THESIS TITLE

'A Critical Analysis of Decision-making Protocols used in Approving a Commercial Mining License for the Beverley Uranium Mine in Adnyamathanha Country: Toward Effective Indigenous Participation in Caring for Cultural Resources'

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Abstract

An exploratory approach via a single case study is used in this thesis to better understand two embedded units of analysis: the first unit of analysis explores Adnyamathanha resources management and decision-making protocols, and the second unit of analysis explores the Environmental Impact Assessment for Beverley Uranium Mine. 'Adnyamathanha' literally translates into English as 'name for the people of the rock country' and is associated with several sub-groups of Indigenous peoples from the northern Flinders Ranges region of South Australia. These sub-groups include Kuyani and Adnya-Kuyani, Biladapa, Warlpi, and Yadliawada and all are inextricably linked through complex relationships between people, land, kinship and language.

This thesis involves a critical examination of the various levels of participation by Adnyamathanha in the decision-making processes surrounding the commercial licensing at Beverley Mine. It clarifies issues and raises new questions about the interface between players involved in land use through a qualitative and participatory research methodology and set of methods used to explore the topic. Theoretical understandings are linked to Indigenous heritage and resources management to highlight the cultural values of past, present and future relationships between Indigenous peoples and customary lands. Deconstruction of the geographical landscape offers an insight to the spaces and places necessary for an equitable assessment of commercial, social and environmental land values.

In this study the trajectory of cultural heritage protection and resources management is examined as part of the key legislated processes that relates to heritage security and sustainability in Adnyamathanha country. Native Title was a focal point of engagement within the Beverley case and is therefore central to many of the discussion points throughout this thesis. An examination of the extent to which mining proponents and governments are responsible for impact assessments goes hand in hand with this discussion regarding participation by Aboriginal players in land use.

Examination of the Environmental Impact Assessment (EIA) in the Beverley case reveals that government and industry processes facilitated mining and devalued Adnyamathanha cultural heritage and site protection. I argue that the ideology behind 'impact assessment' and land use procedures within Australia remains dominated by a colonial framework committed to prioritising commercial perceptions of what is valuable based on national and global business-related interests. This ideology fails to accommodate Indigenous cultural heritage values and

denies Indigenous peoples' human rights. Findings reveal a disturbing scenario of inequitable engagement that unequivocally favoured miners' rights and brutally disempowered Adnyamathanha, a pattern consistent with global trends.

The significance of this thesis lies in the validation of a culturally diverse range of understandings of land resources, especially the meanings of Adnyamathanha identity and Indigenous connectivity to the environment. Cultural heritage protection is explicitly linked to Indigenous governance and Indigenous engagement through prioritisation of Indigenous needs and values. This thesis identifies how capacity building and self-determination can improve governance and engagement strategies to galvanise and strengthen future outcomes for Adnyamathanha and other Indigenous players dealing with exploration and mining. Improving impact assessment participation using culturally appropriate protocols is one part of this multi-faceted solution.

Acknowledgements

I acknowledge the valuable guidance and support I have received during my time as a Doctoral candidate from members of the Yura Language Consultative Group and Anggumathanha Law Adnyamathanha Elders (Yuras that were born and raised in traditional camps) for providing cultural advice and sharing their experiences. Their support has assisted me in telling the story of Beverley Mine in a way that might never have been told otherwise – *in an Adnyamathanha way*. I am also grateful for the efforts of my supervisors in helping me navigate a successful path through the PhD process; there have been plenty of challenges for all of us. Many thanks also to my family and friends who have encouraged me and believed in my commitment to ethical research and Aboriginal peoples' struggle for justice. I say a big 'thankyou' to my daughter Clare for her patience and understanding when I was tired and forgetful and couldn't go places. Finally thanks to the small number of research students who became my peer group; life as an Indigenous researcher is isolating and your support and encouragement has helped me succeed where others have failed.

I wish to state that the intellectual and cultural knowledge shared by Aboriginal participants' remains their property and this thesis in no way infringes on that right.

Declaration

For a Thesis that does not contain work already in the public domain

NAME: *Jillian K Marsh*   PROGRAM: *Doctor of Philosophy*

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<u>Dedication</u>

I dedicate my efforts in completing this thesis to all Yura Yakarti (Adnyamathanha Children) and the special bond they develop with the physical and spiritual environment from a very early age. This bond grows through the learning privileges provided by our Elders and parents, and time spent in 'the bush'. The bush is the most precious part of Adnyamathanha Yarta (our land) and is like a home away from home where we can relax and rejuvenate; a cool shady creek in the summer time, a warm sunny hollow in the winter time, or a panoramic view down to Manda (Lake Frome) that is breathtakingly beautiful. Yura Yakarti go out bush with their ngangginyi (family), visiting special places, listening to all the peaceful sounds, sleeping under the stars, going for long walks in the daytime, and sitting around the fire at night. Together we enjoy all the wonderful foods like urdlu varlu (kangaroo meat) and mai (plant foods) cooked in the ilda (ground oven), warratyi vipi (emu egg) and nguri (wattle gum), and we drink fresh awi (water) from the creeks and springs. For our Yura Yakarti to have these experiences we as parents must demonstrate our knowledge and respect for Adnyamathanha Yarta and our ngangginyi, making sure both are looked after now and for future generations. Learning to know and respect your country is about learning to know and respect yourself.

I also dedicate this thesis to the peaceful movements of people on a global scale who truly believe our world will be a better place when it becomes decolonised and nuclear free. Decolonisation of our minds and our daily lives provides a peaceful strategy that every individual person can nurture and utilise toward a solution for global peace and a cleaner, sustainable environment. The threat of a nuclear holocaust is real for all global citizens, and responsible leadership alone cannot guarantee our children and their children a safe presence on this Earth if uranium continues to be extracted and marketed on a global scale. Ordinary citizens of every nation must act to ensure a safe environment for our children.

A Critical Analysis of the Decision-making Protocols used in Approving a Commercial Mining License for the Beverley Uranium Mine in Adnyamathanha Country: Toward Effective Indigenous Participation in Caring for Cultural Resources

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Section One: INTRODUCTION

Chapter 1. Overview of Thesis

The topic of this thesis explores the cultural relationships between Indigenous peoples and lands and how human knowledge systems are used to identify and realise these connections. This single case study examines knowledge with a primary focus on Adnyamathanha experiences and perspectives and the establishment of Beverley Uranium Mine. The intention is to find ways to improve heritage protection and cultural resources management for Adnyamathanha and other Indigenous peoples.

The quality and style of this case study is based on a conscious effort to bring together peoples' experiences in a way that is honorable and forthright. Comments made by participants cannot be generalised to a population of players, rather they are regarded in this thesis as real experiences that are meaningful in the context of ideas. The key idea in question is embedded in the title of this thesis: toward effective Indigenous participation in caring for cultural resources. I believe the approach and the research topic are indicative of an ethical responsibility on the part of the researcher toward Adnyamathanha Yuras and all other participants.

Anyone with an interest in the uniqueness of Indigenous cultures, or with a prior knowledge of the passion in which many Adnyamathanha experience identity and tradition, will find the work within this thesis to be a confirmation and at times revelation of the intense spirituality that exists between Yura and Yarta. This thesis reveals Australian society's lack of good governance structures and community understanding in regard to legislation, policy and best practice for environmental impact assessment and Indigenous engagement. The pattern of engagement used by mining proponents and governments raises concerns by non-government groups and ordinary citizens and stands out as a controversial factor within the realm of 'development'. For those readers with a specific interest in mining or the nuclear industry, this case adds to the body of evidence and knowledge that already exists in relation to patterns of community engagement. This study also highlights the urgent need to nurture an ideology of genuine community governance and engagement within exploration and mining impact assessment procedures as opposed to covert attempts at instilling new forms of colonialism.

1.1 Use of non-English Language and Appropriate Terminology

Words from the language known as Yura Ngawarla are used in this thesis. Yura Ngawarla is primarily used by persons identifying as Adnyamathanha or Yura. The orthography or writing system and terminology used is endorsed by the Yura Language Consultative Group Incorporated (YLCG), a community based organisation involved in researching and publishing Yura Ngawarla. As part of a reciprocity agreement formalised during the early stages of research, all Yura Ngawarla featured in this thesis will be made available to YLCG for purposes determined by the organisation, subject to approval by Confidential Interview Participants. Individual speakers will not be identified unless prior permission has been obtained. A glossary of Yura Ngawarla words and phrases and Udnyu Ngawarla (English) translations is included (see Appendix One). Yura Ngawarla is used to highlight the centrality of Adnyamathanha values and beliefs in this thesis. The term 'Yura' is used with specific reference to an Adnyamathanha individual or to Adnyamathanha cultural tradition (for example, yura way) and the plural indicator 's' is sometimes added to make a sentence correct according to Udnyu Ngawarla grammar; either 'Yura' or 'Yuras' can be used.

Terms used to describe or refer to people collectively or individually include Adnyamathanha (group or nation), Yura (regional identity) and Anggumathanha (Camp People). The term 'Elder' refers to someone in a position of seniority based on age (usually over 50 years old), cultural knowledge and experience. These people often assume the role of a leader in meetings and as part of family clusters, and often work comfortably with others of a similar status. The term 'Young Person/s' is used in this thesis to refer to someone aged less than 50 years old who seeks to actively engage in cultural resources management and heritage protection. These people can also assume a leadership role, particularly in relation to deciphering written and spoken Udnyu Ngawarla for other Adnyamathanha who are less articulate in Udnyu Ngawarla. Sometimes these people can act in a liaising capacity at meetings. Often there is a degree of tension between Elders and Young Person/s.

Indigenous is used generally in reference to Indigenous peoples, lands, and cultures to denote an original connection between the three which is socially determined and perpetuated. As a sign of respect for persons quoted who prefer the term 'Aboriginal', I will maintain consistency with such terminology throughout the relevant discussion. Both words are capitalised consistently throughout this thesis as a gesture of respect for Australian and other Indigenous peoples given that 'Indigenous' or 'Aboriginal' is often the only form of identity

assigned to or imposed on displaced first nation peoples subject to colonisation. I would deem it improper to refer to the identity of Australian citizens or the culture of these people as *australian* therefore I also deem it improper to use lower case for Indigenous or Aboriginal. Other common terms include Yarta (land), Native Title and native title; title case is used to refer to legislation or respective administrative processes, and lower case is used to refer to the ideology of sovereignty and sovereign rights associated with land and resources.

The term 'participant' is used in this study to identify any person including the researcher who actively contributes either through the generation of new understandings, through directly influencing the environment in which observation is taking place, or through sharing of perspectives and experiences for the purpose of informing this thesis. Interview participants will be required to give informed consent for their part in this investigation, and any persons who become involved through indirect means eg. through participant observation at a public meeting, will not be identified. The term 'I' is used instead of 'the researcher' to denote my role as author and participant in the research setting. I choose to employ terms such as 'us' and 'our' and not 'their' or 'them' when referring to Adnyamathanha collectively, as a way of reminding readers that I am part of this group and my role as researcher is explicitly subjective and participatory. I also sometimes use these inclusive terms as a show of solidarity with broader Indigenous experiences and perspectives.

This study seeks to identify spaces for equitable and ongoing interaction relating to cultural heritage protection and resources management in Adnyamathanha Yarta and elsewhere. The term 'heritage protection' refers to Indigenous understandings, beliefs, and values that denote places of cultural significance worthy of preservation. The term 'resources management' refers to broader socioeconomic understandings of land use. The terms 'security' and 'sustainability' are used in this thesis to refer to the ways in which Adnyamathanha cultural resources are perceived, valued, and cared for within Adnyamathanha Yarta. Security explicitly refers to cultural resource arrangements at any given moment, whereas sustainability refers to cultural resource arrangements over a period of time.

An unpacking of terminology will inform this thesis across a range of significant milestones including historic moments affecting cultural resource arrangements (pre-Native Title and post-Native Title legislature), governance of uranium and the nuclear industry, and the dynamics of key concepts such as *negotiation*, *consultation*, and *participation*. Colin Tatz (Tatz 1982) offers useful insight to these commonly used terms of 'negotiation', 'consultation', and 'participation' and to what extent theory and practice run parallel during

decision-making processes. Tatz claims these terms are often volatile yet widely used with little or no definition. These terms will be explored and clarified during the collection of primary data, and analysed within the final chapters of this thesis.

Cross references throughout this thesis will be marked with the use of the symbol '§' to refer to Chapters or sub-sections of Chapters. For example (see §6.2) may be used in Chapter Seven or Eight to refer the reader to something discussed in an earlier Chapter. This symbol is NOT used in reference to one of the four Sections of the thesis. The purpose of including this discussion on terminology is to minimise any misunderstanding that may arise throughout this thesis, and to recognise Yura Ngawarla as a fundamental aspect of Adnyamathanha cultural identity.

1.2 The Beverley Project

Heathgate Resources Pty Ltd became the designated proponent for the Beverley proposal in October 1996 (Environment Protection Group and Environment Australia 1999) and State and Commonwealth governments were also major players in the regulatory process. Following completion of the exploration and 'trial mine' phase for the Beverley project, an Environmental Impact Assessment (EIA) was undertaken as a joint effort between Commonwealth and State governments; regulation was facilitated by Environment Australia and the Minister for Environment. Requirements under Commonwealth legislation known as the *Environment Protection (Impact of Proposals) Act 1974* (Commonwealth of Australia 1974), hereafter referred to as the *EPIP Act 1974*, were managed by the Environment Protection Group within Environment Australia. The Beverley proposal was also subject to impact assessment under the legislated conditions set out in the *Development Act 1993* (SA Government 1993) and policy guidelines for Major Developments or Projects criteria which are administered by the Environmental Impact Assessment Branch at Department of Transport, Urban Planning and the Arts (Thomas and Elliot 2005). Largely the impact assessment for the Beverley case was administered at the State level.

Public participation and Indigenous engagement remains controversial from the early stages of the Beverley proposal and continued throughout the entire impact assessment phase which took place during the latter part of the 1990s. Possibly the most intense period of proponent-public interaction and media coverage occurred during 1998. This was also the year when Adnyamathanha sought registration of two Native Title Claims and began developing a new

framework for local governance. In March 2009 there was a successful Adnyamathanha Native Title Consent Determination (Federal Court of Australia 2009).

The impact assessment for Beverley involved a Ministerial declaration of a Major Development under the *Development Act 1993*. A Ministerial determination in the late 1990s triggered the Major Developments Panel to establish an appropriate level of assessment using a scoping exercise and issues paper for public comment and interaction with the proponent. This led to a set of guidelines (Planning SA and Environment Australia 1998) for an environmental impact assessment for the Beverley proposal. The South Australian Department of Transport, Housing and Urban Development played a leading role in regulating the approval process for the proponent Heathgate Resources in their bid to gain a commercial license to mine at the Beverley site (Heathgate Resources Pty Ltd 1998a).

1.3 Research Topic

Through an analysis of the Beverley Uranium Mine, this research examines the effectiveness of Adnyamathanha participation in managing and caring for Adnyamathanha cultural resources. The first unit of analysis involves the documentation and understanding of a broad historical perspective of Adnyamathanha resources management and decision-making protocols. The second unit of analysis explores a specific chronological period of engagement purposely driven by key players at the time of the Environmental Impact Assessment for Beverley Uranium Mine.

Key research questions within this case study include:

1. What factors consistently influence Adnyamathanha decision-making in relation to cultural resource security and sustainability?
2. What are the perceived strengths and weaknesses within the consultation and negotiation processes according to the various stakeholder and interest groups?
3. To what extent are Adnyamathanha expectations regarding cultural resource security and sustainability met?
4. What are the lessons to be learned regarding security and sustainability for Adnyamathanha cultural resources?

Cultural resource security and sustainability have been widely discussed within the context of resource management (Howitt, Connell et al. 1996a) and specifically refer to meaningful

arrangements that offer stability and long term security to Indigenous peoples' lands and cultures. As evaluative tools, these terms also describe and critically analyse the extent to which beliefs and values intrinsically Adnyamathanha are understood, respected, and reinforced within resource development processes. As strategic tools, these terms assist in identifying how cultural resources can be sustained for the benefit of future generations. This leads to greater understanding of Adnyamathanha experiences of dispossession as a result of development processes led by government and industry, and assists in situating these experiences within a national and international context of native title and impact assessment.

Perspectives, perceptions and experiences held by participants and interest groups inform the focus and analysis of this thesis; however, I acknowledge these will continue to change or evolve over time and in no way offer a representative view of any particular group. This thesis pinpoints and maps similarities and contrasts, some gaps in understandings, and the strengths and weaknesses that characterise the effectiveness of cultural resource security and sustainability. The purpose is not to characterise Adnyamathanha culture and identity or individual players, but to try and better understand the politics within key interest groups.

1.3.1 Research Objectives

The objectives in this thesis are to:

1. Describe and critically analyse Adnyamathanha participation in the consultation and negotiation processes surrounding the approval of Beverley Mine as a commercial operation,
2. Identify opportunities for and impediments to Adnyamathanha participation,
3. Scrutinise the relationships between Adnyamathanha participation and cultural resource security and sustainability.

1.3.2 Literature Review

The scope of literature reviewed includes documents that inform discussions, draw on previous research, and assist in setting the parameters of this thesis. Particular attention is paid to the extent to which literature reflects and/or directly includes Indigenous perspectives. Theoretical frameworks featured in this review include postmodernism and postcolonialism, cultural theories, critical theories, Indigenous theories, and feminism. These help develop an in depth understanding of cultural resources management from an Indigenous perspective and

the actions of government in response to Indigenous peoples' concerns regarding heritage. Disciplinary frameworks include anthropology, sociology, and geography.

The lived experiences and concerns of people feature in this review. These include experiential knowledge of the impacts of mining and other forms of commercial development such as pastoralism, how decision-making links to Indigenous ways of working, and persistence of Indigenous values and beliefs. O'Faircheallaigh claims an absence of a '…comprehensive record of resource development agreements in Australia …' (O'Faircheallaigh 2004a, p. 6) and a lack of case study research into negotiations. O'Faircheallaigh concludes: 'We must be able to explain existing outcomes if we are to offer conclusions about how more positive outcomes can be achieved' p. 11). In identifying these limitations, this article provides a strong basis for arguing the significance of this thesis. Contributions likely to be made from this thesis include areas such as case study research into native title governance, resource development, agreement making, and positive outcomes for Indigenous peoples generally, and in South Australia specifically.

1.4 Ethical Considerations

Ethical considerations are examined in greater detail in Chapter Two to extend this discussion beyond ethical conduct toward an evolving Indigenous Research Methodology within academia in Australia and elsewhere. Participatory Action Research (PAR) is the preferred methodology that informs the philosophical approach and ethical practices within this thesis. The intention is to create a research approach that endorses working *with* Adnyamathanha people rather than conducting a case study *about* Adnyamathanha culture and people.

Ethical practices include ways of working with Indigenous Australian peoples and ways of conducting research within Indigenous Australian communities that are respectful of the cultural and property rights of Indigenous Australians. Guidelines developed specifically for researchers and research organisations include both practical and theoretical considerations (AIATSIS 2000; Australian Heritage Commission 2002; DKCRC 2003) and these have been reviewed as part of the early stages of developing the research proposal which later became the basis of this thesis. Other relevant literature informing ethical considerations includes academic articles and government guidelines written by Australian Indigenous and non-Indigenous researchers regarding ethical conduct in the field (Kickett and Kickett 1992; Hubbs 1999; Atkinson 2001; Rigney 2001; Australian Heritage Commission 2002; Marsh,

pers. commm. 2004). I have personally talked with these people and read their views and recommendations regarding research based on their lived experiences.

Some of the key aspects of ethical research include ways for researchers to engage Indigenous peoples, their ideas and their values in a meaningful way within research. One way I have tried to do this is by establishing an Indigenous reference group (see §1.3.2) with three or four members to discuss the purpose of this study and to oversee representation of cultural knowledge and other elements such as confidentiality (personal and cultural). Reciprocity includes ways I am able to offer support and/or advice to people throughout as well as beyond the scope of this thesis, and provides a way of acknowledging the enormous benefits I gain as a researcher.

1.5 Solutions to Problems for Researchers

As key researcher in this case study I believe a strong ethical position must seek to anticipate problems and offer direct benefit to community participants. I have tried to develop an approach to research that was recognisable and appropriate for Indigenous peoples generally, and in this case for Adnyamathanha in particular. The ethical priorities I have adopted include voicing Adnyamathanha perspectives through Yura Ngawarla and leading discussions with direct quotes. I also encouraged Yuras to look for innovative ways of improving their situation. This approach adds to the documentation of an endangered language, actively encourages engagement in good governance, and helps to empower Elders. Ethics also demands the researcher declare their positionality within research.

To minimise development of an 'unspoken' or 'hidden' agenda within this case study I wish to articulate my position as *researcher* at the beginning of this thesis as part of a participatory discussion. I acknowledge that personal issues such as family relationships, sickness, or a death in the community can impact directly on research at any given time. I also understand that major new developments relating to the case can impact on research. I believe this must be acknowledged in a professional way in the early stages of research so as to maximise my ability as researcher to effectively manage this case study. I recognise that my position as researcher, my status as an Adnyamathanha woman, and the background knowledge I bring to this thesis inevitably affects the data collection and analytical processes.

Participatory Action Research or PAR (Stringer 1996a) fully acknowledges the role of the researcher, and the influence a researcher can have on a research setting. PAR provides the

space for the relationship between me as the researcher and the research process to be discussed within this thesis, and an opportunity to explore and articulate the degree to which the two are separate entities.

Consideration of the existence of power relationships within and outside of the Adnyamathanha kinship system is a key to recognising my positionality. Existing cultural relationships, protocols and decision-making processes must be respected by me as researcher. As a member of the Adnyamathanha group it is my duty to honour these relationships through mutual trust and respect, and to ensure that the 'ownership' status of this case remains with the Adnyamathanha community at large. In particular, I need to ensure that the production and sharing of research knowledge respects individual as well as collective rights. The next part of this discussion introduces other ways in which I have tried to address issues of ownership, cultural respect and reciprocity.

My intention as key researcher was to establish an Adnyamathanha Reference Group (ARG) comprised of three or four Adnyamathanha Yuras. This body was formed during the very early stages of developing the thesis topic and well prior to commencement of data collection. I anticipated that the role of the ARG was to guide me in determining the scope and application of the research, advise me on issues relating to respect for cultural protocols and ways of working, and to oversee a large portion of this case study in accordance with key principles of Participatory Action Research (Stringer 1996b). I hoped that this group would act as an advisory body throughout all stages of developing methods of inquiry in regard to the gathering of primary data and during data analysis. I also hoped that the ARG would steer the thesis and act as a collective 'double check' when uncertainties arose for me as the key researcher. Establishing a reference group was also intended to ensure that sufficient opportunities for active Adnyamathanha participation were created, and provide a mechanism for accountability for myself as researcher. As key researcher I was attempting to take every possible step to ensure the group could offer cohesive support through a balance of age, knowledge and experience, gender, and kinship alignment. The input I received from Elders was a valuable contribution to this process.

A reference group referred to in this thesis as the Adnyamathanha Reference Group (ARG) consisting of three people was established to oversee the study as I entered the early stage of fieldwork. These people are Adnyamathanha persons with a broad knowledge of cultural resource management issues and cultural protocols relevant to Adnyamathanha. The researcher encouraged the group to work cohesively, covering dimensions such age,

knowledge, gender, and kinship alignment. This was regarded as an important first step in building and maintaining positive relationships around the case study. The role and composition of the ARG has remained fluid so as to be able to respond appropriately to the emerging issues and needs within this case study. In the latter parts of the thesis the ARG was composed of a group of Elders who were able to provide advice in the final stages following a presentation of findings.

Informed consent has been another key consideration throughout all stages of this case study. Interviewees were asked to discuss with me and then complete a written consent form prior to being interviewed which clearly states the purpose of this study and the interview, and their right to withdraw at any stage. Interviewees have received written copies of the transcripts of their own interviews, and have had numerous opportunities to edit or withdraw comments that they feel are confidential or too sensitive to publish.

Each participant has been asked on more than one occasion if they wish to remain anonymous. Advice has also been sought from the ARG about the ownership of intellectual property and issues relating to the sharing of cultural knowledge. There may be some knowledge that is deemed 'private' or 'secret/sacred' by the ARG or an individual and has been omitted or only referred to in a vague manner. In the case of Native Title claimants, it has been essential to protect their identity in the public arena for legal as well as social reasons.

The building of relationships based on mutual trust has been an important aspect of this research topic because it is complex, highly political and addresses issues that are steeped in conflict. From the onset I have felt responsible for ensuring the topic is investigated using a great deal of sensitivity so as not to create further division in the community and to protect the anonymity of all participants.

1.6 Thesis Structure

Section One of this thesis introduces key conceptual tools and an overview of the research topic. For example, an explanation of the use of a language other than English (namely Yura Ngawarla) is provided at the beginning of Chapter One. Yura Ngawarla is used as a means of incorporating culturally appropriate terminology and as a show of respect for Adnyamathanha participants and Adnyamathanha culture. A glossary of terms at the end of the thesis includes Yura Ngawarla words and phrases along with definitions of Udnyu Ngawarla (English) terms

used frequently. The topic of inquiry is also introduced in this section to determine the parameters and scope of this thesis along with the steps used to examine the topic.

The significance of this thesis is outlined in Chapter One together with the benefits likely to emerge from use of an approach to research that is ethically strong, action-based, culturally sensitive toward Indigenous peoples and cultures, and acknowledges the positioning and participation of all players including the researcher. Benefits gained emerge through a reciprocal process established primarily between participants and researcher; academic departments within Adelaide University and other relevant institutions such as Desert Knowledge Cooperative Research Centre also benefit from the research undertaken as part of this thesis. Mining companies and other commercial development proponents seeking to improve their cross-cultural awareness skills and credibility with Indigenous peoples and human rights advocates will also gain new insights from this thesis.

Section Two explores relevant literature in Chapters Three and Four which begins to provide a context for this case study. Literature of particular importance includes case study research from the field of natural resources management including topical areas related to environmental planning, impact assessment, and cultural heritage identification and protection. International, national and local case study literature is also included to build a historical profile for the Beverley case and compare best practice.

Section Three offers an overview that is specifically Adnyamathanha. Chapters Five and Six describe the experiences of Adnyamathanha involvement in cultural resources management, the scope of this case study, the commercial development of the Beverley Mine, and the interactions between proponent, government, Indigenous and environmental players.

Section Four includes an analysis of the topic and some recommendations for Adnyamathanha capacity building and future research. Chapter Seven has its focus on determining the extent to which the Beverley EIA provided appropriate opportunities for effective Indigenous participation in heritage protection, and some theoretical implications emerging from this thesis. This is followed by a Chapter Eight which includes a discussion of what type of future approaches may be useful in building greater capacity for Adnyamathanha to participate locally, nationally and globally. The idea of Indigenous participation in caring for cultural resources remains firmly cemented in many Indigenous traditions but is yet to be fully embraced by non-Indigenous peoples and cultures due to ongoing reinforcement of colonialism. Decolonisation of our minds and the way we do business is a key part of reconciliation and Indigenous self-determination.

1.7 Conclusion

A single case study provides a 'snapshot' in time and space of the Beverley case and is in no way representative of other cases or how the Beverley case may be unfolding at present. This thesis makes an important contribution toward building a more complex understanding of Indigenous participation in cultural resources management and heritage protection generally; it also contributes to greater understanding of the specific context of Adnyamathanha governance and engagement in regard to the Beverley Uranium Mine. A qualitative action-based approach that prioritises the needs of Aboriginal participants helps to explore peoples' perceptions and values about decision-making and develop practical solutions. Examination of the interface between government, Adnyamathanha interest groups and individual players, and mining proponents has provided new insight to engagement and governance.

This thesis therefore offers a new contribution to Indigenous research methodology and an appropriate ethical framework. The next part of Section One provides greater detail of how the researcher has devised and implemented an appropriate methodology and ethics framework. An evaluation of these aspects is included in Chapter Eight of Section Four.

Chapter 2. Research Methodology and Methods Employed

Chapter Two explores the implications of incorporating or alternatively dismissing Indigenous ways of knowing within the research process and details how I address this matter in a culturally sensitive and ethical way. The chapter begins with a discussion of the philosophical beliefs that distinguish quantitative and qualitative research (Stake 1995; Denzin and Lincoln 2000; Yin 2003). It provides an overview of positivist approaches that validate the use of quantitative methods, and similarly that of post-positivist approaches used to validate qualitative methods. An examination of the social construction of knowledge and research paradigms highlights the relationships between epistemologies and ontologies within a context of land values, cultural beliefs, and strategies of survival in colonial Australia.

The second part of this chapter gives credence to an Indigenous Research Methodology through a focus on the design of methods or means of inquiry. This discussion starts with an examination of the relationships between a researcher, a research topic, and other participants so as to highlight the importance of an appropriate set of research methods. Methods such as case study techniques are identified for use in gathering and analysing data, and these are related back to the methodology (approach) and ethical considerations. An outline of culturally appropriate principles and methods (means of inquiry) are presented for use within this thesis based on multiple world views.

2.1 Philosophical Issues within Social Research

2.1.1 Introduction

The term 'paradigm' as it relates specifically to a researcher can be defined as '… the basic belief system or worldview that guides the investigator, not only in terms of choices of method but in ontologically and epistemologically fundamental ways.' (Guba and Lincoln 1994, p. 195). A researcher therefore holds a position of power that is related to the way knowledge is constructed and utilised.

The purposes and intentions of social inquiry are often at the heart of what type of approach is used to investigate within research. A recent study of environmental scepticism literature (Environmental Network News 2008) refers to the overwhelming bias from researchers '…often identified as independent' when in reality their affiliation to political think tanks and industry is commonplace. The study is noted for its particular mention of the need to evaluate the voices within literature in order to be able to determine the merit of claims being made by so-called 'independent' or 'objective' persons.

The uniqueness of this thesis is its grounding in an Indigenous approach for investigating this particular topic of Indigenous cultural resources management. At many stages during this investigation there is understanding gained that can only emerge from a pre-existing body of knowledge that is intrinsically Adnyamathanha. An Indigenous approach aims to provide the necessary space for Indigenous understandings to be fully acknowledged as a valid part of the research process.

2.1.2 Paradigms of Research: Positivism and Post-Positivism

Paradigmatic revelations within social research tell the audience a great deal about the philosophical and conceptual foundations within research. The two main paradigms that are recognised as the basis of research within the social sciences are known as *positivism* and *post-positivism* (Kumar 1996a). Although these paradigms both originate from the physical sciences, the former is often regarded as superior because it is claimed as the only form of systematic, scientific, and objective research. The latter is deemed opposite to positivism because of its naturalistic, ethnographic, and qualitative characteristics. Opposition and resistance between these two paradigms have historically evolved due to fundamental differences that relate to *truth* and *value-free* or *value-laden* research (Denzin and Lincoln

1998). Advocates of both paradigms have developed particular terminology, methods and techniques for gaining an understanding of social phenomena that distinguish each paradigm within social research (Kumar 1996a).

The term *quantitative* generally emphasises a need to identify one truth or reality that is measurable, and can be '… studied, captured and understood …' (Denzin and Lincoln 1998, p. 9). The term *qualitative* generally emphasises the social constructions of identity, reality, and phenomenon, and an inherent subjectivity within any social research process (Denzin and Lincoln 1998). Other distinguishing elements of qualitative and quantitative research pertain specifically to the gathering and analysing of research data. Robert Stake articulates this as '… a difference in searching for causes versus searching for happenings' (Stake 1995, p. 39) which suggests how a researcher's approach influences not only *what* is being researched but *how* something is being researched.

Positivist research paradigms have gained a reputation for reducing Indigenous cultures and peoples to a 'measurable' state of imperialist knowledge, and have historically been used as a means of subjugating Indigenous peoples and Indigenous knowledge (Hartmann 1992). One author who captures the reasoning behind the premise for an Indigenous approach is Dennis Foley who writes: 'Indigenous philosophy is based in the oral traditions, and the contemporary Indigenous scholar should never trivialize this' (Foley 2003). An underlying assumption of this comment by Foley is a consistent lack of sensitivity and awareness, often prominent in the work of social researchers. Another assumption is that Indigenous ways of knowing, like all other, deserve a position of respect within the research process. The aim of this focus on 'ways of knowing' is to cultivate a research methodology that primarily works *with* Indigenous peoples, rather than engaging in a research process that is *about* Indigenous peoples or issues.

Claims abound that social research approaches grounded in positivism often result in misappropriation of Indigenous peoples' identities, intellects and knowledge due to distortion (Nakata 1998; LT Smith 1999; Foley 2003; Gunaratnam 2003). The continued popularity of data gathering and analysis based on quantification (Denzin and Lincoln 1998) indicates that Indigenous peoples need to remain wary of social research. Despite a trend away from positivist to post-positivist within the social sciences, Linda Smith asserts that "re-search within late-modern and late-colonial conditions continues relentlessly and brings with it a new wave of exploration, discovery, exploitation and appropriation" (LT Smith 1999). Ways of

knowing and ways of working with Indigenous people, and claims of colonialism will be discussed in greater depth throughout this thesis.

The aim of discussing distinctions between research paradigms is to maximise the chances of ensuring this thesis does not perpetuate a pattern of social research that is harmful and disrespectful toward Indigenous peoples. For example, I do not seek to determine the total number of persons who identify as Adnyamathanha Yuras, nor the percentage of people who have identical beliefs or values, or to explore the monetary value of compensation being received by groups or individuals as a result of the Beverley Uranium Mine. This thesis is about documenting and analysing the experiences and views of players regarding consultation and negotiation processes involving Adnyamathanha and Adnyamathanha Yarta. I seek to highlight the level of satisfaction held by players as to the effectiveness of the impact assessment process in recognising and protecting Adnyamathanha cultural resources. A qualitative approach enables a full range of happenings to be included in the research process that might otherwise be excluded if a quantitative approach were used.

As key researcher I believe the level of awareness and choices made about the approach to research are primarily informed by my world view, and in this thesis my choice is to use a qualitative rather than quantitative approach. The choice of a qualitative approach reflects a constructivist attitude to social inquiry as noted by Stringer and others (Stringer 1996b pp. 40-41), which emphasises a process of social inquiry that reveals and validates the '…different truths and realities – constructions – held by different individuals and groups' (Stringer 1996 p. 41). I seek to validate a range of perceptions about the meaning of land resources and explore the governance strategies currently in place. In particular, this case study highlights the importance of Australian Indigenous and Adnyamathanha perceptions in order to identify pathways for more effective participation by Indigenous peoples in cultural resources management.

2.1.3 Detrimental Impacts of Social Research on Indigenous Peoples

In this section further attention is paid to claims that social research perpetuates the subjugation of Indigenous knowledge systems, which results in research that continues to be of little or no benefit to Indigenous peoples, and is often detrimental for Indigenous participants and communities.

There are widely held concerns within social research that many traditional and contemporary social research processes are harmful, offensive, repressive, and culturally biased against Indigenous peoples (Cowlishaw 1992; Rowse 1992b; Pimbert and Pretty 1997; Gill 1999; Hubbs 1999; LT Smith 1999; Gunaratnam 2003). Particular disciplines within social research that have been the primary source of this oppression include, but are not limited to, anthropology (Rowse 1992b; Sillitoe 1998) and archaeology (Hubbs 1999; Wylie 2000).

These disturbing claims arise across a range of academic disciplines, but are not entirely an academic issue given that the ramifications of social research are felt far beyond the walls of academia, to include social policy development and administration (Rowse 1992a), school policy, higher education pedagogy, and curriculum development (Christie 1991; Foley 2003), and resource governance arrangements (Brunckhorst 2002).

Ideological perspectives that determine research interests, parameters and outcomes can often be quite distinct depending on the cultural, socio-economic, and historical circumstances. For example, the ideology of development for industrial nations (Young 1995a) is usually about advantages, benefits and progress yet these are rarely the experiences of Indigenous peoples situated in colonial settings, particularly in regions deemed remote (Young 1995c). Often the language associated with procedures such as EIA is loaded to reflect this industrial ideology. Prior awareness of this is critical for any researcher undertaking a thorough investigation of a study such as the Beverley Uranium Mine.

Research paradigms or belief systems within far more recent disciplinary areas that boast qualitative paradigms also harbour reasons for wariness in the context of Indigenous research. For example, the assumption that Western feminists somehow represent all women is pointed out to be fundamentally flawed by its lack of applicability to Indigenous women (L Smith 1999). Many Indigenous peoples regard the issues raised within feminist research as divisive and oriented toward the sufferings and achievements of non-Indigenous women. In part this may be due to social research approaches that emphasise or assume one reality or truth rather than multiple truths.

Environmental research is another area fraught with difficulties for Indigenous peoples. For example, concepts such as *wilderness* remain ambiguous in that they seek to distance or detach humans from the natural environment (Gill 1999). Some critics claim that researchers and policy-makers that embed *wilderness* concepts in areas such as conservation risk engaging in an approach that can alienate Indigenous peoples, denigrate Indigenous identities, and deny Indigenous knowledge systems (Langton 1996, and Bird Rose 1988 cited in Gill

1999). Educational research is also considered by some researchers within education as a contentious area, claiming that Aboriginal Education is noted for its reliance on Western concepts and approaches (McInerney 1992; Nakata 1995).

