

## **SPEAKING AS COUNTRY: A NGARRINDJERI METHODOLOGY OF TRANSFORMATIVE ENGAGEMENT<sup>1</sup>**

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The land and waters is a living body.  
We the Ngarrindjeri people are part of its existence.  
The lands and waters must be healthy for the Ngarrindjeri people to be healthy.  
We are hurting for our country.<sup>2</sup>

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<sup>2</sup> Tom Trevorrow in Naomi Goodwin and Sandra Bennett (eds), *The Murray Mouth: Exploring the implications of closure or restricted flow* (Murray-Darling Basin Commission, 2002) inside front cover.

## Introduction

The systemic nature of colonisation results in a trenchant series of problems for Indigenous peoples striving to protect their lands and waters, to ensure the health of their communities, and to rightfully enjoy their cultural life. Indigenous leaders and communities who seek the transformation of colonial systems of knowledge, law and practice must engage effectively and authoritatively with the non-Indigenous processes and structures that have long been the source of Indigenous disempowerment. How can Indigenous people engage with a dominant system, without being co-opted into that system? Similar issues are raised for non-Indigenous actors implicated with Indigenous affairs: how can the agencies of a dominant system partner meaningfully and respectfully with Indigenous peoples, to refrain from appropriating Indigenous cultural knowledge and assimilating Indigenous aspirations within a framework that has been developed insensitively, in ignorance of Indigenous needs, perspectives and philosophies? In sum, how can we collectively ensure that our ‘response to wrongs are not reinscriptions of colonial processes’?<sup>3</sup>

In South Australia, the Ngarrindjeri Regional Authority (NRA) has developed an innovative response to colonial governmentality, which subverts and seeks to correct the structural conditions underlying the continuing dominance of colonial social forms and their associated epistemologies. The NRA makes strategic use of an Indigenous-led methodology of engagement that is culturally relevant and secured legally through contractual agreement.<sup>4</sup> At its centre is the Ngarrindjeri concept of *Yannarumi*—broadly translated as ‘Speaking as Country’. Resulting interaction then reinforces Ngarrindjeri nationhood and agency in protecting Ngarrindjeri lands and waters, by sharing in knowledge production that respects rights to cultural knowledge as a form of intellectual property. Through this method of relationship-building, including in the domain of scientific research conducted on Ngarrindjeri Ruwe (Country), the NRA has been able to take an active and progressive role in the development of environmental policy and in decision-making around water and natural resource management (NRM) in the Murray-Darling Basin region.<sup>5</sup>

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<sup>3</sup> Daryle Rigney, Steve Hemming and Shaun Berg ‘Letters Patent, Native Title and the Crown in South Australia’ in Elliot Johnston, Martin Hinton and Daryle Rigney (eds), *Indigenous Australian and the Law* (Routledge Cavendish, 2nd ed, 2008) 161, 164; Simone Bignall, *Postcolonial Agency: Critique and Construction* (Edinburgh University Press, 2010).

<sup>4</sup> Steve Hemming, Daryle Rigney and Shaun Berg, ‘Researching on Ngarrindjeri Ruwe/Ruwar: Methodologies for positive transformation’ (2010) 2 *Australian Aboriginal Studies* 92; Daryle Rigney, Simone Bignall and Steve Hemming, ‘Negotiating Indigenous Modernity: Kungun Ngarrindjeri Yunnan—Listen to Ngarrindjeri Speak’, (2015) 11(4) *AlterNative* 334.

<sup>5</sup> The NRA has negotiated a ‘Statement of Commitment’ with the South Australian Government dealing with Indigenous engagement in water resource planning in line with the Murray-Darling Basin Plan.

This article provides a conceptual account of these innovations in environmental management being led by Ngarrindjeri elders and leaders working in natural resource management and cultural heritage programs in the South Australian Murray-Darling Basin.<sup>6</sup> We explain how the NRA and our partners in environmental research and policy planning are involved in a transformative method of ‘actor network’ realignment, encouraged strategically through a politics and an ethics of respectful engagement.

The first section considers the Ngarrindjeri engagement strategy in the light of the nation’s cultural beliefs, its aspirations for the future, and the historical context of the processes of colonisation it has survived and continues to struggle against. The second section describes how a Ngarrindjeri philosophy of interconnectivity has informed this Indigenous nation’s strategic invention of ‘Kungun Ngarrindjeri Yunnan’ Agreements as legal tools for contracting and regulating the conditions of respectful relationship, including in the domains of research and policy; these tools are effectively transforming the actor networks in South Australian natural resource management. The third section elaborates how this process of actor network transformation works. It describes the methodology of engagement employed by Ngarrindjeri and partners in research investigating water use and natural resource management in the South Australian Murray-Darling Basin region. This transformative work is taking place in the ongoing ‘contact zone’ of practices, ideas and assemblages created through engagements between Ngarrindjeri and the settler State.<sup>7</sup>

### **Colonial impairment of the Ngarrindjeri Vision for Country**

At the start of the new millennium South Australia was plunged into a serious drought that severely restricted the flow of water through Ngarrindjeri Ruwe (Country), impacting the health of the lower River Murray, Lakes Alexandrina and Albert, and the Coorong. The entire Murray estuary here is identified as a Ramsar Wetland of International Importance.<sup>8</sup> This region supports a fragile ecology where the ‘Meeting of the Waters’ takes place, as fresh water combines with ocean saltwater in the tidal flows of the river mouth.<sup>9</sup> This area

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<sup>6</sup> The authors of this article are directly involved on a day-to-day basis in the development of engagement and negotiation strategies relating to Ngarrindjeri interests in water planning, management and research and the broader NRM context. We also pay respects to the Ngarrindjeri leaders and elders who have passed and their steadfast commitment and enormous contribution to the development of the strategies and innovations discussed in this article.

<sup>7</sup> For a discussion of the concept of ‘contact zone’ see Marie Louise Pratt, ‘Arts of the Contact Zone’ (1991) *Profession* 33.

<sup>8</sup> Bill Phillips and Kerri Muller, *Ecological character of the Coorong, Lakes Alexandrina and Albert Wetland of International Importance* (Government of South Australia, Department for Environment and Heritage, 2006).

<sup>9</sup> Diane Bell, *Ngarrindjeri Wurruwarrin* (Spinifex Press, 1998); Steve Hemming, Tom

is a vital cultural and creation place for the Ngarrindjeri, and a habitat and breeding ground for many Ngarrindjeri *ngartji* (totems—friends). In 1998 the Ngarrindjeri Ramsar Working Group produced a community-endorsed position paper that lamented the degradation of waters in the region:

Too much water has been diverted from the river system and not enough water now reaches the Lakes and Coorong. The quality of the water has also fallen. The water is cloudy, polluted and not fit for drinking. The Murray, the Lakes and the Coorong are no longer environmentally healthy and this is partly why the Ngarrindjeri people are not healthy. The Ngarrindjeri know that the Coorong, Lakes and River are dying.<sup>10</sup>

The Ngarrindjeri position paper was excluded from the final Ramsar Management Plan after promises were made by the South Australian Government that it would be included. The disrespectful approach to Ngarrindjeri values, aspirations and knowledges was compounded by the degraded health of the river system. This sad state of affairs stands as a direct counterpoint to the Ngarrindjeri ‘Vision for Country’, which encapsulates the Ngarrindjeri philosophy of being (*Ruwe/Ruwar*) at the centre of more recent Ngarrindjeri interventions in natural resource and cultural heritage management:

Our Lands, Our Waters, Our People, All Living Things are connected. We implore people to respect our Ruwe (Country) as it was created in the Kaldowinyeri (the Creation). We long for sparkling, clean waters, healthy land and people and all living things. We long for the Yarlular-Ruwe (Sea Country) of our ancestors. Our vision is all people Caring, Sharing, Knowing and Respecting the lands, the waters and all living things.<sup>11</sup>

Ngarrindjeri elders and leaders developed this aspirational statement in 2006 as a fundamental part of the *Ngarrindjeri Nation Yarlular-Ruwe Plan*.<sup>12</sup> It makes plain ongoing Ngarrindjeri traditions, values and aspirations associated with Ngarrindjeri lands and waters. It was an example of Ngarrindjeri *Yannarumi* (Speaking as Country) and it carries with it reference to Ngarrindjeri law, and a Ngarrindjeri assessment of what constitutes wellbeing and what has to change to achieve this vision.

Since South Australia’s establishment as a British colony in 1836, Ngarrindjeri and other Indigenous people have struggled to protect their cultures,

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Trevorrow, and Matt Rigney, ‘Ngarrindjeri culture’ in Naomi Goodwin and Sandra Bennett (eds), *The Murray Mouth: Exploring the implications of closure or restricted flow* (Government of South Australia, Department of Water, Land and Biodiversity Conservation, 2002) 13.

