatives, and in non-Indigenous eyes they spoke for all the Indigenous people. This was one of the first ways that non-Indigenous people attempted to incorporate Indigenous people into ‘mainstream’ engagement processes.

5.2 Political Representation

Starting in the 1970s, political spaces were created within the existing non-Indigenous systems of government. Indigenous Australians were offered a political forum through elected bodies, including the (1973-77) National Aboriginal Consultative Committee (NACC), the (1977–85) National Aboriginal Conference (NAC), and the (1989–2005) Aboriginal and Torres Strait Islander Commission (ATSIC). As the following will demonstrate, all involved the imposition of non-Indigenous systems in an attempt to represent Indigenous political interests.

\[\text{For a detailed account of the history of Aboriginal activism as attempts to engage see Bennett (1999), Attwood and Markus (1999), and Goodall (1996).}\]
5.2.1 ATSIC

While the NACC and NAC were largely advisory bodies, ATSIC was considered a policy-making and administrative body (Pratt and Bennett, 2004). Pratt and Bennett argue that it was the first Indigenous body to have genuine power over decision-making and management of Indigenous affairs. However, the dual roles caused friction: “ATSIC was to be accountable to the Government, for example in its service delivery and monitoring role, at the same time its elected arm was to be accountable to its Indigenous constituency” (Pratt and Bennett, 2004).

Ultimately the NACC, NAC and ATSIC “generally annoyed governments with their outspokenness, and each was abolished” (Pratt and Bennett, 2004). The lifetime of each body was linked to the policy cycle of incoming governments. Separate Indigenous political representation was abandoned when the Government disbanded ATSIC. Prime Minister Howard stated:

> We believe very strongly that the experiment in separate representation, elected representation, for indigenous people has been a failure. We will not replace ATSIC with an alternative body. We will appoint a group of distinguished indigenous people to advise the Government on a purely advisory basis in relation to aboriginal (sic) affairs … but arrangements will be established to ensure that there is a major policy role for the Minister for Indigenous Affairs. (Howard and Vanstone, 2004: emphasis added)

ATSIC’s history highlights how ultimately the real political power stays with government – it has the power to bestow ‘representation’, and just as easily takes that bestowal away. Indigenous power and voice in the political arena has always been temporary and mediated by the non-Indigenous government that Indigenous representative bodies have had to work with. A government-appointed body in a solely advisory position is tokenistic representation at best. An ATSIC Commissioner suggested that such representatives would be seen by their peers as ‘government lackeys’, and has warned that “the people will not recognise them” (cited in Pratt and Bennett, 2004). Arnstein (1971:4) would classify this as manipulation, the lowest form of participation (see Chapter 4 Table 2) where “people are placed on rubber stamp advisory committees or advisors boards for the express purpose of… engineering their support”. Manipulation signifies the “distortion of [representation] into a public relations vehicle by powerholders”.

5.2.2 The Tent Embassy

In contrast, the Aboriginal Tent Embassy is an iconic symbol of Indigenous activism, an attempt to engage the nation in a dialogue about land rights. On 26 January 1972, Indigenous protesters set up tents on the lawns of the then Parliament House. With placards stating: “Land rights now or else”, “Legally this land is our land, we shall take it by force if need be”, the protesters insisted they “would not be shifted from their Canberra camp until all those years of dispossession were acknowledged and compensated” (cited in Goodall, 1996:339). The land rights movement was thrust onto the public stage in the violent clashes with police that marked
the beginning of the Tent Embassy and served to galvanise Indigenous support around the country, allowing a common set of claims to be made to the Commonwealth Government (Stokes, 1997:166). Unlike the government political representative bodies such as ATSIC, the Tent Embassy is powerfully independent and does not rely on the government for its legitimacy. It is an Indigenous-owned representation of Indigenous interests, however it would be a mistake to assume that it represents all Indigenous people.

Recent years have seen public Indigenous debate regarding the effectiveness of the Embassy as a protest and representation of Indigenous interests. Matilda House, a Ngambri Traditional Owner of Canberra, has called the site ‘embarrassing’ and supported the Howard Government’s move to evict the residents, including her cousin Isabelle Coe, a Wiradjuri Ngunnawal woman. House asserts that the Embassy “should be a place where people can come and protest. But… it's a bit hard to know a protest from a caravan park or a camping ground… I will always be there for the Tent Embassy. But… I do not respect what's down there now” (Message Stick, 25/11/05). However others claim the dilapidated appearance of the Embassy is symbolic: Coe argues, “these tents… represent how we've had to live… Aboriginal Australia, it's not a pretty picture at the moment” (Message Stick, 25/11/05). This diversity of opinion regarding the protest Embassy is a powerful reminder of the heterogeneity of the Indigenous community.

Coe’s comments about the Indigenous representatives on the advisory committee deciding the future of the Tent Embassy are also revealing of the fraught nature of Indigenous representation:

No one from the tent embassy takes any money from the government… But those Aboriginal people have been paid. Now, Matilda House, I believe is one of them who's on the committee. Now, she's a paid elder I believe, of the government. So, they pay her and she does whatever they want her to do. It’s always been our history. We've always had the native police and the Jackie Jackie's. And I believe that these people are, they're another form of the native police. They now hunt us down and do what the government wants them to do. It's been going on for a long time. But I've gotta make the point that Aboriginal sovereignty is about every single one of us. Now, it's not about the select few, like the government want to handpick people all the time. (Message Stick, 25/11/05)

Representatives can be attacked and ridiculed by their communities for engaging in ‘white’ processes. Coe’s comments suggest that she does not think it is possible to work within a system whose legitimacy she opposes. She talks about sovereignty (discussed further in Chapter 7) and representation being about “every single one of us”, not the “select few” who have historically been installed to positions of power by the arbitrary decisions of the non-Indigenous power-holders, as exemplified by King plates or post-ATSIC advisory committee.

5.3 Representing Land Interests

Country continues to be of prime importance to Indigenous people, despite its forced acquisition by non-Indigenous people. The representation of land interests differs across
Australian government jurisdictions; the following discussion examines Land Councils in the NT and NSW (under territory and state legislation), Joint Management and Indigenous Protected Areas (federal responsibilities).

5.3.1 Land Councils

Land Councils in the NT and NSW are government-sanctioned regional representative bodies. In the NT, they are Commonwealth Statutory Authorities that operate under the Aboriginal Land Rights (NT) Act 1976 and are the current recognised Native Title Representative Bodies under the Native Title Act 1993. Under the NSW Aboriginal Land Rights Act 1983, the NSW Aboriginal Land Council (NSWALC) is the statutory authority responsible for protecting and promoting the rights and interests of the Indigenous people of NSW.

The representative structures of the NT Land Councils are an interesting blend of Indigenous and non-Indigenous systems of representation. The Central Land Council (CLC) has a governing board of Aboriginal representatives elected by the population of designated settlements in the region. The CLC territory is divided into regions based on language groupings (CLC 2007). Basing the regions on existing language groups can be said to represent classical Indigenous structures of social organisation. However the Council operates as a bureaucracy. NSW Land Councils also follow bureaucratic operating procedures. In summary, while blending some classical systems of political representation, Land Councils are ultimately governed by non-Indigenous law that requires non-Indigenous governance structures.

There is also contention regarding who the Land Councils actually represent. Reeves (1999) has argued that in the NT, Traditional Owner interests are represented at the expense of the interests of the broader Aboriginal community. In NSW Local Aboriginal Land Councils (LALC) are designed to serve Aboriginal people on the basis of residence (Section 51, Aboriginal Land Rights Act 1983). The NSW Parliament could not concede of there being any traditional ownership left in NSW and consequently the Act was designed for economic development of Aboriginal people in their communities of place, not traditional ownership. A legacy of migration – both forced and voluntary – has meant that in NSW in particular there is much contention about who has rights to talk for Country. However, as MLDRIN (discussed Chapter 6) illustrates, there are many Aboriginal people who claim traditional ownership in NSW. Davies and Moore (2001:111) argue that Land Councils are imposed through legislation “which cut[s] across the structures that already existed among Koories for relating to land… it does not represent the clan groups with traditional ties to the LALC area”. Sincere efforts to empower Indigenous people in the NT and NSW have served to marginalise particular segments of the ‘Indigenous community’.
5.3.2 Joint Management

Joint management is another arena where the non-Indigenous power-holders have sought to carve out a space for Indigenous representation. However power-sharing arrangements are often still unequal. The Uluru-Kata Tjuta National Park is internationally renowned as a model of joint management. The Anangu are recognised owners of the land, and Country is leased to the National Park under conditions, including rent, renegotiated every five years. The Anangu representatives constitute a majority of the Board of Management which has an office in the local community to promote ongoing and effective communication. However, Lawrence (1996) agrees that while establishing an executive role for Traditional Owners “defines Aboriginal participation as an active role, not just a participatory or advisory one”, he argues that “the formal establishment of the of Board does not guarantee its effectiveness, nor does the presence of the Board mean that Aboriginal decision-making determines the direction of park management”.