Detrimental impacts can and do result from inappropriate approaches to social research and strongly suggest that exploration of issues relating to Indigenous cultures and peoples through ideas derived from elsewhere can distort and limit the scope of understanding within research. I believe that advocacy through an approach grounded in the needs of a group or community of players offers a mechanism for Indigenous peoples to achieve greater understanding of the political environment we are in, and increases our level of control over our lives. Within social research, advocacy is a key principle that can bring direct benefit to Indigenous peoples.

2.1.4 Epistemological Issues

At a general level of understanding it is claimed that "Knowledge is a belief, or set of beliefs, about a particular segment of reality" (Denzin 1991, p. 30). Another interpretation more specifically describing Indigenous knowledge is as follows:

> 'Traditional knowledge is a term used to describe a body of knowledge built by a group of people through generations living in close contact with nature. It includes systems of classification, a set of empirical observations about the local environment, and a system of self-management that governs resource use' (Davis 1997, p. 12)

Michael Christie claimed '… Aboriginal science is much more in tune with the whole ecology and therefore boasts an ontology rich in successive layers of metaphor …' (Christie 1991, p. 28). He identified four principles that characterise 'Aboriginal science' as: the contextual focus within scientific study, the multiplicity of perspectives; a methodology that ensures ongoing negotiation of knowledge, and the focus on pooling perspectives to achieve balance. Another strength in Christie's work lies in its grounding through repeated educational application and evaluation, and his open acknowledgement and inclusion of Indigenous Elders' knowledge. The expression 'Aboriginal science', according to the above description, can be interpreted as a research *paradigm* according to the definition given by Stanley and Wioe who define this term as ' … a theoretically derived world view …' (Stanley and Wioe 1983 , p. 152).

An increasing number of academics are challenging the domination of Western knowledge and discourse, stressing the distinctions between 'local knowledge' and 'professional knowledge' (Corburn 2003), the use of 'etic' or outsider approaches and 'emic' or insider approaches (Denzin 1991; McInerney 1992) and the importance of synthesising these for more effective and appropriate research outcomes for Indigenous peoples. Others concentrate on the research process at a more holistic level (LT Smith 1999; Foley 2003). Their efforts not only bring greater clarity to the research process and the development of research theses, they also advocate for researchers to share the balance of power in an equitable way with Indigenous participants. This means a research process that evolves to accommodate the direction and priorities of Indigenous participants, which may require exceptional patience and understanding and a willingness on the part of the key researcher to forfeit a certain amount of decision-making power.

Other authors who raise discussions in their research about ways of knowing the world around us refer to 'world views' (Hubbs 1999) or 'epistemological dimensions' (Gunaratnam 2003). An interpretation of their focus on philosophical issues in social research suggests that as researchers, they feel obligated to develop an appropriate methodology aimed at recognising the possibility of exploitation and subjugation of Indigenous peoples and Indigenous knowledge. Their caution stems from a belief that detriment toward Indigenous peoples can and does frequently happen as a result of social research. An underlying assumption of their concerns is their dismissal of the notion that there is only one (Western) scientific way of knowing the world around us, and that no one way is superior to others.

Many research bodies that fund Indigenous research are also responding to the demands placed by communities for greater control over research theses (Ivanitz 1999; AIATSIS 2000; Australian Heritage Commission 2002). As communities express their concerns about social research and devise ways of better protecting their cultural and intellectual knowledge (Pearson 2000), drivers of organisational practices such as the Australian Public Sector (Ivanitz 1999) have become increasingly aware of a need to address past failures through changing the way in which cross-cultural research is conducted. Individual researchers are also being subjected to more stringent measures when working with Indigenous communities and individuals to ensure the research environment is equitable. These precedents within the research environment lead to a strengthening of ethical requirements and greater accountability within the research process.

The recognition of Indigenous knowledge systems and development of an Indigenous approach does not mean total rejection of Western theory or knowledge; rather it endorses a process of critical informed choice about what is appropriate in any given research context. However, a researcher cannot know what is appropriate without opening up control over the research process. Anna Hartmann advocates: 'We need not discard our (Western) knowledge, but we must be open to local knowledge, to the narratives and truths of our clients.' (Hartmann 1992, p. 484). This recognition indemnifies the existence of many ways of knowing the world around us and signifies a crucial shift from traditional views regarding the relationship of power and knowledge between the researcher and participants.

According to Paul Sillitoe (Sillitoe 1998), interdisciplinary approaches to research and development theses that synthesise with anthropological issues may provide greater understanding, sustainability and productivity especially if a *facilitatory* approach is endorsed. Sillitoe's attention to the different ways that knowledge is shared and stored suggests that social research is yet to accommodate these phenomena. Another significant challenge raised by Sillitoe relates to the distortion of knowledge through cross-cultural communication. As a researcher I endorse the adoption of an interdisciplinary and facilitatory approach for similar reasons to those highlighted above. I believe that the challenges I face as a researcher will contribute to beneficial outcomes in the form of further insight into the development of Indigenous approaches to research.

2.1.5 Indigenous Ways of Knowing

One of the Indigenous participants I spoke with also provided some important tips on how to communicate successfully with Aboriginal people and cited the need for 'a range of communicative tools … for a range of people, taking into consideration their life experiences' (Interview 16 Confidential 2005). This person insisted that as a professional it was:

> '… important to consider the broader issues that affect Aboriginal people; you can't just deal with one section such as 'health' or 'education' or 'employment' and you must be transparent in your role as leader' (Interview 16 Confidential 2005)

As an Aboriginal leader this participant made a valuable contribution not only to the content of this case study but also to the methods used and methodology employed.

Christie's claim that Indigenous ways of knowing have a contextual focus (Christie 1991) suggests that the way knowledge is constructed, shared, and modified may depend on the

topic in question, the level of trust and respect between players, and the likely gains or losses that may eventuate. An article by Christie flags an important issue that directly relates to ontologies, or ' …the picture of the world that a scientific system develops.' (Christie 1991). It highlights the constant renegotiation that occurs and the existence of multiple truths or ways of knowing within an Indigenous context. Christie claims that all knowledge systems involve the building of knowledge on a simultaneous framework of metaphor and censorship (Christie 1991). He argues that in the formation of Indigenous knowledge the negotiation process is celebrated and central in ways that demonstrate that Aboriginal people constantly re-negotiate their ontology as the physical and social universe changes. These 'ways of knowing' highlight a constantly evolving or dynamic set of truths that should never be ignored within research.

Tunbridge has done many years of linguistic research with Adnyamathanha, and her published work refers to the existence of different versions of the same Adnyamathanha oral account (Tunbridge 1986). She suggests it is usual for knowledge to be shared in a particular way in each family based on their own unique perspective and understanding of a particular issue or event. Indigenous constructions of knowledge can be described through reference to the oral traditions of generating, sharing, and reinforcing the way we understand the world around us (Anyon cited in Hubbs 1999). Indigenous ways of knowing can vary dramatically, but each function in a way that intimately connects land, people, and spirituality in a holistic and contextual manner. I have attempted to embed Adnyamathanha ways of knowing into this study in order to reveal similar connections.

Researchers prominent for their work in South Australia (Brock 1985; Mattingley and Hampton 1988) claim that colonisation within the Northern Flinders Ranges region impacts on Adnyamathanha ways of knowing and has led to a continual process of rapid re-negotiation and endurance over the past 50-100 years. For example, the concept *Muda* (x-ref see Ch …..) may provide an appropriate way of knowing for some Yuras but not for others. Its most obvious manifestation occurs in Adnyamathanha oral accounts or Dreaming Stories, noted for their reference to '…events which do not recognisably pertain to recent history.' (Tunbridge 1986, p. xxviii). In this thesis the focus on the existence and evolution of Adnyamathanha ways of knowing is central to understanding the multiple views of Adnyamathanha and the ways in which decision-making takes place.

2.1.6 An Indigenous Methodology

This thesis prioritises the need for a research methodology that is closely aligned with goals inherent to the ongoing agenda for reform of research that involves Indigenous people (North Australian Indigenous Land and Sea Management Alliance 2007). Generally, this requires an approach that is both collaborative and participatory (Ivanitz 1999; Henry, Dubar et al. 2002). The importance of designing a methodology appropriate to the needs and values of participants is strongly argued by the work in St Denis' *A process of community-based participatory research: a case study* (St Denis 1989) and Agger's *Critiques of Critical Social Theory* (Agger 1998).

Work specifically espousing Indigenous approaches to research include Linda Smith's text *Decolonizing Methodologies* (LT Smith 1999), Rigney's Indigenist Research Methodology, (Rigney 1997), Atkinson's *Privileging of Indigenous Methodologies* (Atkinson 2001), and Foley's *Indigenous Standpoint Theory* (Foley 2003). Foley claims 'The Indigenous epistemological approaches in an Indigenous standpoint enables knowledge to be recorded for the community, not the Academy.' (Foley 2003, p. 50). In other words, he is claiming that epistemologies within social research that are not appreciative of Indigenous ways of knowing effectively discount local ways of knowing, and tend to result in a research focus that is relevant primarily to the researcher, the research academy, or the funding body.

Despite striving for more appropriate approaches to research there is always a potential for research and researchers to subjugate Indigenous people and Indigenous ways of knowing (Hartmann 1992). Academia and academic research provide a far reaching mechanism for influencing institutions and policy makers, but at the same time there are substantial risk factors associated with taking part in research as the 'primary investigator' or 'facilitator' or 'researcher'. These risks emerge from the time a research proposal is first articulated and continues through every stage of the research process thereafter. Assuming that all research involves risk factors or that no paradigm or methodology guarantees a 'better way' of doing research, there are some approaches that can decrease the chances of exploitation and inequality, and increase the chances of real benefits for Indigenous people.

As key researcher I have devised an approach that is tailored to the issues and needs specified by people closely connected to this case, and I acknowledge this may not necessarily be applicable to other Indigenous research. My approach should not be regarded as a blueprint for an Indigenous Research Methodology; however, its design principles may have broader

application in modified form. The principles are based on careful consideration of all aspects of the research process, particularly methodological and ethical issues, explored in the early stages of this thesis and reflected on in the final stage (see §8). During the evaluative stages of this thesis an account will be provided that offers a self-assessment of how well these principles have been implemented. I consider a set of principles an important part of this case study in agreement with the assumption that '…until you get in there and get hold of your data, get to understand the context, you won't know what theories (explanations) work best or make the most sense.' (Gillham 2000, p. 2).

The first principle stipulates that an Indigenous approach must bring about actual benefits for the participant community. These benefits may be direct or indirect and are not necessarily determined through measurable outcomes. This principle highlights a commitment to *process* rather than *product* and aims for high qualitative standards within the process of doing research (Howitt, Crough et al. 1990) such as meaningful participation, worthwhile training, and positive articulation of issues. Benefits are intrinsically linked to genuine participatory characteristics, and these should feature throughout all stages of the research process.

The second principle stipulates that an Indigenous approach must acknowledge that at the macro level of research there is a pivotal relationship between power and knowledge that shapes every research project in a subjective manner. Knowledge is socially and politically constructed and defined (Denzin 1991), and must be understood in relation to power. This principle openly acknowledges the historical legacy of social research and its negative impacts on Indigenous peoples (see LT Smith 1999). It justifies a research philosophy that strives for a design that seeks to privilege Indigenous voices, and respect Adnyamathanha ways of knowing and ways of working. This principle is adopted so as not to reduce Indigenous philosophies through a 'skimming off' process whereby existing Western paradigms dominate (Scott 1996). Examples of this principle being enacted will include searching for and citing relevant literature in which Indigenous voices are accurately represented and brought to the forefront. Another example that relates to power and knowledge is the attention given in this proposal to the positionality of the researcher.

The third principle stipulates that an Indigenous approach is a participatory approach that recognises and incorporates Indigenous people and Indigenous ways of knowing and working. Research that leads to effective arrangements for Indigenous cultural resources must be grounded in Indigenous beliefs and values (Howitt, Crough et al. 1990). This study will identify and incorporate Adnyamathanha ways of *knowing* and ways of *working* throughout

this investigation, with particular attention to the gathering and analysing of primary data. Adnyamathanha ways of knowing will enable deep understanding of the research topic from an Adnyamathanha perspective. Defining and exploring Adnyamathanha 'cultural heritage' and 'values' and 'decision-making processes' can only be fully articulated and understood by placing Adnyamathanha knowledge systems in a central position within this study. This will be achieved through exploring the role of language and family relationships and how these influence decision-making processes and connect Adnyamathanha to the landscape around us. It will enable in-depth analysis of what happens at the cultural interface of Adnyamathanha and non-Adnyamathanha encounters, and how these encounters affect definitions and boundaries relating to Adnyamathanha identity. Making Adnyamathanha knowledge systems a central part of this study prioritises Adnyamathanha perspectives.

The fourth principle stipulates that an Indigenous methodology is based on a holistic paradigm. Effective categorisation or separation of causes and effects is virtually impossible given that everything is in a constant state of simultaneous interaction and change (Lincoln and Guba 1985). This assumption denotes an approach that is sometimes referred to as hermeneutic, and is closely linked to a naturalistic (constructivist) interpretive paradigm. Holistic case study research tools (Yin 2003) are examined in greater detail in § 2.2.2. Here holism is highlighted as a principle in recognition of the widespread influences of colonialism and the persistence of Adnyamathanha identities within Indigenous cultural resources management.

2.1.8 Conclusion

I believe reviewing philosophical aspects of the research design to be a critical step toward developing into a well-informed Indigenous researcher and an advocate for self-determination by Indigenous peoples. Discussion on the approach to research and the role of the researcher helps determine the scope of this thesis and helps build my capacity as a researcher to undertake a meaningful investigation, and self-evaluation at the conclusion of this case study.

2.2 The Design of Methods

2.2.1 Introduction

Emphasis on the *design* of methods is crucial to an appropriate cross-cultural methodology that works for Indigenous peoples (Ivanitz 1999). The intention in this thesis is to identify and negotiate opportunities for direct benefit that make sense to participants, particularly Adnyamathanha, to encourage broad participation in the research process, and to contribute to the existing body of case data. Research techniques that influence the design of methods used in this thesis include case study research, naturalistic inquiry, and Participatory Action Research. I have combined elements in a way that facilitates acceptance by and compatibility with Indigenous, and in this particular case Adnyamathanha, ways of working and ways of knowing.

2.2.2 Case Study Inquiry

The justification for choosing case study research as a method of inquiry considers a number of factors highlighted by Yin (Yin 2003, pp. 40-43), Gillham (Gillham 2000), Stake (Stake 1995) and Flyvbjerg (Flyvbjerg 2001b). Each of these authors raise significant areas of discussion relating to the purpose of social and qualitative research and these are worthy of further elaboration at a philosophical level prior to creating a set of methods that are suited to this thesis.

One of the issues raised relates to whether a case study is more suited to identifying peculiarities within a case as claimed by Stake, who states that 'the real business of case study is particularization, not generalization' (Stake 1995, p. 8). Gillham (Gillham 2000) claims that case studies are useful in that '…specificity refers to the unique characteristics that define a group or individual and the issues tested…' (Gillham 2000, p. 6). This suggests that case studies are not suited to the construction of generalisations pertaining to a broad population of people - rather their usefulness lies in the potential to highlight unique qualities and important issues. Yin (Yin 2003) takes this discussion in a somewhat different direction. He claims that case studies are '… generalisable to a theory and not to populations or universes…' (Yin 2003, p. 21), and refers to this type of research as capable of generating an analytic or qualitative generalisation, as distinct from statistical generalisations based on enumerate frequencies. These important observations suggest that case study inquiry is applicable for a

broad range of purposes and is suited to this thesis because it enables links the Beverley case with broader discussions and ideas. Another important reason for choosing a case study approach is based on a personal and openly subjective response from me as the author and investigator of this thesis. I felt a need to document some of the key experiences and priorities of Adnyamathanha in regard to resource management and to 'tell the story of Beverley from an Adnyamathanha perspective'.

This discussion raises questions regarding the expectations of players and participants and the credibility of the findings, as well as the design adopted in this thesis and its alignment with a theoretical disposition. The emphasis on theory-building for Yin is based on an assumption that linking data to theoretical propositions is paramount to the identification of patterns (Yin 2003, p. 33) so that a researcher can construct generalisations. For Yin, the role of theory-building runs parallel with the research design and analysis of data, and this is not entirely at odds with the claim by Gilman (Gillham 2000, p. 2).

This discussion is useful in raising awareness regarding the need to create an appropriate balance in research that acknowledges the existence of different areas of emphasis for different researchers, and one that is suited to a particular research topic. It highlights risks associated with 'theory- building' at the expense of 'listening' to the data with an open and reflexive mind. It also highlights risks associated with data collection in the absence of a theoretical framework, and the likelihood of such a project being unable to support generalisation to an abstract idea. Tailoring the research process to a particular research question was therefore a fundamental step in developing an effective research strategy to overcome such risks.

The aim in this thesis was to demonstrate that an emergent design as defined by Gillham (Gillham 2000) is capable of supporting generalisation, and that this can combine successfully with theory-building requirements as stipulated by Yin (Yin 2003). The emergent design in this thesis is demonstrated by an awareness of theoretical frameworks prior to commencement of the literature review to raise preliminary attention to theory in a way that informed the thesis but did not foreshadow the data collection and analysis phases. As data collection proceeded following the major review of literature, a further review of theory was undertaken to enable an emergent design for organising and analysing data. This demonstrates how theory can be interwoven through all stages of the research process whilst at the same time creates a space for the primary data to be positioned at the forefront of this thesis.

Naturalistic methods of inquiry distinctly refer to post-positivist research rather than positivist research and have many features that are appropriate to the design of methods I have used (Agger 1998); (Lincoln and Guba 1985). One feature within Naturalistic inquiry relates to the approach used when collecting primary data. As a design method, using a naturalistic approach in this thesis favoured an interview schedule and process that was designed to create a comfortable environment for interview participants. Data collection has been conducted in an environment that was familiar and comfortable to participants so as to yield a greater sense of participation as well as a minimal level of anxiety. Naturalistic inquiry assumes an interview process that is more like a conversation than a formal question-answer schedule. As interviewer I have placed emphasis on incorporating language into the discussion that is familiar to the participant; akin to a sharing process rather than an extraction of information.

A second related area worthy of elaboration in case study research is the identification of patterns and pattern theory (Stake 1995; Denzin and Lincoln 1998; Yin 2003). The linking of data to theoretical propositions (Yin 2003, p. 33) is a formulaic process used by Yin for identifying patterns, which is claimed to help the readers to better understand a particular case and assists the researcher in the theory-building process. This focus on patterns is also identified by Gillham (Gillham 2000), who insists that case study research is most effective where '… theory that is grounded in the evidence that is turned up' (Gillham 2000, p. 12) is important to the validity of research methods and to the subsequent findings. Other authors (Denzin and Lincoln 1998) identify grounded or pattern theory as explicit to presenting findings within a constructivist paradigm, clearly linking this process to case study research (Denzin and Lincoln 1998, pp. 34-35). The attention paid to patterns and pattern theory within case study research emphasises the need to adopt pattern construction as an inherent part of the design and use of methods, as a way of adding context and validity to the project findings.

Case and context are regarded as fundamental in understanding human behaviour (Flyvbjerg 2001a), and this recognition dates back to the writing of the famous Greek philosopher Aristotle according to the work of Flyvbjerg, who also cites the works of Hubert Dreyfus and Pierre Bourdieu as a way of bringing clarity to the construction of theory in relation to social sciences and natural sciences. A critical examination of the links between theory (rules and laws) and concrete phenomena (human behaviour or human activity) opens up a discussion on the role of theory within the social sciences as different to that within the natural sciences. Flyvbjerg argues that social science has '…nothing else to offer than concrete, context-

dependent knowledge, and the case study is especially well suited to produce this knowledge' (Flyvbjerg 2001a, p. 72), and that '…there does not and probably cannot exist predictive theory in social science' (Flyvbjerg 2001a, p. 72). However, using the case study method of inquiry is primarily useful in adding to the cumulative development of knowledge and discourse through analysis of new case data. Whilst a case study itself cannot provide the breadth that large samples can, the case study method offers depth in understanding of certain phenomena within the wider context of other cases.

This thesis makes a contribution to the discipline of geography by adding to the body of case study literature that focuses on preparatory stages of capacity building that lead up to Indigenous peoples' initial interactions with resource companies. Additionally, this thesis makes a contribution through engagement with participants, particularly Adnyamathanha, regarding the meanings and implications of the research findings within this case study. I place a lot of importance on spending time building and maintaining solid relationships with various players. I feel this is paramount to the effectiveness of contributions that this thesis will make at a community level.

2.2.2.1 Single Case Study Research

There are several reasons why a single case study approach is used as opposed to a multiple case study as a means of inquiry. One rationale relates to the potentially revelatory properties (Yin 2003) within a case study, in particular the ethnographic richness within a single case. This descriptive and exploratory aspect of case study research is desirable in this thesis as it is likely to offer all players, and particularly Adnyamathanha participants, a deeper and more informed understandings of what happened in this case and how it is situated in a broader context generally. The thesis will dwell primarily on 'what' questions, 'how' questions and 'why' questions in an attempt to describe and analyse the characteristics of this case in the context of a broader understanding of Australian Indigenous governance of land and cultural resource management.

A single case study provides a foundation for further investigation (including a comparative analysis with other cases) which may in turn influence future policy direction and practices in relation to Indigenous resource management and heritage protection. This thesis facilitates exploration as well as explanation of the case at hand to help fill a gap in research knowledge

relating to Adnyamathanha decision-making protocols or social and cultural issues surrounding the Beverley uranium mine.

The second rationale relates to longitudinal properties (Yin 2003) within a case study. There will be scope within this thesis to study aspects of the case at different points in time in considerable depth that would not be possible within a multiple case study. This has led to the identification of significant conditions and stages, particularly in relation to the balances of power and the depth of knowledge and understanding (conditions) that influence decision-making processes at any given time (stages). Practical aspects, such as the development of a simple record keeping process for Adnyamathanha site surveys and a reflective process for working through negotiations, have arisen from the focus on a single case. This provision has been helpful in a very practical way for individuals seeking alternative or additional options to the existing ones. Greater transparency in the relationships between players has also started to emerge.

This second rationale has also offered a tool for helping to determine who should be invited to participate in an interview, consistent with an emergent design that transpired through the ethnographic circumstances. Within this single case there have been focal points such as the two month period of time for public consultation during the Environmental Impact Assessment process, where key persons were identified for their understanding of and participation in this process. There has also been an opportunity to identify and in some ways address the lack of substantive literature, and relying on key persons to 'fill the gap' in knowledge or experience has been an important part of sharing and learning for all participants, including me as the researcher.

A third rationale relates to the potential level of uniqueness (Yin 2003) posed by a single case study which helps identify qualities of uniqueness within this study. It also identifies representative qualities and general ideas that make this study an example of a typical case within Indigenous resource management. Through the identification of patterns during the analytical phases of this thesis there have been opportunities to reveal links between theoretical ideas and primary data that give breadth to this particular case as well as to the wider context within which it is situated.

In addition to Yin's comments, one further rationale identified by the researcher that lends itself particularly to Indigenous case study research relates to a possibility of increased attention to Adnyamathanha affairs through a single case study. Levels of Indigenous (particularly Adnyamathanha) participation and benefit may be enhanced by choosing a single

case study firmly grounded in Adnyamathanha affairs at a time of unprecedented legislation regarding the governing of resource management. I believe there is greater likelihood of Adnyamathanha ownership of the ideas and issues arising within this thesis and resource management due to knowledge-sharing processes such as small group discussion. It is possible that publication of this case study will evoke an increased level of literature from a range of Adnyamathanha perspectives.

However, a renewed interest in Adnyamathanha affairs or the impacts of the nuclear industry on Indigenous communities also has the potential to impact negatively on Adnyamathanha in the future. As an Adnyamathanha researcher, I feel this required a personal commitment to address potential pitfalls that may be generated through increased attention on Adnyamathanha affairs. Importance has therefore been placed on critically appraising Indigenous research guidelines to ensure that this thesis assists local development of best practice as well as meeting academic protocols of best practice within research.

2.2.3 Reliability and Validity

Robert Yin (Yin 2003) identifies three important principles of case study research that maximise reliability and validity. These principles are: using multiple sources of evidence, create a case study database, and maintaining a chain of evidence. One serious problem within case study research relates to the attention given to an issue posed as a question in the design of any case study, and how this has the potential to impact on the case study per se. This thesis therefore acknowledges that '…there is an abiding tension between the case and the issues.' (Stake 1995, p. 25). A related factor is the extent to which preparatory planning is offset with flexibility throughout the lifetime of a project (Stake 1995). In this thesis I have used a list of questions in a flexible manner within the interview schedule to enable the research to evolve. This strategy allowed me to develop in-depth familiarity over time as the case study investigation took place, and for wider participation and collaboration as deemed necessary. Given that participation is focused on people's ideas and experiences in a qualitative way, using one standardised set of questions for all participants was deemed inappropriate based on the belief that this would fail to yield a high level of participation across the various players.

Naturalistic inquiry incorporates reflexivity to ensure an evolving process of observation, analysis and further observation that 'grows' a research project in an academically rigorous

manner. Creating a case study data base that is part of a non-invasive process (Adler and Adler 2000, p. 382) is a useful strategy in the context of a case study that could be regarded by some people as controversial and culturally sensitive. Within Indigenous research it is possible that some people will regard any form of inquiry as negative and detrimental to Indigenous peoples because of the history of over-inquiry into Indigenous affairs. As a researcher I have maintained a reflexive approach that allows me to respond to problems that I see emerging, such as making participant details confidential although they have agreed to being identified during their interview or at the time of personal communication.

2.2.4 Qualitative Practices and Perceptions in Data Collection

There are some aspects to the approach I have used in data collection that constitute standard forms of qualitative inquiry. All participants must understand the thesis aims and interview process and be willing to sign the Informed Consent form. For some participants this will be a simple and straightforward exercise because of their familiarity with academia, or due to their level of familiarity with me as a person. Attention will be given to the use of appropriate language by the researcher when facilitating informed consent, and when interviewing, observing, and disseminating information. Emphasis will be placed on the appropriateness and thoroughness of discussion to ensure interviews are conducted in a sensitive manner, data is properly checked, interviews are not rushed, and data analysis is undertaken in a meaningful way that includes rather than excludes participants, particularly Adnyamathanha participants.

For example Yura Ngawarla, the language spoken by Adnyamathanha, is incorporated into the thesis. The purpose is to show respect for the language used by Adnyamathanha and to provide conceptual clarity during the collection and analysis of data. Incorporating Yura Ngawarla is also as a demonstration of respect and understanding of culturally bound terminology, as well as an acknowledgement of the personal status of Adnyamathanha individuals. Cultural sensitivity has been a key protocol throughout all stages of this thesis.

Another example relates to an awareness of 'Indigenous politicking' (Trigger 1992) and how this impacts on the way that people might react or respond to this inquiry and to me as the chief investigator. Indigenous politics are often volatile and a mix of both personal and professional views therefore may not be indicative or representative of a collective view. The

practice of keeping an open and prudent approach was important when I began developing a proposal for this thesis, when working with people and during the writing up of this thesis.

2.2.4.1 Primary Data

The repertoire of Adnyamathanha experiences and perspectives offered a unique cultural and contextual framework for gathering, organising and analysing the primary data within this thesis. Collection of primary data took place via interviews and participant observation. These methods are based on data collection principles derived from Grounded Theory procedures, Naturalistic inquiry, ethnographic interviewing, and case study research methods.

Direct observation (Yin 2003) and participant observation (Stake 1995; Yin 2003, pp. 93-96) each play a key role in data collection and participant observation made a useful contribution to my thesis and in the evolution of interview questions. Data source triangulation (Stake 1995; Yin 2003) verified that evidence was being supported by more than one source which gave credibility to patterns and conclusive findings.

2.2.4.2 Secondary Data

Secondary sources of data such as historical literature were used to cross-reference with primary sources of data to enable a critical data analysis. Secondary data also provides greater understanding of theoretical aspects of this thesis, and aids in producing a meaningful analysis of relevant issues. Wherever possible, Indigenous perspectives and Indigenous authors are highlighted. A multidisciplinary approach has enabled inclusion of a diverse range of perspectives that characterise Indigenous land use and processes of negotiation. I have included community and professional reports authored by Indigenous persons that directly relate to the Beverley Mine case or, more broadly, to Adnyamathanha heritage issues. Some of these are not readily available to the general public as they are part of a limited edition and there is currently no keeping place identified to house such documents. Relevant newspaper articles, videos, websites and posters pertinent to this case study were also reviewed. International, national and local perspectives were gained through reviewing secondary sources of data; however interviews with individuals from a wide range of relevant organisations also provided quality data.

2.2.5 Interview Processes: Approach and Design

The interview process incorporated procedural aspects derived from Grounded Theory (Corbin 1990) to inform interview schedules, data analysis, and observation. Grounded Theory procedures have enabled the process of data collection to evolve, yet still provide a set of parameters that ensure a standard scope across all interviews. This approach aimed for a reflexive process that maximised data collection opportunities and made the process relevant not only for myself as researcher but also for interview participants.

The interview process adopted principles of ethnographic interviewing (Spradley 1979) that seek to make the process more like an everyday conversational encounter than a formal, unnatural and uncomfortable encounter. Ethnographic interviewing ensured an emphasis on relationship building, resulting in mutual trust and respect between interview participants and interview facilitator. Naturalistic inquiry (Stake 1995) also assumes an interview process that is more like a conversation than a formal question-answer schedule and is a technique used by ethnographers.

In this case study, interviews were aimed at maximising the comfort levels of participants so as to yield a greater sense of participation and to minimise anxiety for interviewees. For example, as part of the interview process, all participants were asked to nominate their preferred environment for the conduct of the interview to maximise their level of comfort. There were instances where short camping trips in order to visit sites, or small group meetings in an outdoor barbecue area, were included to facilitate a relaxed and enjoyable environment. Adnyamathanha participants were given the option of doing an interview with another friend or family member present if this was more comfortable. Some participants preferred to respond to questions in Yura Ngawarla (Adnyamathanha language). All translations to Udnyu Ngawarla (English) were carefully checked to ensure accurate representation. This approach was designed to create a sharing process rather than a one-sided process of extraction of information.

This overall approach to interviewing recognises existing levels of familiarity between interviewee and interviewer (Spradley 1979; Windschuttle and Elliot 1999) in a way that builds a gradual and positive relationship of trust and respect. As an Adnyamathanha person researching a sensitive and controversial topic, my perceived position varied immensely depending on who was being interviewed. This variation included how an interview participant viewed me and how they were related to me, the timing of the interview and the

current issues pertinent to the case study, and the subsequent focus of discussion based on experience and a willingness to share. A sensitive and responsive approach was adopted to minimise perceived levels of intervention which enabled me as the interviewer to take on a facilitating role.

2.2.5.1 The Interview Schedule

The interview schedule was semi-structured with approximately four broad 'grand tour' questions accompanied by a series of consecutive 'mini tour' questions. Broad open-ended 'grand tour' questions were followed by more specific 'mini tour' questions as part of an approach that allowed the interviewee to elaborate (Spradley 1979). This design also sets a standard parameter that links each interview session to the research objectives in this thesis. I anticipated that no more than four 'grand tour' questions would be asked, and that the time spent on each session would not exceed an hour. However, in several instances multiple sessions were required with participants, and some participants chose to continue well over the one hour timeframe.

A maximum number of twenty interviews were planned with an actual figure of eighteen being conducted. Some participants interviewed twice required an additional interview schedule that elaborated on the first set of questions. Emphasis was placed on the appropriateness and thoroughness necessary to ensure interviews were carefully conducted, data was properly checked, follow-up interviews were not rushed, and data analysis was undertaken in a meaningful way that included rather than excluded Adnyamathanha participation. Participants had multiple opportunities to amend their transcription.

In summary, this thesis focused on a single case and used a qualitative approach with methods derived from naturalistic inquiry (Spradley 1979; Lincoln and Guba 1985; Adler and Adler 2000; Gillham 2000). Case study research principles were used to facilitate collection of primary data. Data source triangulation (Stake 1995; Yin 2003) allowed for multiple methods of data collection so as to be able to systematically gather and analyse data. One of the aims in the data collection phase was to work with participants in a way that provided multiple and varied opportunities for interaction and ensured adequate time was spent on building and maintaining relationships of trust and reciprocity. The overall goal was to promote the knowledge of participants and generate new and informed ways of talking about and dealing with land use that are beneficial and respectful primarily to Adnyamathanha.

2.2.5.2 Interview Participants and Data Collection

Written and verbal information about my thesis topic was provided, sometimes repeatedly, to Indigenous and non-Indigenous people, professional and community people, government and non-government. Individuals were invited to participate regarding their involvement, experiences, values and perceptions in regard to the protection and management of Australian Indigenous cultural heritage. A particular emphasis was placed on the granting of commercial mining or exploration licenses, and on involvement in the Beverley case. Identification of persons or groups invited to participate, as well as the way in which discussion evolved during interviews, was influenced by existing relationships between regulatory bodies within State and Federal government, Adnyamathanha cultural heritage management, and the development of mining industry activities. During 2005 and 2006 I spoke with many people interested in making a contribution to this case study.

Indigenous participants included individuals from a broad range of backgrounds. Members of formal Adnyamathanha organisations for example Yura Language Consultative Group (YLCG) willingly contributed their advice and support, some of whom contributed via participation in an interview, via unstructured personal communication rather than through an interview, or as a member of the advisory team that guided this inquiry. All of the nine key players acting within Native Title legislation were invited to participate with two agreeing willingly to participate in an interview. A group of Elders from the Adnyamathanha community, some of whom were also YLCG members, met with me to hear about the case study I was undertaking and nominated two Elders to do an interview with me. Two 'younger' Adnyamathanha persons with a substantial history of involvement with Adnyamathanha heritage issues or projects were approached and agreed to contribute. As a result of advertising my thesis broadly, Yuras interviewed include a range of people, some of whom were directly involved in the Beverley consultation and negotiations and others who participate as Elders in heritage business (Interview 7 Public 2005; Interview 17 Public 2005; Interview 4 Confidential 2006; Interview 5 Confidential 2006; Interview 10 Public 2006; Interview 15 Public 2006). All Yuras that spoke with me or shared their views and experiences believe that the Beverley mine site like many other places in the region is an area of special cultural significance for Adnyamathanha.

Employees and volunteers from Green non-government organisations (NGOs) that took part in interviews included persons associated with environmental campaigns moderated by the

Australian Conservation Foundation and Friends of the Earth (Interview 11 Public 2005; Interview 14 Public 2005). These people were identified as potential participants due to their direct involvement in national or regional campaigns at the time of the Beverley EIA. Other NGO employees invited to take part included employees of the Native Title Unit (NTU) a sub-branch of the Aboriginal Legal Rights Movement (ALRM), the sole agency in South Australia that administered Native Title applications in this State at the time of the Beverley case. No current employees from ALRM or NTU were willing to participate in this case study despite repeated efforts to engage their views and experiences. Two former employees from NTU who had previously been employed as Case Manager of the Adnyamathanha Native Title claim (Interview 12 Public 2006) and Aboriginal Liaison Officer (Interview 8 Public 2005) agreed to participate.

Personal communication also became an important means of gaining first hand information, particularly from public servants and members of the community who wanted their identity protected. Employees from within government departments included persons from within Planning, and Primary Industries, who were identified as potential participants for their knowledge or experience in legislature, policy or practices relevant to this case. Instead of a structured interview the two employees preferred personal communication as an appropriate process of information sharing rather than an interview. At South Australian State government level I spoke with persons from the Dept of Aboriginal Affairs and Reconciliation and members of the Aboriginal Heritage Committee, identified for their involvement in administering and interpreting the *Aboriginal Heritage Act* (SA Government 1988). One employee from the South Australian Police who was locally based immediately following the Beverley EIA agreed to a confidential interview (Interview 3 Confidential 2005) to share views of the community law and order issues relating to the Beverley case.

Industry persons invited to take part included professionals from the legal and mining sector, including employees of Heathgate Resources, the mining proponent that holds the commercial license over Beverley Mine. I was asked by a senior member of staff within Heathgate Resources to sign a legally binding agreement before anyone was allowed to be interviewed, an obligation I was later able to decline because of a former employee's willingness to participate in an interview with me minus any formal agreement. I subsequently undertook two confidential interviews (Interview 1 Confidential 2005; Interview 6 Confidential 2006). Another interview was undertaken with an anthropologist (Interview 9 Public 2006)

employed as Heritage Consultant and Expert Witness under Native Title requirements set by ALRM and NTU.

A total of 18 participants took part in interviews for the purpose of this case study. Some of these people were interviewed over two or three sessions, and each person had an opportunity to review the transcript of their interview. Some people chose to remain anonymous and their identity including gender is carefully guarded throughout this thesis.

2.2.6 Observational Methods

Participant observation was used in the early stages of this case study and as part of a method of reciprocal advice and information throughout the latter stages. Observation can facilitate primary data collection during the early stages of qualitative inquiry through '…broad areas of interest but without predetermined categories or strict observational checklists … to discover the recurring patterns of behaviour and relationships' (Marshall and Rossman 1995, p. 78). I believe that participant observation allows me opportunities to engage in a way that demonstrates my genuine intention of 'giving back' to people, in the form of follow up or debriefing sessions after meetings or helping people to prepare themselves prior to meetings.