<sup>10</sup> Ngarrindjeri Ramsar Working Group, *Ngarrindjeri Perspective on Ramsar Issues* (1998) 5.

<sup>11</sup> Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee on behalf of the Ngarrindjeri Nation *Ngarrindjeri Nation Yarlular-Ruwe Plan: Caring for Ngarrindjeri Sea Country and Culture* (2006), 7.

<sup>12</sup> Ibid.

communities, lands and waters—in short, to ‘Speak as Country’.<sup>13</sup> As a result of the colonial history of dispossession and oppression, Indigenous nations across Australia have very limited ‘rights’ to water and other natural resources except indirectly through a weakened native title regime and more indirectly through regional legislation such as the *Aboriginal Heritage Act, 1988* (SA).<sup>14</sup> Historically, when water licenses became available along the Murray River, Ngarrindjeri people were still living under protectionist legislation on former missions or in fringe camps and were in no position to apply. This situation differs significantly from the experiences of Indigenous peoples in comparable settler democracies such as Canada, the USA and New Zealand. In all these examples there exists significantly stronger recognition of Indigenous rights to lands and waters.<sup>15</sup>

Nonetheless, as the formal ‘constitutional’ statement above demonstrates, Ngarrindjeri have maintained a strong connection to country through a cultural tradition of *Ruwe/Ruwar* (understanding that lands, waters, people and all living things are connected). Ngarrindjeri have continued to draw attention to the damaging changes being made to Ngarrindjeri country through ongoing colonization.<sup>16</sup> Ngarrindjeri argue that the draining of South Australia’s South-East has had damaging effects on the flow of water into the Coorong and into

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<sup>13</sup> Christobel Mattingley and Ken Hampton *Survival in our own land: “Aboriginal” experiences in “South Australia” since 1836* (Wakefield Press, 1988); Shaun Berg (ed), *Coming to Terms: Aboriginal Title in South Australia* (Wakefield Press, 2010); Steve Hemming, Daryle Rigney and Shaun Berg, ‘Ngarrindjeri Futures: Negotiation, Governance and Environmental Management’ in Sarah Maddison and Morgan Brigg (eds), *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance* (Federation Press, 2011) 98.

<sup>14</sup> Bruce McFarlane, ‘The National Water Initiative and acknowledging Indigenous interests in planning’, (2004), Paper presented to the National Water Conference, Sydney, 29 November 2004; Robert Hattam, Daryle Rigney and Steve Hemming, ‘Reconciliation? Culture, nature and the Murray River’ in Emily Potter et al (eds) *Fresh Water: New Perspectives on water in Australia* (Melbourne University Press, 2007) 105; Jessica Weir, *Murray River Country: An ecological dialogue with Traditional Owners* (Aboriginal Studies Press 2009); Jessica Weir (ed), *Country, native title and ecology, Aboriginal History. Monograph 24* (ANU Press, 2012); Poh-Ling Tan and Sue Jackson 2013 ‘Impossible Dreaming - does Australia’s water law and policy fulfil Indigenous aspirations?’ (2013) 30 *Environment and Planning Law Journal* 132; Timothy Neale and Stephen Turner, ‘Other people’s country: law, water, entitlement’, (2015) 5(4) *Settler Colonial Studies* 277.

<sup>15</sup> William H Veeder, ‘Winters Doctrine Rights Keystone of National Programs for Western Land and Water Conservation and Utilization’ (1965) 26(2) *Montana Law Review* 1.; Marcia Langton et al, *Honour among nations: Treaties and agreements with Indigenous people* (University of Melbourne Press, 2004); Steve Hemming, Daryle Rigney and Meryl Pearce, ‘Justice, culture and economy for the Ngarrindjeri nation’ in Emily Potter et al (eds), *Fresh Water: New Perspectives on Water in Australia* (Melbourne University Press, 2007) 217; Lisa Strelein, *Compromised Jurisprudence: Native Title cases since Mabo* (Aboriginal Studies Press 2006).

<sup>16</sup> Diane Bell, (ed) *Kungun Ngarrindjeri Miminar Yunnan: Listen to Ngarrindjeri women speaking* (Spinifex Press, 2008); Ngarrindjeri Nation, Yarlular-Ruwe Plan, above n 16.

the Lower Murray region more generally. The draining of wetlands/nurseries along the Murray and the building of levee banks and barrages to facilitate industries such as dairy farming and fruit growing have had devastating impacts on the health of the South Australian Murray-Darling Basin (SAM-DB) and the lives of Ngarrindjeri people. Always at the centre of this Indigenous communication and educational program have been Ngarrindjeri stories, histories and lessons with a message for non-Indigenous people to develop a respectful, health-giving relationship with Ngarrindjeri lands and waters. Ngarrindjeri have continued to exercise responsibility to Speak as Country, to preserve the reproductive health of Ngarrindjeri *Yarluwar-Ruwe* (Sea Country).

In the early 1990s, Ngarrindjeri men and women used new Aboriginal heritage legislation to argue that the waters around Kumarangk (Hindmarsh Island) are spiritual waters and crucial for the life of the Ngarrindjeri Nation. Ngarrindjeri sought to protect their *Ruwe* (Country) from desecration and further environmental degradation. They insisted that building a bridge between the mainland at Goolwa and Kumarangk would do irreparable damage to the spiritual context of the region and therefore would compromise the health of the River, the Lakes and the Coorong and all connected living things.<sup>17</sup> They were attempting to communicate the core Ngarrindjeri cultural principles associated with *Ruwe/Ruwar*. The litigation around the Hindmarsh Island bridge issue was fought in multiple courts and in both state and federal jurisdictions. In 1995 a Royal Commission was also established to investigate these claims, and its findings rejected the Ngarrindjeri traditions.<sup>18</sup>

At this very low point in the Ngarrindjeri Nation's history, Ngarrindjeri saw little scope for exercising agency within the settler colonial system. The efforts of Elders and leaders to use the mechanisms of settler law such as Aboriginal heritage legislation to speak for Country and to protect Ngarrindjeri cultural life had been met with incomprehension, and at times blank refusal. Ngarrindjeri found themselves caught and immobilised within an inflexible actor network structured by colonial institutions and their associated forms of knowledge, which funnelled social understanding through narrow pathways towards a predetermined outcome of cultural extinction. Ngarrindjeri were once again declared extinct, not modern and 'enslaved' in death-giving, actor-networks that fail to provide any opportunity for Ngarrindjeri to be Ngarrindjeri in a

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<sup>17</sup> Iris E Stevens *Report of the Hindmarsh Island Bridge Royal Commission* (State Print, 1995); Bell, Ngarrindjeri Wurruwarrin, above n 14; Bell, Kungun Ngarrindjeri Mimir Yunnan, above n21; Sandra Saunders (2003) 171 *Overland* 60; Tom Trevorrow and Steve Hemming, 'Conversation: Kungun Ngarrindjeri Yunnan – Listen to Ngarrindjeri People Talking' in Gus Worby and Lester-Irabinna Rigney (eds), *Sharing Spaces: Indigenous and Non-Indigenous Responses to Story, Country and Rights* (API Network, 2006) 295.

<sup>18</sup> Stevens, above n 22; Margaret Simons, *The Meeting of the Waters: The Hindmarsh Island Affair* (Hodder Headline Australia, 2003).

Ngarrindjeri way.<sup>19</sup> According to John Law, because of their apparent systemic stability, such ‘knowledge places’ tend towards a ‘pessimistic ending’ in which the potential for transformation becomes almost unimaginable:

Here’s the pessimistic ending. If we’re interested in change, if we are interested in radically different forms of knowing and the radically different versions of the world that might go along with that knowing, then we face an uphill battle. This is because we’re caught in what one might think of as a quadruple lock. By which I mean that *all* the items on the list—institutions and technologies, metaphysics, particular descriptions and the things that we are describing – need to be altered simultaneously if we are to achieve certain forms of radical change. But, here’s the problem, they all interlock with one another. Specific forms of knowledge and their objects are embedded in institutions and in metaphysics too. So, for instance, to know and to engage in debate in the most obvious ways is also to reproduce the most obvious institutional forms, authorities and metaphysics, and changing these together would require organisational, social, material, and metaphysical reworking all at one go.<sup>20</sup>

However, even in the most rigid colonising and normative systems, what might appear to be minor shifts can produce opportunities for significant change if the interventions are strategic, theorised and coordinated. Ngarrindjeri are working hard to re-assemble this colonising contact zone and to abolish the ongoing erasure of Ngarrindjeri Ruwe/Ruwar. This work has required reinforcement of First Nationhood, strengthening of governance and an assertion of the responsibility to ‘Speak as Country’<sup>21</sup>

In 2001 the Federal Court of Australia in Adelaide reconsidered the evidence previously put forward by Ngarrindjeri to oppose the construction of the bridge to Kumarangk. This time, although the Bridge had already been erected and the desecration of *Ruwe/Ruwar* (country, body, spirit and all living things) had already taken place, Justice Von Doussa concluded that ‘upon the evidence before this Court I am not satisfied that the restricted women’s knowledge was fabricated or that it was not part of genuine Aboriginal tradition’.<sup>22</sup> This

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<sup>19</sup> Steve Hemming, ‘Managing Cultures into the Past’ in Damien W Riggs (ed), *Taking up the challenge: critical race and whiteness studies in a postcolonising nation* (Crawford House Publishing, 2007); Steve Hemming and Daryle Rigney, ‘Unsettling sustainability: Ngarrindjeri political literacies, strategies of engagement and transformation’ (2008) 22(6) *Continuum: Journal of Media and Cultural Studies* 757; Jim Birckhead et al, *Economic and Cultural Values of Water to the Ngarrindjeri People of the Lower Lakes, Coorong and Murray Mouth. Report to the Commonwealth Scientific and Industrial Research Organisation (CSIRO)* (River Consulting 2011).