This is demonstrated by the disregard paid to repeated calls by the Anangu to stop tourists climbing Uluru. The way the Joint Management agreement was established demonstrates the unequal power relations. The Anangu were given a seat at the negotiation table only after they accepted that their Country was to remain a National Park (Davies, 1999:2). Referring to the Canadian context, Natcher et al. assert that First Nations representatives are being forced to participate in culturally inappropriate institutional processes. Joint Management is criticised of “furthering the hegemonic role of government” (Natcher et al., 2005:242).

Lawrence argues that government views Joint Management as a “set of structures and legal guarantees established through the legal and political framework of the majority culture” but that its success “depends on its acceptance as a real process of consultation and negotiation” (emphasis added 1996). As this thesis will argue, an acceptance of Indigenous rights and interests and the consequent shift in power relations that leads to effective negotiation are central to improving engagement processes (see Chapter 7).

5.3.3 Indigenous Protected Areas

IPAs symbolise a fundamentally new style of engagement. Unlike other co-management arrangements, IPAs leave virtually all decision-making and management power with Indigenous representatives. IPAs are areas of land recognised as ‘Indigenous-owned’ under non-Indigenous law, that Indigenous owners declare will be managed, with the support of the Federal Government, for conservation purposes (Smyth, 2006).

IPAs involve devolving power to the community level, and working with existing community representatives. However as the case study in Chapter 1 and discussion in Chapter 3 demonstrated, devolving power to this community level will not necessarily mean engagement with all individuals within the community (of place or interest).
5.4 Representation Dismissed?

Smith (2003) and Aldrich (2007) describe the shift away from self-determination and participation toward interventionist approaches to Indigenous affairs during the Howard era. A perceived failure of self-determination to address the chronic social problems of many Aboriginal communities was used by the Howard Government over its term, to justify an increasingly paternalistic approach.

The NT Emergency Response, loosely premised on the *Little Children are Sacred* report (Wild and Anderson, 2007) has been characterised by a notable lack of representation or consultation. This conspicuous lack of Indigenous voice in designing and implementing the Emergency Response was evident in Numbulwar where a long-drop toilet was dug in the middle of the most important ceremonial ground in the region (McLaughlin, 2007).

The Howard Government failed to effectively engage at a variety of levels. The Aboriginal author of the catalytic report, Anderson, has publicly voiced her disappointment at the cooption of her findings. The Emergency Response ignores her recommendations to work with existing authority structures within communities (particularly chapter 21 Wild and Anderson, 2007). The Federal Government bypassed not only the elders and representative bodies in communities, but also the Land Councils and the NT Government. Rather than identifying and enhancing existing authority structures, the Emergency Response has undermined them.

There has been a sole Aboriginal voice that has dominated media coverage: Noel Pearson. Mansell (2007:79) asserts that Pearson has “effectively replaced the national Aboriginal representative voice with that of his own… [his endorsement providing] the perception that the anti-Aboriginal push by Howard has Aboriginal backing”.

A range of Indigenous views on the Emergency Response were conveyed on the SBS Insight program *Are they safer?*. Some praised the intervention for what it has achieved. However others criticised its ‘one size fits all’ approach. Furthermore, many people commented that due to a lack of consultation the ‘real’ problems or community priorities had not still been addressed.

The Emergency Response was a return to blunt paternalistic and assimilation-style policies of the past when Indigenous people had no say in the policies and laws that governed their lives. In what can be described as a neo-assimilation era, the need for representation at the community, or even Territory Government level, was dismissed. Richie Howitt’s comments about the perceptions of time and Indigenous attitudes are very revealing of the nature of Emergency Response engagement:

The Commonwealth Intervention is a terrific example, ‘we haven’t got time to listen to you, we’ve got to do this now’. But you can’t do it without listening to people, without collaborating with them, without taking notice of their authority, of their experience; these are people who have lived this stuff. When will they open up to you and explain what’s needed? Well most of them will do some of that the day you demonstrate a capacity to sit down
and listen to them. When will they really open up to begin to talk about how you might change things? When they trust you and they think it’s worth talking to you. Why would they waste their breath? They’ve wasted it so many times before. (pers comm.)

5.5 Discussion

This selected history reveals several key themes. Firstly, Indigenous voices can only be heard in a form that is familiar and meaningful to non-Indigenous people. Historically the means of engagement have been overwhelmingly determined by non-Indigenous people; Indigenous people are continually offered representation spaces carved out of existing, largely unaccommodating, non-Indigenous systems. Indigenous voices have been construed into forms, such as ‘Kings’, and through forums, such as ATSIC and Land Councils, that have particular cultural significance to non-Indigenous people. The Tent Embassy is the exception. It is an Indigenous forum of protest (another form of engagement) that does not require legitimacy from the government.

Secondly, engagement has favoured bureaucratic styles of ‘doing business’. Morphy (2007:1) argues that the discourse of governance is highly culture-bound and relativistic, not universal as often assumed. Effective engagement needs to occur in an intercultural space that acknowledges both Indigenous and non-Indigenous political styles.

Thirdly, historical engagement processes have placed Indigenous representatives in a difficult role where they face uncertain futures, and can be accused of upholding the status quo. The duration of each political representative body corresponds almost exactly with the political term of the government that established it. Howard’s final decision to axe ATSIC in favour of a strictly advisory hand-picked committee demonstrates that representation that does not favour government views is discredited and ignored. Engagement, and particularly appointed representation, is a highly political issue, at the local level as demonstrated by the feuding between Coe and House, and at the governmental level, as demonstrated by Howard’s comments.

Essentially this history reveals a one-way intercultural dialogue occurring between Indigenous and non-Indigenous people. Indigenous people have had to learn the language of power, continually translating non-Indigenous systems of governance, and re-inscribing them with meaning. The rules of engagement are set by the power-holders, predominantly non-Indigenous people. To have a voice in the policies and areas that affect them, Indigenous people have had to constantly adjust to the continually changing forums they are offered by the power-brokers. This thesis argues that engagement needs to occur within ‘inclusive realities’. As Aguis et al. (2007:201) this requires a

hybrid space, a recognition space, a point of intersection for dialogue between and within cultures, an inclusive, formative space, and one that is creative and open.

The following chapter demonstrates the adaptation and innovation of contemporary engagement options that Indigenous people are choosing.
Chapter 6: Contemporary Engagement Choices

This chapter begins by considering basic principles of effective engagement revealed in discussions with researchers and practitioners. The rest of the chapter examines several planning processes and Indigenous organisations to illustrate the diversity of means Indigenous people are choosing to represent themselves in negotiations with government.

6.1 Lessons from Experienced Horses’ Mouths

Relationships were identified as fundamental to effective engagement by all practitioners. Relationships are highly dependant on trust and respect. Karissa Preuss\(^7\) (2008) has found that relationships with coordinators are a fundamental incentive or disincentive for Warlpiri people to work in Yuendumu.

Relationships rely on, but can strengthen, local knowledge. For Indigenous people a good relationship with government staff can lead to an improved understanding of how bureaucracies work, and allow each party to identify the ‘right’ people to talk to. It also builds respect. “It’s absolutely critical that you understand what’s going on… know who’s related to who or what the local politics are or what certain people feel about things… [it] shows respect as well… that you’ve made the effort to find out things, that you thought it worthwhile” (Feary 2008 pers comm.).