Participant observation as a data gathering method is regarded as '… an essential element of all qualitative studies' (Marshall and Rossman 1995b, p. 78), a position reinforced by the claim that participant observation provides insight that cannot be gained through an interview or focus session (DeJong, Monette et al. 1990). As a sole researcher and member of the Adnyamathanha community, I feel that observation complements the overall emergent design of this thesis as it adds strength to the construction of patterns and provides space to acknowledge my role as researcher.

The role of researcher as observer is regarded as important in this case study. A researcher can adopt various membership roles when observing, and these include a 'peripheral' role which allows a researcher to '… observe and interact closely enough with members to establish an insider's identity without participating in those activities constituting the core of group membership' (Adler and Adler 2000). This form of observation was particularly appropriate and practically useful for me in understanding the sensitivities of the Beverley uranium mine case and its wider context. Participant observation enabled examination of actual events and an analysis of peoples' experiences and the relational characteristics of these events.

The degree of participation is also important. Spradley (Spradley 1980) identifies varying degrees of participation ranging from 'non-participation' to 'complete participation' as part of an ethnographic approach to research. He highlights differences between an 'ordinary participant' as an insider who is not intentionally seeking to observe minute details, and a 'participant observer' (Spradley 1980) who due to the intention of this role can experience being both insider and outsider simultaneously. The focus here is on the experiences and abilities of the researcher. For others (9, Monette et al. 1998) there is greater discussion on whether a researcher is primarily a 'participant' or primarily an 'observer', and focus here is placed on the degree of intervention a researcher might adopt and to what extent this may impact on the event being observed. I chose to adopt a peripheral role of 'participant observer' which provided the opportunity to build levels of familiarity, trust and connectedness with potential interview participants and members of the wider community who have witnessed my presence at meetings. For the purposes of this study I have adapted a participant observation record keeping chart (Spradley 1980, p. 58) for recording my own perceptions of how I influence a given environment during an observational exercise.

2.2.7 Conclusion

The design and implementation of a customised set of research tools in this thesis draws on previously tried methods including case study research, naturalistic inquiry, participatory action research, feminist research, and ethnographic research. I have combined elements in a way aimed at being acceptable to and compatible with Indigenous, and in this particular case, Adnyamathanha ways of working and ways of knowing. These methods require patience on my part as researcher and a level of respect that may appear to outsiders as tedious, over-conservative, and time-consuming. This thesis demonstrates a set of methods that are academically rigorous as well as appropriate to the context of Indigenous research. Collection of primary data took place using a range of techniques including semi-structured interviews and participant observation. The repertoire of experiences and perspectives held by participants offered a cultural and contextual framework for organising and analysing the data and literature within this thesis.

Section Two: LITERATURE REVIEW

Chapter 3. Looking After Cultural Heritage and Valued Resources

This chapter develops an understanding of the social significance of land and how cultural heritage is constructed and managed. The purpose is to explore the ways in which ideas relating to 'cultural heritage' and 'cultural resources' intersect and what this means for Indigenous heritage protection. The first part looks at broad understandings of cultural heritage followed by Indigenous cultural values and beliefs regarding cultural heritage and cultural resources. Literature reviewed in this chapter provides a broad understanding of the opportunities and impediments for Indigenous participation in cultural resources management of land. The ideological shift from culture as heritage to culture as resources provides an avenue for exploration of the changes in governance regarding natural, environmental and cultural resources.

Understanding the ideological shift from 'cultural heritage' to 'cultural resources' will enable a critique of the way in which Indigenous cultural heritage and resources are understood and managed within the mining sector and the extent to which Indigenous perspectives were valued in the Beverley Environmental Impact Assessment (EIA). Cultural Heritage Management (CHM) and Indigenous Cultural Resources Management (ICRM) are introduced in this chapter to map this ideological shift within government and industry; this does not necessarily mean that all players are fully engaged with or accepting of this shift. Indigenous Natural Resources Management (INRM) offers another variation in terminology within government frameworks under the 'Caring for our Country' banner (NRM Team 2008) and includes Indigenous Engagement as a key target in its 2008 business plan.

3.1 Cultural Heritage – Identification, Protection and Management

3.1.1 Introduction

The historical evolution of Australian heritage and its management provides a background for understanding how Australia's Indigenous heritage is posited and managed. State and Federal government intervention in identification, planning, funding and implementation have been the forte of heritage protection, with limited input from private and corporate sectors. The purpose of this chapter is to develop an understanding of the conceptual tools that generally inform heritage identification, protection and management as a way of explaining how Indigenous heritage within Australia is protected and sustained. This chapter offers an analysis of Indigenous cultural heritage management within commercial development outside of Native Title.

3.1.2 The Identification and Governance of Australian Heritage Places

On a general level 'heritage' can be understood as a person's birthright or family legacy and these can be tied to inheritance of land and customs (Tardiff and Bernard 1998). At a community-based or collective level 'heritage' takes on a meaning that links people collectively to land and other culturally identified processes or resources. The idea of 'heritage' therefore relates to a responsibility toward looking after or caring for something of value, so that it is accessible to and valued by present and future generations. The value and accessibility of a heritage place can be determined and justified through a broad range of socially determined signifiers attached to a physical or geographical landscape.

The impetus to preserve and promote cultural heritage became known as Cultural Heritage Management (CHM) in Australia. This resulted from an increased popularity and need to know about things uniquely Australian as part of an evolving process of '… growth from concentration on single issue concern for … high aesthetic architecture … to an appreciation of everyday places …' (Taylor 1989, p. 28). This historic paper by Taylor on rural cultural landscapes published almost two decades ago helped to define Australia's CHM within a colonial timeframe from 1788 to the present; in other words from British sovereignty over Australia. This terminology is still currently used in the management of cultural heritage or resources, and the term 'heritage' is specifically used to refer to '… an inheritance from the past; something to be valued and which has beneficial social connotations in promoting a

sense of place and belonging' (Taylor 1989, p. 28). Taylor also discusses the legacy of the term 'cultural landscape' (Taylor 1989, p. 29), originally used to refer to changes to the 'natural landscape' by human culture. This theoretical context for a '…landscape conservation ethic' (Taylor 1989, p. 29) is directly informed by Western philosophies embedded in geography, archaeology, history, and conservation. These offer an insight to the typically Eurocentric approach to cultural heritage identification and management that remains a dominant force within Australia.

A large portion of Australia's cultural heritage is identified and managed within government according to the *Australia ICOMOS Burra Charter 1999* (Australia ICOMOS 2000). This charter established a code of practice for managing places of cultural significance, and was developed and endorsed by Australia ICOMOS in response to international resolutions put forward by the International Council on Monuments and Sites (ICOMOS) originally dating back to 1964. Definitions from the Burra Charter (Australia ICOMOS 2000, p. 2) help to understand some key elements relating to 'heritage' as an idea. These definitions and explanatory notes provide a foundation for tracking the changes that occur in relation to the meanings attached to heritage. 'Place' is defined as a '…site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views' (Australia ICOMOS 2000, p. 2) and explained as a concept that '…should be broadly interpreted' (Australia ICOMOS 2000, p. 2) with the possibility of '…a range of values for different individuals or groups' (Australia ICOMOS 2000, p. 2). 'Cultural significance' is defined as '…aesthetic, historic, scientific, social or spiritual value for past, present or future generations (Australia ICOMOS 2000, p. 2). These key definitions are given further meaning in practical terms through various guidelines (Australian Heritage Commission 1998; Australian Heritage Commission 2002) that assist communities, local councils and nature conservation groups wishing to engage in CHM.

Protecting local heritage places: a guide for communities (Australian Heritage Commission 1998) provided greater inclusion of Aboriginal perspectives than the Burra Charter. It included a broad set of standards for heritage conservation, including the 'Draft Guidelines for the Protection, Management and Use of Aboriginal and Torres Strait Islander Cultural Heritage Places, 1997'. The guidelines defined a heritage place based on the inherited meanings or values that people share about a place, and a place can be '… a specific area or site, perhaps a large area such as a whole region or landscape, or a small area such as a feature or building …' (Australian Heritage Commission 1998, p. 4). The key assumption within this

guide rests with the value or significance that people attach to such places, and these values can be social or cultural, scientific, aesthetic, or spiritual. An ambiguity within this document is that there is no limitation on what might be regarded as Indigenous or non-Indigenous, although there is specific reference to 'Indigenous heritage'. This framework's reliance on social meanings attached to heritage places is more culturally inclusive but still lacks a definitive process of assessment. However, on a broader scale the guide offers an action based workbook which attempts to engage more readily with Indigenous peoples and cultures than previous attempts at dealing with Indigenous perspectives using CHM principles in Australia. This guide suggests a significant shift away from the more traditional approaches to CHM which have fundamentally failed to be inclusive of Indigenous values and beliefs in the past.

The Australian Natural Heritage Charter (Commonwealth of Australia 2002) notes that conservation issues arising from cultural values may influence the way that natural heritage places are managed, therefore enabling a wider set of values to be considered within the management of heritage places. Although this literature also suggests a shift, it continues to use Western scientific terminology such as physical, biological and geological spaces and places as the basis for identifying and managing 'natural heritage'. Indigenous perspectives remain outcast in this Charter.

From an Indigenous perspective there are two problems with the identification of heritage in this Charter. A Western approach to CHM assumes practices, policies and guidelines that make distinctions between 'natural' and 'cultural' heritage with the latter referring explicitly to human activity (Taylor 1989). At an epistemic level of understanding there is a fundamental denial of Indigenous knowledge in this Charter and subsequent framework. A second interconnected issue relates to the identities of Australian peoples. The growing sense of what it means for humans to 'belong' to a place with a value that is uniquely constructed and reinforced as part of Australia's cultural heritage is embedded within CHM. A 'taken-for-granted' approach to CHM based on an assumed understanding that natural and cultural heritage is part of an all-Australian identity perpetuates an identity and history that is steeped in colonialism.

Eurocentric conceptual frameworks of land ownership based on hegemony continue to dominate Australia's land ownership system (Plumwood 2003). The paradigm of land ownership based on expenditure, exploitation and human labour contrasts with the Indigenous paradigm of historical dialogical relationships between people and land resources (Plumwood

2003). I would also argue that the persistence of a colonialist lens continues to influence the ways in which land ownership, land uses, and Indigenous rights are interpreted in Australian society.

To suggest that Australian people's sense of belonging and identity since colonisation is somehow widely understood and agreed on (Taylor 1989) raises vexed questions about the inclusivity of policies and practices for CHM in Australia. This position assumes that European heritage in Australia is part of a narrow body of knowledge and experiences devoid of non-European cultural groups, and assumes that the identification and value of European heritage in Australia has taken place in isolation. This artificial separation of views creates a vacuum in which the Australian psyche remains transfixed by colonialism regardless of our individual or collective affiliations and actual experiences.

In September of 2003 the Federal Parliament of Australia passed new heritage legislation for the governance of places of 'national heritage significance' (Department of Environment and Heritage 2005). This new legislation was to '…usher in a new era of protection and management for Australian heritage places' (Department of Environment and Heritage 2005) and supersede the functions and responsibilities of the Australian Heritage Commission. The legislation was designed to establish an advisory body to the Australian Government on heritage matters, and maintain and add to the Register of the National Estate. The Australian Heritage Council comprises 'independent heritage experts' appointed through the *Australian Heritage Council Act 2003* (Commonwealth of Australia 2003). This body became responsible for assessing applications for inclusion on the Register of the National Estate, a central database established to promote and protect places of 'natural' and 'cultural' significance.

As part of a joint initiative the Natural Heritage Trust produced a toolkit for natural resources information management (Natural Heritage Trust, National Land and Water Resources Audit et al. 2003) that encouraged the acquisition and sharing of existing spatial data for improved access and use of natural resources. The idea of what constitutes 'natural resources' within this initiative is not clearly defined; however, it is assumed as having a Western scientific basis as it is characterised by the collection of data that is deemed 'natural' or 'non-human'. Within the broader notion of 'heritage', this toolkit demonstrates a specific framework for developing and managing data that is resource-oriented for human use. This implied focus on *uSage* is employed to build a case that justifies protection of heritage not simply for its aesthetic appeal but for its practical or economic value as a resource.

The discussion above demonstrates that meanings associated with heritage are not universal or static. Additionally, heritage can be defined differently by governments, community groups or industrial corporations, where each player makes a decision about whether or not to include non-tangible forms of cultural significance based on their particular world view. This may include a decision as to whether or not heritage includes 'natural heritage' and to what extent notions of 'cultural' heritage are understood and recognised by governments and corporations. Each sector defines and engages with CHM understandings in a way that is not governed by any standardised set of best practices regarding CHM in Australia.

3.1.3 Commercial Development and Indigenous Heritage Places

The significance of the previous discussion on identification and protection of Indigenous heritage becomes acute in the context of commercial development. Commercial development of resources such as minerals is a particularly contentious arena for the identification and protection of Indigenous heritage, and involves both formal and informal aspects of Indigenous engagement and participation. The formal planning phase of development commonly known as the 'impact assessment' includes consideration of environmental, social, and cultural issues (see §4.2.5 for further explanation).

At a national level, during the 1980s the Aboriginal and Torres Strait Islander Heritage Protection Act (1984) became the key piece of legislation likely to influence the way environmental and Indigenous cultural heritage and cultural resources were managed and regulated within development. Prior to the introduction of Native Title legislation in the early 1990s, in South Australia the *Aboriginal Heritage Act* (SA Government 1988) was the only legal mechanism in relation to planning for heritage protection apart from the Environmental Impact Assessment (EIA) process. According to the *Aboriginal Heritage Act*, all proposed disturbances to Aboriginal sites require consultation via the Minister for Aboriginal Affairs. As the key decision maker for determining the significance of a site, the Minister is ultimately responsible for management of Indigenous heritage during planning. However, both State and Federal Acts have been strongly criticised as ineffective mechanisms for Indigenous engagement and heritage protection (Fergie 1995; Evatt 1996; Fergie 1996; Malone 1996) due to the narrow interpretations placed on heritage and the privileged status of corporations and development projects.

During the 1990s, commercial development of natural resources brought another layer of interpretation in relation to the various cultural perceptions that can be attached to a heritage site. Viewing heritage as a useful or valued resource became common in the field of resources management (Howitt 2001), which has particular significance for Indigenous peoples engaged in negotiations over commercial proposals. Executive members of the Balkanu Cape York Development Corporation claim that '…environmental concerns could stifle economic opportunities …' (Pearson 2008), showing an example of the way in which Indigenous peoples are exemplifying land in a 'resourceful' manner as an integral part of an economically sustainable future. A newspaper article (Lloyd 2006) highlights the potential for increased tensions between the various interest groups associated with heritage protection if a '… strict economic rationalist …' (Lloyd 2006) model is used to govern heritage. This article by Lloyd offers a limited understanding as to what constitutes *heritage*, as the article refers specifically to the protection of buildings; however, it raises the question of what is regarded as 'resourceful' and therefore valuable within a framework of assessment and protection for cultural heritage in Australia. Evidence suggests that a degree of shift in a rhetorical sense toward greater acknowledgement of *Indigenous* CHM continues to evolve; however, the emphasis on economic viability as a key outcome has the potential to jeopardise heritage protection through a process of economic commoditisation. This 'industrialised' interpretation of Indigenous heritage within commercial development such as mining signifies a new phase for protection of Indigenous peoples' cultural heritage.

This shift resonates with the changes in the pastoralist industry that date back to the late 1800s (Duncan-Kemp 1961) and the end of an era in the history of outback Australia with the passing of both Aboriginal custodians of traditional knowledge and the first wave of English and Scottish pastoralists. The passing of these people for Duncan-Kemp was expressed as a social and cultural change in understandings and meanings attached to the land: 'Now the country was slowly turning into a business proposition, a price always extracted in the name of progress' (Duncan-Kemp 1961, p. 27). Prior to this 'turning point' there had been a 'spirit-of-the-thing' and the country was '…more or less the Happy Hunting-grounds' (Duncan-Kemp 1961, p. 27) of the old and new inhabitants of the land. These comments recognise the depth of Indigenous cultural knowledge and the impression this created on early colonisers through human curiosity and basic survival. It also suggests that cultural affiliations to land were surpassed by economic commoditisation. The more recent changes in CHM suggest a

similar transformation where 'socially rich' has been replaced by 'economically rich' as part of the process of commercial development.

3.1.4 Indigenous Heritage Protection Precedents in South Australia

During the 1970s, at the 'Aboriginal Site Recorders' Conference' (Aboriginal & Historic Relics Unit 1978), there was national concern expressed at the fundamental lack of understanding and commitment within governments regarding the protection and promotion of Australian Indigenous cultures. Discussion at this forum centred on the roles of Traditional Custodians and Governments in preserving Indigenous cultures, and the failure by governments in ensuring Elders are properly involved and Aboriginal communities directly benefit from research projects (Aboriginal & Historic Relics Unit 1978, pp. 1-4). A strong contingency from South Australia resulted in specific reference to the effects of commercial development in the Northern Flinders Ranges and the need for 'conservation measures in an area of extreme cultural importance' (Aboriginal & Historic Relics Unit 1978, p. 5). Issues raised at this conference in 1978 provide a snapshot of the frustration and disappointment experienced by Aboriginal people working in the area of heritage protection, and their attempts at gaining recognition and building capacity in collaboration with government and industry.

A major experience of the impacts of mining on heritage relates to the destruction of the Yulura (Azure Kingfisher Spirit Man) Trail (Coulthard, Coulthard et al. 1987; McKenzie 1987). Yuras regard this as a pivotal turning point culturally and many remain sceptical of any site protection regimes as a result of this precedent set by coal mining at the Leigh Creek Coalfield (Coulthard, Coulthard et al. 1987; McKenzie 1987; Marsh, pers. comm. 2002). This devastating event stands as a fixated point of community concern regarding heritage and land use from when it was first mined for coal to the current time.

Two key case study examples of Indigenous heritage protection issues in South Australia in the 1990s were the Hindmarsh Island Bridge and the Olympic Dam Mine. These cases are distinct in that they benchmark South Australian CHM and set precedents for the development of new practices within resources management or ICRM. Prominent attention was given to Hindmarsh Island and Olympic Dam due to the extraordinary steps taken by industry and government to override CHM heritage protection laws during planning and development. These cases emerged during the transitional stage of Aboriginal Heritage

legislation and Native Title legislation and set some firm precedents within South Australia. Events surrounding these cases send a particular mesSage to players contemplating a role within CHM and ICRM, particularly at the interface of Indigenous engagement and commercial development.

Examination of the historical content of legislation as well as the ways in which it is interpreted provides a crucial discussion point to current understandings of Indigenous and non-Indigenous relations in Australia. An abundance of literature exists on the Hindmarsh Island Bridge case covering many perspectives, experiences and philosophies regarding heritage protection. The importance of this literature in exploring the Beverley case rests with the range of views and perceptions on the acclaimed 'secret women's business' and the extent to which legislation, policies and practices are effective in recognising and caring for Aboriginal cultural heritage. Some authors (Goldflam 1995; Mead 1995; Brennan 1997; Trevorrow and Trevorrow 2001; Taubman 2002; Simons 2003) claimed these cases were linked to a push by Australian government and the High Court to gradually erode Indigenous heritage protection laws in Australia. Critiques of the Commonwealth heritage legislation (Evatt 1996; Malone 1996; Taubman 2002) strongly suggest that current legislation is failing to protect Aboriginal heritage in Australia generally.

According to Frank Brennan in his writings on the Hindmarsh Island Bridge case (Brennan 1997), a key element of the 1967 referendum in Australia was to prevent the making of laws that would discriminate in a negative way against Indigenous peoples of Australia. He argues that cultural, political and legal ideologies are often the basis upon which laws are interpreted and decisions are made regarding governance in Australia (Brennan 1997). This article argues that constitutional rights can be interpreted in various ways (Brennan 1997): so as to offer Indigenous peoples benefits, or so as to oppress, exclude or discriminate on the basis of race. This focus on rights raises questions about the Beverley case and how issues of 'due process' for Adnyamathanha interest groups can be markedly different to the 'due process' for the general public. The case of the Hindmarsh Island Bridge opens discussion on a possible pattern of engagement that emerged in South Australia during the 1980s and 1990s.

Ngarrindjeri Elder Tom Trevorrow (Trevorrow 2001; Trevorrow 2003) wrote how he and other Ngarrindjeri were forced to seek United Nations assistance following unsuccessful legal action in Australia's legal system. He argued that the debacle that led to accusations surrounding the spiritual claims of Ngarrindjeri women's business in 1994 (Saunders 2003) raised issues of human rights abuse, racism, and sexual discrimination. Trevorrow claimed

that the approval given to build a bridge between the mainland and Hindmarsh Island amounted to an act of '… cultural genocide …' (Trevorrow 2001, p. 89). The author spoke as a prominent Ngarrindjeri Elder and offered an Indigenous insight as well as a specifically Ngarrindjeri perspective on the affairs surrounding Hindmarsh Island. Trevorrow challenged the processes that led to the building of a bridge. He also denounced accusations made by some critics (Partington 2003) that Ngarrindjeri were unable to distinguish between their own cultural beliefs and the perspectives of non-Indigenous academics.

Notwithstanding the deep and bitter contestation over the validity of women's claims to a spiritual connection to Hindmarsh Island, many authors were concerned by the levels of fairness and sensitivity surrounding the case at large. Questions arose over the existence of Indigenous spirituality and the credibility of professionals that took on an advocacy role (MacDonald 2002; Partington 2003). Partington's claims of bias and fabrication of evidence are flawed in that he fails to engage Ngarrindjeri perspectives such as those published by Trevorrow. Such a denial of Ngarrindjeri perspectives raises a broad issue of the extent to which validation of Indigenous peoples' views occurs within CHM and ICRM.

An Indigenous author Sandra Saunders (Saunders 2003) raised concerns relating to professional accountability. Saunders questioned why a prominent employee within the Museum of South Australia was not held accountable for his part in formulating the theory that led to a claim of cultural fabrication, despite the claim being overturned in the Federal Court. Saunders' questioned accountability within the legal justice system, and the level of protection offered to perpetrators and victims, claiming 'The real fabricators have not been called to account for the roles they played' (Saunders 2003, p. 61). The Federal Court ruling did not prevent the developers Tom and Wendy Chapman from pursuing legal action against the so called 'advocacy professionals' who supported the women's claims of spirituality. Jennifer Clarke (Clarke 1997) questioned the reasoning behind enactment of a Bill introduced to resolve conflict over the building of the Hindmarsh Island Bridge, claiming that it breached international conventions of human rights and set a precedent within government that lacked credibility. The level of accountability attached to professional persons and bodies is of interest in this thesis and will be later reviewed.

Eliza Taubman (Taubman 2002) noted that, historically international conventions have been influential in developing policies and procedures about CHM in Australia. In the case of Hindmarsh Island (Taubman 2002), there were links drawn between this historical trend and the move by Ngarrindjeri to seek international intervention. This Hindmarsh saga is useful in

that it raises two questions: does international Indigenous heritage legislation provides a means of empowerment to Australia's Indigenous peoples, and to what extent are Australia's Indigenous peoples forced to rely on international intervention?

Another key commentator anthropologist Deane Fergie, assessed two cases: the Lake Eyre Basin Heritage Proposal and the Hindmarsh Island Bridge case (Fergie 1996). Her findings strongly criticise the limited levels of heritage protection offered by State and Federal governments, noting that '...Aboriginal peoples have had their selves, identity and heritage assaulted in political processes which surrounded a request for the protection of their cultural heritage ...' (Fergie 1996, p. 141). These precedents, which occurred before the Beverley case, offer a disturbing insight to the existing landscape of CHM within South Australia and at a national level, and to question to what extent Indigenous peoples can expect future cases to be dealt with fairly.

Two issues emerge from this discussion. One issue focuses on the validity of Indigenous peoples' views within Australia's legal system, both at the level of legislation, and at the various levels of interpretation of this legislation within the court systems. These examples of legislation failing to provide an adequate framework for CHM and favouring the likes of industry and government suggests practices of neo-colonialism or the reworking of colonial principles into a modernised form that dominates CHM, and is likely to do the same with ICRM, given the ongoing absence of Indigenous perspectives.

The other issue focuses on the international human rights standards and the level of empowerment these give Indigenous Australians within CHM and ICRM. Ngarrindjeri (Trevorrow 2001) and other Indigenous Australians such as Mirrar (Katona 1998) chose to take their concerns to the international arena via United Nations; however, this has not prevented industries from continuing to trespass on or damage their land. The United Nations can only make recommendations to governments and bring international attention to breaches of human rights. The UN Forum for Indigenous Issues (United Nations High Commissioner for Human Rights 1994/45), the United Nations Declaration on the Rights of Indigenous Peoples (United Nations High Commissioner for Human Rights 1994/45) and other NGOs such as the Nuclear Free Future Award (Nuclear Free Future Committee 1997-2008) encourage Indigenous Australians to continue to participate internationally so as to learn about international standards, to share their experiences and ideas, and to gain political strength.

Concerns of government intervention were also raised in the case of Western Mining Corporation seeking an indenture over their mining lease at the Roxby Downs and Olympic Dam sites. The Olympic Dam mine in South Australia is sometimes referred to by the name of the nearby township of Roxby Downs, where workers reside when not on the actual mine site. This uranium mining venture is another example of where Indigenous rights have been challenged and overridden. One article written by Sarah Wright (Wright 1998), a researcher from the Mineral Policy Institute, highlighted the influences of industry, the marginalisation of Aboriginal peoples, and the lack of government integrity within this case, consistent with the findings of the Senate Inquiry (The Senate 2003). Wright used a legal framework to describe the events and analyse the claims made by some players. The article noted a Bill or Indenture passed in relation to this case (Wright 1998) which granted the mining company Western Mining Corporation exemption from the South Australian *Aboriginal Heritage Act* and CHM principles. This move set a significant precedent within the law relating to mining and CHM whereby the level of cooperation between industry and government demonstrated in the Roxby Downs Olympic Dam effectively bypassed Indigenous concerns and rights. Similar historic influences were claimed during the 2003 inquiry of the Beverley case (The Senate 2003).

Wright's article is in some ways limited by its lack of Indigenous views, particularly from the Traditional Owners of this area. Despite including direct quotations from various interest groups, there is a complete absence of Kokotha or other local Aboriginals' perspectives within this article. This again raises questions about the omission of Indigenous perspectives within any debate on Indigenous governance within CHM and ICRM. However, Wright flagged some important issues relating to the use of an exemption process by industry which circumvented Indigenous rights to heritage protection. The historic context of these cases preceding Beverley Mine shows precedents within South Australia for the mining industry, the government and the Adnyamathanha community about the likelihood of interest groups coming together equitably and according to due process.

3.1.5 Conclusion

The construction of heritage and in particular Indigenous cultural heritage has an important influence over the way it is governed and critiqued in Australia. The omission of Aboriginal perspectives stands as a disturbing trend within published works, suggesting that some non-Indigenous commentators remain comfortable with the idea of talking *about* Indigenous

peoples rather than engaging *with* Indigenous peoples. The idea of heritage having a useful quality offers a new justification for its protection under the banner of ICRM; however, it also opens up the possibility of exploitation. Exploring the understandings for 'managing' cultural heritage in Australia provides a background to the history of Indigenous heritage protection, and to what extent contemporary Indigenous values and beliefs are shaped by this legacy and the ideology of culture as resources.

Links between Indigenous engagement and commercial development, as shown in these cases, give an insight to the practices that emerge through legal requirements of proponents in the context of a new development. This insight offers greater understanding of the context within which Indigenous participation takes place. The consultation and negotiation process surrounding these two cases contextualises the approval of Beverley Mine and provide clues as to how Adnyamathanha can improve our role in CHM and ICRM at a local level and beyond. The range of perspectives arising out of the Hindmarsh Island and Olympic Dam cases highlights a critical determining factor within governance of CHM and ICRM – the level of equity that exists within the relationship between power and knowledge and colonialism is relative to the effectiveness of Indigenous engagement. This leads to a further discussion on the future direction for management of Indigenous heritage as a resource in Australia and the role that Indigenous peoples might play.

3.2 Indigenous Cultural Heritage as a Resource, and Indigenous Engagement

3.2.1 Introduction

Issues around ICHM and ICRM faced by Indigenous groups, such as Native American, Maori, Canadian, and Papua New Guinean peoples, are useful in understanding international themes related to Indigenous engagement. A broad view of the struggles by other Indigenous peoples provides a critical context in which to examine the distinctions between ICHM and ICRM governance and how these inform mining and impact assessment procedures including the Beverley case. A brief review of the latest government initiative, known as INRM (Indigenous Natural Resources Management), is also provided.

3.2.2 International Perspectives on Resources Management

Comparative international research (Young 1995d) regarding Canadian and Australian Indigenous resources management explores issues linked to colonialism including Indigenous capacity, geographic distribution of resources, population figures, and land ownership. Key characteristics of mining impacts explored via Australian and Canadian case study materials (Young 1995b) offer insights that raise awareness of 'remoteness' as an influential resource-based factor in the level of capacity and support Indigenous peoples are likely to experience and the level of recognition placed on cultural significance. The limited capacity of Indigenous players is seen as a key factor that reduces Indigenous participation to a non-equitable level. Practical strategic issues such as how to bring about improved communications between various players through more effective engagement raises awareness of another key factor within heritage protection generally.

Arnold's empirical study of environmental justice and land use regulation involving minority groups (Arnold 2002) critiques the effectiveness of what he refers to as traditional 'oppositional' models that strive to address environmental justices in the United States. Arnold argues that it may be more effective to engage with local planning regulations and strategies as a means of greater empowerment for grass roots community groups or individuals, rather than seeking to engage at the Federal or State levels of governance. The basis of this argument provides a possible strategy that may be useful to Indigenous players at the 'grass roots' level of engagement in a practical sense as it encourages people to consider a range of ways to engage with heritage protection. The other useful aspect of this work stems

from the approach to research based on social justice and advocacy, and helping to highlight less powerful voices at the community level.

Land reform and 'non-native title outcomes' via a comparative study (de Villiers 2004) of southern African and Australian experiences raises concerns of the loosely defined yet widely used concepts of 'non-native title outcomes'. De Villiers claims the meaning is at present '…rather vague, general, weak at law and in many instances an escape route to side-step real issues …' (de Villiers 2004, p. 2). This paper compares the claim-driven process in Australia with similar complexities experienced in the southern African countries of South Africa, Zimbabwe and Namibia. Brief principles recommended include clear and measurable objectives and outcomes to tighten the definition of 'non-native title outcomes', potentially useful for a wide range of applications in Australia where there are competing interests for land.

Following the introduction of Native Title legislation in Australia in the early 1990s, there were concerns raised over the need for '…more time and patience … in the negotiating process' and that '…due respect be paid to their sacred sites, their role as caretakers of the land and to themselves as representatives' (Lippman 1996, p. 174). Principles of engagement raised by de Villiers and Lippman reinforce the need for improved clarity and definition of the role of government once agreements are reached outside of the Native Title legal process in Australia. These comments from the late 1990s suggest that greater definition of engagement principles would offer increased certainty to Indigenous peoples regardless of which political party was in power and regardless of further amendment to relevant legislation.

The *Native Title Act* (Commonwealth of Australia 1993) was originally intended as one of three complementary approaches to address the dispossession of lands and waters through colonisation in Australia. The other two included a social justice package which has never been implemented and a land fund that is widely claimed to have its focus on economic gain rather than reparation for dispossession (ATSI Social Justice Commissioner 2008, p. 41). The 2008 annual review of the Native Title system in Australia conducted by the Social Justice Commissioner raised concerns about the lack of government recognition and protection of native title within the government's reform agenda. The Commissioner was concerned that the Australian government sought '…a more efficient and effective native title system' that did not prioritise '…the realisation of Indigenous peoples' rights and legitimate aspirations' (ATSI Social Justice Commissioner 2008, p. 23). The lack of commitment from government in support of non-Native Title measures has placed enormous pressure on Native Title to

deliver outcomes on issues it was never intended to address. The Commissioner concludes '…native title is not producing land justice for the majority of Aboriginal peoples and Torres Strait Islanders…' (ATSI Social Justice Commissioner 2008, p. 42). One interview participant, employed to act as Case Manager for Adnyamathanha Native Title, stated 'As a lawyer, one of my fundamental concerns is that the Native Title legislation is based in a white legislative framework and is therefore biased' and 'The notion of "rights" and "interests" simply equates to money' (Interview 12 Public 2006). Therefore it can be argued that Australia is failing to protect Indigenous rights and failing to take a lead role internationally.

Examination of the continued struggle faced by Indigenous populations on a global scale (Coates 2004) reveals a pattern of prominent persistence and uneven results, and suggests that Indigenous peoples in industrialised countries tend to achieve greater benefits than Indigenous peoples in the 'developing' world. Coates claims that transformation of Indigenous international politics represents a link between improved public understanding of Indigenous rights, and the rhetoric and politics of decolonisation. However, Coates also acknowledges that international criticism persists regarding governments in first world nations claiming to respect the rights of Indigenous population. Critical review (Coates 2004) suggests that this trend is based on the luxury of wealth rather than on a genuine move toward decolonisation.

Other work from the southern African region (Jones 2003) highlights resource management issues from a conservation perspective drawing on a three-pronged framework regarding economical, political and social structures and relationships. This article and several other reports (MacDonald 2003; Oviedo 2003; Pathak, Islam et al. 2003) collectively provide an international conservation perspective that specifically explores community-based conservation via community conserved areas or co-managed protection areas. Concern lies with improving decision-making powers for Indigenous communities in relation to land resources, and in modifying conservationist thought to form new models that are more appreciative of Indigenous values. Ideology and governance are key issues that feature strongly in southern Africa and Australia.

The importance of these global claims regarding Indigenous engagement highlights the profound challenge in Indigenous diversity and the range of approaches used historically to address resources management. Effective collaboration at an international level will require greater preparedness by non-Indigenous peoples and Indigenous peoples to work together at achieving reconciliation, and identification and implementation of equitable solutions grounded in a decolonising process.

3.2.3 Australian Perspectives on Resources Management

This section has its focus on issues that typify Australian understandings and experiences of resources management approaches. An examination of cases raises some aspects that are unique to Australia at a national level, and some which relate to a particular Australian landscape. It also raises aspects that situate Australia at a regional and global level.

Jacqui Katona (Katona 1999), an Indigenous activist who has worked closely with the Gagadju community in coming to terms with the effects of Ranger Uranium Mine, raised concerns regarding the emergence of economic dependency on mining, claiming it as a form of neocolonialism. The theoretical framework forming the basis of Katona's argument resonates with the work of Elspeth Young (Young 1995d); both shed light on ways of identifying and challenging patterns of exploitation that arise as a result of 'development'. Young claims the negative impact is a common theme in developmental theories that examine exploitation of third world nations by first world multinational companies through monetary compensation. Development and economic dependency and exploitation within the Ranger case study echo sentiments voiced by others regarding the issue of cultural security and ongoing sustainability (Girrabul 1982). Although there is the potential for lessons to be learned through responsible networking of Indigenous players negotiating with mining companies and other developers, this is often difficult to achieve at an independent level.

Young explores the ideological basis upon which development is planned and carried out (Young 1995c), highlighting the geographical and demographic factors (Young 1995d) and the impacts of mining (Young 1995c). Young's advocacy for holistic and culturally sensitive approaches, together with a synthesising of environmental, economic, and cultural perspectives reinforce a need for greater understanding of cross-cultural participation and an urgent need to implement an alternative scheme more appropriate for heritage protection. Whilst Young and Katona may be directing this initiative primarily at professional players, I argue that the responsibility also lies squarely with Indigenous players. Despite our limited capacity, it is crucial to achieve self-determination through an ideological shift as it can play a key role in the decolonising of development. The need for a synthesised ICRM and CHM approach without comprise to the needs of Indigenous values offers a useful strategy and goes hand in hand with culturally appropriate professional engagement.

The idea of emphasising local participation is broadly acknowledged as a strategy for strengthening land management. The broad interpretation of 'negotiation' at an informal level

(Baker, Davies et al. 2001b) and including rather than overlooking local knowledge (Pimbert and Pretty 1997) is fundamental to an inclusive approach yet fails to transfer from non-commercial to commercial ventures. A strong link between self-governance and justice has been ascertained in Canada through a multiple case study examining self-government discourses and justice discourses (LaPrairie 1995). These studies provide a critical insight to the processes that have influenced the emerging Native Title arena in Australia during the 1990s. The case of Coronation Hill illustrates how complex negotiation is a necessary part of all Indigenous approaches to caring for land, and that it comprises of a range of obstacles and complex issues with no short term solutions. Baker distinguishes between the concepts of 'consultation' as a one sided, predominantly government initiative, and 'negotiation' as a two way process where cooperation is fundamental to achieving an outcome (Baker, Davies et al. 2001b). Inequity within consultation and negotiation processes was raised as a key concern back in the 1980s (Coombs and Ross 1989) regarding impact assessment and commercial development in the East Kimberley region. These Australian perspectives suggest an inequitable position of power across interest groups in heritage and resources management, and the particular focus on Native Title and impact assessment provides key understandings pertinent to examining the Beverley Mine case.