<sup>20</sup> John Law, ‘Knowledge Places’ (Plenary paper presented at workshop: ‘Linking STS and the Social Sciences: Transforming ‘the Social’?’), Kookmin University, Seoul, 28-29th October 2011) 10  
<<http://www.heterogeneities.net/publications/Law2011KnowledgePlaces.pdf>>.

<sup>21</sup> Hemming, Rigney and Berg, Researching on Ngarrindjeri *Ruwe/Ruwar*, above n 9; Stephen Cornell, ‘“Wolves Have a Constitution”: Continuities in Indigenous Self-Government’ (2015) 6(1) *International Indigenous Policy Journal*; Stephen Cornell, ‘Processes of Native Nationhood: The Indigenous Politics of Self-Government’ (2015) 6(4) *The International Indigenous Policy Journal*.

<sup>22</sup> *Chapman v Luminis Pty Ltd (No 5)* (2001) 123 FCR 62 (Summary) [12] (Von Doussa

judgement provided support to Ngarrindjeri claims to the cultural and spiritual significance of the ‘Meeting of the Waters’ and the Kumarangk area. As a consequence of difficult and extended negotiations and agreement-making, ‘The Meeting of the Waters’ has now been registered under the *Aboriginal Heritage Act, 1998* (SA) and recently recognised as significant to natural resource management and water planning in South Australia and the broader Murray-Darling Basin.<sup>23</sup>

Always included in Indigenous calls for just recognition of rights and obligations in respect of traditional lands and waters is an appeal to non-Indigenous researchers and natural resource managers to shift their understandings of the relationship between humans and non-humans—conceived in Western terms as the divide between ‘nature’ and ‘culture’.<sup>24</sup> Ngarrindjeri have addressed this gap in understanding through the introduction of Ngarrindjeri philosophies of being, knowledges and histories into State policy and planning with a prioritising of the inclusion of the Ngarrindjeri concept of *Ruwe/Ruwar* and a Ngarrindjeri assessment of the impact of colonisation and environmental degradation in regional environmental water planning. The following excerpt from the 2014 *Report of the Murray-Darling Basin Authority* provides a significant example:

Since the arrival of Europeans the Ngarrindjeri witnessed the draining of their wetlands along the rivers, and in the south east, and the disconnection of the living body of the River Murray, Lower Lakes and Coorong through the installation of locks, levee banks and barrages. They have watched their ngartjis (totems) diminish, their lands cleared and the degradation of Yarlular-Ruwe.<sup>25</sup>

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<sup>23</sup> Steve Hemming, ‘Ngarrindjeri Cultural Heritage Management, Colonial Misuse of Water, Climate Change, and Planning for a Future’ (2009) 2(2) *Heritage Management* 252; Murray Darling Basin Authority, *Lower Lakes, Coorong and Murray Mouth Environmental Water Management Plan* (MDBA Publication No 10/14, Murray Darling Basin Authority, 2014).

<sup>24</sup> Monica Morgan, Jessica Weir and Lisa Strelein ‘Indigenous Rights to Water in the Murray Darling Basin: In support of the Indigenous final report to the Living Murray initiative’ (Research Discussion Paper No. 14, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2004); Bruno Latour, *Politics of Nature: How to Bring the Sciences into Democracy* (Harvard University Press, 2004); Dhimurru Land Management Aboriginal Corporation, *Dhimurru Yolngu Wunambal Gapu Wanga Sea Country Plan: A Yolngu vision and plan for sea country management in north-east Arnhem Land, Northern Territory* (Dhimurru Land Management Aboriginal Corporation, 2006); Marcia Langton, ‘Earth, Wind, Fire, Water: The Social and Spiritual Construction of Water in Aboriginal Societies’ in Bruno David, Bryce Barker and Ian J McNiven (eds.), *The Social Archaeology of Australian Indigenous Societies* (Aboriginal Studies Press, 2006); Ngarrindjeri Nation, *Yarlular-Ruwe Plan*, above n 16; Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Duke University Press, 2007); Hemming and Rigney, *Unsettling sustainability*, above n 19; Weir 2009, *Murray River Country*, above n 19; Birchead et al, above n 19.

<sup>25</sup> Murray Darling Basin Authority, above n 29, 26.



This shift, subtle at first, in the South Australian ‘colonial archive’, activated in the actor networks of the contact zone, substantiates John Law’s ultimate optimism, that if knowledge relations...

... and the practices in which they are implied are multiple then this suggests that the knowledge places don’t come as seamless wholes, but instead with gaps and interstices and cracks. ... The implication, of course, is that different normativities, politics and ethics co-exist and intersect with one another too; and that, if we can make parts of these explicit then they become debatable and contestable. And then there are similar stories, too, about difference, in the places where Northern technoscience encounters alternative post-colonial knowledge traditions. Such encounters are saturated with power, for sure, but again they bring different realities and different normativities into contact with one another – and sometimes, at least, the self-evidences of technoscience are undermined.<sup>26</sup>

In the contemporary South Australian contact zone, actor networks comprising natural resource management policy and practice, are resistant to recognition of ‘different normativities’. The continuing work of Ngarrindjeri leaders and the peak Ngarrindjeri organisation the NRA, however, is leading steadily towards a re-defining of the requisite inclusion of procedures for Indigenous engagement in water planning in the new Basin Plan.<sup>27</sup> Of course, this tendency towards acknowledgement, inclusion and Indigenous agency did not come about inevitably or easily; rather, it was the effect of Indigenous strategic action and a conscious move towards First Nationhood sustained in the frequently hostile, ‘white’, contexts of colonising, settler governance and natural resource management.<sup>28</sup>

### **Restoring the Vision: Kungun Ngarrindjeri Yunnan**

The Hindmarsh Island Bridge affair divided and devastated the Ngarrindjeri community, also impacting negatively on Ngarrindjeri obligations under Ngarrindjeri law to act responsibly for the health of *Ruwe/Ruwar* and to Speak as Country (*Yannarumi*). As the drought worsened in South Australia, Ngarrindjeri Elders embarked upon a comprehensive process of nation re-building),<sup>29</sup> to restore community well-being and provide a clear structure of

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<sup>26</sup> Law, above n 20, 11.

<sup>27</sup> See Steve Hemming, Daryle Rigney and Shaun Berg, ‘Ngarrindjeri Futures: Negotiation, Governance and Environmental Management’ in Sarah Maddison and Morgan Brigg (eds), *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance* (Federation Press, 2011) 98; Steve Hemming and Daryle Rigney, *Indigenous engagement in environmental water planning, research and management: Innovations in South Australia’s Murray-Darling Basin Region*, (Technical Report Series No 14/21, Goyder Institute for Water Research, 2014).

<sup>28</sup> Hemming, *Managing Cultures into the Past*, above n 24; Hemming and Rigney, *Unsettling sustainability*, above n 24; Cornell, *Wolves Have a Constitution*, above n 28; Cornell, *Processes of Native Nationhood*; Aileen Moreton-Robinson, *The White Possessive: Property, Power and Indigenous Sovereignty* (Minnesota Press, 2015).