Transparent communication is essential to relationships. Frequent face-to-face but informal meetings allow parties to get to know one another, to fit each other “in the landscape” (Feary 2008 pers comm.). Howitt (2008 pers comm.) stresses that listening is a fundamental part of communication and engagement:

> Listening is a greatly undervalued skill and a greatly marginalised element of the processes of engagement… So the basic thing of really listening to what Aboriginal people are saying is often executed very poorly because we’re all guilty of listening in a way that we hear what we think we want to hear, we hear what we anticipate to hear and I guess the longer you are engaged in this sort of work the easier it is to think you know what people are going to say so there’s a tendency I think to listen less carefully over time.

The timing of engagement processes is also crucial. Jessica Weir observed that MLDRIN (see below) frequently were not given enough time to develop a response to government requests. However, established relationships and frequent informal communication meant that working groups could be organised quickly even if the Nations would not meet for several months (2008 pers comm.). Howitt also stated that one of the greatest achievements of the SA ILUA negotiations (discussed below) was that the government parties who initiated the

\(^7\) Karissa Preuss is an MPhil student conducting research into the viability of livelihoods on Country for Warlpiri people in Yuendumu. She is also a member of the DKCRC Core Project 1.
negotiations now genuinely understood why a process they originally expected to take three
months was still going ten years later. As he notes (2008 pers comm.), engagement
takes time, it takes relationships, it takes trust, and none of those things can
be assumed, they all have to be constructed and yet what we constantly find
in the negotiations process is that they’re all time constrained – that we want
the answer yesterday.

Providing the necessary resources for Indigenous people to engage equitability is critical.
Indigenous people need resources to organise meetings with government and other Indigenous
groups, as well as resources for negotiation, training and capacity-building (Indigenous
Response to the Living Murray Initiative, 2003:9).

Dermot Smyth (2008 pers comm.) argues that networking opportunities are a crucial aspect
of engagement processes. Regional and national Indigenous workshops provide the “chance [for
Indigenous people] to reflect…and talk to each other about [the] issues”. Workshops also
provide “a safe environment for the whitefella agency people to be invited into an Aboriginal
view of the world and go away feeling that they’ve got some friends and some relationships that
they can continue” (Smyth 2008 pers comm.). Regional communication networks are currently
very robust and provide effective engagement platforms as the following explorations of
MLDRIN, NAILSMA and Congress will demonstrate.

Finally, relationships can lead to policy dialogue with greater Indigenous input that would
ultimately improve ownership, uptake and outcomes. “Policies don’t come from nowhere. They
come from people talking to each other and being transformed by that process” (Weir 2008 pers
comm.). However, the detachment of public servants from local contexts in order to remain
impartial, advocated by Sturgess (2001) (discussed in Chapter 4), poses a serious challenge to
forming and maintaining relationships.

6.2 Contemporary Indigenous Engagement Choices

The following discussion demonstrates that Indigenous groups are seeking to be proactive,
rather than reactive to government policy.

6.2.1 Country Planning

This is not a selfish Plan that seeks to exclude. It is us who have been
excluded and this plan is an indication that we are not prepared to be
spectators any more. (Harradine et al., 2007:5)

Traditionally, protected areas have been controlled by non-Indigenous interests. The scale
of the area is determined by government conservation agencies and often a consultant is hired to
engage with all the Indigenous groups whose Country corresponds, in part, with the proposed
protected area. Not only can this lead to competing Indigenous interests but more importantly
“only part of those Aboriginal groups’ area is subject to planning. So there is the sense that
they’re only partially being heard, only partially being taken into consideration” (Smyth 2008
pers comm.). The IPA Program in many ways seeks to redress this by permitting Indigenous
people to articulate the conservation agenda, but Country Planning goes even further.
Country planning is a “process in which Traditional Owners and/or other local Indigenous people develop their goals, strategies and actions for protecting, managing and using their... environments and resources” (Smyth, 2007:3). Sea Country plans emerged during the development of the south-east Regional Marine Plan. It was not possible for autonomous Indigenous groups’ interests to be addressed in a single regional plan so the National Ocean’s Office funded five pilot plans “covering areas and issues determined by local Indigenous groups” (Smyth, 2007:3). Country planning involves working with a self-defined group who define the spatial scale to be planned. Country planning is much more dynamic than an environmental plan of management. It “allows people to produce their documents that are a statement of themselves, their history, their connection to country and their vision for the future of this country, which they can then take as more equal players to various tables for negotiation and implementation” (Smyth 2008 pers comm.).

The response from the government agencies targeted to support the plans has been positive. Most plans have achieved sufficient funding to employ a full-time coordinator and the support for long-term implementation. Smyth is of the opinion that:

Government agencies all seemed to heave a sigh of relief and say ‘we’ve got policies that say we have to engage Indigenous people in our planning processes. But everything we’ve tried has failed. But now this mob has come up with a document laying it all out for us how they us to engage with them. And now we’ve got this opportunity to talk very constructively’ (2008 pers comm.)

The interesting features of Country planning are the shifts in power and scale. It is Indigenous people who initiate the process, decide who is involved and the geographic scale. Government agencies are engaged only at the end of the planning process. The whole engagement process happens at the very local level; even the launches are held on Country. The process has legitimacy for both parties. Indigenous people follow the correct local processes to develop the plan, taking time to address issues as they arise throughout the planning process. Government partners are presented with a solid, written document that spells out each group’s connection to Country and exactly how they wish to care for it.

6.2.1.1 Wet Tropics Regional Planning

The Wet Tropics Regional Planning process is another example of planning at multiple scales. In an evaluation of the first-stage of the mainstream regional planning of the Queensland Wet Tropics region (1997-2001), Traditional Owners asserted that the engagement process had been inadequate for Indigenous involvement. Consequently a separate Indigenous planning

\footnote{Unfortunately, despite the success of the Sea Country Planning the Federal Government narrowed the focus on the Marine Bioregional Plans: consequently the National Oceans Office now only focuses on Commonwealth waters. However the Country planning model can be used by other government departments. “There is a wider scope for sea country plans to be developed and to cover a greater range of activities than those just within the environment portfolio” (DEWA2008).}
process was developed in 2002, and Caring for Country and Culture: the Wet Tropics Aboriginal Cultural and Natural Resource Management Plan (the Plan) was launched in 2005 becoming the first multi-tenured regional plan in Australia (Pannell, 2008:412 in publication). Pannell describes how Indigenous people moved from being excluded in planning to “tak[ing] charge of the government’s attempts at Indigenous engagement” (2008:412). The decision to pursue a separate Indigenous planning process was made by Indigenous people. The Plan is an aspirational document, outlining how Indigenous people want to manage the Wet Tropics and where agencies can support them (Libby Larsen 2008 pers comm.).

However it can be argued that the Plan continues to exclude some Aboriginal people from the planning process. As Pannell notes “the assertion of a Traditional Owner identity explicitly and intentionally excludes those Aboriginal and Torres Strait Islander people referred to as historical people or who are part of the stolen generation” (Pannell, 2008:414). Particular elements of the Traditional Owner community of interest have engaged in the planning process, rather than the ‘whole’ Indigenous community.

Country plans are becoming a focus of implementation. The focus on the region entails a necessary lack of detail about each group’s affiliation and aspirations for their particular areas of Country. Consequently, in implementing the Plan, Country plans are being developed for each group involved. Country plans recognise that Country boundaries form the level most relevant to the Aboriginal groups involved (Smyth 2008 pers comm.).

6.2.2 Regional Networks

6.2.2.1 Murray Lower Darling Indigenous Nations

MLDRIN were formed in 1998 “to provide a coordinated approach to policy development and management of the Murray Darling Basin” (Morgan et al., 2003:17). One of the primary aims for establishing the alliance was to “change fundamentally the way governments engage with the Indigenous Nations in relation to natural resource management. In particular… to reinforce the role of traditional owners… by moving away from the notion of mere ‘consultation’ with a homogenous ‘indigenous community’” (Morgan et al., 2006:140). MLDRIN is a confederation of Indigenous Nations \(^9\) or Traditional Owners, in the southern part of the Murray Darling Basin.