The claim that legal and political frameworks are vital in determining the environment in which Australian Indigenous peoples can negotiate with resource companies (O'Faircheallaigh 1996) addresses some critical elements of institutional power play within ICRM. O'Faircheallaigh provides understanding of the trends which shape negotiating outcomes such as access to information and resources. This work offers an important precursor in understanding the broader legal and political frameworks regarding land use and social justice for Indigenous Australians. Case research done with Canadian Aboriginal communities (LaPrairie 1995) suggest that there are two key issues worth considering in regard to the impact of State law on local justice; first, the reliance Aboriginal community people have on State law, and second, the effect of national interests which is used by powerful players to unify and standardise diverse local systems. The importance of legislation and regulatory frameworks that offer an equitable playing field and appropriate outcomes for Indigenous Australians has been apparent for many decades but still fails to become a reality under new arrangements, according to the 2008 review of Native Title (ATSI Social Justice Commissioner 2008).

Government perspectives, priorities and initiatives regarding the monitoring of land and water resources in Australia's Rangelands areas were outlined in a national strategy devised by the Natural Heritage Trust (National Heritage Trust 2001), where Rangelands are determined using three criteria: climate, land use, and geography. The approach used in this strategy is primarily driven by statistical data gathering and analysis, using Western scientific means of interpretation. Its primary purpose is to assist government in monitoring land and water resources and the effects of industry. Limitations include an approach that lacks consultation and lacks the ability to be reflective and reflexive.

This strategy for land use, developed in consultation with a range of stakeholders including Indigenous Land Corporation and PIRSA, has limited application in helping local Indigenous community groups other than being able to access statistical data based on Western scientific understandings. Within this strategy there is no means of evaluating the effectiveness of monitoring, nor is there any strong correlation with social justice and equity initiatives. An example of Western ideology dominating the interpretation of land use that resonates with this case study is the exclusion of Indigenous perspectives evident in the Public Environmental Report (PER) for the Beverley Four Mile Project and Mining Lease Proposal (Heathgate Resources Pty Ltd 2009). The Australian government's introduction of a framework designed to encourage public participation and voluntary environmental disclosure was intended to address the 'community right-to-know' principle mandated through the Earth Summit United Nations forum (Natural Heritage Trust 2000, p. 4). However, the absence of Indigenous perspectives in the Four Mile PER suggests that rhetorical commitment by government is no guarantee of best practice in the mining industry. Similar concerns have been raised within other Indigenous groups in Canada (LaPrairie 1995) regarding the lack of a pluralistic approach which continues to foster a colonial relationship between Aboriginal communities and State institutions.

Culturally appropriate frameworks coincide with appropriate concepts. Research identifies commonly used terms that conceptualise resources important to Indigenous peoples such as 'wildlife' and 'management' (Suchet 2001). Suchet claims these concepts continue to suppress Indigenous knowledge and expertise of how best to care for country. A willingness and an ability to scrutinise concepts that are widely assumed as 'common sense' within resources management are identified in this article as a necessary component of engaging meaningfully with Indigenous communities in improving policies and practices (Suchet 2001). This work reinforces a general need for ICRM projects based on equitable and

collaborative approaches and demonstrates ways in which this can be achieved outside of a colonial framework.

Suchet's claims are reiterated in the work of John Bradley (Bradley 2001) who scrutinises Western assumptions of land management despite the existence of a general principle in Australia that asserts a '…pressing need to recognise the stature of indigenous modes of thought …' (Bradley 2001, p. 295). Bradley emphasises a challenge for local Indigenous communities and pays no attention to the need for greater accountability from developers and government within resource management. Whilst it gives a useful overview of some of the intangible aspects surrounding Indigenous perceptions of land management it does not offer any critique of the practices of all players, and does not place accountability with the most powerful players. These pieces of literature again confirm that resources management in Australia is yet to fully recognise 'Indigenous' and 'cultural' aspects within policy and practice.

As one of the longest examples of Aboriginal involvement in ICHM and ICRM national parks commands a unique position. Hill (Hill 1992) claims that a legacy of mistrust and suspicion arising out of competing interests and Western ideologies of conservation and wilderness continues to marginalise Indigenous peoples and Indigenous world views. Using Queensland as its case study, this article illustrates the powers of Australia's state governments to determine access and control over national parks, offering two models for comparison with South Australia's approach. Although not central to this thesis, national park management models and evaluative studies are acknowledged as historical attempts to develop cross-cultural land use strategies and decision-making processes and planning, implementation and evaluation of models and practices.

Guidelines for joint management within national parks in South Australia and in other States raise several key issues relevant to this case study. Over the past decade, there have been at least three extensive studies produced (Davies 1991; Combes 1999; Atkinson 2001) with a specific focus on joint management in South Australia, in addition to other Australian perspectives (Birckhead 1991; Royee and Daphney 1991; Wellings 1995; Wallace, Accoom et al. 1996) and international work (Stevens 1997a).

Governance policies, models and practices are abundant, yet few directly acknowledge or include Indigenous perspectives. A rare exception to this is a case of cross-cultural collaborative management (Robinson and Munungguritj 2001) which directly draws on local knowledge and local perspectives. However, the lack of Indigenous perspectives goes hand in

hand with a lack of implementation within existing governance strategies. The trend of governing bodies failing to implement change and incorporate evaluative mechanisms is a concern raised by many authors (Davies 1991; Curtis, Robertson et al. 1998; Brunckhorst 2002; O'Faircheallaigh 2002). This trend identifies a crucial need for action-based research that can resolve some of the issues around failed implementation and absence of evaluation within Indigenous governance.

A report conducted by Davies (Davies 1991) for the South Australian National Parks and Wildlife Service (SANPWS) discusses perspectives on Indigenous cultural resources within the context of national parks management. Although this report is limited by its stated lack of explicit consultation with Aboriginal communities or Departmental staff within the contract brief (Davies 1991, p. 6), and by its pre-Native Title dating, it emphasises a need for Indigenous cultural interpretation to take place '… with appropriate Aboriginal people in conjunction with relevant Aboriginal organisations and authorised by them' (Davies 1991, p. 58). This report raises discussion on the use of conceptual tools that influence decision-making processes. The idea of Aboriginal ownership of Aboriginal culture and heritage demonstrates a conceptual shift within Australian academic thought away from colonial paternalism toward Aboriginal self-determination, amidst a lagging shift within government and possibly other players.

As the final report of phase two of a project funded to '…further Aboriginal involvement in park management in South Australia' (Davies 1991, p. 6) the author openly states that the contract terms are limited in that they did not provide scope for consultation with Indigenous people with an interest in South Australian joint management of parks. However, Davies explores concepts such as 'joint management' and the problems arising in developing joint management between unequal parties. Davies highlights a lack of resources for both Aboriginal and Departmental parties and the unlikelihood of joint management to develop under these constraints. This report (Davies 1991) is an important historic link between pre-Native Title and post-Native Title arrangements, and is useful in exploring data within this thesis. It highlights the need for greater Indigenous involvement in research projects and a greater need for objectives that meet the priorities set by Indigenous players in the community. The issues raised offer a non-Indigenous perspective that openly recognises this need at multiple levels including national, State, local, Indigenous, and Departmental. Despite almost 20 years having passed, there are still major gaps in government policy (DEWHA and PIRSA 2009).

Public and government institutional arrangements through a hybrid approach to land management (Lane 2002) provides a management perspective that offers an alternative to the previously tried and failed models of the past. Referring to this as '… mediated community-based natural resource management …' (Lane 2002, pp. 839-940), Lane argues for a combined effort that utilises state institutional resources together with community-based institutional resources. This article flags seven key factors influencing Indigenous participation (Lane 2002, pp. 829-830), such as '…constraints on the capacity of indigenous people to participate effectively in resource management, relative to other stakeholders (Lane 2002, p. 829).

The mediating approach in this article (Lane 2002) can be interpreted as an alternative to existing and tried models, but it can also be interpreted as yet another assimilatory approach for two reasons. First, reference to '…strong institutional capability …'(Lane 2002, p. 841) assumes that institutions are culturally aware and therefore able to effectively engage with Aboriginal people at a community level. Despite raising the importance of institutional capability, Lane fails to address the continued lack of cross-cultural understanding within state institutions. Second, this article does not emphasise a need to rectify this problem, yet there is expectation of 'indigenous access to mainstream organisations and policy processes' (Lane 2002, p. 841). A valuable point raised by Lane is the suggestion of a hybrid approach; however, his article lacks conviction. It recognises the dominance of Western views yet fails to strategically address internalised institutional exclusion of Indigenous views for land use arrangements. As with previous academic work presented by Davies (Davies 1991), the key ingredient of an Indigenous ownership strategy is missing and the responsibility for non-Indigenous decolonisation within institutions is not forthright.

Research undertaken for the Central Land Council's Land Assessment and Planning Unit (Gambold 2001) provides important grounding for this thesis because of its participatory qualities. The article highlights an initiative that claims beneficial outcomes for traditional owners managing their land. Gambold claims that through participation, a sense of Indigenous ownership of the assessment processes and planning processes has developed within land management in the Tennant Creek region of the Northern Territory. Whilst acknowledging that this work is not yet fully participatory and that participation is time consuming and costly (Gambold 2001), the author of this chapter claims the capacity building, sense of ownership, and greater cross-cultural understandings that have occurred far outweighs the effort required to establish a participatory process of governance. The

experiences and issues shared in this chapter provide a unique insight to perspectives on governance in relation to the Central Land Council and how they are actually transforming their visions into participatory action. This article illustrates how assessment, evaluation, implementation and ongoing monitoring of resources can work for Indigenous peoples.

3.2.4 Indigenous Heritage Legislation and Administration in South Australia

After two hundred years of Indigenous Australians' experiences of dispossession (Pittock 1970; FRAHCC 1991), heritage protection for Indigenous peoples and lands remains in a fragile and fragmented state, partly due to the lack of legal recognition of prior ownership of land by Indigenous Australians (Parkinson 1994). South Australian ICHM since the 1980s has been primarily governed by the *Aboriginal Heritage Act* (SA Government 1988), hereon referred to in this section as 'the Heritage Act', which was introduced in the 1980s and administered via the government agency Aboriginal Affairs and Reconciliation Division (AARD). The Heritage Act recognises Indigenous peoples as Traditional Owners of the land through community consultation and archaeological evidence and does not commoditise Indigenous heritage as 'resources' in the sense that monetary compensation for Traditional Owners is not included in the Heritage Act. Administration of the Heritage Act has involved South Australian government departments providing advice to the Minister for Aboriginal Affairs in South Australia, who has the ultimate right of say regarding the preservation or destruction of an Indigenous heritage site.

The Heritage Act specifically relates to Indigenous consultation, registration of physical land sites, and general advice given to the Minister for Aboriginal Affairs in making determinations in relation to the cultural significance of physical sites in South Australia. A former CEO of AARD, when asked to define Aboriginal heritage protection, claimed there was a '…history of 'gate-keeping' and lack of accessibility and accountability within the government system' (Interview 16 Confidential 2005). Another claim was made that 'Indigenous affairs in South Australia is managed primarily by non-Indigenous people, many of whom have been repeatedly appointed across various States to control and dominate in a 'white' way' (Interview 16 Confidential 2005). These extraordinarily frank comments were offered openly and accompanied by a passionate view that engagement with Aboriginal people required a 'holistic and transparent approach' and 'assertiveness with other professionals'. This person also claimed that various decision-making models for Aboriginal engagement had been 'developed and implemented with little or no success', primarily due to

'people on the ground' not being listened to or included in the planning process (Interview 16 Confidential 2005).

A key State function has been to establish and maintain a Sites Register according to the Heritage Act. The centralised database known as the Sites Register houses a limited number of records based on anthropological and archaeological data mostly gathered in the 1980s, when government funds were readily available to facilitate the process of adding to the Sites Register database. The purpose of this Sites Register is linked to the planning and development processes that make up the EIA requirements in South Australia; however, claims abound that the Heritage Act has been thwarted when cultural resources are under threat (Wright 1998; Trevorrow 2003). A common perception of the Sites Register as a 'complete' set of data often favours development (Hubbs 1999) provides a mistaken view that potentially denies Aboriginal peoples' oral and intellectual knowledge.

Heritage legislation lacks the breadth to acknowledge or accommodate Native Title legislation in both legal and political terms (Evatt 1996) and does not offer an adequate framework for heritage protection (Calma 2005). At a provincial level the requirement to engage under the Heritage Act is frustrating yet mandatory for all players. As part of the current legal framework that underpins ICHM and ICRM in South Australia, the Heritage Act as a stand alone mechanism denies recognition of Indigenous ownership of lands within its legislative framework. Additionally, policy direction and administration remains inadequately funded. The lack of a comprehensive weaving of Native Title and Aboriginal Heritage policy into a truly adequate framework fails to champion best practice and fails to protect Aboriginal sites of cultural significance.

The Mabo and Wik cases overturned the Australian legal myth of 'Terra Nullius' or the notion that the land belonged to no one at the time of colonisation (Keon-Cohen 2001), creating a major breakthrough in how government and industries were to understand and respond to Aboriginal land rights and interests in the future. This new framework for the formal recognition of Australian Indigenous peoples and cultures known as 'native title' emerged at the national level during 1993 (Commonwealth of Australia 1993). Through this legislation the High Court gave legal recognition to Indigenous Australians as the original inhabitants and owners of the Australian continent. Native Title legislation stands as Australia's newest legally binding national arrangement for compensation and co-existence or shared land use for Indigenous Australians.

A template for South Australia's Indigenous Land Use Agreement or ILUA (Crown Solicitor's Office 2004b, pp. 1-2) stipulates a voluntary settlement process aimed at avoiding litigation. A review of online information relating to Native Title in South Australia (SA Government, ALRM et al. 2005) show that generic guidelines on how to conduct a mapping survey prior to negotiating an Exploration Agreement under the ILUA Framework were developed and published in 2003 which attempt to dovetail the requirements of Aboriginal Heritage legislation with Native Title requirements. This is an important demonstration of how the government after ten years of Native Title legislation have attempted to address the inadequacies of current legislation. Attempts to synchronise the two Acts based on a legal approach a decade after the inception of legislation shows a serious lag between political enactment of legislation and political initiative in policy making. These guidelines do not include or refer specifically to Indigenous protocols set by Indigenous groups and do not provide a solution to non-Native Title aspirations. I argue that the issue of the lagging responses in relation to relevant policy making and guidelines poses a serious lack of commitment by government and industry, and a serious setback to the inclusion of Indigenous players within heritage protection and resources management.

A legal and political critique of the implications of the Mabo decision (Watson 1993) provided by an Australian Indigenous author Irene Watson highlights the limitations of a legal decision which overturned the historic doctrine of 'terra nullius' in Australia. This article is significant because it questions the continued denial of Aboriginal existence in Australia, and the extent to which the Doctrine of Discovery may be replacing the Doctrine of Terra Nullius. (see also Parkinson 1994). These concepts of Australia's governance of Indigenous peoples, resources, and cultural rights prompt Watson to question: 'Who can make the claim for Aboriginal title?' (Watson 1993, p. 7). This question emerges repeatedly throughout this case inquiry in the form of Adnyamathanha cultural knowledge and identity, and who has the right to speak for country.

3.2.5 Indigenous Governance and Issues of Justice

During the past two decades, critical examination of traditional government-based processes of Indigenous governance has led to a changing trend toward non-government models of negotiation or a reduced role of government (Bird Rose 1995; Jackson 1996; Environment Protection Group and Environment Australia 1999; Lane, Balogh et al. 1999; Keon-Cohen 2001; Wooley 2001; Davies 2001, 2nd - 4th September; Lane 2003); hence a shift away from

'heritage' or ICHM models to 'resources' or ICRM models. This section explores the extent to which Indigenous peoples have gained a more empowering position as sovereign owners.

Practitioners from the community level directly involved in Native Title negotiations have been less than forthcoming in regard to guidelines for Indigenous engagement. The introduction of voluntary land use agreements known as ILUAs became a part of the Native Title process during late 1998 after the Beverley case had been finalised, and this case was possibly one of the early 'test cases' that influenced the introduction of a non-government land management strategy. Introduction of the ILUA process has led to a template (Crown Solicitor's Office 2004b) is yet to be fully endorsed and interpreted by Indigenous peoples. This template, developed by the Crown Solicitor's Office, has not been incorporated into Adnyamathanha governance and there is no evidence to suggest it has been integrated into the practices of other Indigenous groups. A key Indigenous player within Native Title in South Australia, Parry Agius, claims that legislation governing Aboriginal sites has created new challenges and new understandings of the ways in which Indigenous governance of cultural resources ICHM and ICRM occurs (Agius, Davies et al. 2002). However, the leadership role played by Agius and others directly involved in administering Native Title is limited by the lack of vision regarding good governance. Another commentator (Baker, Davies et al. 2001b), who speaks more broadly, claims that ICRM involves many perspectives on management and many forms of negotiation but is not necessarily committed to heritage protection. This suggests that unless there is greater emphasis placed on developing and implementing practical strategies based on participatory action there is little likelihood that 'new challenges' and 'new understandings' will directly benefit Indigenous players seeking to enhance heritage protection.

Indigenous peoples from the Kaurna, Ngadjuri, Peramangk and Ngarrindjeri Nations have been directly involved in developing governance strategies for natural resources management intended as a 'respectful guide for practitioners in the field' (Four Nations NRM Governance Group 2007, p. 10). This document was constructed and endorsed by people such as Richard Hunter (Four Nations NRM Governance Group 2007, p. 5), who are recognised as long term practitioners and leaders in the area of heritage protection. Information about Native Title and Aboriginal Heritage legislation is presented in a way that is easy to understand and practical for a broad audience including community people. It clearly states a set of 'Principles for Engagement' (Four Nations NRM Governance Group 2007, p. 13) which form the basis of a consensus strategy endorsed by all local practitioners in the NRM Adelaide and Mount Lofty

Region (AMLR). These principles provide a starting point for other groups such as Adnyamathanha that are yet to actively develop a governance strategy.

The move from government to non-government negotiation is discussed by a solicitor formerly in the ALRM in South Australia, who regarded the implementation of Native Title legislation in South Australia as advantageous because it ensures '… State government is not a party to negotiations…' (Wooley 2001). This article positions Indigenous governance as significant due to its leadership potential in reform, particularly in the area of resources management. However, this article omits any discussion of the transitional period of capacity building and how this major gap in the system fails to protect Indigenous heritage and cultural resources. The initiative shown by the AMLR and the Four Nations is possibly a significant step toward grass roots reform but is yet to be replicated in other areas.

Resources sovereignty in Australasia, Melanesia and Southeast Asia (Howitt, Connell et al. 1996a) specifies control over resources as a key justice issue and highlights poignant experiences that form a common thread among Indigenous peoples in these geographical regions. The definition given to resources in this text includes '… land, water, minerals, timber, tourist sites, inland and offshore fisheries, cultural knowledge, education, and language' (Howitt, Connell et al. 1996a, p. v) and the relationships of control over these resources form the basis of sovereignty. Justine Smith claims that 'Native rights activists reject a single-issue framework in favour of a framework of sovereignty…' which '…enables Native peoples to recognise and address various issues in a comprehensive manner' (J Smith 1999, p. 203). The identification of resources control and human relationships with resources are a critical element in the reshaping of a model that combines ICHM and ICRM. Howitt captures many of the common issues faced by Indigenous peoples on a global scale and provides a critical lens for investigating the Beverley case. The breadth of issues raised in this text facilitates opportunities to critique the effectiveness of negotiations across a number of different areas: first through the roles and status of Indigenous women, second through the implications of different ontological positions, third through the various approaches used to govern at state levels of legislation and government policy, and fourth through the continual patterns of denial and marginalisation of Indigenous issues and peoples.

The level of institutionalisation of Indigenous governance signals a desperate need for change and reiterates many of the previous issues already highlighted. Mary Edmunds provides further useful background to the emergence of the national Native Title process and its interpretation at a national and state level (Edmunds 1997). Its focus on the role of women

and the production and uses of knowledge is highly relevant to a discussion on mining, an industry noted by other authors (Bird Rose 1995; Robinson 1996) for its masculine characteristics. Given that only a few of the many dozens of articles reviewed in this thesis discusses the role of Indigenous women in mining negotiations, this suggests a gap in the literature and poses an opportunity for further investigation beyond this study. Inherent problems within the Native Title governance processes have led to the entrenchment of current land use practices, at the expense of Aboriginal aspirations and rights (Jackson 1996).

Another worthwhile and appropriate contribution to this thesis (Gelder and Jacobs 1998) examines land issues and cultural resource interpretation and management. The central aim in this text is to offer greater understanding of the ways in which 'Aboriginal sacred' is articulated (Gelder and Jacobs 1998, p. xi). Post-colonialism as a theoretical framework explores societal understandings of Australian heritage, and how this is legislated and administered. This work is relevant for its focus on the discourse of 'sacredness' in the context of 'modernity' using the Freudian concept 'uncanny' (Gelder and Jacobs 1998). Gelder and Jacobs unpack discourses of sacredness and identity which offer insights to historical as well as current Australian perspectives. In the context of this study, such multidisciplinary insights will help clarify the persisting influences that continue to limit Indigenous participation within ICHM and ICRM.

Within a legal framework, an Environmental Impact Assessment (EIA) is required prior to government approval of a commercial mining license; however, it remains void of any reference to Indigenous notions of spiritual connections to land. Lane (Lane 1993) claims that the domination of physical sciences and scientists within research and impact assessment effectively shuts the door on issues and perspectives relevant to Indigenous peoples. The paper recommends a political or participatory approach to achieve greater community empowerment and representation, and posits this model as ideal when '… bargaining determines land use outcomes …' (Lane 1993). The EIA model proposed here assumes a level of competence among Indigenous players in being able to confidently use the EIA process as a decision-making tool, when it realistically may be limited to an advisory tool. The EIA procedure is traditionally modelled in South Australia on a Western interpretation of land use; however, the empirical and theoretical insights of Lane's document are critical of its effectiveness for Indigenous heritage protection.

Recognition of sovereignty for Indigenous peoples within ICRM and ICHM is a complex challenge for Australia and other colonised nations. The ongoing domination of Western

ideas and practices currently facilitates destruction of Indigenous cultural rights and lands with little or no regard for Indigenous rights.

3.2.6 Government Initiatives within Natural Resources Management

Funding and support for Indigenous heritage protection has been available through a range of Commonwealth and State government initiatives, but there has been very little assessment of the success of these initiatives. Specific guidelines for ways of working with Indigenous people and respecting Indigenous knowledge (Natural Heritage Trust 2004a; Natural Heritage Trust 2004b) were designed to assist regional bodies and community groups to enhance their ability to participate within natural resources management sectors including mining, via an Indigenous Natural Resources Management (INRM) planning process. Both documents include a set of 'good practice' standards for INRM with key components such as an Indigenous Knowledge Support Plan or IKS Plan (Natural Heritage Trust 2004b) and results listed on the Natural Heritage Trust (NHT) website (Natural Heritage Trust 2008) confirms that at least 100 projects include the term 'Indigenous' in their title, and many of the projects include funding that is directly linked to development of an IKS Plan. NHT has also commissioned a series of case studies in Indigenous engagement (Smyth, D., et al. 2004) for use as resource material in community workshops, by regional NRM boards, and for wider dissemination.

Recent restructuring at the Federal level has led to an integrated approach by government regarding natural resources management, Indigenous heritage and cultural resources (NRM Team 2008). NHT ceased to exist on 30 June 2008, and was replaced by a new government initiative 'Caring for our Country'. This new NRM body includes the Indigenous Heritage Program (IHP) established through the Commonwealth Department of Environment, Heritage, Water and the Arts, and offers support to Indigenous communities as part of a national grants program (Australian Government 2008). Evidence shows some projects funded in previous rounds related specifically to Indigenous heritage; however, comparatively small numbers of grants were listed for South Australia. This may suggest there are other more effective options or that this program was little known or utilised in South Australia.

This framework focuses on delivery of two Australia-wide natural resource management (NRM) initiatives: the National Action Plan for Salinity and Water Quality (NAP) and the Natural Heritage Trust (the Trust). The ecological approach for Indigenous engagement

acknowledges Indigenous peoples' ongoing and lengthy interaction with the natural environment (NRM Team 2008) and seeks to streamline this knowledge with priorities and directions set by a range of departments. The funding package is pitched at national, regional and local partnerships and aims to record Indigenous knowledge, build capacity among Indigenous Australians in resources management, and protect Indigenous heritage. Within South Australia there are eight regions identified by government in regard to NRM management. These regions are each governed by a Board that is required to negotiate an Indigenous engagement strategy as part of their role. Indigenous peoples have engaged with this new NRM framework at various levels; most prominent in South Australia is the regional call for a strong emphasis on developing guidelines for community consultation and governance protocols in the absence of existing guides (Four Nations NRM Governance Group 2007).

The views published by the Four Nations Group (Four Nations NRM Governance Group 2007) showcases how Indigenous peoples in one part of South Australia have begun to address these problems via opportunities under the new government banner of Natural Resources Management (NRM). Reaching this point has not been without pain and anguish as stated in the various Ngarrindjeri testimonies regarding the impacts of colonisation and development including the Hindmarsh Island Bridge saga (Four Nations NRM Governance Group 2007, pp. 86-101). Tom Trevorrow's statement in the Four Nations document reads:

> "The land and waters is a living body. We the Ngarrindjeri are part of its existence. The land and waters must be healthy for the Ngarrindjeri to be healthy. We are hurting for our country"
>
> (Tom Trevorrow cited in Four Nations NRM Governance Group 2007, p. 89)

The ongoing struggle between commercial development and Ngarrindjeri concerns over contemporary land uses is being channelled into this new set of consultation and engagement protocols in the hope that the fight for truth, justice and equity brings Ngarrindjeri Spirits to a peaceful resting place (Four Nations NRM Governance Group 2007, p. 87). This example of how these Four Nations have managed to work together with each other and have their values and expectations endorsed by a Government agency, namely the AMLR Natural Resources Management Board, is a remarkable show of goodwill and persistence by all players and interest groups. The key ingredient to its future success and widespread applicability rests in the frank articulation throughout the document that these guidelines do not represent a guaranteed outcome for any players; however this may bring people a step closer to

postcolonialism. As a guide for practitioners wanting to operate in an ethically sound manner, this document sets a benchmark for best practice that has a potential for much broader application. Ultimate responsibility will rest with the general public to ensure developers and governments face increasing pressures to demonstrate best practice within Indigenous engagement. The Four Nations' efforts may offer a working precedent that proves impossible for future governments and developers to ignore but much will depend on the quality of governance at the local Indigenous level.

A new framework of Indigenous engagement emerges from these government initiatives and includes responses to the introduction of Native Title legislation. The ILUA process introduced in South Australia (Agius, Jenkin et al. 2007) suggests a way of integrating Native Title into a State-wide negotiating strategy that may offer Indigenous players a new basis for contesting the assumed role of colonial settlement. On the one hand this pathway offers a potential framework for coexistence; on the other, it also has the potential to assert the rights of non-Indigenous peoples in a way that recolonises land (Agius, Jenkin et al. 2007, p. 196).

3.2.7 Conclusion

Heritage protection in this thesis refers broadly to the conservation of heritage sites and ICHM to the conservation of Indigenous cultural heritage. Resources management can refer more specifically to commodity-based management of heritage sites as resources under the banner of ICRM. Examining previous government initiatives (National Heritage Trust 2001; SA Government, ALRM et al. 2005) strongly suggests that ICHM and ICRM remain entrenched in Western science as a means of heritage protection and resources management, and both place a low priority on Indigenous perspectives and issues. The idea of a hybrid approach (Lane 2002) raises the issue of 'institutional preparedness' as a possible alternative to current arrangements. The more recent Commonwealth government joint initiative known as Indigenous Natural Resources Management or INRM (NRM Team 2008) seeks to use a nationally based approach based on ecology as the new holistic 'science' for heritage and resources management. Throughout the remainder of this thesis, Indigenous engagement and Indigenous governance will be used to explore the effectiveness of heritage protection and resources management and commercial land use.

Widespread use of the Australian Native Title framework for community consultation and negotiation over ICRM (Agius, Davies et al. 2002; Agius, Jarvis et al. 2003; O'Faircheallaigh

2004a; Minerals Council of Australia 2004b) makes it impossible to have any comprehensive discussion without considering the role of Native Title legislation. Subsequent policies and practices that emerge to include this new legal framework for Indigenous engagement have been examined in this chapter to provide a basis for understanding the Beverley case.

The conceptualisation and implementation of governance strategies for Indigenous heritage and resources management continue to evolve in response to the increasing pressures with natural resources management. Literature reviewed suggests a shift away from traditional CHM models for Indigenous heritage toward an economically driven mode of ICRM or an ecological model of INRM. These approaches regard Indigenous cultural heritage as comprising 'resources' or assets relative to their usefulness and monetary value for Indigenous peoples. I am not convinced that this shift is grounded in Aboriginal or Indigenous values and beliefs because it remains aloof from Indigenous sacredness and our spiritual relationship with the land.

Chapter 4. Exploration and Mining of Land Resources and Engagement with Indigenous Peoples

Key concepts in mining influence the framework for environmental, cultural and social impact assessments; examination of these concepts inform theoretical as well as practical debates surrounding engagement with Indigenous peoples and governance of Indigenous heritage. Indigenous management regarding land resources within the broad NRM sector (Baker, Davies et al. 2001; Howitt 2001) and Native Title negotiations (Keon-Cohen 2001; Strelein 2006) are key examples of heritage protection intersecting with resources management and mining. Trends in mining and Indigenous engagement highlight critical aspects that inform the case analysis in later chapters. Uranium mining and expansion of the nuclear industry are of particular relevance to this case study and are of national significance within Australia. Literature in this chapter reinforces how a human rights framework offers a critical framework for examining community engagement and Indigenous participation in impact assessments. Human rights abuse also situates this thesis in a wider international context of global colonisation of Indigenous peoples and lands through mineral exploration and mining ventures.

Exploring concepts of land use provides greater understanding of the historicity of land resource development preceding the EIA for Beverley Uranium Mine. Further insights to key influential frameworks for ongoing management of Indigenous resources are possible through brief examination of Commonwealth government Indigenous land acquisition and management programs (Australian Government Indigenous Land Corporation 2006) and protection of Indigenous land (Australian Government Department of Environment and Heritage 2006). The wide range of models available across the various sectors of resources management are regarded as too broad to be examined in detail within this thesis; however, in several places throughout this chapter, models and best practice standards are discussed for their relevance to the Beverley case.

4.1 Colonialist Governance of Indigenous Peoples and Lands

4.1.1 Introduction

Post-contact resources development in Australia differs from the way in which Indigenous peoples utilised resources due to cultural and political changes associated with Western ideologies. Contemporary colonised nations remain subject to forces of colonialism on the basis that Indigenous and non-Indigenous peoples in these countries have internalised colonialism in varying degrees, therefore maintaining a major barrier to effective self-determination for Indigenous peoples (Head 1991; Trigger 1992; Forte 1996; Wilson 1998; J Smith 1999; Howitt 2001). This issue of internalised colonialism will be discussed in further detail for its specific relevance to governance and community engagement.

Commercial development has brought rapid evolution of cultural meanings, economic gains and political dialogue in relation to land uses and the way we humans regard land resources. Key factors that continue to influence participation by Indigenous peoples regarding the existence and uses of land resources include the strength of engagement strategies, the capacity of Indigenous players, the willingness of all players to negotiate outcomes that value Indigenous cultural knowledge and world views, the dominant ideology of land use and land management, and the breadth and practical implementation of research in this area.

Local governance of Indigenous peoples is a key capacity indicator. Literature relating to 'good governance' of Indigenous resources examines policies and laws, and Indigenous approaches to engagement. This opens up debate on the roles of industrial corporatisation, mineral exploration and commercial mining, and Indigenous land rights. Examination of the evolution of models and strategies helps understanding of the actual *process* as well as the political *context* within which Indigenous peoples participate in resources management. Postcolonialism offers a framework in which new theoretical understandings of the complexities surrounding equity, opportunity and decolonisation can be developed. The purpose is to try and identify possible strategies for improved Indigenous collaboration and participation in the management of Indigenous resources and heritage.

4.1.2 Colonisation and Colonialism—a Global Trend with Local Impact

Indigenous peoples' experiences of colonisation include a disturbance in patterns of lived experiences and cultural and social oppression on a mass scale. French, American, English,

Indian and other colonising nations (Mattingley and Hampton 1988; LT Smith 1999; Reynolds 2001; Coates 2004) have colonised many Indigenous peoples and lands via the rapid forces of physical, intellectual and spiritual domination. Colonisation and colonialism affect Indigenous peoples in countries such as India, Canada, New Zealand and Australia, where lands have been acquired by force, with or without prior recognition of ownership or occupancy. Fundamental links between institutionalisation and racism exist where exploration or mining operations, and planning processes associated with land resource developments take place (Fergie 1995; Sandercock 1998; Green 1999; Pannikar and Brugge 2007). The rights of Indigenous peoples who value and occupy land resources are repeatedly subverted by wealthy resource developers or powerful corporations or governments (Pannikar and Brugge 2007), and the divisions created by internalised colonialism perpetuate an imbalance of power and knowledge (Trigger 1992). Disconnection between Indigenous peoples' cultural rights and commercial development, the continuing imbalance of power relations, and ethnocentricity within the Australian legal system signal an entrenched pattern of racism within environmental planning, exploration and mining driven by commercial interests.

Perpetuation of colonialism is ever present in the national psyche of colonised countries (Gelder and Jacobs 1998) and remains embedded within institutional frameworks and processes such as native title procurement, community engagement, and decision-making. Recognition and redress can provide the momentum from which Indigenous peoples will be able to build strength and political empowerment (Williams and Stewart 1992; Rigney 1997; Wilson 1998; J Smith 1999; Trudgen 2000; Rigney 2001; Robinson and Munungguritj 2001; Suchet 2001). Colonial constructions of Aboriginality (Jacobs 1997; Trigger 2000) are regarded as a key part of consultation and negotiations that creates an inaccurate impression surrounding Aboriginal peoples' views on mining. This situation has been coined by Trigger as '…interplay between resistance and accommodation…' among Indigenous interests (Trigger 2000, p. 203) and exposes a crucial element within any discussion on Indigenous engagement and decision-making. The difficulty rests with dominant institutions continuing to maintain colonialist attitudes toward land use, and their unwillingness to embrace empowering strategies that directly benefit Indigenous peoples and promote Indigenous cultures.

Indigenous participation in resource development projects is often at odds with the commercial expectations of technological progress and economic gain held by developers.

This situation challenges the dominant ideology and is therefore dismissed by government and industry as invalid because of this discrepancy (Trigger 2000; Suchet 2001; Trevorrow 2001). Institutional strategies of dismissing 'resistance' (Trigger 2000, p. 203) effectively reject or deny issues raised by disputing interest groups that are not part of the dominant culture. Industry attempts to harnesses the concept of sustainability is sometimes perceived as a strategy to challenge interests that are critical of commercialism (Dixon 1990b). On the other hand, when Indigenous participation aligns with institutional expectations of technological progress, profit, and socio-economic reform a process known as 'accommodation' (Trigger 2000, p. 203) is often embraced by developers and governments which maintain the dominant ideology of development (Evans, Goodman et al. 2002; Coates 2004).

Claims of the use of duress and bribery are commonplace. Land Rights negotiations by the mining proponent at the Ranger Uranium Mine are claimed in one case study (Clancy 1980) to be inequitable and unethical on the part of proponent engagement. It is argued that proponents knowingly choose to negotiate with Indigenous peoples who are in an economically and socially depressed state. In another case, claims of the brutal public dismissal of women's religious rights surrounding the Aboriginal heritage value in the Hindmarsh Island case (Langton 1996) suggested that these Indigenous peoples relied on a misleading anthropological construction based on advocacy politics, and that their claims were devoid of any 'real' spirituality in connection to Hindmarsh Island. Indigenous peoples quoted as supportive of mining ventures either as individuals (Arthur Coulthard Snr cited in Jory 1999) or as leaders within a legal Native Title framework (Heathgate Resources 1998b) are treated favourably as appropriate representatives of an entire Indigenous nation.

The perpetuation of colonialism is evident from these examples and demonstrates the complex and controversial issues of Indigenous heritage protection and how deep seated colonial constructs are within our national psyche. Even when a court found the claims of fabrication of knowledge regarding Hindmarsh Island to be untrue this did not prevent the development from going ahead, nor did the court adequately compensate the Aboriginal people involved in this case. The ongoing use of a dismissive approach by government and industry continues to deny the necessary space for Indigenous participation, limits resources available to people, and dissolves goodwill among negotiators. The likelihood of failure for Indigenous peoples in this situation is extremely high, which limits the possibility of effective

engagement, reduces the chance of gaining any real benefits, and destroys good governance within communities.

Communicative breakdowns across negotiating parties due to cultural misunderstandings, and associated frustration and violence are also part of a deep-seated legacy of colonial oppression (Trudgen 2000). Implementation of an appropriate educational strategy that tackles some of the existing misconceptions and inequalities is identified as one key solution for improving the plight of Indigenous peoples' health and wellbeing (Trudgen 2000, see Ch 14). This focus on health and wellbeing has a wider application regarding Indigenous negotiations within impact assessment regulation.