<sup>29</sup> Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and*

authority through which negotiations with the non-Indigenous community and its institutions could proceed, on terms that recognized (rather than excluded) Ngarrindjeri rights and responsibilities as a starting point for engagement. This process of nation re-building is ongoing. It includes a claim for native title in the region,<sup>30</sup> but is not dependent upon the successful determination of this claim. In relation to water, for example:

Ngarrindjeri consider they have the first right, a right attached to the exercise of their cultural rights, interests and responsibilities, that precedes all other rights including but not limited to the legislative function of the MDBA [Murray-Darling Basin Authority] to allocate water for particular uses. The rights and interests of the Ngarrindjeri require that water flows into, through, and from, their country from up river. This is a right a priori to all others and the MDBA should commence their consideration of allocations without interference or diminishment of these rights.<sup>31</sup>

Ngarrindjeri Nationhood assumes an autochthonous and unique connection to Country (regardless whether this is recognized in settler law), and is now deeply embedded in a range of practices and leadership engagements with other governing powers in South Australia. The process of Nation re-building accelerated in 2007 with the official incorporation of a centralised governing body, the Ngarrindjeri Regional Authority, tasked with representing and acting for Ngarrindjeri interests. This was a vital first step in the nation re-building process, allowing Ngarrindjeri to *identify* authoritatively as a Nation, and to be identified as such by settler powers. This primary moment of National identification then allowed Ngarrindjeri to *organize* politically and to *act* more effectively as a consistent and representative power in the South Australian political landscape).<sup>32</sup> Federally and locally the NRA is clearly acknowledged by non-Indigenous governments as the peak representative body for the Ngarrindjeri Nation. The NRA was the first Indigenous peak body representing an Indigenous nation in South Australia. Inspired by its success, the State Government has recently introduced a new policy direction in Indigenous affairs aimed at establishing Aboriginal Regional Authorities across South

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*Development* (University of Arizona Press, 2007).

<sup>30</sup> In South Australia the First Peoples of the River Murray and Mallee (FPRMM) have a consent determination and Indigenous Land Use Agreement (ILUA) applying to lands and waters of the Upper Murray in South Australia. The Ngarrindjeri & Others Native Title Management Committee (NNTMC) is responsible for a native title claim that includes the River Murray to just north of Murray Bridge. The NRA is the peak regional Indigenous body that includes the NNTMC and also covers the River Murray to Morgan through another member organisation—the Mannum Aboriginal Community Association Inc. (MACAI). It is important to note that the FPRMM native title claim was first submitted as a Ngarrindjeri claim. It was later re-named during the late 1990s native title re-registration phase. Many members of the Ngarrindjeri Regional Authority are FPRMM native title holders.

<sup>31</sup> Ngarrindjeri Regional Authority, NRA Submission to Murray-Darling Basin Authority for and on behalf of the Ngarrindjeri People in relation to the Proposed Basin Plan, 16th April 2012, 13.

<sup>32</sup> Cornell, *Wolves Have a Constitution*, above n 21.

Australia.<sup>33</sup> This new policy direction should help support the further development of Ngarrindjeri capacity to meaningfully contribute to regional management of natural resources.

The NRA was established to support the Ngarrindjeri leadership's long-term aim of protecting and improving the wellbeing of Ngarrindjeri *Ruwe/Ruwar*—the inseparable relation between lands, waters, body, spirit and all living things. The organization and expression of the Nation's core commitments is contained within the foundational Ngarrindjeri management planning document—the *Ngarrindjeri Nation Yarlular-Ruwe Plan: Caring for Ngarrindjeri Sea Country and People*.<sup>34</sup> It articulates a broad vision and a set of strategic directions for caring for Ngarrindjeri country, emphasising that 'the river, lakes, wetlands/nurseries, Coorong estuary and sea have sustained us culturally and economically for tens of thousands of years'.<sup>35</sup> It is important to appreciate that the Yarlular-Ruwe Plan is at once a policy document, and a constitutional statement by the Ngarrindjeri Nation. It is an expression of Ngarrindjeri identity and aspirations for the future.<sup>36</sup> The Ngarrindjeri Yarlular-Ruwe Plan is now given high-level recognition in State and Commonwealth contexts. For example the M-DBA's *Lower Lakes, Coorong and Murray Mouth Environmental Water Management Plan* includes the following positioning statement:

This document is to be read in conjunction with the Ngarrindjeri Nation Yarlular-Ruwe (Sea-Country) Plan, the Ramsar Management Plan and the Ecological Character Description Report.<sup>37</sup>

In 2007, following in the footsteps of earlier Ngarrindjeri natural resource management and cultural heritage programs, the NRA established a Caring for Country Program (soon re-named Yarlular-Ruwe Program) to implement and further develop the vision expressed in the Nation's Yarlular-Ruwe Plan.<sup>38</sup> Through its Yarlular-Ruwe Program the NRA is now working with government and local communities to develop new forms of natural resource management that recognise Ngarrindjeri values and rely on Ngarrindjeri expertise and capacity. The Yarlular-Ruwe Program facilitates a series of objectives that include: coordinated development and implementation of Caring for/as Country strategies and activities within Ngarrindjeri *Ruwe/Ruwar*; a forum for engagement, discussion and innovation; the provision of advice and formal responses to requests from the Ngarrindjeri nation and external bodies

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<sup>33</sup> Government of South Australia, Department of State Development, 'South Australian Aboriginal Regional Authority Policy. A regional approach to Aboriginal governance in South Australia' (Government of South Australia, Department of State Development, March 2016).

<sup>34</sup> Ngarrindjeri Nation, Yarlular-Ruwe Plan, above n 16.

<sup>35</sup> *Ibid.*, 6.

<sup>36</sup> Cornell, *Wolves Have a Constitution*, above n 28.

<sup>37</sup> Murray Darling Basin Authority, above n 29, 5.

<sup>38</sup> Hemming, Rigney and Pearce, above n 20.

such as governments at all levels, education and research organisations, and the business sector; promotion of the NRA and its activities; and supporting the NRA in achieving its goals to build its capacity and create increasing opportunities to manage Ngarrindjeri lands, waters and all living things. For the NRA, much of the energy in this process has been directed towards improving governance, initiating Caring for/as country Programs with associated economic development opportunities, and creating new relationships with government at all levels to achieve these objectives. The NRA is critical in this process, providing a centralised point of contact between non-Indigenous interests and the Ngarrindjeri Nation.

In fact, the NRA not only is a key point of government contact, but also significantly decides the *nature of the contact* ensuing between Ngarrindjeri and the settler State. For Ngarrindjeri, a key lesson taken from the Hindmarsh Island Bridge affair was that communication with non-Indigenous agencies would only be worthwhile if Ngarrindjeri could be sure that cultural knowledge would be listened to, acknowledged as authoritative, and treated respectfully. Displacing the insidious, settler ‘politics of recognition’ was a primary goal in re-assembling the contact zone.<sup>39</sup> To guarantee this, Ngarrindjeri leaders and advisors established a contract law foundation for all future negotiations over interests affecting Ngarrindjeri Country.<sup>40</sup> This requires signatories to begin by ‘Kungun Ngarrindjeri Yunnan’—‘listen to Ngarrindjeri people talking’. To enter into a negotiation and ‘consent’ process with Ngarrindjeri (as is generally required under settler state policies of consultation with Indigenous peoples as part of policy planning procedures), state powers seeking to consult with the NRA must enter into legally binding accords known as Kungun Ngarrindjeri Yunnan Agreements (KNYA). The ‘KNY’ process does not designate fixed outcomes, but rather clarifies a *starting point* for respectful communication between interested parties: every KNYA requires parties to commit to respectful listening, discussion and negotiation over any and all management matters concerning Ngarrindjeri jurisdiction in relation *Ruwe/Ruwar*. Importantly, the negotiation can only proceed when there is a formal procedural recognition of the capacity of each partner to enter into the negotiation and agreement process. This necessarily includes an *a priori* recognition of the Ngarrindjeri as ‘traditional owners’ and the Ngarrindjeri Regional Authority as a peak political body that registers *de facto* Ngarrindjeri sovereignty over Ngarrindjeri (unceded) territories;<sup>41</sup> KNY agreements allow all parties to recognise how Ngarrindjeri rightfully enjoy a practical exercise of

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<sup>39</sup> Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Duke University Press, 2002); Steve Hemming ‘The problem with Aboriginal heritage’ in Gus Worby and Lester-Irabinna Rigney (eds) *Sharing Spaces: Indigenous and non-Indigenous Responses to Story, Country and Rights* (API Network, 2006) 305; Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014).

<sup>40</sup> Hemming, Rigney and Berg, *Researching on Ngarrindjeri Ruwe/Ruwar*, above n 9.