Recognising the diversity of Indigenous interests within the basin, MLDRIN is very clear about who it represents. MLDRIN is a

confederation of traditional owner groups. The distinction between a community of traditional owners and the local Indigenous community is complex. Traditional owners are not always members of the local Indigenous communities that exist on their traditional country, and not all members of these local Indigenous communities are traditional owners. These different

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\(^9\) The confederation consists of delegates from the Wiradjuri, Yorta Yorta, Taungurung, Barapa Barapa, Wamba Wamba, Mutti Mutti, Wadi Wadi, Latji Latji, Werigaia and Ngarrindjeri Nations.
communities of interest must be appropriately represented in the decision-making processes… (Morgan et al., 2003:17 emphasis added)

This provides a clear mandate for accountability. The Indigenous Nations assert that they draw their rights and legitimacy from Indigenous ownership of, and custodial responsibilities to, Country. This is in contrast to the “majority of ‘local Indigenous communities’ [who] are constructed through an affiliation to Indigenous community based organisations, holding membership based on democratic decision-making processes similar to that of the broader society” (Morgan et al., 2004:22).

MLDRIN engages at both the local and regional levels. However decision-making power remains at the local level. Only individual Nations can make decisions regarding their country (Morgan et al., 2003:19). Strengthening each nation’s autonomy, governance and authority is a priority (Morgan et al., 2006:142). At the regional level MLDRIN is an umbrella organisation, engaging with QLD, NSW, VIC, SA and ACT Governments, and the Murray Darling Basin Commission. MLDRIN aims to secure “institutional acceptance of the primacy of traditional owners speaking for country… MLDRIN casts itself as a facilitator to connect natural resource management institutions with traditional owner groups, and vice versa.” (Morgan et al., 2006:142).

Many Nations are choosing to incorporate. Weir and Ross (2007:194) argue that incorporation increases the legitimacy of Nations in the eyes of outsiders. They assert that incorporation includes the naming of representatives which outlines a clear structure for government, improving accountability and allowing engagement. This helps to address the key problem (outlined in Chapter 4) of government representatives not knowing who to talk to. Weir and Ross add that the “current informality of these communication networks is open to manipulation both by individuals within the Nation and by the government” (2007:194). Weir states that “Indigenous people aren’t living in a separate world” and that many of the so-called Western values of incorporation are also meaningful to Indigenous people (2008 pers comm.). Incorporation is a strategic move to enable engagement. “Western culture is bureaucratic and so based on legal structures that setting up an incorporated body is just a really quick way to cut through a lot of complex issues” (Weir 2008 pers comm.). However, incorporation has its own set of associated problems. Weir and Ross warn that incorporation risks the loss of the involvement of elders’ and the broader Nation. The corporate structure appeals to a generally younger and more educated sector of the Indigenous population. “If the Nation is represented by very narrow interests only, the informed consent of the Nation group will be undermined, which then also undermines the legitimacy of MLDRIN” (2007:198). Nevertheless Feary expresses confidence that these threats can be addressed: “if you had internal processes that enabled those older people to talk to those young articulate people so that they have good synergies, then you could overcome that problem” (2008 pers comm.).
6.2.2.2 North Australian Indigenous Land and Sea Management Alliance

NAILSMA is an unincorporated bioregional forum for Indigenous land and sea management in Northern Australia working primarily in remote Australia. NAILSMA exists to support Traditional Owners with on-country management of natural and cultural resources, developing support structures for future managers of the Indigenous estate, developing effective communication across the top [of Australia], engaging [Traditional Owners] into the research agendas and indeed to lead them, and finally supporting [Traditional Owners] to explore economic opportunities”. (NAILSMA, 2004:1)

The forum adopts a ‘both-ways’ approach, supporting Indigenous land and sea management with non-Indigenous research and resources. However, a principle feature of NAILSMA is Indigenous control: “for the first time in Australia (at least on this scale) Indigenous Australians are to be the principal architects and owners of a consistent and coherent strategic plan for the conservation of Indigenous Knowledge and its practical application to land and sea management” (Johnson, 2006:4).

Engagement with government is entrenched in NAILSMA’s structure and activities. Land Councils¹⁰ are the principle members of the alliance and Country management activities rely on Commonwealth government programs.¹¹ However the short-term insecure nature of the majority of these funding sources is a concern and NAILSMA is actively seeking sources of more secure finance, such as philanthropic organisations.

NAILSMA operates at the regional level with recognition of the authority of Traditional Owners at the local level. The strategic plan describes NAILSMA’s structure as an “umbrella that supports the core partners and adds value by being a collective that brings grass roots input to key issues” (Bessen Consulting Services, 2006:3, Johnson, 2006). The rationale for a regional approach is recognition of the shared circumstances across Northern Australia. Dreaming tracks and relationships link people and Countries. There is similar ecology, related Country management issues, and the desire to generate a strong economic base to sustain the Indigenous estate and its people (Armstrong et al., 2006:1). Furthermore it is felt that a regional organisation is better equipped to “negotiate the complex bureaucratic and legislative environment that land management in Australia is administrated through – to force the multi-agency, cross jurisdictional cooperation that will be required to make genuine space for

¹⁰ The Kimberley, Northern and Carpentaria Land Councils, Balkanu Cape York Development Association and Cooperative Research Centre for Tropical Savannas Management form NAILSMA. However CRCTS was not successful in gaining a third round of funding and will cease to operate at the end of 07/08 financial year. This presents a major challenge according to EO Joe Morrison “The vacuum of research, collaborations and opportunities will decrease as there is no other [research] entity working across the region – only NAILSMA remains” (Morrison, 2007).

¹¹ Including the Community Ranger Program, the Indigenous Land Management Facilitator Program, various Joint Management arrangements, the IPA Program, the Indigenous Land Corporation and CDEP (although changes to CDEP are currently occurring, it is unclear how much this will affect NAILSMA’s work) (Armstrong 2004).
customary management in the mainstream systems” (Armstrong, 2004:12). Finally, working at a broadly defined regional level allows NAILSMA to move away from local issues and conflict and focus on consistent regional Country management.

6.2.2.3 Congress of Native Title Management Committees

There is a revolution taking place in South Australia. It’s a quiet revolution, which has been building in momentum for almost a decade, but a revolution none-the-less. (Johns, 2007:197)

South Australia (SA) has been a progressive state with regard to Indigenous interests, attempting to resolve issues through “discussion and negotiation, rather than confrontation and litigation” (Crown Solicitor’s Office Native Title Section, 2004:1, Agius et al., 2002:4). In 1999 in an effort to prevent a long and expensive Native Title determination process, a state-wide Indigenous Land Use Agreement (ILUA) negotiation process began. The negotiations fundamentally changed how stakeholders viewed the Native Title process. “Native title is no longer seen as a threat or risk to be contested, managed and contained by non-Indigenous parties. It is now widely seen as an opportunity to build positive relations with Indigenous peoples, to realise sustainable outcomes to the benefit of the whole state” (Agius et al., 2007:197).

The Congress of Native Title Management Committees (hereafter known as ‘Congress’), was formed to represent all Native Title claimants in SA, to provide a “coherent and united voice” at the state-wide level (Agius et al., 2007:197). SA’s Native Title Representative Body, the Aboriginal Legal Rights Movement Inc (ALRM) acknowledge that only Congress can speak for Indigenous people, “ALRM will not speak for Native Title claimants without consulting with, and obtaining consent from, the Congress” (ALRM Native Title Unit, 2005:28). Constructing Congress was necessary because ALRM “wasn’t a representative body in the sense of being authorised as a representative by the Native Title claimants. It was a representative body because the Native Title legislation called it a representative body” (Howitt 2008 pers comm.). ALRM’s role was not to negotiate on behalf of claimants, but to facilitate negotiations by providing advice and support in the form of funding for meetings, travel costs, sitting fees, training and information to claimants (Calma, 2006). Congress became the legitimate (but unincorporated) body that could represent the Native Title claimants. Congress facilitates engagement with remote and settled communities, meeting the diverse needs of these groups poses a challenge which Congress aims to address through a focus on process.

Rather than just focusing on outcomes, special emphasis was given the process of negotiation. As Howitt points out, “even if you get the outcome that you think you’ve been

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12 South Australia was the first state to implement land rights legislation (in 1966) and agreed to return inalienable freehold land in the early 1980s before Native Title legislation (1993).