The legacy of colonialism on a global scale is also evident by the extent to which Indigenous peoples' human rights are legally protected from corporate giants (Evans, Goodman et al. 2002). The current lack of international laws offering widespread protection and liability against corporate pressure is regarded as a key problem facing Indigenous peoples, who are forced to deal with an ever increasing onslaught of mining corporations that dwarf many countries and the communities within these countries. Many national governments have legislated to weaken protective laws, deepening the level of disempowerment for Indigenous peoples. The approaches used by Indigenous communities are influenced not only by their respective governments but also by their levels of expertise and by the way in which they are organised (Evans, Goodman et al. 2002), and this has a direct effect on how well corporate bodies are forced into accountability and regulation. The irony may be that Indigenous communities need to experience first hand the destruction caused by exploration and mining. Access to a portion of the wealth from mining giants and witnessing how this further degrades communities may be a key trigger to becoming effective negotiators, as in the case of the Mirrar campaign to stop the Jabiluka proposal.

Land resource development in contemporary nations with a colonial history continues to evolve from a fundamental foundation of colonialism (Dixon 1990b; Howitt 2001, p. 95). Reiterating these understandings of colonisation and colonialism will unpack varying definitions and degrees of interest in what constitutes cultural resources and how cultural resources are managed. Exploring the Australian as well as international contexts helps develop an understanding of how Indigenous cultural resources are regarded within Australian definitions of heritage, and how these resources are likely to be valued within a future contemporary scenario of commercial development.

4.1.3 Colonial Land Resource Development and Indigenous Australians

Colonisation of Indigenous lands and peoples in Australia began in 1788 as a result of British claims to sovereignty over terra nullius or empty land. Over 200 years later, the exploration and surveying of uncharted lands, minerals and waters, establishment of townships, building of roads and railways, and industrial expansion as part of a discovery process continues to erode and replace the entire landscape of pre-colonial Australia. Contemporary development includes commercial exploration and mining, industrial forestry and logging, industrial waste management such as landfills or storage of toxic waste, building construction, and pastoral or agricultural operations. As in other colonised nations such as the United States, Canada and New Zealand, Australia's contemporary land resource development is governed by constituted rights and legislated Acts of Parliament that recognise Indigenous rights in varying degrees (Howitt 2001; Coates 2004; Langton, Tehan et al. 2004). These abstract frameworks are complemented by government policies and practices that relate to environmental, cultural and economic planning, development and management strategies, many of which directly impact on Indigenous peoples and cultures by imposing a Western ideology.

Ancient Indigenous ontology relating to minerals and other land resources determined and reinforced economic, political and social status within and across Indigenous groups. Yet in a colonial context there has been limited recognition of Indigenous rights to land and land resources in Australia. A comprehensive study of Central Australian Aboriginal trade routes (Donovan and Wall 2004) reveals the significance of inland Australia to Aboriginal peoples of the region and beyond. Knowledge and exploitation of mineral resources in Australia prior to commercial mining were governed according to pre-colonial affiliations of decision-making, social status, spirituality and economic exchange between Indigenous peoples (Curr 1886; Berndt 1981; Brock 1985; Tunbridge 1986; Bird Rose 1995; Bell 2001). The well-worn paths of trade and exchange across Australia prior to invasion are being swallowed up by commercial development at an increasingly rapid rate.

Prior to the 1967 national referendum that signalled a beginning of citizenship status for Aboriginal peoples across Australia (Mattingley and Hampton 1988), Indigenous Australians were systematically denied any recognition of ownership of land and a place within the Australian nation as citizens. The commencement of citizenship for Indigenous Australians paralleled the introduction of new legislation in the early 1970s such as the Northern Territory

Land Rights Act, Native Title legislation and Aboriginal Heritage legislation (Brennan 1997; Strelein 2006). These new laws have led to at least partial legal and social recognition of Indigenous rights and interests in relation to land use (Pittock 1970; Aboriginal Heritage Unit, Wilton et al. 1980; Berndt 1981; Tatz 1982; Combes 1999; O'Faircheallaigh 2000).

At a national level during the 1980s, the Australian legal system witnessed a change in how government and industries understood and responded to Aboriginal land rights and interests, which in turn gave rise to new State legislative frameworks. *The Aboriginal and Torres Strait Islander Heritage Protection Act* (Commonwealth of Australia 1984) introduced over 200 years after colonisation, was claimed as a '…belated attempt by the Australian government to recognise that the indigenous population places importance on objects, sites and geographical areas of land for reasons which may have little or no meaning in settler Australian law, religion or custom' (Malone 1996, p. 23). This recent 'belated' attempt made to properly recognise Aboriginal sovereignty within Australia's legal and governing systems highlights the ongoing lack of non-Indigenous understanding in regard to Indigenous sovereignty and sovereign rights. Malone suggests an element of tokenism exists in western law which continues to allow the trivialisation of Indigenous sovereignty.

In addition to the suggestion of tokenism within the law, there exists another layer of tokenism within the practices of institutional engagement with Indigenous peoples. The deconstruction of conceptual terms relating to decision-making processes in mining (Tatz 1982) such as 'decision-making', 'negotiations', 'consultation' and 'participation' offers valuable insight to understanding the nature of inequitable relations. Concepts such as decision-making and consultation (Tatz 1982) demonstrate that in the broad context of social interactions it cannot be assumed that 'participation' and 'consultation' are one and the same, nor that all parties agree on a universal understanding of these terms. The new era of voluntary guidelines for 'Indigenous engagement' is viewed with a similar level of scepticism as well as an underlying expectation of improvement (Four Nations NRM Governance Group 2007). The importance of questioning and understanding commonly used terms which may represent a token arrangement in mining and Indigenous consultation is critical as it offers a contextual framework that is often overlooked or not prioritised before industry-community engagement commences.

By the early 1990s, the Mabo and Wik cases had overturned the Australian legal myth of 'Terra Nullius', which legally dismissed the notion that the land belonged to no one at the time of colonisation (Keon-Cohen 2001). The High Court consequently gave legal

recognition to Indigenous Australians as the original inhabitants and owners of the Australian continent. A fundamental resounding point within this discussion is that prior to 1992, Australian law failed to recognise native title in Australia (Parkinson 1994), thus denying Indigenous Australians a right to justice within land resource development. For this reason, the introduction of Native Title legislation can be regarded as a milestone in postcolonial Australia.

Within a South Australian context in the late 1980s, the first piece of South Australian legislation which offered some level of legal protection to Indigenous sites of cultural significance was introduced, known as the *Aboriginal Heritage Act* (SA Government 1988). This Act has been administered by various government departments and remains as part of a current two-pronged approach to Aboriginal heritage protection in South Australia. The second piece of legislation, known as the *Native Title Act* (Commonwealth of Australia 1993), was introduced in the early 1990s. However, claims abound that little has changed in the wider scheme of things. Extinguishment of rights is evident within existing legislated land rights frameworks, and the continued assertion of colonial sovereign power (Strelein 2006) suggests an ongoing dominant force within modern approaches to land resource development and Indigenous engagement. Irene Watson, an Indigenous lawyer (Watson 1993), warned that legal developments such as introduction of new legislation do not imply that general recognition of native title or the right to occupy land based on previous occupation will prevail, or that the Native Title legislation will ensure future protection against dispossession for Aboriginal Australians.

Increased emphasis during this era of legislative change has also led to a greater conceptual and philosophical focus on 'Indigenous self-determination' and 'national reconciliation' that parallels a growing body of critique questioning the extent to which Indigenous Australians are rid of our colonial shackles. The capacity to actively engage in land resource development matters (Legg 1999; Pearson 2000) suggests that 'self-determination' or Indigenous autonomy must be evident in order that Indigenous Australians can work effectively within the legal parameters of the Australian Constitution and High Court judgements. Evidence suggests that Indigenous interests are rarely prioritised within consultative and negotiating processes (Howitt 2001; Coates 2004), and the Australian legal system remains an aloof or foreign entity to many Indigenous peoples (Ritter and Flanagan 2001; Lloyd, van Nimwegen et al. 2005). Research findings claim that '…biodiversity values on Aboriginal land in the Northern Territory are under threat …' (Putnis, Paul Josif et al.

2007, p. 9) and '…a strict commercial feasibility approach to developing Indigenous land and sea management groups will not work in the majority of cases …' (Putnis, Paul Josif et al. 2007, p. 10).

Warnings from the Australian government's Social Justice Commissioner (Calma 2005) claim that prolific efforts from within industry to introduce new voluntary codes of conduct do not detract from an urgent need for decolonisation strategies across all sectors and interest groups involved in resource management and development. Levels of accountability by developers and governments are yet to be thoroughly negotiated with Indigenous interest groups, and the capacity of Indigenous players to effectively engage in land resource development requires a great deal more exploration and experiential knowledge before it will reach its full potential (Agius, Jenkin et al. 2007).

Within the body of literature relating to understandings of 'development' (Power 2003) there are strong arguments claiming a need to decolonise the way people *think* about these activities, and the way that meanings are constructed that assume certain privileges and normalities based on ethnocentric and Eurocentric views of the world. In the early 1980s, commentary specific to mining negotiations claimed that democratic theory and practice had been all but abandoned (Tatz 1982) and that unless Indigenous players were highly aware of this scenario the consequences were dire. Tatz predicted that unless strategies for dealing with issues relating to decision-making are developed it is likely that commencement from an inequitable position will simply continue to reinforce the colonial status quo of developers and Indigenous peoples. Human geographer Richard Howitt argued that claims of '…implementation of 'objective', 'scientifically-determined' best practices …' (Howitt 2001, p. 19) can be viewed as '… reinforcing of privilege that is constructed and renewed socially.' (Howitt 2001, p. 19).

The meanings and use of terminology are also a critical aspect of decolonising land use regulation. For example, the term 'development' suggests that a new land use proposal is essential, inevitable, logical and for everyone's benefit, and any dissent risks being labelled as 'anti' or 'emotive' or 'confrontational', without logic or 'common sense' and a hindrance to the normal flow of 'progress'. Examination of the contents of two interrelated pieces of literature (1993; Planning SA 2003) reveals a clear discrepancy that may highlight scope for improvement in the way that legislation is framed and interpreted at an institutional level. A policy document known as the State Premier's Planning Strategy for South Australia stated the purpose of the Planning Strategy was to guide development in accordance with the

Development Act 1993 (Planning SA 2003). Within this Act there is no specific reference to the terms 'Indigenous' or 'Aboriginal'; however, the term 'heritage' is used in at least 40 instances. Within the 1993 State Premier's Planning Strategy for South Australia, reference to the words 'Indigenous' appears 11 times and 'Aboriginal' appears 85 times (Planning SA 2003). Additionally, a search for the phrase 'best practices' within this policy document identifies a correlation with terms such as 'agricultural' and 'environmental' but does not offer 'best practices' in correlation with the terms 'Indigenous' or 'Aboriginal' or 'heritage'. This suggests Indigenous participation is partially valued within the Department of Transport and Urban Planning, at the level of strategic policy-making, but not at the level of developing or implementing 'best practice', and not within the relevant legally binding legislation.

4.1.4 Models of Management as a Means of Developing Best Practice

This part of Chapter Four is intended as an introduction to existing land management models in the wider context of cultural resources management and heritage protection. This will assist in critiquing the case at hand and in developing a new set of understandings and ideas regarding Indigenous participation in an environment of best practice. This may also result in new conceptual tools with a specific reference to the identification of patterns that are unique to mining as a form of commercial land use.

This discussion begins with a theoretical glimpse at resource geopolitics. Within industries such as mining there is an increasing likelihood that Indigenous peoples will be impacted on and responsive to negotiations regarding land resources identified as potential commodities for commercial gain. The definitive role of 'resource geopolitics' (Howitt 2001) can be used to develop a theoretical model by placing a central focus on relationships between power, wealth and privilege to create a complex environment within which Indigenous interests are situated. This model allows for an understanding of maintaining or establishing access to cultural resources and direct involvement in the development. It highlights implementation of practical management models and evaluation strategies, and gives recognition to Indigenous values and beliefs throughout consultation and negotiation. Resource geopolitics also provides a framework for recognising these aspects as key areas of impact and response for Indigenous peoples within land resource development. Engagement by Indigenous peoples is a crucial yet fraught layer of land resource development and recognition of Indigenous cultural perspectives in this process remains fragile and contentious, and largely negated

(Howitt 2001). This model design may be a useful strategy for developing greater effectiveness in both Indigenous engagement and Indigenous governance.

Other models offer an insight to the way in which legislation transforms into practice. One of the key issues surrounding new legislation relates to its political background or impetus. Understanding the context within which it is legally positioned and the extent to which it is understood and transformed into practical uSage can be crucial in the effectiveness of legislation. For these reasons it is worthwhile to briefly note some of the more definitive models that have emerged during the era of Native Title legislation. Discussions on land use frameworks such as the Cape York model founded in 1996 by local Indigenous leaders (Balkanu Cape York Development Corporation 2007), and Australian Bush Heritage founded in 1990 by Bob Brown (Bird 1999). Each of these models for land resource management have historically emerged in parallel with the *Native Title Act* (Commonwealth of Australia 1993), yet each has been designed with a specific purpose in mind, such as a self-determining philosophy in the case of Balkanu, or Bush Heritage with its pledge to 'buy and protect land of high conservation value in perpetuity' (Bird 1999). Joint management for national parks is another example worthy of note but as with the previously mentioned models, an in depth examination goes beyond the scope of this thesis. Models for managerial arrangements under the auspices of land acquisition projects by Indigenous Land Corporation may aim for Indigenous empowerment, but these models are still driven by government bureaucracies. The key point here is that existing models such as these may provide conceptual and practical grounding as part of a useful strategy that synthesises the 'best' or most appropriate components. This process of model construction may offer Indigenous players some real benefit including a series of best practice strategies applicable to Indigenous players engaging with the mining industry.

The idea of models is accompanied by strategies that promote good governance or best practice. The idea of 'best practice' is not new to Indigenous engagement and governance. Aboriginal development in the 1980s (Langton 1983; Coombs and Ross 1989) attempted to focus on planning initiatives aimed at more actively involving Indigenous participation through a focus on informed decision-making. A national strategy aimed at achieving 'fair play' in Indigenous engagement was drafted as part of a proposed statutory framework for 'continuous consultation' (Langton 1983). The spirit of this strategy was to ensure Indigenous participation went beyond a token gesture and had a long term stabilising or sustaining effect on governance. Claims of the need to replace policies that promised

'consultation' with a more participatory approach of 'negotiation' (Coombs and Ross 1989) sought to shift the power balance to a more equitable arrangement. It is possible that this national strategy failed to make any lasting improvements for Indigenous players due to a lack of practical guidance at more localised levels. The projects being funded through 'Caring for our Country' may bear testimony to the effectiveness of 'best practice' strategies within INRM as an effective model. Governance of Indigenous heritage and resources is influenced by the legal framework of Native Title, the political framework of INRM, and a range of regional or local approaches being endorsed by Indigenous groups. Each of these links to the idea of best practice in varying degrees and in varying areas of focus.

4.1.5 Good Governance and Sustainable Development

The idea of building a strong and sustainable foundation for Indigenous peoples, cultures and lands suggests a possibility of endurance without comprise of our values. Sustainability of Indigenous cultures and lands arose in comparisons drawn between Indigenous affairs in Africa and the East Kimberley region of Australia. One of the key concerns was the elitist role played by a small number of local Indigenous persons (Coombs and Ross 1989), and the effects this was likely to have on the stability of Indigenous affairs in each case. Australian legal and political systems in 2003 are claimed to perpetuate the same fundamental weaknesses as those highlighted many years earlier (Agius, Jarvis et al. 2003).

Since the 1990s, there has been an increased use of the word 'governance' generally in the context of Indigenous self-determination (Royee and Daphney 1991; Rowse 1992a; Williams and Stewart 1992; United Nations High Commissioner for Human Rights 1994/45; Stevens 1997b), and more particularly regarding negotiation and consultation relating to development of natural resources industries such as mining (O'Faircheallaigh 1995; Indigenous Support Services and ACIL Consulting 2001; Dodson and Smith 2003; Lane, Ross et al. 2003; Brereton 2004; Minerals Council of Australia 2004a). Governance can be defined as a series of processes, structures and institutions (Dodson and Smith 2003) that are inextricably linked to the assertion of Indigenous rights and sustainable development within industries.

The term 'governance' within the Australian arena creates a link to historical international uSage (Dodson and Smith 2003) in the context of social justice and best practice in other nations impacted on by colonisation. As an analytic tool within research, notions surrounding governance and *good* governance are useful in exploring and linking the decision-making

processes such as negotiation and consultation to issues of power such as capacity, representation and accountability within cultural resource management. A far greater challenge is presented by synthesising these ideas with the experiential knowledge and politics within communities. The previous 1980s focus on a national strategy for 'Indigenous development' (Langton 1983) and the more recent focus on 'good governance' (Dodson and Smith 2003) and 'Indigenous engagement' (NRM Team 2008) may offer scope for a transformation in Indigenous governance.

Arguably the responsibility of asserting Indigenous rights lies as much within Indigenous sectors as it does within the wider arena of decision-making bodies (Pearson 2000; Dodson and Smith 2003; Pearson 2009), and Indigenous peoples making a determination of what these rights consist of and who they represent is equally important. Striking a balance between cultural and economic sustainability within Indigenous groups is perhaps the greatest challenge and responsibility facing all Australians. The level of politicking within Indigenous communities in relation to who has rights often escalates into an intense and divisive battle (Trigger 1992) that fails to adequately serve the interests of Indigenous players, effectively facilitating development and rendering Indigenous perspectives obsolete and Indigenous rights invisible or irrelevant.

In stark contrast to the ongoing struggle within communities to find the capacity for development of suitable governance mechanisms, the collective response from industry over the past few years has been phenomenal (see §4.2.2). Calls by the Aboriginal Torres Strait Islander Social Justice Commissioner (Jonas 2004) for greater emphasis on the 'human right to development' clearly links full Indigenous sovereignty over resources with self-determination. Whilst this report provides some important guidelines within the arena of land resource development and Indigenous rights, there is still a remarkable silence at the community level as to the experiences of Indigenous peoples engaging in resources development, and the needs and priorities that enable entry and participation in heritage protection and resource management.

A review of Native Title policy and practices suggests that generally this engagement framework is yet to empower Indigenous participants beyond a token position (Dodson and Smith 2003), and that largely this can be accredited to the ongoing impacts of colonialism at the community level of governance. Although this knowledge is readily available for discussion and debate within academia and corporate environments, it is possible that this debate rarely occurs in communities, and therefore unlikely that community-driven resolution

to inherent problems will result. However, the South Australian approach outlined by Agius and others (Agius, Howitt et al. 2003; Agius, Jarvis et al. 2003; Agius, Jenkin et al. 2007) claims community engagement and good governance are high on the Native Title agenda. This resonates with the Kimberley Land Council approach (Perpitch 2009a; Perpitch 2009b) and Cape York approach (Pearson 2000) to resources management but differs, however, in that the latter two represent regional approaches determined by Traditional Owners.

4.1.6 Conclusion

The legacy of colonial rule on a global scale continues to leave an imprint upon Australian peoples' psyche that hinders Indigenous self-determination at a policy-making as well as practical level. Resistance from NGO and Indigenous players has been responsive as well as proactive. A review of models, strategies and frameworks suggests an attempted shift for Indigenous governance is needed to empower Indigenous players and lift the bar for institutional best practice for Indigenous engagement. A range of suggestions includes frameworks and strategies for improved 'development', 'management' and 'engagement'. These suggestions run in parallel with a pattern of paralysis and non-implementation that implicates all players and maintains the status quo in development. Capacity building and contemporary leadership aimed at improving Indigenous decision-making across all levels of governance may be the vital missing links in the pathway to decolonisation and self-determination. The next part of this chapter delves further into these issues by focussing more closely on the dominant institutional arrangements for heritage protection and resources management.

4.2 Overview of Mining and Associated Impacts on Indigenous Peoples

4.2.1 Introduction

This part of Chapter Four seeks to examine the effectiveness of institutional practices associated with policies and guidelines for mineral exploration and mining, linking this thesis to the 'chain' of previous relevant research at an international as well as national level. Indigenous engagement within exploration and mining is examined through work that critiques corporate and government initiatives. Indigenous voices within the existing body of literature will highlight how Indigenous ontology informs this discussion. Expansion of the nuclear industry is situated in this part of Chapter Four to offer an example of how industry politicises Indigenous and non-Indigenous engagement, and how NGOs situate government-industry alliances; each have global as well as local consequences. In this thesis I recognise exploration and mining of uranium as interconnected components of the nuclear industry.

Theoretical understandings that underpin other case studies are used to highlight trends spanning across institutional responses to Indigenous governance and land uses. Examining engagement beyond postcolonialism in search of a sustainable decolonised position meets the objectives of identifying opportunities and impediments to participation as well as scrutinising the relationship between participation, security and sustainability. Literature that specifically deals with decision-making in the planning stages of mining proposals and Indigenous engagement provides an informed basis upon which to analyse the Beverley EIA landscape. The purpose is to draw some suggestions for future improvement that assist Indigenous players in working more effectively within the legacy of colonialism whilst at the same time identifying some tools for forging new contemporary responses to mineral exploration and development.

4.2.2 Corporate Social Responsibilities

Globalisation and an increasingly international response to the mining industry continue to influence the status of best practice within exploration and mining development in Australia. High levels of foreign ownership within Australia's mining industry known as 'transnational penetration' (Mercer 1995) emerged as a substantial trend during the 1960s and has resulted in around 59 per cent of our mining industry being foreign-controlled. One of the consequences of foreign ownership and control is a tendency toward maximisation of profits

and low priority on social and environmental impacts that persist long after a company ceases operation. Mercer claims growing scepticism within communities regarding the dialogue from mining companies and governments pledging full recovery of environmental impacts. Mercer refers to examples of superficial attempts to rehabilitate the environment as 'cosmetic revegetation' (Mercer 1995) and suggests this futile attempt at reducing the impacts of mining is done at minimal expense to the proponent. Best practice would require a degree of revegetation that restores an area to its natural or previous state which may be costly, time consuming or impossible to achieve.

Prior to the period of national Indigenous land rights under Native Title (Altman 1983; Howitt 1991), the mining industry sought to undertake a restructuring process claimed to be about improving existing relations between the various sectors. During this period it was argued (Howitt 1991) that an ideology of antagonism deliberately undermined any attempts to improve relations, and the industry position was inflexible. Howitt concluded that '… entrenched patterns of social, economic and cultural impacts of mining on remote Aboriginal groups seem likely to be reproduced in the industry restructuring …' (Howitt 1991, p. 119), resulting in the continued marginalisation of Aboriginal people from Australian mining. Case study research focused on Corporate Social Responsibility (CSR) highlights international experiences (Lawrence 2007) of industrial relations with Indigenous people. This work explores economic arguments being used by the forestry industry in Finland and identifies a strategy that thwarts the cultural rights of the Saami and creates a wedge between traditional reindeer herders and loggers. Lawrence claims the forestry industry ignores Indigenous rights and remains driven by colonialism in Finland. This challenges the alliance between state and corporate entities and the taken-for-granted idea that '…democratic core states have a 'duty' to govern and ensure the spread of socially responsible corporate practice to the resources peripheries' (Lawrence 2007, p. 174). The reality in Finland and in Australia is decidedly less than of a high standard in regard to corporate social responsibility, particularly for Indigenous peoples and their traditional lands.

In the early 1990s, as part of an initiative from Australian Mining, Minerals and Sustainable Development (MMSD), the Australian Minerals and Energy Environment Foundation (AMEEF) commissioned a project to identify 'best practice' in agreement making between mining companies and Indigenous peoples (Indigenous Support Services and ACIL Consulting 2001). This report was intended to provide a starting point for '…practical guidance for mining companies and Indigenous communities seeking to produce constructive,

mutually beneficial agreements' (Indigenous Support Services and ACIL Consulting 2001, p. v) and noted that a limited amount of case study material was available to provide a more comprehensive analysis. Equitable bargaining powers and greater benefits to Indigenous peoples were noted as part of a preferred option for Indigenous engagement. However, the report noted that the role of proponents providing funding for agreement making, and the reliance on this funding within Indigenous organisations is a reality that is far from independent or empowering for Indigenous peoples (Indigenous Support Services and ACIL Consulting 2001). This report suggested Indigenous players need to be highly aware of underlying agendas and play a more assertive role in communicating their expectations from a cultural as well as an economic perspective when negotiating with proponents. Mining companies must be prepared to show genuine consideration of the limits placed on Indigenous organisations, and not provide financial incentives to overwhelm or adversely influence negotiations.

The handing down of the Mabo court decision in the early 1990s sparked condemnation from the mining industry due to arguments that Native Title created a period of anticipated 'uncertainty' for the Australian mining industry (Russell 2005c). Manning argues (Manning 1997) that the mining industry made concerted efforts to erode the powers granted under Native Title legislation suggesting there was an industry backlash, through exploitation of a conservatively narrow legal approach to Indigenous relations. Malone argued (Malone 1996) that the limitations of legislation and the reality of 'development' perpetuated a continued absence of commitment toward recognition of Indigenous sovereignty. Malone claimed this was not necessarily because the mining industry chose to uphold a position of domination, but because the legal system failed to adequately recognise native title rights.

The late 1990s brought a modified response from the Australian mining industry with regard to the introduction of Native Title legislation, claiming that the mining industry had '…no political or philosophical objection to native title …' (AMEC 1997, cited in Manning 1997, p. 7). This response by the mining industry suggested there was a new view within the mining industry that Native Title legislation was no longer regarded as an impingement on mining rights and was therefore acceptable to the industry; however this statement offered no guarantee that Indigenous rights or lands would be better protected. The Native Title legislation offered the mining sector access to a new mechanism for Indigenous engagement that did not centralise heritage protection; rather the key focus was on compensation. It is

possible that the legal inadequacies for heritage protection under Native Title legislation have had an effect of perpetuating Indigenous peoples' experiences of marginalisation.

The mining sector, like other major industries, is subject to an international trend of corporatisation and external scrutiny in regard to sustainability (Evans, Goodman et al. 2002). This has led to a global industrial response during the late 1990s for greater self-regulation, including voluntary industry codes, implementation of organisational change programmes within companies, and increased engagement with critics of the industry. A wide range of interest groups came together during the World Summit for Sustainable Development which convened in September 2002 (Brereton 2004). This world summit occurred in a climate seeking change for corporate industries and demanding new standards from mining companies, including significant improvement in environmental and social performance (International Council on Metals and the Environment 1999; Brereton 2004; Secretariat of the Convention on Biological Diversity 2004; Danielson and Digby 2006). Whilst this suggests an intention from industry to play a responsible role in raising awareness of global sustainability and the possibility of implementing new standards, a substantial amount of review and critique is required before any conclusive findings can result. However, cases such as the forestry industry and Saami rights (Lawrence 2007) and the introduction of Native Title in Australia suggest that reform within industry and state continues to be clouded by colonialism.

Environmental best practice at an international level from the mining industry perspective includes development of partnerships and voluntary codes of conduct. A global trend in corporate relationships has been instigated by the international mining sector's peak body, the International Council of Metals and the Environment (ICME), which funds research and development into a range of issues relating to voluntary codes of practice for corporations (Minerals Council of Australia 2004a; URS Australia 2006). For example, the International Council on Mining and Metals (ICMM previously known as ICME) actively sought to develop an international partnership including the United Nations Environment Program, to develop a voluntary code of conduct on the use of cyanide in the mining industry. Although an international voluntary code of conduct was regarded by developers as a positive means of demonstrating a responsible attitude toward the environment and communities (International Council on Metals and the Environment 1999), corporate 'watchdogs' regarded this trend with scepticism. NGO research (Mineral Policy Institute 1998b) regarded this industry move toward voluntary codes as a clever way of circumventing legislative requirements set out by

governments and perpetuating the denial of Indigenous peoples' rights and environmental responsibilities.

A recent government-industry 'dialogue' group established through the Australian Uranium Association claims Indigenous Australians have '…missed out on major benefits in the past…' from uranium mining '…because of the lack of support from representative bodies or inexperience in their own communities' (Michael Angwin cited in Boase 2009). Founding members of the Australian Uranium Association's Indigenous Dialogue Group (IDG) include several well-known Indigenous persons on a team poised to '… manage the collection and presentation of wider input from indigenous viewpoints around Australia' (Australian Uranium Association 2009). However, the narrow focus by IDG on an economic model for dialogue implies members of this organisation potentially stand in a compromised role as brokers between the uranium industry and Traditional Owners. This dialogue group has been hailed by the AUA as a positive step toward Indigenous economic development; however, Kokatha Mula custodian Sue Coleman Haseldine dismisses establishment of this group as '…an industry PR exercise' (Boase 2009).

The uranium industry is not alone in its efforts to positively influence public perception on a broad scale. Criticism (Burton 2002) of the joint initiative on cyanide protection included minimal participation from NGOs, over-representation from within the mining industry, and a lack of capacity within the United Nations to independently fund the review of mining codes being proposed. NGO concern at the lack of capacity within the United Nations combined with a corporate attitude toward regulation that is 'burdensome' and 'not binding' is claimed to be appalling in that it shows a 'disturbing trend toward corporate influence at the United Nations' level (Burton 2002, pp. 121-122). Therefore, the intention from within industry to introduce voluntary codes was regarded as a positive step toward greater accountability by government and business, but critics openly question the intention of industry-driven engagement and partnership.

Voluntary codes of conduct also include guidelines for sustainability as part of best practice. In 2003, ICMM published a set of industry guidelines known as 'Sustainable Development Framework of ICMM Principles' (International Council on Mining and Metals 2003) which pledges a commitment to best practices and better practices by corporate members. The idea of sustainability suggests minimal impacts on existing environments, and an accommodation of change or development that all parties are happy with. This attempt at best practice was at odds with claims that the mining industry was found to have endorsed practices such as

'…shifting the forum of debate away from open public spaces to smaller more private venues where social pressure can be subtly mobilised to moderate more critical views' (Burton 2002).

Sustainability has been linked by industry to the governance of impact assessment legislation and procedures. Corporate frameworks (Minerals Council of Australia 2004a; International Council on Mining and Metals 2006; URS Australia 2006) that govern impact assessment processes and heritage protection relating to commercial proposals and developments are prominent in that they are openly and actively facilitating the requirements and priorities of the mining industry. These extensive frameworks offer corporate views on 'environmental issues' that are characterised by Western scientific understandings of the 'natural' environment and corporate profitability. Sustainable development within corporatism creates a hidden agenda upon which to discuss compensation for destruction of lands rather than protection of heritage and cultural resources. Sustainable land use was considered central to the strategic framework for Indigenous Australians in the Northern Territory (Putnis, Paul Josif et al. 2007), which claimed a balanced and holistic approach between commercial, social and cultural aspects. Some claimed there was the potential for Indigenous rights to be effectively incorporated into the global trend in sustainability in ways that would not necessitate erasure of Indigenous peoples' and cultures (Neate 2004; Howitt 2006). However, the terminology of 'sustainable development' drawn into discussions of Indigenous sovereignty becomes highly loaded when constructed on an assumption of inevitability (Neate 2003). What is important in this thesis is how notions of sustainability specifically relate to Indigenous heritage protection and Indigenous governance.

The international trend of neo-colonialism and narrow ideology places major challenges before Indigenous players within cultural resources management and mining (J Smith 1999). Persistence of Indigenous rights along with corruption and conflict remain common trends within Indigenous populations impacted on by mining activities, but the vigilant struggle for Indigenous peoples' survival will continue (Howitt 2001; Coates 2004), given that international as well as national mechanisms are demanding greater scrutiny of the impacts of the mining industry. The role of corporate bodies in establishing, maintaining and monitoring guidelines and practices that address issues of environmental and social justice is arguably limited in that it fails to fully address cultural and environmental concerns from a non-profit perspective. Government responsibility and community initiative in partnership has the potential to provide solutions to these problems through greater responsible collaboration.

Global recognition of Indigenous peoples situated at the forefront of impacts from mining and other forms of commercial development (Korten 2002; Secretariat of the Convention on Biological Diversity 2004) has led to the production of voluntary guidelines by the Convention on Biological Diversity. The suggestion of a potential shift in the mining industry's position aimed at improvements in relations between various sectors has been strongly promoted by the mining industry in Australia (Minerals Council of Australia 2004a; International Council on Mining and Metals 2006). Politically the mining industry portrays itself as taking a 'softer' or more sensitive approach to Indigenous engagement, however there is ongoing scepticism of the degree to which mining and cultural rights can coexist.

Corporate approaches which focus primarily on large scale economic development are claimed to represent an ongoing threat to Indigenous cultural survival. Australian Indigenous responses (Katona 1999; Langton 2003) highlight the small-scale commoditisation of Indigenous resources and the domination of large-scale commercial development of land based industries such as mining, pastoralism and tourism. Langton (Langton 2003) and Katona (Katona 1999) offered sceptical views of commoditisation of Indigenous resources due to the economic pressure this places on Indigenous peoples to assimilate with the priorities of corporate enterprises. Langton also argues that the often misguided role of conservationists in protecting biodiversity, together with government restrictions placed on Indigenous peoples to confine wildlife activities to 'non-commercial' use, hampers small-scale commercial use of natural resources. Langton's claims suggest Indigenous diversity is not well understood in mainstream Australia, and what is possibly needed is greater space for Indigenous peoples to determine how Western institutions can assist in asserting an Indigenous standpoint.

Corporate responsibility toward developing appropriate engagement strategies with Indigenous peoples is limited by a lack of attention within research and policy making toward recognising and improving gender relations. Within the realm of corporate relations, women continue to face even greater challenges than their male counterparts interacting with the mining industry due to the 'masculinised' nature of mining and corporatism (Bird Rose 1995; Robinson 1996; Dacanay and See 1997). Analysis from Robinson (Robinson 1996) characterises mining as a masculine activity which compromises the positionality of women generally, and in the case of Indigenous players adds further complexity to negotiations due to the history of colonial race relations in Australia. The subjugation of women in rural areas (Alston 2005) where exploration and mining continue to expand and flourish poses a further

barrier to the recognition of gender rights and corporate responsibility toward women. Indigenous women are therefore subject to enormous pressures to comply with development proposals as a result of gender bias from within the mining sector.

The mining sector's corporate entity has responded to concerns of negative social, cultural and environmental impacts from mining in a way that suggests the corporate level of understanding continues to assert mining rights as its key priority. Some people within the mining industry claimed environmental concerns were misguided understandings of mining, and that mining disturbances have been far less serious than other industries such as pastoralism and agriculture (Mercer 1995). Barriers of resistance within the mining sector, due to poorly developed knowledge of social responsibility, is still a major challenge particularly at site level (Brereton 2004, p. 16), and is yet to be overcome by smaller or 'junior' companies as well as within larger companies and corporations. However, a tension persists among even the most forward thinking companies, due to 'the stated commitment to improving the environmental and social performance and the traditional focus on production, profit and cost minimisation' (Brereton 2004, p. 15).

4.2.3 Governance of Australian Commercial Rights and Indigenous Rights

Governance of commercial and Indigenous rights can be understood in a range of ways. The use of a 'contextual framework' (Christie 1991) distinguishes Aboriginal science from Western science and highlights the effects of dismissing Aboriginal science in the impact assessment process. The justification for endorsement of a 'participatory' framework for research (Howitt, Crough et al. 1990) could also be transferred to more effective engagement with Indigenous players within Native Title, particularly in regard to developing an appropriate engagement and governance strategy. The existence of powerful corporate players and their ability to subvert rather than promote fair processes and outcomes (Lane 2003) must be fully acknowledged if the gap between commercial and sovereign rights is to be fully understood - the concept of 'remoteness' in Australia has been utilised by the powerful players in society since the time of colonial invasion (Dirk Moses 2004). The historical fragmentation of Indigenous communities as a result of the 'settler presence' during the 1800s and early 1900s (Dirk Moses 2004, p. 176) is easily likened to the divisions created within contemporary communities by the rich and powerful players in society. I argue that the imprint of these experiences of governance continue to influence land use today.

Australia's commercial mineral rights are held by the Crown, and therefore regulated under state or territory institutional governance (Manning 1997) along with matters relating to environmental and heritage protection schemes, and native title rights. International response to sustainable development and mining has also led to Australian government initiatives on community engagement for the mining industry (Commonwealth of Australia 2006) and for the nuclear industry (Commonwealth of Australia 2008b). Indigenous rights are earmarked as 'land access issues' (URS Australia 2006), and these views are replicated in government frameworks (Regulation Taskforce 2006; UIF Steering Group 2006). The adoption of a legal approach via Native Title legislation means there is a need for industry to validate Indigenous peoples' rights to negotiate 'access to land' but not 'protection of land'. This becomes problematic since this type of corporate framework encourages both industry and government to effectively deny Indigenous cultural heritage protection an equitable space in the broader landscape of land management and industrial development. Concerns raised nationally within the Native Title sector claim that industry and government use of a legal approach (Agius, Howitt et al. 2003; Agius, Jarvis et al. 2003) severely disadvantages Indigenous players.