<sup>41</sup> *Ibid.*

sovereignty over all matters in the Nation's jurisdiction, even where these matters now register coexisting interests as a consequence of colonial settlement. Ngarrindjeri have negotiated a number of such contracts over subsequent years, including some very significant agreements with government outlining the co-management of land and resources, and statements of apology for past wrongs and of new commitment to better relations.<sup>42</sup>

This way of doing business has been formally recognised by government at local, State and Federal levels through the signing of KNY agreements. In particular, a whole-of-government KNYA between the Ngarrindjeri and the South Australian Government was set in place in 2009 to frame the Ngarrindjeri strategy for negotiating Ngarrindjeri interests in Country and 'natural resource management', and in particular the South Australian Government's long-term plan for the Coorong, Lower Lakes and Murray mouth.<sup>43</sup> This is a legally binding agreement committing Ngarrindjeri and various Ministers of the Crown in South Australia. The KNYA provided for the establishment and funding of a joint taskforce that created a formal context for the NRA to negotiate regarding South Australian Government programs on Ngarrindjeri *Ruwe/Ruwar*. The agreement includes a recognition of Ngarrindjeri traditional ownership; recognition of the NRA as the Ngarrindjeri peak body; and an agreement to negotiate on key, long-held Ngarrindjeri objectives, such as the hand-back of the Coorong National Park.

The NRA continues to reinforce the need for a shift in the use of government resources, towards prioritising the provision of long-term resourcing to develop the NRA's capacity to effectively engage with and 'participate' in the State's environmental programs and to conduct Ngarrindjeri programs. The KNYA 2009 and the KNYA Taskforce have provided the primary Indigenous engagement mechanism for environmental water planning in the South Australian Murray-Darling Basin region. Membership of the KNYA Taskforce includes relevant state government departments, local councils, NRM Boards, the South Australian Water Corporation and the Environmental Protection Authority. The inaugural KNYA Taskforce Annual Report (2010-2011) begins with the following acknowledgement of the Ngarrindjeri as traditional owners of Ngarrindjeri lands and waters:

The South Australian Government acknowledges Ngarrindjeri are the Traditional Owners of the land and that according to their traditions, customs and spiritual beliefs its lands and waters remain their traditional country. The State also acknowledges and

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<sup>42</sup> Ibid.

<sup>43</sup> KNYA (Kungun Ngarrindjeri Yunnan Agreement) 2009 Ngarrindjeri Tendi Incorporated, Ngarrindjeri Heritage Committee Incorporated and Ngarrindjeri Native Title Management Committee for and on behalf of the Ngarrindjeri people and The Crown in right of the State of South Australia represented by the Minister for Environment and Conservation, the Minister for Aboriginal Affairs and Reconciliation, the Minister for the River Murray, and the Minister for Agriculture, Food and Fisheries (5 June 2009).

respects the rights, interests and obligations of Ngarrindjeri to speak and care for their traditional country, lands and waters in accordance with their laws, customs, beliefs and traditions.<sup>44</sup>

This recognition is repeated in the recent Environmental Water Management Plan for the Lower Murray Ramsar Icon site that covers the Ngarrindjeri 'Meeting of the Waters'. It states that the 'Ngarrindjeri Nation is acknowledged as the traditional owner of the country that includes the Lakes, Kurangk (Coorong) and Murray Mouth'.<sup>45</sup>

State Government and Ngarrindjeri recognition of the structural role played by the KNYA Taskforce in water planning, for example, is reflected in Objective 5 of the KNYA Taskforce Strategic Implementation Plan, which was endorsed in October 2012:

Objective 5: Support coordinated and appropriate engagement with Ngarrindjeri on water related planning and management issues that affect the Ngarrindjeri Nation  
Description: The Ngarrindjeri are inextricably connected to the fresh and saltwater of the Lower Murray, Lakes and Coorong. Water resource planning for this region and within the broader Murray-Darling Basin affect water quality and quantity flowing into Ngarrindjeri country. The KNYA Taskforce can help coordinate engagement with Ngarrindjeri across these different water resource planning arenas and support the appropriate integration of Ngarrindjeri interests.<sup>46</sup>

The KNYA Taskforce has been pursuing its stated objectives through initiatives such as the organisation of a series of workshops focused on Indigenous people and water issues, and the shared development of 'an agreed way forward' and a 'statement of commitment'. Development of a Water Resource Plan Statement of Commitment between the NRA and the South Australian Government is seen as a positive step in clarifying relationships and activities to implement the Basin Plan and progress Ngarrindjeri water interests.<sup>47</sup> Like a KNY agreement, a 'statement of commitment' can define engagement principles and agreed actions. This process of formal commitment of powers to work together to achieve dedicated outcomes ensures mutual and

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<sup>44</sup> Government of South Australia, Department of Environment, Water and Natural Resources and Ngarrindjeri Regional Authority, 'Kungun Ngarrindjeri Yunnan Agreement. Listening to Ngarrindjeri People Talking. KNYA Taskforce Report 2010-11' (KNYA Taskforce Report 2010-11, Government of South Australia, Department of Environment, Water and Natural Resources, June 2012), 2.

<sup>45</sup> Murray Darling Basin Authority, above n 29, 5.

<sup>46</sup> DEWNR and NRA, above n 50, 14.

<sup>47</sup> Government of South Australia, Department of Environment, Water and Natural Resources and Ngarrindjeri Regional Authority, Water Resource Planning (Murray-Darling Basin Plan) Statement of Commitment between Ngarrindjeri Regional Authority Incorporated and the Department of Environment, Water and Natural Resources and the South Australian Murray-Darling Basin Natural Resources Management Board and the South East Natural Resources Management Board (31 January 2015) <file:///Users/104030/Downloads/water-resource-planning-statement-of-commitment-2015-gen.pdf>.

shared benefits: South Australia meets M-DB Plan Water Resource Plan accreditation, while recognising Ngarrindjeri political authority and supporting Indigenous input of aspirations, values and knowledges into environmental water planning. On a smaller scale, Statements of Commitment have also been developed as crucial 'tools' for articulating the KNYA principles within specific projects and programs, such as *Ruppia* translocation; Coorong, Lower Lakes and Murray Mouth research, monitoring, and vegetation management planning; and most recently for up-dating the Ramsar Ecological Character Description. They ensure clarity of process and provide protection for Ngarrindjeri cultural knowledge through a Ngarrindjeri-developed cultural knowledge protection regime. As part of the expression of a partnership statement of commitment, specific clauses and definitions are included in project agreements, research agreements and other documents. The following is an example of a key definitional clause, which relates to a principle of cultural knowledge protection enabling Ngarrindjeri to safely share knowledge:

Cultural Knowledge means all and any cultural knowledge, whether such knowledge has been disclosed or remains undisclosed of the Indigenous group, including but not limited to: (a) traditions, observances, customs or beliefs; (b) songs, music, dances, stories, ceremonies, symbols, narratives and designs; (c) languages; (d) spiritual knowledge; (e) traditional economies and resources management; (f) scientific, spatial, agricultural, technical, biological and ecological knowledge; and includes documentation or other forms of media arising there from including but not limited to archives, films, photographs, videotape or audiotape.<sup>48</sup>

Such acknowledgement of Indigenous political and cultural authority in key State policy and planning resources outlined above is evidence that an Indigenous-led, highly innovative model for engagement between Indigenous people and the State has been firmly established in the SAM-D region. We have described how the Ngarrindjeri Yarluwar-Ruwe model treats 'Caring as Country' as a holistic nation-building project designed to create a healthy Ngarrindjeri future. This unique Indigenous governance model, combined with the high-level KNYA engagement strategy, provides this part of the M-DB with well-developed structures and practices designed to support just and effective Indigenous engagement in water research, policy development and management. It has achieved this because the political and legal technologies introduced by the NRA have been instrumental in transforming the colonial nature of the actor network in South Australia. By providing new conditions of interaction, the NRA has created a new political disposition in South Australia, characterized by increased willingness to listen for culturally diverse expressions of interest, and to respond to such expressions in ways that mutually enhance governing agencies. Importantly, this re-shaping of the contemporary 'contact zone' has produced vital opportunities for increased Ngarrindjeri agency in water research, policy and planning.<sup>49</sup> In the final section

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<sup>48</sup> Hemming, Rigney and Berg, *Researching on Ngarrindjeri Ruwe/Ruwar*, above n 9, 100.

<sup>49</sup> Hemming, Rigney and Berg, *Ngarrindjeri Futures* (2011), above n 33; Steve Hemming and Daryle Rigney, 'Ngarrindjeri futures: negotiating a future through Caring for

of this paper, we examine in finer detail how the broad scale structural initiatives introduced by Ngarrindjeri translate into a practical methodology of engagement, which is redefining programs and projects of natural resource management on Ngarrindjeri Country.