13 Stakeholders in the negotiations included the Aboriginal Legal Rights Movement (ALRM), the South Australian Government, South Australian Chamber of Mines and Energy (SACOME), South Australian Farmers Federation (SAFF), Local Government Association (LGA), South Australia Fishing Industry Council (SAFIC) and Seafood Council South Australia (SCSA).
targeting, if your process hasn’t been sound, fair, supported by your participants, then it will fall apart” (2008 pers comm.). The process was constructed to “address power imbalances, capacity needs, understandings, uncertainties, relationships, respect and trust, and the defining of responsibilities to enable the making of informed decisions” (Agius et al., 2007:198). The legitimacy of Congress for Indigenous participants has been a crucial element of the negotiation process. Congress aimed to empower claimants to make and be accountable for decisions rather than relying on recommendations from lawyers and other experts (Agius et al., 2002). Congress meetings used an ‘opt-in’ approach to informed decision-making. When discussions reached a decisive stage, each claimant group withdrew to individual workshop sessions to consider its position. They then returned to discussions with the whole Congress body bearing ‘witness’ to each other’s decisions (Davies, 2001:13, Agius et al., 2002:9). The workshops allowed claimant groups to consider the state-wide issues in the context of their own local issues.

The engagement process was guided by key principles including: “Native title is about people, not legal technicalities; Aboriginal claimants must have standing as the principals in the negotiations [not lawyers or others]; agreement making should be an act of self-determination; and participation and decision-making must be an act of choice, not the only choice” (Agius et al., 2007:197).

To equip all parties with an understanding of each other’s perspective, reverse role-playing activities were utilised (Agius et al., 2004:, see also Howitt, 1997). Prior to negotiations, claimant groups carried out theoretical discussions acting as industry groups or government, and the other stakeholders walked theoretically in Indigenous shoes. This promoted cooperative negotiation, helping industry parties understand that the Congress is the authority and it drives the negotiations (not the ALRM), and conversely, helping Congress members learn about the opportunities and challenges in the different industry sectors (Calma, 2006).

Another important feature of the SA negotiations was the recognition space created. The SA Government and other stakeholders engaged with Indigenous claimants as if they had had a positive Native Title determination. Indigenous jurisdictions (new, old and emerging) were recognised, respected and supported (Agius et al., 2007:, Davies, 2001). Agius et al (2004) assert that this created an equal playing field where no party “is required to ‘prove’ to any other party their right to be at the negotiating table”.

Like MLDRIN, Congress operates at the higher level while still respecting the autonomy of local groups. Each claimant group has its own internal decision-making processes and delegated authority, and as stated, the autonomy to opt-in (or out) of every Congress decision. Fundamental to the operation of Congress is the fact that “traditional law was still very much alive and that Aboriginal people want to adhere to their laws and customs” (Johns, 2007). Complementing local governance systems, the state level provides access to issues and forums that could not be addressed from the local level alone. Furthermore, negotiating at the state level reduced the resources and time required for multiple ILUAs. One of the main advantages of the
state-level process is that “all parties can negotiate their land aspirations in a forum that has authority to achieve agreed legislative and policy outcomes” (Calma, 2006).

6.3 A Plethora of Options

The different structures and planning processes outlined above illustrate a number of important points. Firstly there is no single approach that will work across Australia. The range of engagement mechanisms Indigenous people are choosing is indicative of the diversity of Indigenous interests and experiences. It is important that all parties consider a range of engagement processes and be open to adaptation to fit local circumstances.

This chapter has explored different ways that processes and organisations are challenging power relations, such as the role reversal exercises in Congress negotiations, and Country planning seizing control of planning processes. MLDRIN and Congress demonstrate innovative and effective ways of securing legitimacy for both parties, while all examples reveal the numerous levels of spatial scale at which meaningful engagement is occurring.

Chapter 3 discussed the dynamic and heterogeneous nature of community. This chapter has further illustrated that there is no simple way to include all members of a particular community. Contention and disagreement will still be part of any engagement process. Altman states “history and bad policy have made many of these areas extraordinarily murky. We are not going to find a ready solution… where there’s contestation” (2008 pers comm.). The reader can be assured that in each of the above examples not every individual in the communities concerned would be satisfied with how they are being ‘represented’. What these organisations and processes demonstrate are engagement options. People will choose to be involved in organisations that interest them and have legitimacy for them. Indigenous organisations deserve respect and support from government but it is also important that government agencies realise they cannot engage with these groups alone. Lane (1997) warns of the dilemmas of agencies engaging with a single body claiming to be representative. These organisations alone cannot represent the entire ‘community’ regardless of how it is defined. The following chapter will now explore the themes of this thesis: power, legitimacy and scale.
Chapter 7: Bringing It All Together

Thus far, this thesis has explored understandings of community, government and engagement, and examined interactions between Indigenous communities and various governments (or government agencies). It has been established that effective engagement requires process options, strong relationships, an understanding of each others needs and must occur in a true intercultural forum. Through this discussion, three inter-related themes have emerged: power, legitimacy and scale. Each is explored below.

7.1 Power

Giddens’ (1976:111) conceptualisation of power as “the capacity of an actor to intervene in a series of events so as to alter their course”, provides a useful understanding in the context of engagement. Therefore, who has the greatest capacity to affect the outcomes of engagement? Government has sovereign authority14 including policy-making power, control of time-frames and budgets, which constitutes a significant capacity to affect outcomes. However, Indigenous ownership of 20% of Australia represents a considerable bargaining chip. Furthermore, at the local level it is people’s behaviour that greatly influences NRM, therefore non-compliance to the government’s conservation agenda is also a form of power. Sturgess (2001) and Davis et al (1993:3) argue that power struggles between communities and governments, especially about the devolution of power, are really a debate about values. It is a struggle over “which part of society is to control our key institutions” (Sturgess, 2001:217); again a question of influence.

This thesis has demonstrated that Indigenous people are actively seeking greater control of decision-making power regarding their Country. This requires a shift in power relations to facilitate effective engagement. Indigenous people are no longer content to wait for government agencies to come and merely consult, with the hope that their aspirations will be adhered to (see Box 2). They are demanding a more meaningful seat at the negotiating table. MLDRIN, NAILSMA and Congress are regional forums that provide the means for Indigenous people to have a significant role in decisions about Country. The Country planning processes go even further; Indigenous groups are defining the terms of engagement and land management.

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14 Sovereign power is the political power located in the state to protect civil society. It is exercised through democratic processes, such as voting, which gives legitimacy to the actions of the vehicles of government, the legislature and public service, which create the laws and policies that regulate land management and Indigenous rights in Australia (Kelly 2005:63). This imposed British sovereignty (Brennan et al 2005) has posed serious challenges to the full recognition of Indigenous sovereignty.
Box 2 Ineffective Engagement

Classically, Indigenous people have been invited to engage by contributing to processes but have had little to no capacity to influence the decisions that affect their lives. The current NSW NPWS engagement protocol for Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act) regarding site clearances is a case in point. Indigenous people are invited to engage through a ‘community consultation process’ whereby they have the “opportunity to improve assessment outcomes by:

- *influencing* the design of the assessment of cultural and scientific significance
- *providing relevant information* regarding cultural and scientific significance
- *contributing* to the development of cultural heritage management recommendations
- *providing comment* on draft assessment reports prior to their submission”

However, “community consultation is not a sign-off or approval process. The NPW Act establishes the Director General of DEC [Department for Environment and Conservation, now Department of Environment and Climate Change] as the decision-maker… DEC will take into account all relevant information it receives as part of its decision-making process.”

The DEC remains the ‘decision-maker’, while the Aboriginal community “may participate in the process through comment of the assessment of methodology, contributing cultural knowledge and commenting on cultural significance of potential impacts…” (DEC 2004:3)

Contributing knowledge and attempting to influence criteria and recommendations does not constitute significant power. Smyth comments that “it’s not a particularly empowering process [when] Indigenous people are invited to download all their concerns and suggestions and then stand back and hope that someone takes a blind bit of notice of them” (2008 pers comm.). This is virtually a perfect match of the description by Pimbert and Pretty (1995: see chapter 4) of ‘participation in information giving’ or at best ‘participation by consultation’. With the DEC remaining the real power broker and decision-maker, Aboriginal people have little control over decisions that have great importance to them.