The introduction of Aboriginal Land Rights and Native Title legislation, and the new role played by Indigenous negotiators post-Mabo regarding mining agreements in Australia, is portrayed with a mixture of concern as well as optimism (Agius, Howitt et al. 2003; Agius, Jarvis et al. 2003), suggesting a level of scepticism as to the worthiness of this new piece of legislation. Research evidence around Native Title consistently demonstrates that the mining industry remains in a far more powerful position than Indigenous players (Manning 1997; Howitt 2001; Savage and Dennison 2006), with as many as 95% of exploration licenses issued without objection from Native Title claimants (Manning 1997). I argue that governments maintain a far greater level of control over the nature and extent of Indigenous participation and ownership of this process by Indigenous peoples is still to be achieved. Significant political clout maintained by the mining industry post-Mabo suggests a strengthening of alliances between governments and industry and a further weakening of Indigenous rights.

Well-known commentators on Australian native title legislation (Keon-Cohen 2001; O'Faircheallaigh 2004a; Strelein 2006) also add a wealth of understanding to the broader political spaces that exist within the evolution of native title since its inception. Comparative Australian-based research conducted on Native Title agreement making and outcomes in the mining industry (O'Faircheallaigh 2004a) through a broad sweeping international overview

calls for a need for greater understanding of the internal dynamics of Indigenous groups impacted on by native title. This work also identifies a lack of case study research regarding the impacts of agreement making processes and relationships between Indigenous peoples and resource developers (O'Faircheallaigh 2004a, p. 6), in particular the mining industry. Strelein (Strelein 2006) highlights case studies within the resources sector to illustrate the existence and effects of political alignments between the mining industry, the courts and governments in relation to the overall governance of mineral resources. This work raised concerns about some of the implications for governance of exploration and mining that might eventuate as a result of the Mabo decision.

Whilst a large degree of scepticism remains, it is evident that some long-term commentators are cautiously optimistic with regard to the potential for improved interplay between Indigenous interests, government interests and mining interests despite a continued display of government and industry collaboration. For example, there is a sense of optimism in negotiating agreements that can offer mutual benefits, and in some cases these need not be bound by legal definitions (Agius, Howitt et al. 2003; Agius, Jarvis et al. 2003; Savage and Dennison 2006). Although this alludes to acknowledgement of an uneven playing field there is also a suggestion of the possibility that Indigenous groups can benefit from mining provided they not attempt to block mining rights when negotiating with mining companies. A crucial point here is recognition of Indigenous players' potential ability to function as effective governing bodies. This focus shifts critique to explore not only the culture of the mining industry but also the culture of Indigenous governance (see §4.1.5).

This and the previous section reveals that corporate alliances between government and industry, and the influence these have on Indigenous participation, require further investigation and explanation suggesting a need for further investigation. Suffice to say the role of government agencies to use a 'partnership' approach with industry (Primary Industries and Resources South Australia 1999) suggests a non-critical position within government and echoes the dominant international corporate position held by the mining industry. Additionally, the culture of commercialism within mining negotiations and the emphasis on a Western legal framework for Indigenous governance may be attributed to limited government impartiality and a weak state of corporate social responsibility.

4.2.4 Indigenous Engagement and the Nuclear Industry

The nuclear industry adds another layer of complexity to the multitude of problems faced by Indigenous peoples attempting to engage meaningfully with the mining industry. The nuclear industry sparks conflict and concern from many sectors in society (Clancy 1980; ANAWA 1986; Nepabunna Aboriginal Community 1995; Australian Conservation Foundation 1997a; Select Panel of the Public Inquiry into Uranium 1997; Clarke, Stringer et al. 1998; Evans 1998; World Heritage Committee 1998; Green 2006; Pannikar and Brugge 2007; Boase 2009). Indigenous experiences of 'engagement' with the nuclear industry have led to the formation of alliances based on political, economic and cultural aspirations. Indigenous peoples concerned about cultural heritage being affected by uranium mining have taken a strong stance against uranium mining, and it is through these alliances that a range of agendas and ideological shifts on a global, national and local scale have taken place.

At NGO level in Australia Indigenous voices openly challenge the might of governments and industry through reiteration of traditional knowledge and cultural rights (Katona 1999; Green 2006; Adnyamathanha Elder 2008; Dingaman 2009). Some non-Indigenous voices also oppose the nuclear industry in particular, claiming that mining, milling and transportation of uranium and storage of nuclear waste continue to create major issues for nations directly impacted on by the nuclear industry (ANAWA 1986; Beller 2004; Niedenthal 2001; Caldicott 2006). Primarily of concern are the health issues associated with radiation and other forms of contamination that have proven to be a threat to human life and other forms of life. The worldwide actions of nuclear free networks (ANAWA) reiterate the many concerns raised by politicians, doctors, and ordinary citizens who protest at the expansion of the nuclear industry. Aboriginal voices continue to join this opposition. However, governance of resources including uranium remains primarily in the hands of political leaders and corporate profiteers.

Despite the chronic disadvantage of colonialism, many Indigenous peoples rely on limited resources to actively seek compensation for past injustices and play a key role in critiquing the expansion of the nuclear industry. The emotive nature of long term contamination on Indigenous lands directly as a result of nuclear activity, and the lack of recompense experienced by interest groups and individuals is a shocking reminder of ongoing human suffering (Tatz 1982; PCRC 1999; Brown 2005; Sydney Morning Herald 2008). Many people in the Marshall Islands (Sydney Morning Herald 2008) remain in exile after more than 60 years of contamination of their homeland, and the United States government have refused

to meet the demands of the Marshall Islands government and accept full responsibility for ongoing health care, land rehabilitation, and monitoring and maintenance of contaminated sites. Legal claims and a petition put to the Unites States Congress under the Bush administration have met with counterclaims of 'no custodial responsibility' for the deteriorating waste disposal facility, and an insufficient monetary compensation fund for a long-term monitoring programme (Sydney Morning Herald 2008).

There are many examples of Indigenous peoples participating in alliance formations that are positively empowering for Indigenous players. These include Pacific Islander nations who have sought to cluster in a bid for political and economic independence (PCRC 1999) and as a voice for nations in the region to participate directly with the United Nations Permanent Forum on Indigenous Issues (United Nations High Commissioner for Human Rights 1994/45; Garcia-Alix 2003). One of the key areas of concern raised in the Inaugural Pacific Consultation on the United Nations Permanent Forum on Indigenous Issues was the lack of understanding by Indigenous peoples in the Pacific region regarding the exercising of international human and cultural rights within development (PCRC and PCRC International Steering Committee 2004). Informed engagement and empowerment is a major theme within the Permanent Forum's Statement of Mission (Garcia-Alix 2003, p. 59), and has the potential to offer an important strategy and resource base for Indigenous players in the future as we continue to experience engagement with the nuclear industry and other forms of commercial development.

Within Australia an alliance emerged between Indigenous and Green NGOs specifically on nuclear issues during the 1980s, aided by initiative shown by Western Australian Greens (ANAWA 1986; ANAWA 2008a). This move was in response to the growing national campaign to stop the Jabiluka Uranium Mine proposal (Friends of the Earth 1998) and was initiated to enable Indigenous peoples and Green NGOs to cooperatively engage with the expansion of the nuclear industry. A resurgence of 'green-black' activism against the nuclear industry in 2005 (Catchlove 2005) and continued engagement between environmental and Indigenous groups on nuclear issues (Friends of the Earth 2008) signals a collective strength aimed at bringing greater clarity to the issues that continue to concern the general public such as environmental degradation and contamination, as well as the loss of spiritual connections to land, and respect for past Indigenous generations (Adnyamathanha Elder 2008).

Concerns raised by Indigenous peoples in Australia are directly linked to cultural experiences, knowledge, and beliefs associated with the occurrences of uranium ore in its 'natural' state,

and the mining and processing that occurs as a result of development. Claims by Indigenous people (ANAWA 1986; Marsh 1998) of cultural knowledge pinpoint the disturbance of uranium as a threat to the health and wellbeing of the land and people. This resonates with research findings (Fergie 1995; Goldflam 1995; Bell 2001) that note Indigenous concerns regarding the modification or disturbance to country. A pattern of racist oppression is being experienced by Indigenous non-supporters of the nuclear industry (Green 1999) and this is directly impacting on Indigenous peoples attempting to assert our rights over land. Other claims by Indigenous Australians speak of a right to uphold cultural heritage responsibilities as part of a group (Forrester 1984; Katona 1999), and argue that Indigenous communities must move beyond economic assimilation and feel free to assert a position as custodians of the land. This opposition to expansion is ratified by other Indigenous peoples also concerned at the extent to which privatisation and transnational corporations place increasing pressure on the spirituality and identity of Pacific peoples (Dumaru 2001). A trend within Indigenous peoples building alliances with NGOs such as environmental or Church groups becomes evident.

Whilst many environmental groups remain at loggerheads with governments and the nuclear industry over this global expansion, Indigenous groups also continue to experience pressure in relation to uranium exploration and mining, transportation of ore, storage of radioactive waste, and contamination of the country we belong to (Anti-Nuclear Australia 2008). Many natural resources are being exploited through 'development' which is causing concern and grief for Indigenous peoples (Howitt 2001); uranium and the nuclear industry are clearly a critical aspect of development. Within the cycle of planning and development, Indigenous groups are some of the earliest interest groups to be approached by developers and governments seeking to expand a particular industry, yet we are still the least equipped to participate in a fully informed decision-making process.

Indigenous peoples affected by the nuclear industry (Forrester 1984; Katona 1998; Wright 1998; Jory 1999; Pannikar and Brugge 2007) face many challenges in attempting to expose a legacy of dispossession and corruption and assert our cultural human rights. Indigenous engagement is regarded here as an active and independent process initiated by Indigenous peoples and NGOs, and realised in many different forms including heritage protection and future sustainability strategies. Indigenous participation in opposing the nuclear industry includes a call for a global ban on uranium mining from the United States of America, India, Australia, China, Mexico and Canada (Anti-Nuclear Australia 2008).

Recognition of Indigenous participation in peaceful resistance on a global scale through an international Award known as the Nuclear Free Future Award (Nuclear Free Future Committee 1997-2008) is another example of Indigenous peoples not willing to act as passive players in the nuclear industry. This Award recognises outstanding efforts made by individuals, many of whom are Indigenous people. Public concern expressed over past atrocities of the nuclear industry reiterate the sense of frustration felt by Indigenous people at the significant shift currently occurring in Australian politics and industry (McCann 1999). Organisations such as ANFA continue to support Indigenous peoples in our efforts to protect our cultures, lands and future generations. Greater cooperation between Green and Indigenous groups suggests an ideological shift within Green NGOs toward understanding and acceptance of the commonalities as well as the differences between mainstream Australian cultures and Indigenous Australian cultures. These engagement initiatives suggest Indigenous people are highly aware of the dangers of the nuclear industry, and although many feel overwhelmed by the ongoing expansion, there are signs of resilience.

4.2.5 Expansion of the Nuclear Industry

Political and industrial alliances promoted by governments continue to successfully expand the nuclear industry within Australia as part of a global movement in commercial development. At an international level there is continued political and economic interest surrounding the nuclear industry and uranium mining. The Australian Uranium Industry (Brisbane Times 2008), the Nuclear Energy Institute based in Washington (Landers 2007) and various political parties within Australia's democracy (ANAWA 2008a) continue to foster relations that promote expanding the nuclear industry. According to a prominent investigative newspaper source (Baker 2009), in August 2008 the Australian Rudd Labor Government secretly endorsed a management plan for spent nuclear fuel and radioactive waste based on Cabinet made decisions; as at 24 January 2009 when Baker's article was published there was still no public announcement of this secret deal. International opposition (Nuclear Free Future Committee 1997-2008) to the processes used and the threats posed by nuclear expansion comes amidst concerns that major players, including governments, appear undeterred by any threat posed by global expansion of the nuclear industry. Public sentiment, corporate competitiveness and national security may be influencing the government's tight lipped attitude about Australian participation in this industry.

The nuclear industry and associated activities such as uranium mining is one of seven matters regarded as significant within the Commonwealth environmental legislation known as the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth of Australia 1999). The *EPBC Act 1999* applies directly to proponents and forms a new level of regulation for proposals that have been approved since 2000 with a 'significant impact' as defined by a set of mandatory criteria (Thomas and Elliot 2005, pp. 108-109). The Commonwealth Minister for the Environment is responsible for administering new proposals under this Act; however, exemption is possible under conditions such as Ministerial advice being sought prior to the new Act. Recognition of nuclear activities within this legislation shows that government are prepared to take on a regulatory role that distinguishes nuclear impacts on biodiversity from other forms of industrial development, but not to apply these standards in retrospect, and not as a blanket ruling on development.

An advisory body set up by the Australian government and uranium industry (UIF Steering Group 2006) known as the Uranium Industry Framework (UIF) recently published a set of voluntary working principles developed by its Indigenous Engagement Working Group (Commonwealth of Australia 2008b). This alliance between industry and government includes Indigenous bodies such as the Aboriginal Legal Rights Movement and the Central Land Council, which suggests a possible change in attitude toward recognition of Indigenous rights, or that these organisations are comfortable in playing a role that assists in facilitating government and industry approval processes, a role which may compromise their views as independent bodies. Additionally, there is no evidence to suggest that Australian governments, past or present, have been willing to legislate specifically on the protection of cultural diversity within the nuclear industry. This scenario returns the discussion to the vexed question of 'Science for the West, myth for the Rest?' (Scott 1996), which highlights the exploitation and degradation of Indigenous peoples and cultures based on an ethnocentric view of the world.

A most prominent case of Indigenous engagement and nuclear expansion is evident throughout the establishment and ongoing management of Kakadu National Park, the Ranger Uranium Mine situated within the Park, and the proposal for Jabiluka Uranium Mine (Clancy 1980; Wellings 1995; Friends of the Earth 1998; Katona 1998; Koori Mail 1998; World Heritage Committee 1998; Katona 1999; Green 1999-2000; The Senate 2003). Over a period of 25 years a series of interconnected key examples show the sheer breadth of struggle of Indigenous Australians in trying to establish and maintain connections to the cultural

landscape. Common threads include claims of a denial and abuse of human rights (Friends of the Earth 1998), and developers showing minimal levels of attention to the Indigenous cultural significance of a region (World Heritage Committee 1998; Heathgate Resources Pty Ltd 1998a). Engagement has been a long and hard struggle for the Traditional Owners opposed to expansion (Katona 1998; Katona 1999) and finding the resources and strength to persist has come at enormous cost.

Chapter Three elaborates the importance of equitable engagement and the necessary steps needed to ensure Indigenous peoples are able to participate with dignity. The continued development of political alliances between Indigenous and Green NGOs based on independent action-based strategies and global recognition (ANAWA 1986; Nuclear Free Future Committee 1997-2008; Mineral Policy Institute 1998b; Catchlove 2005; Friends of the Earth 2008) represents a growing initiative from Indigenous and Green groups pooling their slim resources and demanding greater accountability within governments and the global mining industry.

4.2.6 Conclusion

This section explores the level of commitment shown by the mining industry toward equitable Indigenous engagement and concludes that, whilst there have been some attempts to improve the quality of economic benefits, heritage protection is not seen as a priority. Literature reviewed claimed an entrenched and widespread political trend exists which continues to situate Indigenous peoples' heritage in a legal, social and economic conundrum. Exploration of gendered perspectives (Bird Rose 1995; Robinson 1996; Dacanay and See 1997) has helped to clarify the political positioning of commercial mining companies through understandings of the cultural biases within the mining industry and how these impact on gender relations. The link between gender and Indigenous relations in terms of recognition of rights helps to evaluate and learn about community engagement.

This section concludes that the main beneficiaries of exploration and mining are government and industry, and the values placed on Indigenous heritage and resources management remains marginal despite claims of best practice regarding Indigenous engagement. Amidst expansion of the nuclear industry and a continued dismissive attitude of government and corporate players toward NGOs and communities, the rights of Indigenous players become

critical in asserting a strong position for gender equity, heritage protection and environmental protection.

4.3 Impact Assessments and Land Uses

4.3.1 Introduction

The term 'impact' often has negative connotations due to the many destructive characteristics associated with its use in describing and analysing commercial development (Mercer 1995); however, its use in government regulatory guidelines refers to both adverse and beneficial effects within an impact study (Planning SA and Environment Australia 1998). Impact assessment procedures have developed along with a set of practices in relation to risk analysis, health impact assessment, environmental impact assessment, social impact assessment and economic impact assessment, and may include other forms of impact assessment (Thomas and Elliot 2005). Impact assessments often come under the generic banner of Environmental Impact Assessment (EIA) in Australia. EIA offers a unit of analysis within this thesis that goes hand in hand with Indigenous engagement in the early planning stages of development. It is used in this context to allow examination of terms of reference set by government and industry, effectiveness of negotiations and decision-making procedures. This part of Chapter Four begins with a broad exploration of the issues within impact assessment and concludes with a focus on best practices.

4.3.2 Environmental, Social and Cultural Impact Assessments

Impact assessment on an international scale has been described (Thomas and Elliot 2005) with a focus on countries that have a similar cultural and political background to Australia, many of whom participate in mining activities within Australia. Nations include New Zealand, the United Kingdom, Canada, and the United States of America. Thomas and Elliott (Thomas and Elliot 2005) state that generally these nations share a common interest in committing to a process that takes into account a complete range of impacts, and defines a set of consequences in advance of a development. This suggests a process that is inclusive of all possible impacts and one that treats every type of impact as equally important to the other.

A key catalyst for EIA was the growing awareness of pollution and public health, conservation of our 'natural' environment, and a realisation that the historical legacy of Western civilisation in its bid to conquer and exploit spaces and resources was not sustainable or equitable (Thomas and Elliot 2005). Concerns were raised at an international level during the 1970s which primarily focused on the lack of environmental consideration within

development projects. A need was identified for a formal process to be put in place within societies that had an existing system of government administration (Thomas and Elliot 2005). Environmental impacts of mining were first comprehensively addressed in the late 1970s, and became part of a traditional focus on concerns framed by biophysical interpretations consisting of three sub-systems: the earth, water and atmospheric systems.

The future sustainability of EIA (Thomas and Elliot 2005, pp. 229-232) is an important aspect of any discussion regarding impact assessment and best practice. For several decades, EIA has been part of an institutionalised procedure on a global scale, which suggests it is now likely to remain an important regulatory component of development. The key to EIA having a meaningful place in development in the future will depend on a number of aspects. These include systematic integration of impact assessment within project planning, EIA as a pathway to sustainable development, the willingness of proponents to move toward an inclusive and meaningful procedure that meets the needs of host areas and communities, and the ability of environmental and other interest groups to continue resourcing their role as 'watchdog' organisations. The other factor which may influence the longevity of EIA is its capacity to adequately address social and cultural impacts, which in theory it is meant to already be able to do.

Social Impact Assessment (SIA) has gained considerable popularity in an institutional sense both in Australia and internationally, but in comparison to biophysical components remains less tenable than EIA due to its lack of definition as a procedure, its limited connection to EIA, its place within the screening process in the early stages of EIA, and a limited body of research to inform and improve SIA (Burdge 2003). Despite the availability of guidelines for SIA since the mid-1980s (Branch, Hooper et al. 1985) and a few examples of SIA case studies, there remains a general international trend of SIA being bypassed (Burdge 2003). As a separate procedure SIA is claimed to offer a stronger emphasis than EIA on public participation and a greater focus on predicting impacts of development on humans (Burdge 2003; Thomas and Elliot 2005, pp. 38-44); however, a range of myths and misunderstandings are claimed to have limited the use of SIA in planning (Burdge 2003, p. 87). Some argue strongly (Howitt 2001; Thomas and Elliot 2005) that an interdisciplinary research component within impact assessment and SIA in particular can contribute to an improved set of practices, policies and legislation.

SIA has the potential to bring an added quality of transparency to impact assessment depending on the approach used. Two approaches that have been clearly identified include a

'technical' and a 'political' approach (Thomas and Elliot 2005, p. 40), which basically differ in that a technical approach prioritises scientific expertise and methods, whereas a political approach prioritises participation from a wider community perspective and rejects methods and decision-making that are driven by elitist expertise. The case of the construction of a Hibernia offshore oil platform off the east coast of Canada (Storey and Jones 2003) is an example of how an SIA, when used in conjunction with an ongoing management strategy, can bring a better quality of life for communities. The success of this SIA procedure was accredited to a number of strategies including use of the 'opportunity-threat' model used in the early assessment phase, which not only assesses expected impacts from the proposed development but also includes '…the actual impacts that only occur because of the announcement of a proposed development' (Storey and Jones 2003, p. 101). This approach is significant in that it considers occurrences that took place before the formal impact assessment process commenced, thus increasing the scope of assessment, the breadth of expertise used during engagement, and the level of participation during community consultation and decision-making. One key assumption underlying this case includes the starting point of 'minimising' community disruption (Storey and Jones 2003) and a fundamental expectation that the project proposal was likely to proceed.

The expectation of disruptions suggests that SIA is not designed to stop or prevent a development rather to scrutinise *how* it will go ahead and to monitor its progress; this assumption offers a realistic picture to the public without dismissing community concerns. On this basis people have a more informed input than might be otherwise offered had a different approach been used, and individuals can make informed choices as to whether they participate and validate the procedure being offered or whether they reject outright any role in engagement. This example highlights an important role for SIA in pre-development that is often absent from EIA, as noted from the Australian data summarised in 1990 (Thomas and Elliot 2005, p. 71).

Another important role of SIA highlighted in this case is the importance placed on follow-up assessment, which took the form of a series of surveys that dealt with attitudes toward, and perceptions of, oil-related activities in the area (Storey and Jones 2003, p. 103). Follow-up was possible due to the continued input from a graduate researcher who had been involved in the case from its early stages, and this proved to be a valuable mechanism for 'post-decision monitoring' of management strategies adopted and their effectiveness in addressing anticipated impacts. A key element that influenced the success of this case was the

willingness and commitment shown by the proponent to meet the impact management objectives identified by the affected communities in the host area, and ongoing support from a skilled and dedicated researcher.

Literature that evaluates a wide range of Australian perspectives on community consultation and negotiations relates directly to impact assessment processes (Berndt 1981; Girrabul 1982; Coombs, McCann H et al. 1989; Trigger 2000; Langton, Tehan et al. 2004). These explore the role of government, the parameters of the assessment process, the level of understanding among various players, and the resulting outcomes of negotiations for Indigenous interest groups regarding new proposals for development. An important factor is the degree to which government regulations are effectively implemented and critically evaluated. A recent government report (Regulation Taskforce 2006) provides an overview of how government is working to lessen the degree to which businesses are regulated in the future, and this includes environmental and cultural regulation within industries such as mining. The absence of recommendations, specific guidelines or frameworks in this report suggests that government is willing to endorse initiatives from industry sectors in regard to deregulation, raising questions as to how effective this trend will be in empowering Indigenous players. However, providing there are adequate resources for capacity building at the community level, deregulation may offer Indigenous players and NGOs new opportunities to participate with greater strength.

Howitt claims (Howitt 2001, p. 325) that many projects subject to impact assessment demonstrate 'systemic failure' as the key outcome in regard to resource and environmental management, validating the concerns that persist in relation to impact assessment and SIA in particular. These concerns include the claim that failure has occurred not because of technical or unknown factors, but due to the 'inherently political and human dimension' of development (Howitt 2001). The challenge borne from these claims is one that requires further scrutiny and modification of legislation, policies and practices. Cases from elsewhere (Storey and Jones 2003) provide examples of how the impact assessment can become a more humanised process.

4.3.3 Australian Impact Assessment Procedures

A broad understanding of the role, purpose and limitations of Australia's impact assessment procedure assists in scrutinising the interpretation of legislation and subsequent practices

within commercial mining cases and Indigenous engagement. There are two tiers of government administration: Commonwealth and State government, each operating under a distinct but interrelated set of procedures pertaining to regulation of development.

The objective of EIA legislation, known as the *EPIP Act 1974* (Commonwealth of Australia 1974), was to ensure that matters significantly affecting the environment be fully examined and taken into account before a decision is made to proceed with a proposed development. In the mid-1990s the EPIP framework was significantly broadened to include principles of ecologically sustainable development (Thomas and Elliot 2005). This shift to include '…all aspects of the surrounds of humans …' (Thomas and Elliot 2005, p. 101) is potentially a major breakthrough in creating a more inclusive and standardised set of procedures and a legal framework that matches.

In the early 1990s a review of the *EPIP Act 1974* (Commonwealth of Australia 1974) was undertaken to include public comment and broad political and government input (Thomas and Elliot 2005), which subsequently led to a major overhaul of environmental legislation in 2000 following the passing of the *EPBC Act 1999* (Commonwealth of Australia 1999). This national approach to EIA in Australia was developed in response to existing issues of duplication and inconsistency across State and Commonwealth government. The benefits and outcomes proposed (Thomas and Elliot 2005, p. 99) did not specifically relate to Indigenous issues such as cultural resources management and heritage protection; however, they did suggest improved levels of participation and accountability in areas such as decision-making. Amendments in 2004 by the Commonwealth government include a '…national heritage trigger under the matters of national environmental significance' (Thomas and Elliot 2005, p. 106), the 'trigger' being the point at which screening of a new proposal is undertaken to determine whether or not an EIA is required. Final decision-making powers on approval of a new proposal rests with the Commonwealth Environment Minister and confirms a lack of independent community based decision-making.

A key expectation within the EIA procedure is the construction of a study usually conducted by a team of experts under instruction from the proponent (Howitt 2001) which outlines the feasibility of their development proposal using economic, social, and biophysical elements to give a broad understanding of 'environment'. The impact statement takes the form of either a Public Environment Report (PER) or an Environmental Impact Statement (EIS), which are similar in content, and some EIAs will require both. An EIS and PER must be produced by the proponent and must give a full description and analysis of the proposal. The key

difference is that only the final published version of a PER is made available to the public, whereas the EIS draft and final version must also be made available to the general public as part of a community consultation process. Production of an EIS involves a number of stages including screening, scoping, and monitoring, all of which are undertaken by a proponent with assistance from its respective industry, and appropriate policy guidance from within government.

EIA legislation has emerged in Australia partly in response to the major environmental assault caused by mining proponents in the 1970s (Mercer 1995) and partly due to international pressures. Regulation occurs through government legislation and policy and voluntary codes of conduct. One author, exploring the South Australian impact assessment process, expressed concern that '…there are no clear cut criteria for defining a 'major' as opposed to 'minor' project' (Harvey 1996, p. 40) which suggests an absence of clarity and an assumed role of authority by government. Claims that the EIA process is seriously flawed on the grounds of scientific inconsistency and bureaucratic 'fast-tracking' was a key criticism from within the environmental sector (Mercer 1995; Australian Conservation Foundation 1998a).

Other Australian legislative Acts and subsequent government policies that influence impact assessments include natural resources management or NRM (Environment Unit - Conservation Commission of the Northern Territory 1984; Department of the Environment and Water Resources 2007; Government of South Australia 2007; South Australian Government 2007). These are based on a range of standards also designed to facilitate community consultation, but do not require the provision of detailed information to the public on the basis of commercial confidentiality. The role of the Environmental Defender's Office (EDO) in each State and Territory of Australia is to provide a mechanism for the public to raise questions regarding any perceived breaches of environmental law. Whilst each of these aspects relating to impact assessment presents opportunities for public input, there is no institutionalised avenue for public participation at the level of decision-making in regard to development.

4.3.4 Indigenous Community Consultation: Cultural and Human Rights

One of the broader shifts that can assist decolonisation within the impact assessment procedure of resources management relates to policy reform based on a more equitable balance of interests (Howitt 2001). This would provide genuine recognition of the social and

cultural elements of 'environment'. Some practical ways in which this shift can take place are suggested (Howitt 2001) through increased government endorsement of SIA as an additional or alternative mechanism for managing resources, and clarification and institutionalisation of Indigenous engagement protocols at the local levels. An emphasis on environmental sustainability within this integrated framework of economic, social and cultural justice, as distinct from corporate frameworks driven by economic sustainability, will demand much broader standards of community benefits that go beyond compensation and economic dependency.

A fundamental global challenge persists in the form of Indigenous peoples and cultures securing a space within impact assessment procedures where our cultural knowledge and contemporary values can be accommodated without compromise and without prejudice. Meeting this challenge in Australia will require a much greater level awareness raising with the assistance of bodies such as the Human Rights and Equal Opportunities Commission given that 'Human rights really only exist if they are understood, accepted and adopted by the community' (Healey 2005, p. 39). Impact assessment procedures have frustrated Indigenous participation, thus favouring the priorities of developers and embittering Indigenous peoples (Howitt 2001; Lane, Ross et al. 2003). Western constructions of the biophysical or 'natural' environment are claimed by Indigenous critics to reinforce a set of scientific definitions and procedures that continue to dispossess Indigenous peoples from lands and deny a value being placed on Indigenous perspectives (Langton 1983; Scott 1996; Rigney 2001; Balkanu Cape York Development Corporation 2007). This raises questions not only about the limitations of impact assessment policy in Australia but also about the effectiveness of the HREOC regarding human rights awareness, and the role of bodies such as NRM (Natural Resources Management) in building governance capacity.

Examination of guidelines and adherence to 'best practice' applicable to mining impact assessment helps to identify the extent to which cultural and human rights standards are being met and what steps need to be taken to ensure continued improvement takes place. Protecting human rights stems from a belief that everyone is entitled to equality and fairness, and safeguards are in place to protect these rights according to two major international treaties known as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* (Healey 2005; Commonwealth of Australia 2008a). During the early 1990s, an international study into the effectiveness of environmental assessment was commissioned by the International Association for Impact

Assessment and later published (Sadler 1997), to provide a comprehensive review of EIA practice. The report concluded that effective application of EIA required clear terms of reference and guidelines, appropriate timing of assessment, quality information based on good practice, and a receptive environment for communication and decision-making.

According to government regulation, best practice environmental management and mining in Australia is guided by international principles including effective communication and openness, continual improvement, and accountability and compliance with international human rights and environmental standards and principles (Environment Australia 2002, pp. 13-14). Community consultation and engagement are regarded as '…essential mechanisms to show that environmental protection and harm minimisation are taken very seriously by today's mining operators' (Environment Australia 2002, p. 12) and a '…community-centred, rather than project-centred approach to community consultation…' (Environment Australia 2002, p. 18) is the preferred option. However, the ideology of community consultation is based on the assumption that any decision-making power over a mining project is off limits to community. Environmental auditing is defined as an '…essential management tool to measure overall performance objectively and to develop action plans for ongoing improvement in the effectiveness and efficiency of environmental protection' (Environment Australia 2002, p. 26). At the time this thesis was released it was noted that an environmental audit remains a voluntary activity in Australia.

Different stages of planning have been identified to help explore best practice within other cases. The initial planning stages of resource development (or pre-development stage) highlight a range of issues that are better understood when placed in a broader context including post-development processes (Clancy 1980; Coombs, McCann H et al. 1989; Dixon 1990a; Katona 1999). Exploring the latter stages of post-development that relate to implementation of agreements (O'Faircheallaigh 2002) helps to build a context for case study analysis. According to these previous findings, successful relationships not only require adequate and appropriate resources, they also require that all negotiating parties to an agreement operate in good faith, and to do this it is crucial that everyone fully understands and supports what has been negotiated. This focus on a renewed hope for greater equity in future negotiations is reflected by others (Howitt 2001; Kinnane 2002; Lane and Corbett 2005) who claim the complexities involved in Indigenous and mining relations are many, and that there is significant distance between good intention and good practice.

Although Young (Young 1995c) acknowledges failures within the mining industry to facilitate best practice, she notes that mining has not been totally detrimental to Indigenous interests, and stresses the importance of regional planning as a key element for increased equitable outcomes for Indigenous peoples. Whilst this article does offer possible solutions in addressing human and cultural rights abuses, it also cautions how community participation can be thwarted simply by lack of ongoing government funding to sustain worthwhile project work (Young 1995d). Initiatives that engage communities with non-government funding demonstrate greater sustainability, and possibly greater community ownership (Young 1995d), which opens up another discussion point regarding the extent to which Indigenous groups can and should freely accept private funds. Whilst this may be beneficial in some instances there is always a level of risk, particularly when funds are being offered by mining companies or other bodies with interests driving their own particular agenda. The impact this has on the balance of equitable negotiations is also questionable.

Claims by Indigenous players directly involved in Indigenous engagement include concerns regarding bribery and corruption within the community consultation and negotiating phases (Vince Coulthard cited in Clancy 1980; ABC 1999; Trevorrow and Trevorrow 2001). These allegations strongly suggest that breaches of human rights are commonplace and constitute a wilful intention by developers and governments to tip the balance of power in favour of development. This imbalance serves to silence any community based dissent, allows the destruction of sites and denies the existence of in-depth cultural knowledge regarding land management. It also denies free access to land, can lead to contaminated resources such as water and food, and perpetuates an ongoing dependency on economic welfare. An argument emerges that regardless of the geographical and political location in which an Indigenous group exists, the typical experiences of Indigenous communities impacted on by mineral resource development is negative.

The Australian Human Rights Commissioner states that recognition of human rights has the potential to promote both a social and an economic development agenda and international human rights treaties, and he stipulates '…all peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development' (Calma 2005). So how are Indigenous peoples' human rights affected within consultations and negotiations surrounding mining proposals? Case studies of the plight of Indigenous peoples living in regions remote to metropolitan zones highlight how they have been systematically ignored by mining companies and

governments (Young 1995c). Players involved in prominent Australian Indigenous cases have been forced to utilise both national and international mechanisms as tools for engagement in land resource development when normal domestic protocols have failed to offer social justice (Koori Mail 1998; Trevorrow 2001).

A human rights framework provides a broad dialogue regarding the cultural characteristics of Indigenous players' capacity of engagement (Lawrence 2005; Lloyd, van Nimwegen et al. 2005) and links individual cases to a national and international political landscape. Issues such as community disempowerment through a lack of informed discussion and decision-making due to culturally inappropriate engagement strategies have been raised and scrutinised. The purpose of exposing gross inadequacies within the negotiating processes is to promote greater accountability by powerful interest groups such as mining companies, and to heighten the understanding among all players regarding the repertoire of standards that should and could be used to ensure all parties are fairly represented and Indigenous peoples and cultures are not placed in a position of compromise.

One example of the effects of limited protection is the *Aboriginal Heritage Act* (SA Government 1988), which provides the legal means to destroy sites of significance to Indigenous peoples based on a Ministerial decision, and applies miniscule penalties for destroying sites of significance without authorisation. This limits the powers of Indigenous parties that wish to exert heritage protection over a proposed development, given that the final decision rests with the Minister for Aboriginal Affairs (1988). Likewise, Native Title legislation (1993) confines Indigenous peoples to the 'right to negotiate' over an exploration or mining proposal and denies the right to veto. These limitations deny the basic human rights of Indigenous Australians as defined by the Australian Human Rights Commissioner (Calma 2005). Another example relates to nuclear testing in the Pacific region in places such as the Marshall Islands and Maralinga which constitutes a breach against human rights (NIEDENTHAL 2001). These examples of contamination and destruction of resources valued by Traditional Owners without informed consent is a significant legacy to the current status of relationships between resource developers and Indigenous peoples.

The powerful influences of industry that result in marginalisation of Indigenous peoples, and the lack of government integrity, sets precedents within the law relating to Indigenous engagement in cultural resources management. A legal framework was used to describe the events and analyse the claims made by various stakeholders in the Roxby Downs case(Wright 1998), and a Bill was passed which enabled the proponent to effectively circumvent

Aboriginal Heritage responsibilities. This case highlights the level of cooperation between industry and government and lack of consideration for Indigenous players' rights.

4.3.5 Conclusion

Historic precedents offer significant insights to the might of the mining industry and the Beverley case, particularly in relation to assessing the extent of equitable consultation and negotiation processes. A common thread of poor corporate governance by resource developers strongly suggests that governments and corporations must become more accountable to Indigenous communities.

Research within a broader context of cultural survival and conservation of natural resources suggests that there is an urgent need to continue critically evaluating the nature of existing relationships (Young 1995b; Stevens 1997b; Dodson and Smith 2003; O'Faircheallaigh 2004b; Lane and Corbett 2005). Situating mining within this wider context of development offers a substantially fuller picture of development and Indigenous participation in Australia, and from here it is possible for a detailed and holistic analysis to take place.

Despite claims within Australia's corporate mining industry (Minerals Council of Australia 2004a) and the Australian government sector (Regulation Taskforce 2006) that many companies are leading the way in developing and implementing initiatives that facilitate greater understanding and benefits for Indigenous peoples, these claims are overshadowed by an acknowledgement that mining continues to pose a fundamental threat to the human rights of Indigenous peoples (Dodson and Smith 2003; Calma 2005; Savage and Dennison 2006). The Australian mining industry generally has created a legacy of interacting with Indigenous Australians in ways commensurate with treatment usually associated with conditions faced by people in 'third world' or developing countries (Young 1995d). This raises a common thread of misunderstanding, denial and brutality that characterises the onset and after effects of colonisation generally (Trudgen 2000), as well as specifically in relation to the interaction that takes place between many Indigenous peoples and mining companies (Clancy 1980).

International guidelines regarding the wellbeing of Indigenous peoples and cultures have been devised due to the repeated and gross misappropriation of power that continues to negatively impact on Indigenous peoples. National guidelines are based on interpretation and recognition of human rights in a more concise way (United Nations High Commissioner for

Human Rights 1994/45; Aboriginal & Torres Strait Islander Social Justice Commissioner 2002), whilst still drawing on international standards and principles.