### Securing the Vision: Actor alliances

In December 2014, Ngarrindjeri further embedded Ngarrindjeri cultural principles in the agreement making process and extended the concept of Speaking as Country (Yannarumi), underpinning governing responsibility, into a Ngarrindjeri Speaking as Country Deed.<sup>50</sup> This agreement provides recognition in a more explicit way the deep interconnectedness between Ngarrindjeri agency and responsibility, health of Country and health of people and cultural life: Ngarrindjeri *Ruwe/Ruwar* (lands, waters, body spirit and all living things) needs to be healthy for Ngarrindjeri to be healthy, and for this reason Ngarrindjeri care for, speak for and exercise cultural responsibility as Ngarrindjeri *Ruwe/Ruwar*. The Speaking as Country Deed specifically commits the government to work with Ngarrindjeri to promote an improved understanding of the meaning and significance of the 'Meeting of the Waters site'. In signing a KNYA, parties commit to listening to Ngarrindjeri 'Speaking as Country'. This shift in message from simply listening to a deeper understanding is crucial to truly grasping what Ngarrindjeri have been trying to explain since colonisation. In assigning Ngarrindjeri *Ruwe/Ruwar* to the practices and discourses of cultural heritage management rather than, for example, the northern Australian land rights and Caring for Country programs, Ngarrindjeri have suffered a 'deep form' of colonisation that locates southern Indigenous people as museum specimens rather than contemporary First Nations.<sup>51</sup>

The Ngarrindjeri Yarluwar-Ruwe Program has resisted and transformed the contemporary contact zone in natural resource and cultural heritage management to produce new actor networks that carry life-giving flows that sustain Indigenous nation building. The Yarluwar-Ruwe Program provides a

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Ruwe/Ruwar (lands, waters and all living things)' in Penelope Figgis, James Fitzsimons and Jason Irving (eds) *Innovation for 21st Century Conservation* (Australian Committee for IUCN, 2012) 186; Mac Kirby et al, 'Preliminary Systems Inventory and Project Scoping River Murray Catchment' (Technical Report Series No. 13/9, Goyder Institute for Water Research, 2013).

<sup>50</sup> Ngarrindjeri Speaking as Country Deed between the Ngarrindjeri Regional Authority for and on behalf of the Ngarrindjeri People and the Minister for Sustainability, Environment and Conservation (27 December 2014). <[https://data.environment.sa.gov.au/Content/Publications/CLLMM\\_404\\_Ngarrindjeri%20Speaking%20as%20Country%20Deed%20Murray%20Mouth%20dredging\\_2014.pdf](https://data.environment.sa.gov.au/Content/Publications/CLLMM_404_Ngarrindjeri%20Speaking%20as%20Country%20Deed%20Murray%20Mouth%20dredging_2014.pdf)>.

<sup>51</sup> Deborah Bird Rose, 'Land rights and deep colonising: the erasure of women', (1996) 85(3) *Aboriginal Law Bulletin* 6; Hemming, The problem with Aboriginal heritage, above n 45.



culturally appropriate and strategic Indigenous engagement mechanism supporting a number of major regional natural resource management partnership projects such as the Murray Futures Program. It also facilitates ongoing and developing partnerships between the NRA and the four regional natural resource management boards and the programs of the regional Local Councils. It is a successful mechanism for discussion, analysis and decision-making and has been influenced by best-practices in leading First Nation contexts internationally.<sup>52</sup> As a program, it is the conduit for all external and internal projects and programs associated with Ngarrindjeri Yarluwar-Ruwe. First contact from outside organisations is made via the NRA Board and the KNYA Taskforce. Once ideas, projects and programs have been presented through these channels they are referred to the Yarluwar-Ruwe Program for detailed assessment and consideration. What is known as a Ngarrindjeri *Yannarumi* assessment is conducted based on Ngarrindjeri cultural principles that reproduce Ngarrindjeri wellbeing.<sup>53</sup> This assessment incorporates: Ngarrindjeri *Kaldowinyeri* (Creation) law; the concept of *Ruwe/Ruwar*; Ngarrindjeri understandings of spiritual connection, *Miwi*; Ngarrindjeri *Yannarumi*, the responsibility to Speak as Country; and Ngarrindjeri *Ngiangiampe*, respectful partnerships (see Table 1, page 46).

The Yarluwar-Ruwe Program brings natural resource management, cultural heritage management, and other related issues together. This is a unique feature of the Ngarrindjeri approach to Caring as Country and is based on the Ngarrindjeri philosophy of being: *Ruwe/Ruwar* (all things are connected). The vision that Ngarrindjeri lands and waters need to be healthy for Ngarrindjeri to be healthy lies at the centre of this approach. Key features of the Program include:

- Formal representation of all appropriate Ngarrindjeri bodies such as Ngarrindjeri Heritage Committee, Ngarrindjeri Native Title Management Committee, Ngarrindjeri Tendi (traditional governance) and others;
- Devolved decision-making—NRA Board has formally established the program to provide a best-practice model for ‘Caring for Yarluwar-Ruwe’;
- Prioritising the establishment of a program of Statement of Commitments (formal terms of reference) and associated working groups that frame and direct Ngarrindjeri/Government projects and

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<sup>52</sup> Hemming, Rigney and Berg, Ngarrindjeri Futures (2011), above n 33.

<sup>53</sup> Steve Hemming et al ‘Murrundi (Murray River): Ngarrindjeri Yarluwar-Ruwe (Caring as Country) Program’ Paper delivered at the 18<sup>th</sup> International River *Symposium*, Healthy Rivers – Health Economies, 21-23 September, Brisbane, 2015. These principles have been refined through engagements with NRM and water planning in projects such as the up-dating the Ramsar Ecological Character Description for the Coorong, Lower lakes and Murray Mouth ‘site’ and the Murrundi (River Murray) Recovery Project.

- programs;
- The development and use of cultural knowledge protection clauses in all NRA contracts, KNY agreements, and research projects (with outside bodies);
- Ngarrindjeri culturally appropriate, decision-making;
- Empowerment of Ngarrindjeri and coordinated, long-term capacity building program;
- Ability to deal with multiple issues and projects including direct engagement in conduct and development of research projects;
- Developing strategies that support cultural change in government policy, programs and practices—‘abolition of whiteness in government policy’
- Stakeholder involvement through presentations and small working groups;
- Innovative use of technology with a Ngarrindjeri media team producing award winning documentaries and reports on film and digital formats;
- Diverse engagement and partnership building with research, educational and business sector—partnerships with Flinders University, national and international universities, local businesses, government at all levels, NRM Boards, community groups; and
- Supporting and developing business opportunities and employment - securing NRM contracts and facilitating relevant training and education.<sup>54</sup>

In 2009, following the formalisation of the whole-of-government KNYA, the State Department for Environmental Water and Natural Resources (DEWNR) and the NRA began working closely to develop the Ngarrindjeri Partnerships Project, one of nineteen management actions under the Coorong, Lower Lakes and Murray Mouth program incorporating its key Aboriginal engagement strategy. This Partnership Project is supporting the development of core capacity within the NRA and it begins the long process of ensuring that the Ngarrindjeri Nation’s knowledge, experience and cultural values are appropriately incorporated into regional policy. The Partnership Project has supported the NRA to develop the Ngarrindjeri Yarluwar-Ruwe Program and project objectives include securing the future of the innovations that re-assemble the contemporary contact zone enabling Ngarrindjeri to Speak as Country.

The NRA is also working with DEWNR on a project under the broader Murray Futures Program, called the Riverine Recovery Project, which focuses on ‘water savings’ and increasing river and wetland health. The NRA renamed their involvement in the project as the Murrundi (River Murray) Recovery

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<sup>54</sup> Hemming and Rigney, *Indigenous engagement in environmental water planning*, above n 33.

Project and have identified a key Ngarrindjeri objective as ‘Ngarrindjeri working together to bring life to Murrundi (River Murray)’. The Murrundi Recovery Project has been strategically repurposed as a Ngarrindjeri Nation rebuilding program. The key aims of the Murrundi Recovery Project include: building the capacity of the Mannum Aboriginal Community Association (member organisation of the NRA) to care for Murrundi; bringing Ngarrindjeri interests, cultural principles and rights and responsibilities for *Ruwe/Ruwar* (country/body/spirit and all living things) into water management and natural resource management; and developing long-term strategies for culturally appropriate community development. The NRA began developing a tailored wellbeing assessment process (Ngarrindjeri Yannarumi assessment) that is being applied to wetland complexes and is also seeking wetland registration under the *Aboriginal Heritage Act 1988* (SA) as part of the well-known Ngurunderi creation story of Murrundi.<sup>55</sup> The NRA expects that the Sugar Shack Complex near Swan Reach will become an example of best-practice Indigenous-led management of wetlands in the Murray-Darling Basin.