7.1.1 Factors Influencing Power Dynamics

Engagement is based on the premise that a heterogeneity of stakeholders will lead to a “diverse set of problems-based solutions, leading to creative group discussions, and innovative management outcomes” (Natcher et al., 2005:245). Essentially this assumes that getting all the stakeholders together to compare ideas about environmental management and thrashing out a solution will deliver the best outcome. However Natcher et al. assert that power dynamics determine whose knowledge is valuable and how this knowledge is, or is not, used in decision-making (2005:246). They have explored engagement processes between government and the Little Salmon Carmacks First Nation people in the Yukon Territory of Canada. They found that
through the formal (typically corporate) structure of engagement between First Nations representatives and government conservation agencies, non-First Nations members tended to define the expectations and norms of engagement, consequently subjugating the knowledge and experiences of the First Nations members (2005:246). This is further entrenched by power dynamics that typically favour the non-Indigenous participants through the lack of recognition of Indigenous rights.

Australia’s history is characterised by a notable lack of recognition of Aboriginal and Torres Strait Islanders. The myth of *terra nullius* was only overturned in 1992, finally acknowledging that Australia was in fact inhabited prior to European colonisation. Native Title provides limited recognition of continuing Indigenous relationships with Country. However it also allows the new occupiers to over-ride and ‘extinguish’ traditional Indigenous property rights (Brennan *et al.*, 2005). Furthermore, litigation outcomes and the repeated ‘watering down’ of legislation threatens this recognition space (Behrendt, 2002; Brennan *et al.*, 2005). It has been suggested that a treaty process may be a way to build on the negotiation processes established through Native Title proceedings to renegotiate the relationship between Indigenous people and the state (Brennan *et al.*, 2005; Strelein, 2002).

### 7.1.2 Resolving Power Imbalances

Addressing the relative lack of capacity for Indigenous people to influence the outcomes of engagement does not necessarily involve taking power away from the powerful (Agius *et al.*, 2007:201). Rather than thinking of power as a finite ‘thing’ to be possessed and distributed, power can be thought of as a capacity to be built and exercised. Altering power relations does not mean disempowering the government, but building institutional recognition and respect of Indigenous rights and interests. As Brennan and others have suggested above, a treaty process is one avenue to achieve this. At a more basic level, it requires all parties at the engagement interface to understand Indigenous relationships with Country and recognise that Indigenous people are not ‘just another stakeholder’ in environmental management negotiations.

The old rules of engagement need to be formally broken and replaced with new rules. Gaventa (2004:27) asserts that new rules must clearly outline “processes for inclusion and decision-making, and the new roles, rights and responsibilities of the various parties” to prevent old procedures ‘kicking-in’ “even if the process looks more inclusive and participatory”. The treatment of Native Title claimants in Congress negotiations is an example of the recognition required for effective engagement. Indigenous claimants are treated as if the outcome from the Native Title process had been a positive Native Title determination. In other words, they were recognised as the legitimate custodians for Country. They were recognised at the negotiating table as landholders with real rights and interests, rather than *potential* interests that were yet to be ‘proven’ in a non-Indigenous court. Engagement processes also need to be legitimate.
7.2 Legitimacy

Legitimate engagement is meaningful and acceptable to all parties. However, there are different principles that provide legitimacy for the different parties. The following will examine what aspects provide legitimacy for firstly Indigenous people, and secondly government.

Reflecting on the SA negotiations, Howitt states that the starting place for engagement was acquiring authority for the process under customary law.

I think the negotiations can only work where they are controlled by contemporary Indigenous governances,\textsuperscript{15} [Congress] up-scaled from a contemporary structure that was legitimate within customary law. It up-scaled that but it up-scaled that in a highly political process which was political within the Aboriginal domain because it was never imposed, it was people deciding for themselves did they want to negotiate (2008 pers comm.).

Under customary law, Indigenous people can only talk for areas of Country that they are related to. This presents challenges for engaging at regional levels. However, MLDRI, NAILM, and Congress very clearly state that although they are regional bodies and wish to engage with other regional interests, decisions relating to Country can only be made by the relevant contemporary Indigenous governance bodies (Nations for MLDRI, and claimants in the case of Congress). These bodies are nested institutions (discussed below).

Governments prefer to deal with bodies that abide by clear and familiar governance structures and procedures. As discussed in Chapter 6, incorporation is one means of providing legitimacy for government bodies. However, it can undermine the legitimacy of customary law if the requirements of incorporation overwhelm the organisation and undermine the needs of Indigenous legitimation processes. For example, as discussed in Chapter 5, NT and NSW Land Councils are bound by non-Indigenous legislation which regulates their functions. This makes the bodies accountable firstly to government and secondly to Indigenous people. Howitt voices concerns about incorporation, articulating serious criticism of it as a process that “legitimates the institution above the rights of the people who they’re supposed to be representing” (2008 pers comm.).

Making a distinction between assigned and achieved political representation, Weaver (1985) argues that government-assigned representation has little legitimacy for Indigenous people. Examining the 1960s-1980s, Weaver explores the development of national relations between governments and Indigenous people in Canada and Australia. The problem with ‘assigned’ representative status is that organisations are subject to the whims of government. The axing of the NAC, NACC and ATSIC all attest to the fraught nature of organisations relying on governments for legitimacy and existence. MLDRI, NAILM, Congress and the processes used in Country Planning, would all come under Weaver’s category of ‘achieved’

\textsuperscript{15} ‘Contemporary Indigenous governances’ is a term coined by Sherry Cross, a PhD student working with Richie Howitt.
status. That is, they derive their primary legitimacy from their Indigenous constituents under contemporary Indigenous governance structures. They also meet the criteria for ‘self-mobilisation’ (Pimbert and Pretty, 1995: discussed in chapter 4). Nevertheless the reliance on government funding and the ongoing need to work within non-Indigenous forums – rather than a true intercultural forum with greater accommodation of Indigenous styles of doing business – continues to present challenges.

Legitimacy cannot be assumed. It must be built and continuously checked and maintained. Rather than a status that can be declared as achieved, it is an on-going process which it is vital for effective engagement. It would be inaccurate to argue that the aforementioned organisations have legitimacy for all the people they claim to represent. Organisations that represent communities from both remote and settled Australia have an even greater challenge in providing legitimacy for constituents given the diverse needs of each group. Larger regional alliances in particular encompass diverse communities of place and interest and there is, no doubt, ongoing internal conflict. The case study from Chapter 1 illustrates that on the small scale, organisations exist within factional politics. Cohesion is often achieved through exclusion. Seeking legitimacy is an ongoing task for any Indigenous organisation. However as discussed in the last chapter, it is not realistic for government agencies to work with a single organisation that claims to represent, and have legitimacy for everyone. Respect must be paid to these groups but talking to such bodies does not excuse government agencies from attempting to engage more widely. The policy of engagement of NSW NPWS’s (Box 2), while questionable in some respects, requires that the proponent of a project that has the potential to impact on cultural or natural heritage, must “actively seek to identify stakeholder groups or people wishing to be consulted about the project and invite them to register their interest” (DEC 2004:5). This is necessary to prevent the domination of particular groups at the expense of the wider interests of the ‘community’ (Lane, 1997). Legitimacy is also influenced by the level of the spatial scale at which engagement occurs.

### 7.3 Scale

Gibson, Ostrom and Ahn (2000:218) define scale as the “spatial, temporal, quantitative, or analytical dimensions used to measure and study any phenomenon”. They make a distinction between scale and levels, the latter referring to locations along a scale, sometimes hierarchically (2000:219). This thesis has explored the spatial scale of engagement, particularly at what spatial level engagement is most effective. The levels of interest are the local, regional, and to a lesser extent, the national levels.

Different levels are more meaningful to particular stakeholders. The local level is the most meaningful to Indigenous people, notably due to what Smith (2005:7-8) describes as a “sense of localism [which] insists on the necessity of Aboriginal people representing themselves and the ‘country’ with which they have personal ties”. Despite a huge number of social, cultural and political changes and adaptations, it is evident that this local Country level is still important to
Indigenous people. The regional level is the most legitimate level for governments due to the federated nature of Australia and the newer notion of managing resources based on bioregions. These factors make the national level essentially too large in the context of NRM. These different level preferences relate to divergent but coexisting systems of governance. Classically, Indigenous governance was primarily situated at the local level. Despite colonisation – particularly federation – imposing higher levels, the local remains a meaningful and functional level of contemporary Indigenous governance.