Case studies that explore impact assessments via the EIA or SIA stage of development offer insight to the issues arising at the early stages of community consultation and negotiations, such as local or Indigenous politicking and how it influences community consultation and negotiation with mining companies. Different stages of interaction facilitate impact assessments within a chronological and hierarchical planning process driven primarily by legislation (international, Commonwealth, and State) and policies. These stages include research-based impact statements and negotiation of formal agreements. Players include industry and industry partners, government departments, NGOs, research bodies and educational institutions, and Indigenous interest groups such as Native Title Named Applicants, Incorporated bodies and community organisations, and family groups. The literature reviewed here suggests that the various stages of the impact assessment procedure are interlinked and therefore influence each other, moving from formal guidelines, institutional interpretations and legislative requirements to a social arena based on goodwill and effective local governance.

Chapter 5. Colonial Encounters between Adnyamathanha Cultural Heritage and Mining Proposals

This chapter reviews background literature relevant to the evolution of contemporary Adnyamathanha views on cultural heritage protection and resources management and the history of commercial mining in Adnyamathanha Yarta. The discussion is appreciative of Adnyamathanha interpretations of land uses and land management as well as Western institutional frameworks such as ICRM or ICHM.

The first part of the chapter links Adnyamathanha knowledge and experiences with a range of views regarding legal and political governance of heritage and resources management. It concludes with a brief overview of the history of mining in Adnyamathanha Yarta. The second part of this chapter explores some of the key issues regarding Adnyamathanha governance such as what works well and what needs changing to improve protocol. The overlap of traditional and contemporary laws, policies and practices frames this discussion and identifies some possible solutions for Adnyamathanha Yuras wishing to make community engagement a more equitable process. This chapter discusses governance of Adnyamathanha heritage protection with the purpose of establishing a focus on community experiences of governance and engagement within commercial mining.

5.1 Background to the Evolution of Adnyamathanha Cultural Resources Management and Mining

5.1.1 Introduction

Adnyamathanha interpretations of associations with land and resources are presented here to help define the evolution of heritage protection and resources management in Adnyamathanha Yarta. Currently, there is very limited description or analysis specifically relating to Adnyamathanha views on cultural resources management and mineral exploration and mining (Aboriginal Heritage Unit, Wilton et al. 1980; Tunbridge 1986; FRAHCC 1998; Marsh 1998), and possibly even less information publicly available regarding the idea of traditional ownership or custodianship of land. There is also limited documentation of Adnyamathanha views on how Yuras 'do business' in the broader context of development (Coulthard and Hoskins 1969; Tunbridge 1986; Tunbridge 1991; Mines and Energy South Australia 1997; Marsh, pers. comm. 2009b). This suggests that colonialist impacts on Indigenous governance has created a smokescreen on Indigenous priorities on a regional as well as local scale, and traditional governance strategies are not being fully understood or included in contemporary plans or strategies.

Changes to power relations among Adnyamathanha Yuras and the ways in which we engage with mining proponents are explored in the first part of this chapter, along with institutional regulation of heritage and resources management. The experiences of Adnyamathanha are linked to major barriers and challenges that persist for Indigenous peoples globally. This includes working with limited expertise and practical knowledge of how to interact successfully with mining companies in a colonial landscape, and with little understanding of the scope and limitations of the Western laws that govern mining and cultural resources management (Howitt, Connell et al. 1996a). Case study evidence (Tatz 1982; Altman 1983; Coombs, McCann H et al. 1989; Coates 2004) shows a pattern within the mining industry on a global scale of Indigenous peoples being exploited through the colonial attitudes that continue to dominate negotiation and consultation between Indigenous players and mining companies.

5.1.2 Yuras' Muda: Knowledge Construction from Associations between Adnyamathanha Yuras and Yarta

The depth of knowledge held by Adnyamathanha signifies a set of values and beliefs regarding the Beverley Mine area which give us a human right to be heard on any impacts or potential impacts in this region. Adnyamathanha cultural knowledge of, and practices associated with, uSage of minerals in the northern Flinders Ranges predates Western commercial mining activities (Curr 1886; Brock 1985) and positions Adnyamathanha Yuras collectively as the 'Traditional Owners' under Aboriginal Heritage legislation (1984; 1988). Minerals such as red ochre were highly prized and widely traded via connections to other Australian Indigenous groups. Cultural associations between Yuras and Yarta developed and reinforced through oral and visual accounts of story and song lines make up the Adnyamathanha collective identity and knowledge of the land in contemporary times. These accounts are shared through the oral tradition, but have also become partly available through written, audio and visual data collected and interpreted predominantly by non-Indigenous peoples (Brock 1985; Tunbridge 1986; Tunbridge 1991; Ellis 1999; Ellis 2006). Traditional visual images such as rock engraving and painting are not a widespread component of contemporary transfer of knowledge for Adnyamathanha, however there is resurgence in visual representations (Regina McKenzie and Juanella McKenzie 2008) as a way of sharing cultural knowledge.

Connections between Adnyamathanha Yuras and Yarta stem from accumulated knowledge and ways of knowing the whereabouts, the uses, the origins and associated meanings of physical places and other cultural spaces. Adnyamathanha oral accounts of the area known as 'hot springs' (Tunbridge 1986) merge with people's lived experiences and memory of the Wooltana Station, Wertaloona Station and Balcanoona Station pastoral properties (Ellis 1999; Adnyamathanha Elders Group 2008). The longevity and depth of this ongoing association readily surpasses the limited association between non-Indigenous peoples and the region (Cockburn 1927) which initially began through a pastoral pioneering exercise in the late 1800s. No written literature exists to clearly identify Adnyamathanha Yuras connections to Yarta according to personal or clan inheritance; however, a great deal of in depth cultural knowledge exists in oral accounts of knowing the land. Native Title registration requires each Named Applicant to identify an 'interest area', which has prompted a contemporary awareness of traditional affiliations to Yarta; however, this process does not seem to parallel authority and responsibility according to Anggumathanha Law (camp rules) Ngapi Ngapi, the

two sides of the family sometimes described as 'moiety' and 'totems', and Ngangginyi Wiri Wiri or family relationships (Marsh 2003; pers comm 2004b). Key aspects of the symbolic relationships between Yura and Yarta are the sharing of information, the learning and teaching of new ideas, Yura obligations to Yarta and Muda, and the respect for people and land that goes hand in hand with decision-making protocols.

Fundamental to the process of knowing the land is the construction of knowledge based on cultural (historical, spiritual, social) meanings that make up our 'Yura Muda'. An Adnyamathanha Elder now deceased (Annie Coulthard cited in Tunbridge 1986) shared her views on the important role of our Muda; she spoke of the cultural practice of telling others about the land by sharing the knowledge passed on through successive generations of Adnyamathanha. Sometimes this involves sharing of knowledge about cultural phenomena that an individual may never have physically encountered, yet spiritually and socially they can experience or know about something through the telling of stories by others (Tunbridge 1986; Tunbridge 1991). This suggests that shared knowledge can be so detailed and such an intricate part of culture that it is possible for experiential knowledge and ancient wisdom to become a collective entity.

The connections between people and land are deeply spiritual and help explain the persistence of an Indigenous existence across Australia and its difficulty in being adequately represented in a Western legal system. Yarta Warndatha or 'telling of land' (Buck McKenzie cited in Education Department of South Australia 1992) denotes cultural associations between Adnyamathanha and the geographical area now known as the northern Flinders Ranges. Yarta Warndatha for other Adnyamathanha shows a very respectful reference to our cultural knowledge and custodianship of land (Christine Wilton cited in Aboriginal Heritage Unit, Wilton et al. 1980; Claude Demell and Annie Coulthard cited in Tunbridge 1986; Marsh 1998). Individuals who are passionate about Yura Muda sometimes place emphasis on particular experiential knowledge that is important to them as individuals, but they also express how they have been influenced by a collective Adnyamathanha view or priority (Tunbridge 1986). Muda is derived from and demarcated by trees, rocky outcrops, creeks or springs or some other non-human formation or phenomenon (Buck McKenzie cited in Education Department of South Australia 1992). Muda is also associated with learning about the important meanings of cloud formations, wind patterns and behaviour patterns of animals or birds. For many Yuras, this sense of belonging is so deep it forms an intrinsic part of

Adnyamathanha identity. In summary, our Muda is the unique spiritual link between Adnyamathanha Yuras and Yarta and cultural resources.

The ancient foundation of Yura Muda creates and defines a social landscape for Adnyamathanha (see later in this Chapter) and is believed to have come about through an evolving spiritual connection to land now symbolised by a Wida (Gum Tree) that marks the place where Yuras first agreed to follow the rules of Mathari and Ararru, or Ngapi Ngapi. This is also acknowledged by non-Aboriginal researchers as a classificatory social system or structure described in anthropological terms as kinship or 'moiety' in reference to the '…class organization under the names of 'Matteri' and 'Kararu' or their equivalents…' (Howitt and Siebert 1904, p. 101). Linguistic evidence suggests that contemporary Yura Ngawarla has done away with the 'k' sound at the beginning of many words, hence 'Kararu' is now 'Ararru' (Tunbridge 1991). The understandings of Yura Muda and Ngapi Ngapi are possibly linked to widespread practices and beliefs such as the 'mura-mura' or 'murdu legend' of other Aboriginal groups of central Australia (Howitt and Siebert 1904, p. 100).

Providing evidence to the courts of Adnyamathanha knowledge of Muda has played a key role in earning Adnyamathanha a legal Consent Determination in accordance with legal requirements (Crown Solicitor's Office 2004a; Federal Court of Australia 2009); however, measures to ensure heritage protection of sites such as the Wida, and recognition of Ngapi Ngapi are yet to be fully acknowledged within the Native Title process. The key emerging emphasis since the introduction of Native Title legislation has been on negotiating Exploration and Mining Agreements, which has proven problematic across Australia (Jackson 1996; Keon-Cohen 2001; Neate 2003; Calma 2005; Strelein 2006). The content and importance of Adnyamathanha tradition and Muda spans many generations, and this has been the basis on which legal recognition has eventuated, yet discussions about governance of peoples and land uses remain diverted from tradition.

Research conducted by various academics (Brock 1985; Tunbridge 1986; Tunbridge 1991; Ellis 1999) acknowledges the ongoing reinforcement of an amazingly complex relationship between Adnyamathanha Yuras and Yarta despite the impacts of colonisation over approximately the past 100 years. Examples of some well-known story and song lines about Yura Muda show connections with land that have been partially documented. These include cultural knowledge and meanings associated with places such as Wayanha or Mount McKinlay, Viliwarunha or Reaphook Hill (Tunbridge 1986). Spiritual trails that span hundreds of kilometres include the travels of Marnbi (Bronzewing Pigeon). Marnbi Yapa or

Bronzewing Pigeon Trail is situated north of the township of Lyndhurst and continues to the Broken Hill region (Tunbridge 1986; Warrell 1995), and the Yulura (Azure Kingfisher Spirit Man) Trail is located between the Leigh Creek area and Ikara or Wilpena Pound east of the township of Hawker (Coulthard, Coulthard et al. 1987; McKenzie 1987).

The physical landscape is made up of a complex spiritual network that connects physical, social and spiritual dimensions. Mineral substances such as quartz, copper, gold, and talc are common features within many Adnyamathanha oral accounts (Tunbridge 1986; Warrell 1995; FRAHCC 1998; Marsh 1998) and are often central to the purpose and meaning of the knowledge being shared. Other examples of Muda include cultural interpretations of green rocks referred to as 'warratyi ngurtuka' (mound of rotten emu meat) and 'marnninha vari' (creek of emu fat), otherwise known as mineral deposits at an old copper mine site called Moro Mine (Tunbridge 1986). These narratives provide reinforcement and reconstruction of an ancient and deeply spiritual connection between human and non-human beings and the environment.

Adnyamathanha stories of creation specifically include understandings of uranium ore and other naturally occurring mineral deposits which collectively form a fundamental aspect of the cultural significance attached to the area. For example, the greenish rock or 'uranium ore' known within Yura's Muda represents vomit from a spiritual being, a God-like creator called Virdnimuru, who is said to have created the physical landscape '…up through the site of the Beverley Mine, and on to Ngumbabadanha or Mount Painter' (Tunbridge no date, p. 9). I estimate that this pilot study of name places in the Gammon Ranges National Park informed by Adnyamathanha Elders Annie Coulthard and Cliff Wilton was conducted some time during the early 1980s. The sickness experienced by Virdnimuru in conjunction with the prevailing winds characterise the region as vasinyi Yarta or 'poisonous country' is regarded as highly significant (Marsh 1998; Sutherland 2009). This story warns people of the dangers they may encounter and the power of the land. Virdnimuru is said to have travelled on to Gill's Bluff near Lyndhurst where he died (Tunbridge no date).

Ceremonial practices and spiritual beliefs associated with the formation of coal deposits are central characteristics in the story of Yurlu and his ceremonial role within Adnyamathanha and Kuyani tradition (Coulthard, Coulthard et al. 1987), sometimes referred to as Adnya-Kuyani. The meanings of the coal deposits were transformed into a commodity based resource for non-Indigenous profiteers when mining began, as noted in song lyrics produced by Adnyamathanha songwriter and singer Buck McKenzie (McKenzie 1987). The

destruction of significant spiritual and ceremonial life for Adnyamathanha in the case of coal mining at Leigh Creek has been acknowledged through children's educational materials such as storybooks (Coulthard, Coulthard et al. 1987) and songs (Buck McKenzie cited in Education Department of South Australia 1992), and through the testimony of Adnyamathanha woman Eileen McKenzie (McKenzie cited in Hercus 1985). Another Yura who felt it was important to acknowledge the impacts of coal mining and the relationships between Yuras and land was Syd Jackson, a senior Adnyamathanha initiate (Syd Jackson cited in Aboriginal & Historic Relics Unit 1978), who spoke with Trainee Rangers working for the Aboriginal and Historic Relics. Syd Jackson claimed: 'The coalfields means a lot to the Wilyaru men (fully initiated). The Government should give them something for the land.' (Aboriginal & Historic Relics Unit 1978, p. 4) There has never been any form of compensation or any formal negotiations between Adnyamathanha and governments or the mining industry over the desecration of Yurlu's sites. The breadth and depth of cultural knowledge defines individual peoples' place in Adnyamathanha society and our connections to neighbouring groups and the wider Australian population; however, this knowledge and spiritual significance remains only marginally recognised within Western institutions that govern land use and development.

Understanding the cultural associations between Adnyamathanha Yuras and Yarta in this thesis is particularly significant to an analysis of how mineral substances in Adnyamathanha Yarta are valued. An interesting aspect of this evolving relationship is the blending of traditional and contemporary knowledge. Adnyamathanha Yuras readily associate 'minerals' with 'Dreaming trails' in their storytelling narratives (Molly Wilton cited in Coulthard, Coulthard et al. 1987; Warrell 1995) in a complex and meaningful manner that accommodates both modern experiences and ancient traditions. Long standing and intricate connections or associations between people, land and cultural resources (Curr 1886; Brock 1985) suggest a sense of personal collective responsibility toward culturally appropriate use of minerals as cultural resources.

In a contemporary setting, the significance of place is evident in information shared by Adnyamathanha interview participants, where an individual may feel very strongly committed to site protection and respect for cultural beliefs, yet also feel very strongly committed to asserting the 'right to negotiate' under Native Title as a means of securing ongoing royalty monies as compensation (Interview 4 Confidential 2006; Interview 5 Confidential 2006; Interview 10 Public 2006). This scenario of ancient traditions and modernity situates

Adnyamathanha peoples and heritage values at the interface of change in a complex and diverse manner that is difficult if not impossible to recognise within the colonial governance structures in Australia. Information related directly to the Beverley case (see §6) helps to further unravel the interface between ancient practices and beliefs and contemporary attempts at 'best practice' within the mining industry.

5.1.3 Development of Contemporary Adnyamathanha Protocols

Yuras wishing to engage in heritage protection and resources management have strong views on the role of Elders and young people in the community. Discussion with one Yura (Marsh, pers. comm. 2002a) reveals how Adnyamathanha 'business' or internal governance took place prior to colonisation. This emerged from an interview when the participant was asked to talk about the best way for Yuras to make decisions about culture and heritage. The immediate response from this Elder was 'Go back to the old times, talk to the old people because it was broken up into three, and should be only the three to make decisions' and 'It's knowing your place…' (Marsh, pers. comm. 2002b). This participant was sharing detailed experiential knowledge of earlier Adnyamathanha cultural practices where Yuras lived in three separate 'anggu' sites also known as 'camps' and Yuras were governed according to the internal leadership in each place. Elders who were raised in these circumstances feel this experience taught them a great deal about traditional life, and today they express this code of living as Anggumathanha Law (Marsh, pers. comm. 2002a; Marsh, pers. comm. 2002b). One of the most senior women, Mrs Gertie Johnson who has now passed away, formed the breakaway Elders group in 2003 stated: 'if people don't follow the right rule, the kids won't have a place' (Adnyamathanha Elders Group 2003, p. 1) and 'They lose their Adnyamathanha Family identity … they should not get Native Title Royalty Money!' (Adnyamathanha Elders Group 2003, p. 3) Another female Elder stated 'It's up to the parents to teach the Yura Moiety' (Adnyamathanha Elders Group 2003, p. 1) and one male Elder stated '…we must put all the old families together in order to follow the line' (Adnyamathanha Elders Group 2003, p. 2). These voices offer unique understandings of the ways in which Yura identity is constructed and highlight concerns that old people have regarding recognition of cultural heritage under Native Title.

The evolving social positioning of Adnyamathanha emerges as a strong point of discussion with all interview participants; Adnyamathanha perspectives are the focus here. Wilton and Mahomed (Interview 10 Public 2006; Interview 15 Public 2006) referred to previous attempts

made by government and industry to develop the Beverley area through sharing their frustrations about the level of control Yuras now have over land use and decision-making, compared to the way people had their say in the past. Under traditional Anggumathanha Law, formally sanctioned male leaders known as Wilyaru worked closely with a cohort of other leaders, both men and women. Wilyaru held powerful positions with a high level of responsibility in caring for Yuras and Yarta. The current importance of the Wilyaru tradition stems from an ancient and widespread ceremonial belief about social status and governance that dominated Aboriginal Australia and was intricately linked to trade, particularly throughout south-west Queensland and northern South Australia (McCarthy 1939).

Comments from Adnyamathanha participants about the disrespect shown toward Wilyaru include: 'Wilyaru would have a lot to say about that, not everyone having a say' (Interview 10 Public 2006) and '…after they (Wilyaru) all passed away there was nothing … everything fallen to pieces' (Interview 15 Public 2006). Both women expressed concern that members of the community with a much more junior level of social status (Vardnapa and Murlkupa) than that of Wilyaru were playing key roles in decisions made about land use and about the effects of this on land and people. Mahomed says '…nowadays Vardnapa and Murlkupa and all that is giving it away' (Interview 10 Public 2006) indicating that current practices and meeting protocols effectively betray traditional responsibilities. There is agreement from the other interviewee Martha Wilton, who says 'They just coming in and giving things away … people fighting now' (Interview 15 Public 2006) suggesting concerns over the conflicts and tensions created by current decision-making processes. These participants expressed an urgent need for an orderly and respectful way of speaking and the importance of knowing one's place.

Some of the problems associated with trying to accommodate old and new ways of discussing things and reaching a decision were mentioned by other younger Adnyamathanha (Vicki Wilton cited in Catchlove 2005; Interview 4 Confidential 2006). One person claims: 'It was very difficult because of the way some individuals were operating because there was often confusion about who had the right to speak on things' and 'Often it came down to using our Adnyamathanha way of working when it suited people, then using a Committee structure at other times' (Interview 4 Confidential 2006). Another Adnyamathanha person claims 'When you stand up for you country, they (other Yuras) put you down' (Vicki Wilton cited in Catchlove 2005). These concerns were raised specifically in regard to the Beverley case, but highlight a number of broader issues, including who has the right to disturb land and whose responsibility it is to 'stand up for your country' or look after land. The internal conflict and

oppression suggests a disturbing pattern and frustrating environment for Yuras who are highly aware of the link between effective heritage protection and a strong decision-making process. This issue of not having a clearly defined or agreed way to do business arose in all discussions held with interview participants, including those non-Indigenous players who took part in interviews. The commitment toward getting the process right through acknowledging traditional as well as contemporary understandings of the significance of place continues to pose major challenges for Adnyamathanha participation.

Another key aspect of developing an appropriate way to do business relates to language used in discussions, visual presentations and written information. Evidence from interview data gathered in this thesis demonstrates a wide vocabulary of colloquial English and Yura Ngawarla interspersed with Udnyu Ngawarla, and Adnyamathanha expressions and ideas (Interview 1 Confidential 2005; Interview 2 Confidential 2005; Interview 4 Confidential 2006; Interview 5 Confidential 2006; Interview 6 Confidential 2006) and (Interview 13 Public 2004; Interview 9 Public 2006; Interview 10 Public 2006; Interview 15 Public 2006). Most participants raised the issue of effective cross-cultural communication as a complex issue and how it reduced the capacity for effective engagement. Comments made by one legal adviser who has worked for many years with Adnyamathanha acknowledged 'Understanding the significance of the moiety system, and where people belong according to this system also posed another level of complexity' (Interview 1 Confidential 2005); however, there was no reference in this interview regarding the use of Yura Ngawarla in meetings. Some participants spoke specifically about how unresolved language protocol and lack of cross-cultural understanding can create an air of mistrust and confusion in meetings which divides Elders and young people and weakens our bargaining power (Interview 13 Public 2004; Interview 5 Confidential 2006).

Barriers to culturally appropriate communication within community consultation and negotiations under Native Title have made participation particularly difficult for Elders. As a result many Elders decided in 2003 to start holding their own independent forums under the guise of Adnyamathanha Elders Anggumathanha Law (Interview 2 Confidential 2005). In these meetings, language use includes a combination of Yura Ngawarla and Udnyu Ngawarla, and Yuras are free to express themselves as they wish. Attendance at these meetings is by invitation only, and matters in these meetings are discussed in detail until everyone is clear on what is being talked about. The success of these Elders forums is recognised by one young person recently invited to an Elders meeting (Marsh, pers. commm. 2009f) who feels the

Elders have reason to feel proud of their achievements. The fact that meetings attract a consistent number of approximately 25 people regardless of how extreme the weather is on the day of the meeting, and the continued demand for meetings since the groups' inception, are two key indicators of their success. These meetings operate entirely on charitable donations of food, venue hire, and professional expertise from members of the group and their families.

5.1.4 Shifts in Heritage Protection and Cultural Resources Management

Mainstream knowledge and awareness of Indigenous heritage values emerged during an era of citizenship rights and human rights for Indigenous Australians. Within two years of Indigenous Australians receiving some form of citizenship status in 1967 and two decades of mining commencing at Leigh Creek coalfield there were signs of a major breakthrough in the general thinking of this period. Sparse written evidence (Coulthard and Hoskins 1969) of Adnyamathanha responses to colonisation in the Flinders Ranges region began to appear following the inception of pastoralism, mining, road works and township settlements.

Andy Coulthard and his family lived and worked in the Leigh Creek coalfield and township during the 1960s and 1970s and his status within Adnyamathanha society was that of a well respected Wilyaru man with high levels of recognition (Interview 10 Public 2006). Coulthard was probably the first Adnyamathanha person to be acknowledged as co-author in a Western style publication, via the *Origin* journal (Coulthard and Hoskins 1969), in which he articulated Adnyamathanha values and beliefs regarding custodianship of Adnyamathanha Yarta. Without being able to verify it personally with the now deceased Coulthard, but having spoken to one of his daughters in an interview (Interview 10 Public 2006), it is likely that the main purpose of this article was to respond to mining development and other impacts, particularly in the area fundamentally linked to Adnyamathanha spirituality around the Leigh Creek Coalfield.

The article by Adnyamathanha Elder Andy Coulthard signalled an emerging concept of Indigenous and non-Indigenous collaboration in ways culturally appropriate for Adnyamathanha for the specific purpose of site protection (Coulthard and Hoskins 1969). His views pre-date any legislative reforms to land use that offered recognition or protection to Indigenous peoples in South Australia and perhaps represent an emergent idea that Indigenous heritage was worthy of acknowledgement and protection.

The changes in transference of traditional knowledge signal another shift in post-contact Adnyamathanha culture. Historian Peggy Brock (Brock 1985) and linguist Dorothy Tunbridge (Tunbridge 1991) have produced work that testifies to the strong relationship between Adnyamathanha Yuras and Yarta and how this was impacted on by colonisation. According to their research, not only was the land exploited, but so too were the people. Concerns by Adnyamathanha (as cited in Tunbridge 1986) that cultural knowledge of Yarta has been repeatedly exploited by non-Indigenous profiteers have led to feelings of resentment and secrecy within Adnyamathanha culture, particularly in relation to the whereabouts of economically viable minerals, and the cultural knowledge sought after by academics and professionals in exchange for monetary reward. This suggests that one of the earliest impacts from mining on Adnyamathanha stems from how Yura's Muda became exploited and how the transference of traditional knowledge changed in response to this exploitation.

Often changes in culture are highlighted within a colonial framework as a means of invalidating claims of culturally significant sites (Fergie 1995; Coates 2004). This is based on an assumption that Indigenous culture is somehow fixed in time or static in content and knowledge that is not constructed according to these ideas can be dismissed. Adnyamathanha Yuras continue developing and reinforcing successive layers of Yura's Muda through physical, social, and economic associations, but as with other aspects of culture, the meanings of associations between Yuras and Yarta continue to evolve, partly as a response to the pressures of colonialist mining.

Evidence of Adnyamathanha efforts regarding heritage and resources management includes the establishment of a range of community-based, constituted organisations that act as representative bodies for Adnyamathanha heritage, such as the Yura Language Consultative Group (YLCG Inc 1993) and Flinders Ranges Aboriginal Heritage Consultative Committee (FRAHCC 1988). FRAHCC has not met as a committee for several years, possibly due to the rise of Native Title Governing Committee meetings and the lack of adequate resources. YLCG functions as a heritage organisation with a primary focus on language reclamation and related project work such as the Adnyamai Project (YLCG 2008). Possibly there is limited scope within these organisations to demonstrate initiative in terms of constructive community development due to lack of financial support and other resources.

Other initiatives include attempts by Adnyamathanha to formally engage with external non-Indigenous structures such as education, heritage protection, tourism and research, for the purpose of promoting Adnyamathanha heritage and caring for country (Mattingley and

Hampton 1988; Davies 1991; Education Department of South Australia 1992; Wood 1996; Davis 1997; FRAHCC 1998; Marsh 1998; Native Title Unit 1998; Ellis 1999; Combes 1999; Marsh 2003). However, these are not part of a coordinated approach. In each example there has been no literature produced that details ongoing evaluation or monitoring of any of these ventures, and there is an absence of any discussion on protocol, best practice, or other guiding principles.

Evidence of attempts by Adnyamathanha to engage at an internal level with the aim of specifically improving local governance and raising the level of accountability (FRAHCC 1991; Austin 2006) show that some Adnyamathanha have tried to raise concerns through formal channels, particularly in relation to the way that whitefella laws and rules are being used to frustrate and intimidate many Yuras. These historical attempts are potentially valuable learning experiences which reinforce that Yarta and Muda are very important to all Adnyamathanha. Greater examination of the capacity of Adnyamathanha to engage in heritage and resources management is undertaken later in this thesis (see §7 and §8).

5.1.5 Commercial Mining Operations in Adnyamathanha Yarta

The identification and use of mineral substances as trading resources played an important role in the lives of Flinders Ranges Indigenous peoples and neighbouring groups prior to invasion of the land and colonisation of the people and resources (Curr 1886). Mineral exploration and the commencement of commercial mining is now a part of colonial contact in the northern Flinders Ranges (Brock 1985). The wealth of minerals located in Adnyamathanha Yarta and the changes in exploration and mining techniques suggests that mineral exploration, mining, infrastructure, and rehabilitation will be an ongoing issue for Yuras to have to contend with. The commercial mining sequence poses as an important signpost in this thesis because exploration and mining contribute significantly to the way in which lands rich in mineral and cultural resources are perceived and governed.

Mining operations include uranium and radium deposits which were mined between 1920s and 1960s at a location known as Mount Painter, though not as part of a commercial operation (Mutton 1998). The Western scientific discovery of uranium ore at the Beverley Uranium Mine site occurred in 1969, but did not lead to a commercial operation until 1999 (Uranium Information Centre 2007). The Leigh Creek coalfield and the Oraparinna barites mine are the longest continuing commercial mining operations, dating back to the mid-1900s, with the coal

deposit noted as being commonly regarded as linked to a major cultural Dreaming trail highly significant to Adnyamathanha (Aboriginal Heritage Unit, Wilton et al. 1980).

Mineral exploration in Adnyamathanha Yarta during the past decade has led to further scientific discovery of a wide range of minerals, including significant amounts of uranium ore, situated in the wider Flinders and Far North of South Australia (Heathgate Resources Pty Ltd 1998a). A key issue relating to the mining sequence was raised by one interview participant who has played a leading role in Adnyamathanha business relating to heritage protection and resources management. This person claims:

> 'Mining companies are only there for a while and then they are gone, but us Yuras are there forever. That gets forgotten when damage and disturbance is done to the land. You only have to look at Leigh Creek (open cut coalfield). Will that place ever be cleaned up properly? It's the same with Beverley; after they are gone we are left with the damage' (Interview 4 Confidential 2006).

These concerns highlight the Adnyamathanha sense of loss through destruction of places of cultural significance in the vicinity of the Leigh Creek coalfield and the increasing scale of the coal mine over the past 30 years. On a global scale, Indigenous peoples have been ravaged by the long term consequences of mining (Coombs, McCann H et al. 1989; Coates 2004) and the 'aggressively paternalistic hand' of governments (Coates 2004, p. 226). A sense of cynicism within Adnyamathanha is therefore understandable about the priorities of the mining industry and our government bodies, and the 'forgotten' damage to land and peoples that eventuate through mining.

Cross-cultural understanding among players associated with mining interests in Adnyamathanha Yarta is an area that remains poorly developed. Some interview participants claimed that Adnyamathanha culture and Anggumathanha Law are a source of confusion and frustration or treated as little more than a curiosity to legal advisors and mining company negotiators (Interview 1 Confidential 2005; Interview 6 Confidential 2006). One participant (Interview 1 Confidential 2005), who plays a professional role in Adnyamathanha Native Title affairs, spoke of severe difficulties in effective cross cultural communication. This person linked these 'difficulties' to what they see as a transitional state in Adnyamathanha society, somewhere between 'tribal' and 'urban', and also spoke of the steep learning curve on their part as a non-Indigenous person. There is no evidence to suggest that ATLA, the governing body for Adnyamathanha, have hosted or instigated any cultural awareness training either internally or for professional outsiders working in areas related to land use.

Engagement with the local people does not appear to be regarded as significant for mining proponents operating in Adnyamathanha Yarta.

The Uranium One or Heathgate Resources websites show no evidence suggesting that these mining companies have sought to develop a Charter or Code of Conduct based on best practice standards in regard to Indigenous engagement. Uranium One website (Uranium One 2006) houses a brief set of six values including one point on cultural respect for people in countries where they operate, but there is nothing that specifically relates to Indigenous peoples or lands. Heathgate Resources website (Heathgate Resources Pty Ltd 2007) houses one brief section on 'Aboriginal Relations' which does not include any reference to cultural awareness training, a Charter or Code of Conduct for Indigenous Engagement, or any other guiding principles that have been used to date during exploration or mining. The new owners of the Leigh Creek Coalfield (Babcock & Brown Power 2006) list the Leigh Creek Coalfield as an asset on their website; however, no corporate guidelines are available regarding Indigenous engagement. The Leigh Creek Guide to Flinders Ranges and Outback website (LCVIC 2000) provides scant information of the cultural significance of the coal under a section titled 'Leigh Creek History: Legend of Yulu's Coal', an Adnyamathanha story adapted from a version published by CC Poole in 1946. Lack of corporate guidelines suggests that guidance on Indigenous engagement is absent within mining industry protocols in Adnyamathanha Yarta; possibly this trend is widespread.

Sectors with a potential to play a greater liaising role may include younger Adnyamathanha with a cross-cultural upbringing, and professionals who have been fully briefed on Indigenous protocol, such as lawyers, who are willing to function according to the priorities set by Indigenous clients. In cases such as the Honeymoon Uranium Mine operated by Uranium One, formerly known as Southern Cross Resources (Southern Cross Resources Australia Pty Ltd 2000), and in the Beverley case (Heathgate Resources Pty Ltd 2007), Aboriginal Liaison Officers have been employed. Heathgate Resources have also run cultural awareness training programs for on-site workers, and cultural activities during NAIDOC Week have been hosted by Heathgate Resources. Based on the comments made by all of the interview participants, there is much room for improvement.

5.1.6 Conclusion

As with other Indigenous peoples and cultures affected by colonisation, Adnyamathanha continue to feel a strong sense of connection and responsibility toward caring for our lands. The impacts of Western institutional requirements developed by commercially driven interest groups and individuals pose new challenges that are difficult to address. The current legislation applicable to Indigenous cultural resources protection offers limited scope for empowerment of Indigenous players, and government programs that could provide resources to invigorate community-based development in the area of capacity building and codes of conduct are not being fully utilised.

International pressure to improve community relations in mineral exploration and mining is prompting minimal response within the mining industry regarding Indigenous engagement. Whilst the mining industry at a national level has developed codes of practice and professional protocols there is no evidence of mining proponents systematically implementing codes of conduct based on best practice for community or Indigenous engagement. The development or use of guidelines for Indigenous engagement and best practice does not currently feature as a key area for any of the main players, including mining companies, Indigenous peak bodies, government departments and Ministers.

5.2 Key Issues Surrounding Legislation, Policies and Best Practice in Adnyamathanha Yarta: the Overlap between Traditional and Contemporary

5.2.1. Introduction

Adnyamathanha are in a transitional stage of politics where cross cultural understanding is minimised by current policies and practices. In order that Yuras are able to maintain cultural connections with land and resources, intermediary efforts are required and should be sustained from a broad sector in order to develop equitable bargaining tools and achieve long term outcomes that respect the custodians of Anggumathanha Law and protect Adnyamathanha Yarta. The Western legal system and Anggumathanha Law provides an institutional foundation that could be useful in developing a contemporary vehicle for land use and management; however, Yuras need to seize opportunities to strengthen our understanding of cultural rights and obligations as well as focussing on what Western legislation and government policy may offer us. To gain maximum security for our cultural heritage and resources, Traditional Owners must engage effectively with both Yura and Udnyu governance so that we can be effective custodians of Adnyamathanha Yarta.

5.2.2 Impacts of Legislative Reform for Adnyamathanha Yuras and Yarta

Legislative change to Indigenous heritage governance has occurred rapidly over the past 20 years. Inception of the *Native Title Act* (Commonwealth of Australia 1993) has had an immediate effect on Adnyamathanha due to the lodgement of a series of Native Title claims in the early 1990s, which became part of an amalgamated claim that was registered in 1999 (Strelein 2006). This created a major change regarding utilisation of the *Aboriginal Heritage Act* as the most common legislation for heritage protection and cultural resources management in South Australia. Greater understanding of the limited functionality of heritage legislation, the role of the State Heritage Committee, and the capacity within community-based NGOs, is critical to exploring the objectives of this thesis particularly in identifying opportunities and impediments to Adnyamathanha participation.

Adnyamathanha claims under Native Title pre-dated the Native Title Amendment Act (1998) that came into operation on 30 September 1999 (Keon-Cohen 2001, pp. xl-xli). Under the 1993 Act there were no resources provided for Representative Bodies as named in the legislation, which resulted in an unrepresentative scheme. Under resourcing for

Representative Bodies was consistently raised by all interest groups as a serious flaw in the policies associated with Native Title legislation (Keon-Cohen 2001); hence the introduction of the Amendment Act. This policy flaw was seen as a '…deliberate ploy by the Federal government to ensure that the entire native title scheme is rendered 'unworkable' (Keon-Cohen 2001, p. xli).

Adnyamathanha NGOs with a focus on land and cultural heritage have always struggled to develop effective protocols in the absence of adequate funds and resources, and Indigenous input depends heavily on voluntary efforts and goodwill. One community-based body, Flinders Ranges Aboriginal Heritage Consultative Committee Incorporated (FRAHCC 1988), is the sole organisation primarily set up to facilitate consultation regarding site protection with 'traditional owners' according to the South Australian *Aboriginal Heritage Act* (SA Government 1988). Yura Language Consultative Group is the only other organisation formally recognised with a role in heritage protection according to ICHM protocol based on South Australian heritage legislation. Both organisations are limited to Adnyamathanha membership. FRAHCC and YLCG are both incorporated bodies yet neither currently receive any financial or other type of support from government. According to some Yuras (Marsh, Marsh, pers. comm. 2008bb), YLCG is the only organisation that maintains regular contact with the government body Aboriginal Affairs and Reconciliation Division (AARD). AARD is cited as '…South Australia's lead agency on Aboriginal affairs…' (AARD 2003) yet it provides no financial assistance to these organisations.