Through these partnership projects, South Australia has developed a form of partial Indigenous ‘co-management’ of environmental water that has been Indigenous-led and characterised by the KNYA strategy. Co-management has been identified in environmental management literature as a useful conceptual direction towards better recognition of Indigenous interests in water management and there is also a growing interest in ecological character descriptions and their potential for better recognition of Indigenous responsibilities for Country.<sup>56</sup>

A crucial aspect of the co-management partnership concerns Indigenous involvement in processes of research and the shared development of relevant and ethically-generated knowledge. Historically, Indigenous peoples have been the objects of research designed and conducted by non-Indigenous ‘experts’.<sup>57</sup> This standard colonial approach to knowledge formation typically alienates Indigenous expertise and devalues Indigenous intellectual authority, while also

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<sup>55</sup> Ibid. The Goyder project supported the research input of Hemming and Rigney in the development of the Ngarrindjeri *Yannarumi* assessment process in relation to wetland planning. See Ngarrindjeri Nation, *Yarlular-Ruwe Plan*, above n 16, 8 for account of Ngurunderi Creation Story.

<sup>56</sup> Poh-Ling Tan and Sue Jackson, ‘Impossible dreaming —does Australia’s water law and policy fulfil Indigenous aspirations?’ (2013) 30 *Environment and Planning Law Journal* 132; Sue Jackson, S, and Lisa R Palmer ‘Reconceptualizing ecosystem services: Possibilities for cultivating and valuing the ethics and practices of care’, (2015) 39 *Progress in Human Geography* 122; Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33; Steve Hemming and Daryle Rigney *Restoring Murray Futures: Incorporating Indigenous knowledge, values and interests into environmental water planning in the Coorong and Lakes Alexandrina and Albert Ramsar Wetland*, (Technical Report Series, Goyder Institute for Water Research, in press).

<sup>57</sup> Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous Peoples* (University of Otago Press, 1999).

failing to realise the wealth of Indigenous insight developed over millennia. As part of the Nation re-building agenda and the reclamation of self-governing authority, Ngarrindjeri have actively pursued a program of Indigenous co-direction of scientific and social research that is conducted on Ngarrindjeri Country and investigating issues affecting Ngarrindjeri well-being. This has resulted in an enrichment of conceptual and scientific understanding for both Indigenous and non-Indigenous participants, who have begun to develop a new understanding of where cross-cultural philosophical synergies lie and may be utilized for maximum mutual benefit, reflecting a belief that ‘we will be stronger if our knowledge places are multiple.’<sup>58</sup> Not entirely different, but not the same either’.<sup>59</sup> Chickasaw theorist Jodi Byrd expresses a similar view:

Indigenous critical theory could be said to exist in its best form when it centres itself within indigenous epistemologies and the specificities of the communities and cultures from which it emerges and then looks outward to engage European philosophical, legal, and cultural traditions in order to build upon all the allied tools available.<sup>60</sup>

The Ngarrindjeri philosophy *Ruwe/Ruwar* rests on a broadly ‘ecological’ understanding that ‘all things are connected and that the lands and waters are a living body’. The connectivity principle is something that environmental scientists see as a priority for further research in the SAM-DB region. Ngarrindjeri share research interests that focus on the identification of key species that both act as environmental health markers and rely on the connectivity of the River Murray, Lakes and Coorong.<sup>61</sup> Ngarrindjeri hold deep cultural knowledge about these features of Ngarrindjeri *Ruwe/Ruwar*, passed on through Ngarrindjeri creation stories such as Ngurunderi, Thukeri and Thukabi.<sup>62</sup> This deep, long-term ‘environmental’ knowledge is increasingly acknowledged by non-Indigenous science as valuable and practical. Over the last few years, for example, Ngarrindjeri have worked with research scientists and DEWNR on a project designed to translocate crucial plants such as *Ruppia* (submerged herb) in the Coorong.

Using the KNYA strategy it is now possible to support Ngarrindjeri engagements with scientific research projects that continue the process of increasing non-Indigenous recognition of the value of Ngarrindjeri knowledge. It is also important for the State Government to support Ngarrindjeri-led

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<sup>58</sup> Kirby et al, above n 55; Hemming and Rigney, Ngarrindjeri futures (2012), above n 55; Morgan, Weir and Strelein, above, n 30; Heming and Rigney, above n. 62.

<sup>59</sup> Law, above n 25, 11.

<sup>60</sup> Jodi A Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (University of Minnesota Press, 2013), xxix-xxx.

<sup>61</sup> Birkhead et al, above n 24; Hemming and Rigney, Ngarrindjeri futures (2012), above n 55; Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33.

<sup>62</sup> Ngarrindjeri Nation, Yarluwar-Ruwe Plan, above n 16.: 9; Hemming, Trevorrow and Rigney, above n 14.

‘environmental’ research that brings scientific research together with Ngarrindjeri research. For example, an environmental scientist was seconded to work with the NRA to support the NRA’s Murrundi Recovery project. Through intensive lobbying alongside KNYAs the NRA’s research team has worked on developing the support of the State Government, regional agencies and other research bodies to support the development of Ngarrindjeri research capacity. For example, the SAM-DB NRM Board funded a project titled ‘Developing Ngarrindjeri Research Capacity: Ngarrindjeri Yarluwar-Ruwe Institute for Research, Education and Training (2009–10)’.<sup>63</sup>

Another pertinent example of research partnership is the collaboration between the NRA, Flinders University and the Goyder Institute for Water Research, which has produced valuable outcomes relating to Indigenous engagement in water and NRM with direct impacts on relevant South Australian policy settings.<sup>64</sup> An engaged, collaborative and inter-disciplinary research methodology was used in Goyder-funded research: an approach that recognises and values Ngarrindjeri nation building.<sup>65</sup> This research methodology has provided an opportunity for Indigenous knowledge, experience and research to directly inform the research in ways that directly support transformational policy changes. This methodology also assists with connecting scientific research more directly with Indigenous and government programs.<sup>66</sup> The Ngarrindjeri Nation was a formal research partner on the CSIRO Water-For-A-Healthy-Country Flagship Project, the ‘Economic and Cultural Values of Water to the Ngarrindjeri People of the Lower Lakes, Coorong and Murray Mouth’ and senior Ngarrindjeri leaders jointly authored the final report, as is clearly reflected in its content:

We argue that because Ngarrindjeri water, wetlands and floodplains are so intimately tied to Ngarrindjeri wellbeing there must be a holistic, long-term program for Ngarrindjeri to address the impacts of extensive environmental degradation of Ngarrindjeri lands and waters. This means developing research, employment, education/training, planning, cultural and spiritual processes. In this way Ngarrindjeri can hope to achieve wellbeing in a globalising economy, a twenty-first century world and on Yarluwar-Ruwe that is affected by global warming and destructive non-

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<sup>63</sup> Developed and led by Steve Hemming and Daryle Rigney. See Steve Hemming and Daryle Rigney, *Developing Ngarrindjeri Research Capacity: Ngarrindjeri Yarluwar-Ruwe Institute for Research, Education and Training*, Final Report to the Ngarrindjeri Regional Authority (NRA) and the South Australian Murray-Darling Basin Natural Resource Management Board, (2010, NRA Research, Policy and Planning Unit, Flinders University).

<sup>64</sup> Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33.

<sup>65</sup> Steve Hemming et al, ‘Caring for Ngarrindjeri country: collaborative research, community development and social justice’ (2007) 6(27), *Indigenous Law Bulletin* 6; Birkhead et al, above n 24; Hemming, Rigney and Berg, *Researching on Ngarrindjeri Ruwe/Ruwar*, above n 9; Yasminah Beebejaun et al, ‘Exploring Ethos and Method in Co-Producing Research with Communities’ (2013) 49(1) *Community Development* 37 developed and applied in a number of Ngarrindjeri research projects.

<sup>66</sup> Smith, above n 63; Hemming and Rigney, *Unsettling sustainability*, above n 24.

Indigenous land and waters practices.<sup>67</sup>

Future directions hold some hope for collaborative research that supports the leadership and partnership of Indigenous nations in developing water policy, planning and environmental science. At a national level the National Water Commission is continuing to sponsor Indigenous water research.<sup>68</sup> The National Cultural Flows project is a major initiative led by the National Water Commission, the M-DBA and peak Indigenous bodies such as Murray Lower Darling Indigenous Nations, Northern Basin Aboriginal Nations, and Northern Aboriginal Land and Sea Alliance.<sup>69</sup> The concept of ‘cultural flows’ is, however, one that the NRA has distanced itself from in recent times.<sup>70</sup> For Ngarrindjeri all flows of ‘water’ are cultural flows and securing Indigenous capacity and agency in NRM and water management are considered the priority objectives as part of the Ngarrindjeri nation building strategy. Water research, policy development and planning, therefore, remain important NRA and KNYA Taskforce objectives. The NRA continues to collaborate with Flinders University through its NRA Research, Policy and Planning Unit and is currently a partner organisation on two Australian Research Council (ARC) Linkage projects that have relevance to the developing NRA approach to caring for Yarlwar-Ruwe.<sup>71</sup> The NRA is currently also focusing its research activity on the further development of ‘cultural health/First Nation health’ or *Yannarumi* assessments for areas such as the Lower Lakes, Coorong and Murray Mouth and wetlands along the River Murray south of Morgan. This work has parallels in Aotearoa (New Zealand) where, for example, the *Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010* (NZ) incorporates indigenous values and interests and a ‘cultural health index’ into a co-management regime.<sup>72</sup> Importantly, regional Ngarrindjeri engagement and

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<sup>67</sup> Birkhead et al, above n 24, 42.