There is evidence of each party accommodating the other’s preferred levels of engagement. The IPA Program is an example of the Commonwealth Government recognising Indigenous autonomy and priorities at the local level, while the regional organisations such as MLDRIN, NAILSMA, Congress and the Wet Tropics planning all ‘scale-up’ to work at the regional level. As this list indicates, it is more common for Indigenous people to accommodate Government preferences to ‘scale-up’ and work at the regional, state or national levels. While it is a strategic choice to scale-up, Altman states that it is a choice that is “in some ways out of their hands: it is a choice, but I think that to be effective they are more or less blackmailed into having larger levels of governance, and sometimes beyond local or regional capacities” (2008 pers comm.). This comment again demonstrates the unequal power relations between parties and the intercultural forum that still heavily favours non-Indigenous ways of doing business.

7.3.1 Polycentric Governance

Gatzweiler (2006:303) argues that complex ecological systems require complex governance structures to effectively manage them. He argues that polycentric governance is the answer. Polycentric governance systems are the “organisation of small-, medium-, and large-scale… [governance] units that each may exercise considerable independence to make and enforce rules within a circumscribed scope of authority for a specified geographical area” (Ostrom, 2001). Gatzweiler (2006:299) asserts that polycentric structures reflect the heterogeneity of their constituents, while Hooghe and Marks (2003 cited in Gatzweiler, 2006:299) argue that they “provide more complete information of constituents' preferences, [are] more adaptive in response to changing preferences, [are] more open to experimentation and innovation, and that [they] facilitate credible commitments”. This meets some of Weaver’s (1985) criteria for representative organizations (discussed Chapter 4) and could help overcome the heterogeneous nature of the community discussed in Chapter 3.

Congress, MLDRIN and NAILSMA are examples of polycentric governance. These bodies operate at several levels; providing guidance and/or on-ground action at the local level, while engaging with government and other bodies at the regional level. These organisations all demonstrate the governance structures Gatzweiler (2006:303) advocates: actions taken at each level are complementary and reinforce on another and each organisation abides by the principle of subsidiarity by strongly advocating autonomy at the local level.
7.3.1.1 Nested Institutions

Nested institutions are autonomous but linked units. The linkages only flow one way, moving from the inside out. Local institutions can ‘nest’ within and influence larger institutions, but larger institutions cannot fit within and influence smaller levels (see Figure 5).

Figure 3 Nested Institutions
MLDRIN and Congress are nested institutions because the decision-making autonomy is preserved at each level. The broader level organisation (MLDRIN, Congress) cannot make decisions at local level, but local level organisations (the Nations or Native Title claimants) authorise and constitute these regional level bodies. This style of governance is very different to that of ATSIC or Land Councils (discussed in Chapter 5), where regional councils and national boards, and the Council governing board respectively, were/are elected using democratic models. Voting is the only power at the local level in democratic structures while nested institutions retain autonomy and authority at the lowest level that can effectively govern.

7.3.2 Working at Relevant Levels of the Spatial Scale

A central argument of this thesis is that engagement must occur at a relevant spatial level. As demonstrated in Chapter 5, historically, Indigenous representation has been bestowed by government at an inappropriate level – generally national (NACC and NAC) or at the national level with regional elements (such as ATSIC). Contemporary engagement tends to be at local and regional levels.

Regional organisations demonstrate Indigenous awareness of the need to work at multiple levels to engage with government. Smith (2005) and Pannell (2008:414) have argued that
“Aboriginal notions of country and people’s attachment to traditional localities appear at odds with the general push towards regionalism”. However Chapter 6 has demonstrated Indigenous people are making strategic choices about the levels they wish to engage at. The crucial element of these regional alliances is that autonomy is emphasised at the local level, constructing nested institutions. Smith asserts that regional representation “almost inevitably [involved] transferring the responsibility for speaking about a particular area to others, resulting in considerable distrust towards such organisations amongst those represented by them” (2005:8). However MLDRIN, NAILSMA and Congress are Indigenous organisations that derive their legitimacy from the local level. Weir (2008 pers comm.) commented that “Indigenous politics is strongly based in local identities. However, the regional and national is not somewhere else… Indigenous people draw on their local issues and… take them to broader forums”. Organisations are scaling up; keeping their foundations at that local level and using nested institutions that function at the regional level. Note that this is in contrast to organisations or bodies that exist solely at the regional or national level with little or no legitimacy to the local level, such as Howard’s hand-picked advisory body. Securing legitimacy at the local level should also meet part of Weaver’s (1985) criteria for representative organisations: organisations focused on the local level are better placed to respond to people’s needs and demands. Particular communities of interest (such as Traditional Owners and ranger groups) are engaged at this local level, and platforms are built to allow them to engage with government at its preferred level, the regional, or in the case of Congress, the state.

In summary, this chapter has argued that effective engagement requires awareness of power dynamics and works to accommodate Indigenous rights and interests; it ensures that processes are legitimate for all parties, and operates at a spatial level relevant to everyone. A key finding has been strength of polycentric governance in representing the heterogeneity of the community and dealing with the complexity of ecological systems. This finding has relevance for mainstream NRM as well.
Chapter 8: Where To From Here?

This thesis ends by returning to the research questions and reiterating the arguments outlined in Table 1. It then considers the implications for the new Federal Government by framing the challenge of engaging effectively in the context of the community outlined in Chapter 1.

8.1 Revisiting Research Questions

This thesis has established the basis for engagement between Indigenous communities and governments: Indigenous people are seeking management solutions to problems primarily created by the colonisers, while governments are seeking Indigenous support to expand and manage the conservation estate. Through examining various examples of engagement across settled and remote Australia, involving a diverse range of Indigenous communities, a shared willingness to engage has been demonstrated.

Historically Indigenous people have been obliged to participate through processes legitimate to non-Indigenous stakeholders but not necessarily sensitive to the way Indigenous people ‘do business’. Historical engagement has been a one-way intercultural dialogue. It has been argued that effective engagement requires a two-way intercultural forum.

The primary changes in the way engagement is occurring have been in relation to power, legitimacy and scale. In contemporary processes this research has found that Indigenous people are seeking greater control over Country management. They are operating at multiple levels and often through nested polycentric governance structures to provide legitimacy according to contemporary Indigenous governances, and function at levels, and in processes, relevant to government. Interviews with practitioners and researchers also revealed the importance of relationships for framing effective engagement. It has been argued that effective engagement is about options. As Dovers states, successful engagement needs to “cater for multiple patterns of participation, both in terms of intensity and across time” (Dovers, 2000:6-7).

8.2 Looking Forward…

This thesis comes at a time that could to be an important new beginning for Indigenous affairs in Australia. The election of the Rudd Government presents a unique opportunity to move away from the neo-assimilation approach of the Howard Government. Prime Minister Rudd has demonstrated a commitment to important symbolic issues such as the formal apology to the Stolen Generations, the signing of the United Nations Declaration on the Rights of Indigenous peoples and a return to discussions about reconciliation.

However these symbolic gestures need to be matched by effective engagement. The Government has outlined a new plan for environmental management. Caring for our Country (NRM 2008) suggests that the new government is serious about a working relationship to manage Country with Indigenous people. Furthermore the recent announcement of a new
national representative body (Smiles, 2008) presents a new opportunity for Indigenous voice in Australia. This thesis recommends that polycentric governance nested at the local level should be a seriously considered in this debate. However, ultimately the test will be how well these good intentions are carried out on the ground. Engagement happens with real people in real communities, like the ‘imagined’ community with its real problems discussed in Chapter 1.