<sup>68</sup> National Water Commission, *A review of Indigenous involvement in water planning* (National Water Commission, 2014).

<sup>69</sup> Sue Jackson and Joe Morrison ‘Indigenous perspectives on water management, reforms and implementation’ in Karen Hussey and Stephen Dovers (eds) *Managing Water for Australia: the Social and Institutional Challenges* (CSIRO Publishing, 2007) 23.; Joe Morrison, ‘Caring for country’ in Jon Altman and Melinda Hinkson (eds), *Coercive Reconciliation: Stabilise, normalise, exit Aboriginal Australia* (Arena Publications Association, 2007) 249; Northern Australia Indigenous Land and Sea Management Association, *Guidelines and Protocols for the Conduct of Research* (NAILSMA, 2007); Michael O’Donnell, ‘Indigenous Rights in water in northern Australia 2011’, (TraCK Project 6.2, North Australian Land and Sea Management Alliance, 2012).

<sup>70</sup> Sue Jackson and Marcia Langton ‘Trends in the recognition of indigenous water needs in Australian water reform: the limitations of ‘cultural’ entitlements in achieving water equity’ (2012) 22(2/3) *Journal of Water Law* 109; Hemming and Rigney, Indigenous engagement in environmental water planning, above n 33.

<sup>71</sup> This article was produced with support from the Australian Research Council for projects titled: ‘Negotiating a space in the nation: the case of Ngarrindjeri’ (DP1094869); ‘Indigenous nationhood in the absence of recognition: Self-governance insights and strategies from three Aboriginal communities’ (LP140100376); and ‘Return, Reconcile, Renew’ (LP130100131).

<sup>72</sup> Linda Te Aho, ‘Indigenous Challenges to Enhance Freshwater Governance and

research strategy is also producing innovations in national water planning.<sup>73</sup>

Despite this promising and busy outlook for Ngarrindjeri innovations in NRM research and policy development it is important to point out that environmental planning literature often fails to recognise their significance.<sup>74</sup> For example, this has an impact on local resourcing and the capacity of the NRA to sustain the Yarlular-Ruwe Program, and for federally funded programs such as the Murray Futures Project to leave a regional legacy. Further research is required to better understand this continuing gap in the published research literature, but historical understandings of Indigenous Australia constructed in anthropological, archaeological and historical discourses remains part of the answer.<sup>75</sup> These are gaps that can impede effective, long-term Indigenous engagement in areas such as water research and policy development. Indigenous and non-Indigenous researchers have recognised that Indigenous capacity is crucial to Indigenous engagement in water management, but changes are required in government processes and funding models to prioritise increased capacity of Indigenous nations.<sup>76</sup>

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Management in Aotearoa, New Zealand – the Waikato River Settlement’ (2010) 10 *Water Law* 285.

<sup>73</sup> Neva Collings, *Indigenous Cultural & Spiritual Values in Water Quality Planning* (Australian Government, Department of Sustainability, Environment, Water, Population and Communities, 2012); Murray Darling Basin Authority, above n 29; and Benjamin Docker and Ian Robinson ‘Environmental water management in Australia: Experience from the Murray-Darling Basin’ (2014) 30(1) *International Journal of Water Resources Development* 164.

<sup>74</sup> Carla Mooney and Poh-Ling Tan (2010) ‘Critical Times. Practical Measures. Water Planning Tools. Pilot social impact study of changes in water availability below Lock 1 in South Australia’ (Informant Report, July 2010); Sue Jackson, ‘Indigenous Water Management: Priorities for the next five years’ in Jessica Weir (ed), *Country, native title and ecology, Aboriginal History. Monograph 24* (ANU Press, 2012) 163; Sue Jackson et al, ‘Principles and guidelines for good practice in Indigenous engagement in water planning’ (2012) 474 *Journal of Hydrology* 57.

<sup>75</sup> Marcia Langton, ‘Urbanizing Aborigines: The Social Scientists’ Great Deception’. (1981) 2(2) *Social Alternatives* 16; Bain Attwood and John Arnold (eds), ‘Power, Knowledge and Aborigines. A special edition of Journal of Australian Studies’ (1992) *Journal of Australian Studies*; Steve Hemming and Daryle Rigney, ‘Decentering the New Protectors: Transforming Aboriginal Heritage in South Australia’, (2010) 16(1&2) *International Journal of Heritage Studies* 88.

<sup>76</sup> See, for example: Hemming, Trevororrow and Rigney, above n 14; Birckhead et al, above n 24; Jackson, above n 80; Richard Howitt et al, ‘Capacity Deficits at Cultural Interfaces of Land and Sea Governance’ in Ryan Walker, Ted Jojola and David Natcher (eds) *Reclaiming Indigenous Planning* (McGill-Queen’s University Press, 2013) 313; M. Barber et al, ‘Working Knowledge: characterising collective indigenous, scientific, and local knowledge about the ecology, hydrology and geomorphology of Oriners Station, Cape York Peninsula, Australia’ (2014) 36 *The Rangeland Journal* 53.

## Conclusion

It is clear that, in southern South Australia, natural resource management has been transformed through a sustained Indigenous-led strategy focused on Indigenous nation building. The Ngarrindjeri KNYA process has led to a unique working relationship between an Indigenous nation and non-Indigenous interests represented by the government at all levels, universities and other groups.<sup>77</sup> Key to the Ngarrindjeri strategy has been the development of a peak governance body, increased research, policy and planning capacity focused in the Ngarrindjeri Yarluwar-Ruwe Program and strong local, regional and international partnerships. As a marker of the success of this strategy the Yarluwar-Ruwe Program recently won the Australian Riverprize 2015 for delivering excellence in Australian river management.<sup>78</sup> The success of the NRA model has also inspired a new policy direction in Indigenous affairs in South Australia: Aboriginal Regional Authorities.

The importance of the complex Indigenous relationship with ‘Country’ stands at the centre of the Ngarrindjeri vision for a healthy Indigenous nation; engaging with this vision through the NRA programs is a proven pathway for non-Indigenous projects and programs similarly aimed at fostering the health of communities and their environments. The NRA stresses the need for governments to understand and respect Ngarrindjeri responsibilities to Speak as Country (*Yannarumi*) and to act as an Indigenous Nation. This has required attention to re-assembling the actor networks that constitute the contemporary contact zone between Ngarrindjeri and the settler State. The emerging approaches to engagement between Ngarrindjeri and the State are comparatively unique, locally and regionally relevant, address relevant UN treaties and provide useful directions for environmental and resource management in Australia and overseas.

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<sup>77</sup> Hemming, Rigney and Berg, *Ngarrindjeri Futures* (2011), above n 33.

<sup>78</sup> The International RiverFoundation’s Riverprize is Australia’s top award for effective and sustainable river basin management. The NRA’s win was in partnership with the SA Department of Environment, Water and Natural Resources (DEWNR), and also includes support from Flinders University, Goyder Institute for Water Research, the Commonwealth Department of the Environment and the Australian Research Council.



Table 1 Ngarrindjeri Yannarumi Assessment of the 'health' of Ngarrindjeri Yarluwar-Ruwe – Ramsar Ecological Character Description Project 2015

	Kaldowinyeri Creation, Change	Ruwe/Ruwar Country, body, spirit, all living things	Miwi spirit, connection resilience	Yannarumi Speaking as Country, responsibility, management	Ngiangiampe Relationships, partnerships	Ngarrindjeri Yarluwar- Ruwe Health assessment
Kaldowinyeri Creation	Ruwe/Ruwar All things connected	Katjeri Beautiful, healthy	Pritji Strong	Rupelli Elders Speaking as Country	Tendi, Nguldun Governance, agreements, Being healthy	Katjeri Beautiful healthy
Parpun miwi Colonisation, Longing for wellbeing	1985, Ramsar listing, locks, barrages, land cleared	Wiran, Wurangi, Sick, Bad	Pritji, wurreng- wulun Strong, Sorrowful	Blewilin Unhealthy	Wurangi Bad, disrespectful	Blewilin, Pukali Unhealthy, indicators of sickness