8.3 …by Looking Back

What insight does this thesis offer to the issues associated with engaging with a real community? Like all social phenomena, the answer is complex. As discussed in Chapter 1, I assumed that the Community Organisation established to manage the Protected Area would represent a community of place. However my fieldwork revealed numerous fluid communities of interest in conflict, within the community of place. I believe that exploring the relationships and power dynamics between individuals within these communities could facilitate communication and assist people to focus on common interests. This is not a role solely for government; sustainable solutions to internal community problems are most likely to come from within. However in this instance the government could benefit from an improved understanding of the different communities with interests in the Protected Area. Inter- and intra-community conflict surrounding the Protected Area should be of concern to the government: conflict affects health and undermines people’s capacities to engage with government and manage Country. The localised and adaptive criteria for finding the ‘right people’ to engage with require effective relationships and local knowledge. Organisations established to engage with government need local processes to ensure they maintain legitimacy amongst their constituents and deal with conflicts. Nevertheless this thesis has also acknowledged that attempting to represent ‘everyone’ is a near impossible task. The best option for government is to provide and support an array of engagement (and Country management) options, and allow Indigenous people to choose when and how they wish to engage. Applying the principles of effective engagement to this and other communities, and assessing how effectively the new Government engages, would be fruitful areas for further research. If the new Government is able to put in place meaningful principles and practices, it is possible that we may now be entering new era of effective engagement between Indigenous communities and government with regard to Country management.
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Appendix 1: Researchers and Practitioners Interviewed

In trying to answer the questions raised through the fieldwork, I chose to do a second round of interviews with people experienced in engagement processes. Practitioners and researchers with engagement experiences with a diversity of Indigenous communities provided insight and shaped this thesis. Below is a brief biography of each person, focusing on the experiences discussed in interviews.

Craig Elliott is a senior anthropologist at the Central Land Council. Through his work with the CLC Craig deals with Land Rights claims, site clearances and Native Title claims. He has also conducted research on primary health care in Indigenous communities, and worked with members of the Stolen Generation.

Dermot Smyth is a consultant with Smyth and Bahrdt Consultants. He has a wealth of engagement experience having worked across Australia with remote and settled communities. Dermot was instrumental in developing the IPA Program and conducted an Inquiry into Coastal Land and Sea Management (culminated in the report A Voice in All Places).

Jess Weir is a visiting research fellow with the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). Our discussions focussed on Jess’s work with MLDRIN for her PhD ‘Murray River Country: an Ecological Dialogue with Traditional Owners’.

Jon Altman is the Director of Centre for Aboriginal Economic Policy Research (CAEPR). Jon has conducted extensive research in remote Central, and particularly North Australia, chairing inquiries and conducting research for Aboriginal organisations.

Libby Larsen works for the Northern Land Council. Our discussions focused on her work as the Planning Officer for the Wet Tropics Aboriginal Plan.

Richie Howitt is the Head of the Human Geography Department at Macquarie University. He has conducted extensive work as a consultant in South Australia and the Northern Territory. Richie was the lead technical support person in South Australia’s state-wide ILUA negotiations. He conducted a social impact assessment for the Alice Springs to Darwin railway, and examined the historic impact of the Comalco bauxite mines at Western Cape York which led into the Western Cape community’s co-existence agreement.

Sue Feary has a range of experience with engagement through the NSW NPWS. Sue has engaged directly with communities as an archaeologist working in cultural heritage management. She has also worked with communities through the management of National Parks as a Manger. Sue conducted fieldwork across Australia for her PhD examining the National Indigenous Forestry Strategy.
Appendix 2: Interview Schedules from Community Fieldwork

INTERVIEW SCHEDULE 1: For participants involved with the Protected Area

Section 1: Exploring key issues in the town

In your opinion, what are some of the good things about living in this town?

What do you worry about most? (education, health, access to country, culture, cultural heritage, jobs, water, climate change, economic viability of [town])

Section 2: Activity out on Protected Area

Do you know that place called [x]? Do you go out there?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Why do you go out?</td>
<td>How come?</td>
</tr>
<tr>
<td>Who do you go with?</td>
<td>Do you know who does go out there?</td>
</tr>
<tr>
<td>How often do you go out to that place?</td>
<td>Why do think they go out to that place?</td>
</tr>
<tr>
<td>What kinds of things do you do out at the Protected Area?</td>
<td>What kinds of things do you reckon they do out at the Protected Area?</td>
</tr>
<tr>
<td>Have you noticed any benefits for you from going to the Protected Area?</td>
<td>Do you think that they benefit from going out to the Protected Area?</td>
</tr>
<tr>
<td>Has what you do at The Protected Area changed over the time you have been involved out there?</td>
<td></td>
</tr>
<tr>
<td>Are there things that everyone does at the Protected Area (group activities/whole of community)?</td>
<td></td>
</tr>
</tbody>
</table>

Section 3: What does the Protected Area mean to you?

Does the Protected Area have any special significance for you as an Aboriginal person? Can you tell me about it? (cultural heritage – mounds, restoring the environment, getting exercise, being with people, safe place for kids/family)?

Has the significance or meaning of the Protected Area changed over the time you have known about it?

Section 4: Aspirations for future

What sort of place do you think the town/the Protected Area will be in 20 years?

What sort of place would you like it to be in 20 years?

Section 5: Assessment of ‘successes’

Are things working well out at the Protected Area?

Are there things that are not working so well? How do you think they could be ‘better’?

On the whole do you think things are going well or not so well?

Thinking about the future, do you see any risks or threats to the things that are working well at the Protected Area?

What do you think people/you can do to build on the things that are going well?
What is the difference between how things used to be, say 10 years ago when it wasn’t a Protected Area, and now?

*Ok we’ll be finishing soon, only a few more questions.*

**Section 6: Influences**

Thinking about some of the things that are going well at the Protected Area, who do you think has been most responsible for these things:

- the Aboriginal community here or
- Government policies (which government?)
- something else?

If answer 1. Ask them what aspects of the Aboriginal community have been responsible for this – prompt only if need be with strength of the Aboriginal community

If answer 1 or 2

What decisions by govt/community have been helpful or unhelpful?

Do you feel that you can have a say in these decisions about the Protected Area?

**Section 7: Processes of change**

From the previous answers, focus on decisions that show a potential for positive long-term changes (eg. healthy people, sustained income, education, regular land management, engaged young people).

Ask people to tell the story of the decisions that led to that change.

(What has changed? Are you happy with theses changes? What do those changes mean for you?)

**Section 8: Reflection:**

Do you think that there are key ingredients for making things work well? Tell me about them.

We’ve been talking about what is important to Aboriginal people, do you think that non-Aboriginal people have the same concerns? If not, then in your opinion, what do you think they worry about the most?

Thank you for your time.
INTERVIEW SCHEDULE 2: For relevant agency staff

Section 1: (COMMUNITY CONCERNS)
What do you think are some of the key issues for people in the town?
Are there any differences, in your opinion, in the issues Aboriginal and non-Aboriginal people have to deal with?

Section 2:

A. (OBSERVING CHANGE)
Have you observed any changes in the social, cultural or economic opportunities for Aboriginal people in the town?
In your opinion, have they been positive or negative? In what way?

B: (QUANTIFYING CHANGE)
Do you think you can measure these changes? If so, how would you measure them? What other/better indicators could be used to track changes?
What in your opinion has brought this change about? Was it one thing or many?
Do you think that there is a difference in opportunities/issues between generations of Aboriginal people in the town?

C. (ACCOUNTING FOR CHANGE)
Thinking about the changes you just told me about, can you tell me who you think has been responsible for these changes?

- the Aboriginal community here or
- Government policies
- something else?

Follow-up questions if applicable are:

What are the local rules or policies helping these changes happen? Have they been a positive or negative influence?

What is the role the government has played in this change? Has it been a positive or negative influence?

How have these rules/policies/influences changed over the time you have been involved with (their organisation) in the town, for better or worse?

Do you feel that you influence those rules or policies, to change their effect on your activities and results? How?
Appendix 3: Interview Schedule for Researchers and Practitioners

The following questions loosely guided interviews with researchers and practitioners.

What kinds of engagement processes involving Indigenous people have you been involved in the past?
- What elements do you think were ‘effective’? Why?
- What elements do you think were not so effective? Why?

How do you think Indigenous people think about engagement? Is this different to how the government views it?

How do you conceptualise effective Indigenous engagement?
- How do you think about ‘communities’?
- Do you think everyone in this community can be represented?
- How do you deal with conflicts?

Do you think that there are existing representation ‘spaces’ that are useful for Indigenous people?
- How could they be improved?
- What capacity needs to be built within Indigenous communities and within government agencies?