As heritage organisations established to facilitate consultation under the *Aboriginal Heritage Act*, it might be assumed that members of these groups would have a strong definition of community consultation. Exploration reveals that both organisations lack clear guidelines relating to their expectations for 'consultation' and there is no definition embedded in their Constitution (FRAHCC 1988; YLCG Inc 1993). Whilst this does not suggest that none exists, the lack of specific protocols regarding their core business is problematic in that there are no clear guidelines for the group about what its core business is made up of, and no guidelines for outside organisations who may wish to engage with either group. The regularity of constituted meetings is another area relevant to effective functionality. There have been no minuted meetings held by FRAHCC and no public notice of upcoming AGMs or Committee meetings for at least 10 years, and YLCG meetings which are held on a regular basis have been funded by external funding received for projects such as Adnyamai.

A brief examination of the political heritage protection environment on a broader scale is another area worthy of mention. Over the past decade there has been a series of unsuccessful collaborative attempts by government and industry to formally amend the South Australian *Aboriginal Heritage Act,* and this Act is still under review in 2010 (AARD 2003), with no discussion or engagement through local heritage bodies such as FRAHCC or YLCG. To date there have been no formally sanctioned changes to the original Act although there has been a series of consultative workshops held in some regional centres in South Australia. Changes to Ministerial policy include the recent appointment of an inaugural Commissioner for Aboriginal Engagement, who is yet to establish a relationship with bodies such as FRAHCC and YLCG.

The following is an example of how the legislation lacks support in its application for groups such as Adnyamathanha. A centralised database known as the Aboriginal Sites Register is a key requirement of the *Aboriginal Heritage Act*. First, the number of Adnyamathanha sites registered (SA Government 2001) is a very small portion of the total volume of Adnyamathanha sites that potentially could be registered; second, there is limited capacity to continue adding to and updating this data base; third, there are no public guidelines regarding the management of the Aboriginal Site Register; fourth, the main purpose of this database is controversial. One Indigenous heritage organisation (Agius 2005) claims that government players place an interpretation on this Act that favours development and limits community participation at the expense of heritage protection. This claim is reinforced by others (Fergie 1995; Trevorrow and Trevorrow 2001) who argue that the case of the approval to build the Hindmarsh Island Bridge shows the Site Register and the legislation are being manipulated in favour of development. Cross reference with the data held on the Aboriginal Sites Register is regarded as a key step in the EIA process where Indigenous heritage may be an issue (Department of Environment Heritage and Aboriginal Affairs 1998; Planning SA 2001); however, there are no specific guidelines for making this determination other than the Ministerial authority written into Aboriginal Heritage legislation. This suggests the Aboriginal Sites Register is entirely controlled by the South Australian government and there is a current lack of policy and practical guidelines about how this Register can and should be utilised and expanded according to community wishes. This situation raises questions about the effectiveness of implementing and evaluating heritage protection under existing regulations.

The recording of sites for the purpose of adding to the Sites Register, which Planning SA then refer as a key part of the EIA process, raises issues regarding the approach to heritage protection. The example of only a limited number of Adnyamathanha sites housed on the register opens up a series of questions about whether or not it is appropriate for communities to continue divulging their knowledge to government departments. It also raises the question of how safely this data is stored, who has access to database information, and how sites NOT listed on the register are equally protected under Aboriginal Heritage legislation. Although the legislation stipulates the Sites Register is not to be regarded as a complete collection of data, in practice there are limited independent resources available to investigate beyond the scope of this database. The burden of responsibility to provide a complete set of data then rests with Indigenous NGOs, which have very limited resources, and have to negotiate with mining companies with much larger resources.

Arguably, the existing *Aboriginal Heritage Act* in its original form, and the lack of efficiency in developing new policies or amending the legislation, suggests a lack of interest by government in acknowledging or accommodating the needs of Aboriginal Traditional Owners, and lacks the ability to correlate with new legislation such as the *Native Title Act*. Administration across these two pieces of legislation has been largely void of any formal policy making, and the absence of collaboration at a government level reflects non-cohesion despite a period of more than 10 years since the two Acts have been simultaneously operating.

5.2.3 The Face of Adnyamathanha Politics under Native Title Legislation

Native Title legislation brought a new layer of governance for Adnyamathanha peoples and lands in the mid-1990s. In 1995 under the original Federal *Native Title Act* (Commonwealth of Australia 1993) there were several claims being processed (Native Title Unit 1998). Two Adnyamathanha individuals sought recognition as Native Title Named Applicants by applying to the Federal courts to register Adnyamathanha Native Title Claims. These were followed by a third overlapping claim over some parts of Adnyamathanha Yarta known as the Kuyani Native Title Claim. Nationally, concerns were raised by the emerging key players in Native Title about a lack of resources for community engagement and functionality of Representative Bodies (Keon-Cohen 2001), in accordance with Section 203B of the *Native Title Act* (Commonwealth of Australia 1993); many felt this was a deliberate ploy within the Howard government to bring about failure of the Native Title process. On the ground implications for this situation include applications that could not demonstrate community representation. This new regime introduced by government meant that despite limited community consultation and no independently funded resources to facilitate informed decision-making, Native Title Named Applicants could be legally identified as key representatives without proper sanctioning at the community level. This gave commercial developers such as mining companies the legal power to approach Native Title Named Applicants in order to negotiate royalty compensation for damage or destruction to heritage sites via Exploration and Mining Agreements on behalf of entire groups such as Adnyamathanha. Neither the proponent nor the Named Applicant was under any legal obligation to ensure Agreements were truly representative of community-wide needs and wishes.

In March 1997, following a period of confusion within Adnyamathanha as to the role of Native Title Named Applicants, an overarching local governance body known as the Adnyamathanha Native Title Management Committee (ANTMC) was established. The purpose was to facilitate community input to the native title process and to address areas of discontent, particularly in relation to the lack of clarity surrounding community representation. As a further reactive measure to Adnyamathanha concerns (Native Title Unit 1998), the establishment of a newsletter and management committee evolved in an environment clearly charged with disunity, misinformation, and feelings of powerlessness among Adnyamathanha. Parry Agius (Native Title Unit 1998), then Manager of the Native

Title Unit and Executive Officer of ALRM Representative Body, urged the Adnyamathanha community to '…get together to act and speak with one strong and united voice, which will force other key stakeholders to talk to all Adnyamathanha people'. At the ATLA Annual General Meeting, held in Hawker on 17th January 2009 (ATLA 2009), the Adnyamathanha community was notified that a financial account had been recently established to manage the inaugural allocation of government funds being transferred from the SANTS (South Australian Representative Body) to facilitate meetings. The gap of more than 10 years between the initial Claims being lodged and the availability of operational resources is arguably a disgraceful oversight by government that has resulted in inequitable circumstances which Adnyamathanha have had to shoulder.

As of 1999, the Native Title Claim known as 'Adnyamathanha People versus South Australia' became a registered case (Strelein 2006), and a series of final court hearings have resulted in a legal outcome. A Consent Determination involving agreement from all interest groups has now been officially reached for a portion of the Adnyamathanha Claim. However, as one author claims (Strelein 2006) the process of determination will not provide any closure for interest groups and players, but will instead continue to raise a series of ongoing issues as highlighted by previous experiences of Native Title (see Chapter 12 The Jurisprudence of Native Title: 'recognition' and 'protection' in Strelein 2006). Of particular importance to Adnyamathanha may be the 'role for law and custom' and the 'maintenance of connection' (Strelein 2006 pp. 133-134) which focuse on the historical impacts of colonisation on Indigenous Australians and the ongoing colonial constructions of Aboriginality. Adnyamathanha Elders have consistently raised concerns that traditional customs are not being respected (Johnson 2000a; Johnson 2000b; Interview 2 Confidential 2005), and this has become a major concern not only for outsiders wishing to negotiate with Adnyamathanha, but also in relation to Adnyamathanha internal affairs, particularly Native Title administration.

Mrs Gertrude Johnson was an Elder and Native Title Named Applicant who campaigned tirelessly for Adnyamathanha to show greater cultural strength until her recent passing. She urged Adnyamathanha Yuras to 'follow the Adnyamathanha Mothers' Rule of Ararru and Mathari or lose their identity' and 'if the Government won't listen our people should walk away from Native Title' (pers comm 2004b). As noted previously, Ararru and Mathari are the two societal names for Ngapi Ngapi (also referred to as Ngangginyi Wiri Wiri) or family that prescribe a person's place and symbolic connections to the environment from birth, sometimes referred to as 'moieties' within Adnyamathanha kinship (Brock 1985; Tunbridge

1986; Enice Marsh JP 2003; pers comm 2004b). Some Yuras also use 'north wind' and 'south wind' instead of 'Ararru' and 'Mathari' (pers comm 2004b) to signal their cultural recognition of this ancient Adnyamathanha custom that connects land and people in an abstract manner through totemic associations. Yuras will also commonly use this reference as a means of showing solidarity with others in the same kin group as them and as a sign of respect for members of the other group. This practice of an almost unconscious referencing in the everyday lives of Yuras suggests a fine distinction between 'abstract' and 'literal' in Adnyamathanha culture. Knowledge of placement and social belonging through Ararru and Mathari has guided Yuras in a practical and philosophical way throughout our lives for many generations. It is therefore appropriate that Ngangginyi Wiri Wiri and Ngapi Ngapi continue to be recognised as a way of understanding and thinking about our spiritual connection to each other and how we as custodians take responsibility in caring for the land through our totemic associations.

In 2003, Mrs Johnson wrote to the National Native Title Tribunal (the Tribunal) to raise Elders' concerns at being 'shoved aside and abused' (Johnson, corresp. 2003a), and referred to traditional Adnyamathanha ways of identifying who has the authority to speak on land. The meaning of 'traditional Adnyamathanha ways' can be taken in this instance to refer to Anggumathanha Law made up of the beliefs and customs handed on for generations, such as Ngapi Ngapi. There was no reply from the Tribunal, however, in December 2003 a letter was sent from ALRM to the Tribunal regarding Certification of Adnyamathanha Native Title Claims 1 and 2. It was claimed in this letter that on the basis of two ATLA meetings held on 21st and 22nd July 2003 'there was no traditional process for making such decisions for the purposes of s251B(a) of the NTA'. This evidence suggests that the concerns raised by Mrs Johnson and other Adnyamathanha Elders were undermined through Native Title during a critical period that was to set precedents within Native Title and also within industry in regard to engagement protocols.

By June 2003, the inaugural Elders Meeting held in Port Augusta (Adnyamathanha Elders Group 2003) was the first step toward an independent and safe meeting place for Adnyamathanha Elders who believe and respect in Anggumathanha Law including the Mothers' Rule of Ararru and Mathari. Mrs Johnson's fortitude and ongoing support from other Elders led to the establishment of the Anggumathanha Law Adnyamathanha Elders group in 2003, which has developed into a strong political entity over the past six years. At the most recent ATLA meeting held in Hawker in January 2009, many Elders, including

Named Applicants (Marsh, pers. comm. 2009a), spoke of their concerns individually especially their frustration at not being heard at ATLA meetings. Many urged for another Elders meeting to try and address concerns. One of the key concerns was the lack of ATLA or Native Title Named Applicant leadership regarding engagement in the Beverley Four Mile Expansion Proposal.

Native Title developments for Adnyamathanha are likely to have impacted on the entire group's identity and cultural survival through challenging our cultural identity as a group of people as well as the internal strengths and longevity of our Native Title Claim. Within the broader context of continuing to deal with cultural heritage and resources management in an efficient and effective manner, Adnyamathanha Yuras and Yarta face many challenges, including trying to find ways of doing business that prioritise Adnyamathanha beliefs and customs and do not compromise our traditional ways of doing business.

The introduction of Native Title added another layer of colonial complexity to the way that cultural resources are managed in Adnyamathanha Yarta because of the utilisation of a relatively new and rapidly changing legal framework, as well as mass confusion and uncertainty over what Native Title legislation was likely to deliver to the various players. At the time this move not only impacted directly on the way that Adnyamathanha were doing business, but also on the focus of what business was being addressed and where the priorities rested. It also began to have a general influence over South Australian Indigenous land rights.

5.2.4 Protocols that Work Well

Many people who have repeatedly witnessed injustices relating to land use and ways to 'do business' have difficulty in visualising or articulating concepts of consultation and negotiation that are fair and respectful or positive. Comments made in interviews suggest that current practices fail to accommodate Indigenous views in an equitable manner which may stem from historic issues pertinent to Adnyamathanha leadership and identity as well as factors unique to the Beverley case. For many Adnyamathanha Yuras the idea of recognition and respect for sub-groups such as Elders and youth is fundamental to any 'best practice' working protocol (Adnyamathanha Elder 2002; Interview 13 Public 2004; Interview 5 Confidential 2006); however, 'best practice' remains in an idealised state in that a set of protocols has never been purposely developed and trialled. The inclusion of a 'rule of thumb' general statement in the ATLA Constitution which refers to the status of Elders as being defined by a person's '…age,

experience and/or spiritual or cultural knowledge' (ATLA 2001, p. 2), is a far cry from a sensitively conducted exercise to consult with Yuras for the purpose of developing consultation and engagement protocols. There is little to compare with other efforts such as the Four Nations document discussed later in this section (Four Nations NRM Governance Group 2007). For many Adnyamathanha, the knowledge of Muda and experiences of living according to Anggumathanha Law are sacred and must not be dismissed or undermined through contemporary laws or practices. These comments highlight the strong sense of cultural connection but the lack of cohesiveness in thinking about, identifying and implementing appropriate and adequate protocols for contemporary governance.

Indigenous groups (Four Nations NRM Governance Group 2007) from the AMLR (Adelaide and Mount Lofty Ranges) region recognise the need to properly respect Elders, and have sought to define the term 'Elders' and to write this definition into a strategy for consultation and engagement. The Four Nations collective have each devised a set of working principles for engagement within natural resources management which demonstrates their commitment to cooperation and collaboration for the purpose of heritage protection. Collectively, they have forged a new set of principles for 'best practice' in their region. The concept of 'best practice' is raised here to frame strategies perceived to have worked well for Adnyamathanha and other groups in the past in regard to cultural resources management and heritage protection, and to offer some vision of how to improve practices.

What follows are some examples where Adnyamathanha have interacted successfully in a respectful and rewarding environment of heritage protection. This includes individual cooperative efforts with non-Indigenous persons who have successfully connected with the community and helped record important information in a way that directly acknowledges the concerns of Adnyamathanha (Clarke, Stringer et al. 1998; Catchlove 2005). Working together on the basis of trust has been an empowering step in 'being heard' by the wider Australian public, something that was sanctioned many years ago by Andy Coulthard (Coulthard and Hoskins 1969). Another example is the collaborative effort between FRAHCC and the government agency for mining (Mines and Energy South Australia 1997), which attempted to present Indigenous perspectives in government dialogue on geology. Development of a positive working relationship through cultural interface with Mines and Energy, and a strong voluntary commitment from FRAHCC members, resulted in a relationship where both interest groups directly benefited. Further examples include Adnyamathanha organisation YLCG seeking and winning Commonwealth government funds

for community-driven project work on heritage protection (YLCG Inc 2005). The AdnyaMai Project provided mobility for Elders to visit old camp sites, practice traditional law, and interact safely and positively with other Elders that they grew up with. This project was fully acquitted in 2008 with a legacy of booklets, reports, photographs, language data, an AdnyaMai website (YLCG 2008), and an ongoing network of support people. These examples suggest that appropriate ways of working for Adnyamathanha are in existence in pockets, but these are sporadic, not widely recognised, and not sanctioned in a Western style of linking practices to organisational policy. Whilst this maintains a level of flexibility and spontaneity, it also maintains a level of vulnerability when dealing with industries and individuals that place profit before people.

5.2.5 Limited Cohesiveness in Local Governance Practices

It is arguable that a lack of cohesion characterises the way in which cultural resources management has been addressed generally in relation to Adnyamathanha Yarta. Observational data gathered at meetings and in public places (Marsh, pers. commm. 2005a; Marsh, pers. commm. 2005d; Marsh, pers. commm. 2005e; Marsh, pers. commm. 2005f) give some insight to how Adnyamathanha Yuras participate in 'doing business', which offers reflective examination of the level of cohesion in meetings that have emerged since inception of Native Title and the Beverley EIA. National Parks Joint Management is one example of how local governance could be setting examples of best practice. At one joint management meeting (Marsh, pers. commm. 2005c) of several hours in length, I observed what seemed to me to be the use of dismissive language and a lack of commitment from Parks employees. Yura Board members were showing very minimal input and interest in the general business being discussed. That was, until an Adnyamathanha Elder raised discussion on mining issues, which brought a response from one National Parks employee who commented 'You will never stop mining' (Marsh, pers. commm. 2005c). The level of interest from other Adnyamathanha participants at this meeting changed dramatically whereby everyone tried to secure some sense of commitment from National Parks to stop mining in the future. I believe what I observed was an attempt from Yura Board members to engage National Parks as a government agency in a way that might provide support to the Adnyamathanha community. Discussion in this case was not specifically raised in terms of the existing ILUA between Adnyamathanha Yuras and National Parks, which may have brought a more engaging response from Parks employees. However, I felt the practice of engagement through

inflammatory or dismissive comments limited the scope for relationship building and halted any further discussion that might benefit Adnyamathanha.

Observations of meeting styles show an interesting part of Adnyamathanha experiences in regard to cultural heritage management, particularly when important issues are discussed and decisions are made. Utilising a joint management forum to raise discussion on heritage protection and mining suggests there is need within the community for greater government inter-agency involvement on heritage protection, and illustrates a level of desperation from some Adnyamathanha seeking sympathetic intervention. Observations reveal a style of meeting where an Elder that is well known and respected by all meeting participants is seen as the authoritative instigator behind discussion on an important issue. I have also witnessed this same Elder at ATLA meetings (Marsh, pers. commm. 2005f) become angry and frustrated and effectively silenced by other younger Yuras. This person responded by refusing to participate in voting and voicing concerns to other people during breaks that he felt as though Adnyamathanha Native Title was doing a disservice to heritage protection. The use of Corporation-style majority rule voting, and the frequency of abstinence voting, is a common practice at ATLA meetings, and the level is often as high as 30% of those present. However, the high level of abstinence voting has not been openly discussed or resolved at ATLA meetings. Elders have sought to resolve issues such as this through establishing an independent Elders forum where discussion and decision-making is done according to practices associated with and sanctioned through Anggumathanha Law.

5.2.6 Conclusion

Oral accounts and historical literature highlight several important aspects in this case study. First, Adnyamathanha knowledge of mineral deposits and a spiritual attachment between people and the land are based on intimate associations developed over countless generations. This acknowledges Adnyamathanha as having ongoing and long standing interests in resource arrangements in the region. Second, the patterns of colonisation associated with land use, planning, and recognition of rights over commercial mineral extractions in the Flinders Ranges has dramatically altered resources management in a way that largely excludes Adnyamathanha. Third, an existing gap in current literature amidst the growing pressures on Adnyamathanha to participate in cultural resources management signals the possibility of Indigenous governance being conducted in an unethical and inequitable environment. Based

on these aspects it can be argued that community based research working with Adnyamathanha for the direct benefit of Adnyamathanha is urgently needed.

Adnyamathanha participation in land use management has dramatically changed over the past decade due to the rapidly evolving legal landscape both within South Australia and at a national level. As with many Indigenous interest groups and players, Adnyamathanha face a multitude of challenges both internally and in dealing with external forces. The historical failures and limitations of Aboriginal Heritage legislation in providing adequate protection for and recognition of Indigenous heritage, in the broad context of cultural resources management, remains part of a colonial legacy yet to be fully understood and resolved. The current climate of uncertainty surrounding Native Title legislation adds to an increasingly challenging and legalised framework of cultural resources management, which may prove to offer limited benefits for Indigenous peoples.

The ongoing dismissal of Indigenous values and customs in this chapter demonstrates a link between contemporary land management and land use and a pattern of colonialism within mining. This perpetuation of colonialism reveals an overwhelming burden of responsibility held by Traditional Owners or Custodians across Indigenous Australia to continue in their efforts to maintain an internal strength, and highlights a practice of resilience amongst Elders. Greater recognition of cultural protocols by government and commercial developers, and greater acceptance of cultural responsibilities by Indigenous players, emerges as key challenges within land use and heritage protection. Each has the potential to build a governance platform respectful of Indigenous identities such as Adnyamathanha, and to properly validate the status and role of Traditional Owners during representative negotiations.

Section Three: CASE DESCRIPTION

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Chapter 6. Case Description of Adnyamathanha Cultural Resources Management and Beverley Project Impact Assessment

This chapter defines the scope of this case study through the experiences of Adnyamathanha involvement in local governance of heritage and cultural resources, commercial exploitation at the Beverley Mine, and the interactions between proponent, government, Indigenous and environmental players. The purpose is to highlight Adnyamathanha experiences and the uniqueness of Indigenous perspectives, and to develop greater understanding of the nuances within this case study that characterised Adnyamathanha priorities in relation to the Beverley Mine site. Significant aspects, such as equitable governance and initiatives shown by community regarding land management within Adnyamathanha, are linked to best practices for Indigenous engagement nationally and internationally. This linking process situates the Beverley EIA within a wider contemporary setting.

Part one of this chapter sets the parameters of the Beverley case by identifying the key players involved, the geographical features of the case, and the chronological context of the EIA for Beverley Mine. Part two of this chapter captures the experiences and perceptions of Adnyamathanha Yuras regarding community engagement, and identifies Adnyamathanha priorities for heritage protection and decision-making. Part three explores engagement by government and industry with Adnyamathanha Yuras. The primarily descriptive nature of chapter six leads into Section Four which offers a critical, evaluative and reflective appraisal of the Beverley case.

6.1 Case Study Definitions and Parameters

6.1.1 Introduction

It is important to refer back to the scope of this case study and to highlight its focal point and purposes. The key foci include exploration of the experiences and perceptions of Adnyamathanha regarding cultural resources management and mining proposals in Adnyamathanha Yarta (northern Flinders Ranges region of South Australia). This is done through highlighting the significance of the Beverley proposal as the first major development in which Adnyamathanha rights under the Native Title legislation were tested, and through developing greater understanding of the capacity within Adnyamathanha organisations and the extent to which Yuras can participate effectively in consultation and negotiation processes in a viable and sustainable manner.

Many places hold special importance for Adnyamathanha Elders, young people, women, children, men, and initiated persons. Some places hold special value for family clusters in regard to heritage protection and cultural resources management because of the existence of ongoing associations between land and people. This project does not relate specifically to a single sub-group such as women, but provides an appraisal of values and experiences as shared by the Adnyamathanha participants in this case study; their perspectives and perceptions realistically relate to a range of sub-groups and their experiences are often shared. Some people talked specifically of the Beverley case whilst others spoke more generally about heritage protection. The involvement and views of non-Indigenous participants regarding the actual events that took place during the Beverley EIA also feature in this case study. The views of all participants are considered crucial in making recommendations for future directions in Adnyamathanha heritage protection and cultural resources management.

Some people reading this thesis may anticipate its focus being on Adnyamathanha community relations and the ongoing development of the Beverley Uranium Mine site, or the expansion of the nuclear industry, on Indigenous research and development, or Indigenous governance at the local or regional level. All of these are important aspects; however, the primary units of analysis are Adnyamathanha participation in cultural resources management, specifically in regard to heritage protection, and impact assessment for the proposed Beverley Uranium Mine. This chapter aims to capture a description of the perspectives and experiences of all players and interest groups regarding the Beverley case.

6.1.2 Key Interest Groups: Non-Government Organisations, Government Agencies and Corporate Bodies

The main players involved in the Beverley case are State and Federal government departments and Ministers involved in administering development regulations, environmental activist non-government organisations (Green NGOs) acting as environmental watchdogs for the general public, Indigenous NGOs representing the interests of Traditional Owners (TOs), Aboriginal heritage protection and native title and the mining proponent and corporate industry.

Government-based regulation in the Beverley case acted as one of the triggers for Indigenous engagement within the EIA process. There was one South Australian government agency instrumental in implementing impact assessment requirements, including seeking advice on Aboriginal site protection under the banner of 'social assessment', which covered both State and Federal Planning legislation. This agency was the Environmental Impact Assessment Branch within the South Australian Department of Transport, Housing and Urban Development. Government agency Mines and Energy South Australia and the then current Minister for Primary Industries Rob Kerin were responsible for administering the Mines and Energy Act of South Australia. Aboriginal engagement was required under the South Australian *Aboriginal Heritage Act* and Minister for Aboriginal Affairs (then current Minister Dorothy Kotz). The Division of State Aboriginal Affairs (DOSAA), now known as Aboriginal Affairs and Reconciliation Division, Department of Premier and Cabinet (AARD-DPC), was responsible for administering this process.

A key Indigenous NGO known as FRAHCC, established in 1988 (FRAHCC 1988), was the peak heritage body for Adnyamathanha at the time of initial engagement between proponent and community over the Beverley proposal (see §5). This organisation was comprised entirely of Adnyamathanha Yuras. Members of FRAHCC facilitated grass roots engagement specifically in the area of Adnyamathanha heritage protection through measures such as facilitation of public meetings and participation in the EIA public process, and in coordinating Site Inspections for heritage protection in accordance with Traditional Owner consultation under the *Aboriginal Heritage Act*.

The other institutional requirement for Indigenous engagement was the *Native Title Act* (Commonwealth of Australia 1993), which offered the legal right for Adnyamathanha Native Title Named Applicants to negotiate Exploration and Mining Agreements and royalty

compensation for land use. Negotiated Agreements were facilitated by Case Managers employed by the Native Title Unit (NTU), a sub-branch within the ALRM Native Title Representative Body for South Australia. ALRM/NTU played a facilitator role according to directions set by the Federal government agency known as the National Native Title Tribunal, to administer the requirements of the *Native Title Act* (Commonwealth of Australia 1993). The Tribunal and NTU were initially funded by the Aboriginal and Torres Strait Islander Commission (ATSIC) at the time of the Beverley EIA.

Indigenous engagement within the Adnyamathanha community prior to colonisation took the form of Anggumathanha Law (self-governance) over all matters including the safeguarding of water sources, the respect for people with authority in the community, and the adherence to traditions which mapped out customary rights to land and sustainable use of resources.

Environmental lobby groups also played a key role in community engagement and the EIA. Environmental 'watchdogs' within Australia, sometimes known as Green NGOs, played an active role in the Beverley EIA, particularly Friends of the Earth (FoE), the Australian Conservation Foundation (ACF) and the Conservation Council of South Australia (CCSA). Their main role included scrutinising the public consultation process for development, facilitation of public meetings, gaining access to and circulation of public information regarding the EIA, critical assessment of the Beverley EIS from both environmental and social perspectives, and lobbying against government policy which allowed expansion of the nuclear industry in Australia. At the request of many people from the Adnyamathanha community, their role also included cooperatively establishing a relationship between Green NGOs and Yuras prior to the Beverley EIA.

In the early 1990s there were three Adnyamathanha Native Title Claims and three Named Applicants; each was approached by Beverley proponent Heathgate Resources to negotiate a Native Title Exploration Agreement similar to the generic draft provided to Adnyamathanha by ALRM (Aboriginal Legal Rights Movement 1999). Individually negotiated representative Agreements were signed by each Named Applicant under a banner of confidentiality as stipulated by Heathgate Resources. This engagement process set a precedent that would later have a profound impact on the ability of the Adnyamathanha community to freely engage in an informed decision-making process regarding development of Beverley Uranium Mine.

The establishment of a new Adnyamathanha NGO, the ANTMC (Adnyamathanha Native Title Management Committee), to oversee Native Title evolved into a registered Corporation known as Adnyamathanha Traditional Lands Association (ATLA) under the Office for

Registration of Indigenous Corporations (formerly known as ORAC or Office for Registration of Aboriginal Corporations). This new governing body was necessary under the *Native Title Act* (Commonwealth of Australia 1993) to facilitate community representation. A wide range of Adnyamathanha family clusters, later known as 'core groups' in the ATLA Constitution, (ATLA 2001) were encouraged to affiliate with ATLA. Despite having this new organisation, decision-making powers were legally situated with the Native Title Named Applicants who held the right to sign off on Native Title Agreements. The Native Title Named Applicants held the legal power to negotiate compensation Agreements and to facilitate site surveys as part of a demonstration of good faith according to *Native Title Act* requirements. To take the alternative of refusing to enter into negotiation was to risk being taken to the ERD (Environment, Resources & Development) Court and face expulsion from the Native Title negotiating process.

The governing body was promoted by ALRM-NTU as a potential 'new voice' for Adnyamathanha to facilitate community consultation under the respective pieces of legislation known as Native Title and Aboriginal Heritage, working in tandem with the individual Named Applicants in the various Adnyamathanha Native Title Claims (Aboriginal Legal Rights Movement - Native Title Unit 1998). Adnyamathanha Yuras were encouraged to provide the governing body with an amalgamated cross-section of Adnyamathanha interests and become part of this new peak representative body for Adnyamathanha interests in land rights, cultural resources management, and heritage protection. Resistance from organisations such as FRAHCC was initially raised (FRAHCC, corresp. 1993; FRAHCC, corresp. 1994; FRAHCC, corresp. 1997; FRAHCC 1998) but gradually subsided over time. Theoretically, the new role of ATLA offered constitutional privilege to a special group of Adnyamathanha known as the 'Elders', and a strong legal framework through the *Native Title Act* (ATLA 2001).

By 2003 the realisation of governance under Native Title was showing serious signs of strain. In stark contrast to the Constitutional rules of ATLA, many Elders experienced abuse, felt they were being left out and ignored, and were often subject to ridicule. They began to distance themselves from ATLA meetings as a sign of respect for Anggumathanha Law (see §5.1.3) and sought refuge by starting their own informal gatherings and raising their concerns directly with the National Native Title Tribunal (Johnson, corresp. 2003a). As a group that operates independent of Native Title, the Elders continue to pursue their own interests which are more closely connected to heritage protection than to royalty compensation.

The discussion now turns to the mining company attached to the Beverley Mine known as Heathgate Resources (Heathgate Resources Pty Ltd 2007). This proponent evolved as a subsidiary company to a US based nuclear company known as General Atomics from whom they purchased in 1990 the ore deposit known to exist on the Beverley site (Uranium Information Centre 2007). Confidential engagement between the proponent and the initial Native Title Named Applicants claiming interest over the Beverley lease commenced during 1995, yet public consultation did not commence until 1997. The Native Title negotiations which resulted in Exploration Agreements were later used as political leverage during the EIA by Heathgate Resources in regard to mineral exploration and a bid for a commercial mining license (Heathgate Resources Pty Ltd 1998a).

The wider Adnyamathanha community did not have an opportunity to become involved until FRAHCC, at the request of Nepabunna Community members and other concerned Yuras, held a meeting at Balcanoona on 13th and 14th December 1997 (FRAHCC, corresp. 1997). By this time Heathgate had already negotiated Native Title Exploration Agreements and gained government approval for a field leaching operation or 'trial mine'. The gap between the proponent seeking legally binding confidential engagement and broad community consultation was approximately two years.

6.1.3 Cultural Geography of the Beverley Mine Site

The Beverley Mine site is located in a zone recognised by Traditional Owners as Anngurla Yarta (Spiritual Country), a region which is now also recognised under the non-Indigenous leasehold system of property ownership. Leases include the Beverley Mine Lease (formerly Wooltana Pastoral Lease), Wertaloona Pastoral Leases and the Arkaroola Wilderness Sanctuary (formerly a pastoral lease). The Adnyamathanha map which fully defines understandings of Muda and Yarta is collectively held by a select group of Adnyamathanha persons through oral traditions of shared knowledge. These persons include those who identify themselves as Anggumathanha Law Adnyamathanha Elders (Sutherland 2009), who have an intricate understanding of the lands that are now subject to exploration and mining by Heathgate and other mining proponents in the vicinity of the Beverley Mine site. A geography of the site includes understandings of the region's cultural significance primarily contrived through Adnyamathanha knowledge of Muda and Yarta (Brock 1985; Tunbridge 1986; FRAHCC 1998; Interview 10 Public 2006; Interview 15 Public 2006; Sutherland 2009).

As previously noted in Chapter Five, the connection between Adnyamathanha Yuras and Yarta is compellingly powerful due to the longevity and complexity of association. Adnyamathanha values of Manda (Lake Frome) and the adjacent hills country draws on the cultural knowledge and ongoing connection between Yuras and Yarta and how the whole environment is interconnected through stories of creation (Tunbridge 1986, p. viii; Sutherland 2009). Responsibilities for caring for country are based on knowing the Adnyamathanha map and constant reinforcing of the connectedness between the land and people through spirituality that dates back thousands of years.

An Adnyamathanha Elder spoke passionately about the meaning of the Beverley area: 'That's our fathers' history you know … Muda is there. That's their place where they held initiation' (Interview 10 Public 2006). The meaning behind this statement is an example of the special and sacred relationship between Yuras and Yarta where Beverley mine is located. Mahomed also spoke of the negative impacts of any disturbance, recalling how her father Andy Coulthard, an Adnyamathanha Wilyaru or senior initiated man, now passed away, raised concerns over the mining of spiritual country during the 1960s (Coulthard and Hoskins 1969), even though there was no legal recognition of native title or heritage protection at that time. The use of the words 'big stuff' and 'big thing' by Martha Wilton, another Adnyamathanha Elder (Interview 15 Public 2006), signify a sacred (big) meaning for a physical site which connects to cultural phenomena of spirituality and creation. These recollections and experiences are part of a collective and enduring view of Indigenous cultural resources and heritage protection evolving out of necessity since the 1960s in an attempt to address the pressures of exploration and mining operations. A very recent public statement by a contemporary Adnyamathanha Elder Desmond Coulthard (Coulthard 2008) reiterates the concerns of Andy Coulthard and other Adnyamathanha Wilyaru regarding the Beverley area. He claims 'The Adnyamathanha Elders who have now passed on would be turning in their graves now if they knew what is happening …' (Coulthard 2008). The inference here is directly in regard to damage caused by exploration and mining on the Beverley Mine site. Later in this chapter Adnyamathanha traditional knowledge of the Beverley area is given in much greater detail (see §6.2).

A related geographical aspect worthy of note in this section is the construction of space and the concept of 'wilderness' (Gill 1999; Stratford 1999; Figgis 2003; Castagna 2005) and how this influences the way that land is managed under contemporary Western models. The value placed on land by governments and developers in Australia remains driven by profit making

and a trend in government toward shedding responsibility for environmental management. This trend, labelled the 'retreat of government' (Figgis 2003, p. 199), is claimed to have led to smaller governments, a larger and more powerful private sector, more emphasis on market-based allocation of resources, deregulation of environment and heritage management, and a 'multiple use model' for land management. This model is claimed to have been openly embraced by the mining industry, who prioritise economic development (Figgis 2003, p. 205).

Conservation models offer another prominent way of securing and maintaining land tenure. The ecological tourism model used to manage the Arkaroola tourist resort poses as a serious alternative to mining; this is evident from the longevity of this tourist destination. Arkaroola has been recognised through Australian tourism industry awards which demonstrate that the tourism industry and many Australians regard this space as a 'wilderness' area devoid of human culture and therefore pristine, which makes it worthy of valuing and preserving for its natural heritage (Arkaroola Pty Ltd 2005). Leaseholders and owners/operators of the Arkaroola Wilderness Resort actively oppose uranium mining proposals on their land and they receive support from the Greens Party and Wilderness Society (Arkaroola Pty Ltd 2005). This continues to create uncertainty for mining proponents (Marathon Resources Limited 2007) in securing a mining lease for Mount Gee. The non-Indigenous value placed on Mt Gee by the leaseholders, the Greens Party and the Wilderness Society is based on the concept of picturesque wilderness and tourism. This is in contrast to the popular value placed on the Beverley site, which is located on the plains east of Mt Gee in semi-arid pastoral country.

Western environmental concepts are possibly as influential and as Eurocentric as commercial development concepts. Australian Conservation Foundation (ACF) campaigner David Noonan shared his recollections of how difficult it was to generate public interest in the Beverley site because the site attracted a popular colonialist view of being in a 'remote' locality and having 'poor' aesthetic qualities (Interview 11 Public 2005), in contrast to an area of scenic and pristine wilderness. Noonan compared the Beverley area with other sites in close proximity such as the Weetootla Gorge and Gammon Ranges National Park. He stated 'The engagement of civil society on the Weetootla Gorge was such that neither ACF or FoE had to do almost anything at all on the campaign to stop development; the Wilderness Society were very much involved because what they saw was the natural values which were so appealing to the general public that '…some key individuals could go in there and talk up the positive values of the Gammon Ranges National Park…' (Interview 11 Public 2005) and secure widespread civil action. However, images of remoteness and semi-arid or desert-like

conditions, and extremely saline water resources constructed by the mining industry (Primary Industries and Resources South Australia 1999; Heathgate Resources Pty Ltd 2007), portray a sense of 'worthlessness' of the Beverley area. That is, worthless other than for the rich mineral resources able to be exploited for financial profit from below the surface of the ground.

Based on his experiences of working on environmental issues regarding the Lake Eyre Basin and the Beverley Uranium Mine case, Noonan concluded that 'Arid lands in general and desert areas in particular are difficult to protect…' (Interview 11 Public 2005). He claims there is a set of iconic triggers that define areas which 'white civil society regard as aesthetically beautiful' and these definitions often fail to appreciate broader cultural values such as Adnyamathanha spirituality and environmental degradation of groundwater. Noonan referred to 'icon triggers' and 'icon issues' that generate public interest in Australian landmarks and cultural rhetoric. He speaks of how the conventions within 'civil society' are important in facilitating public engagement, and claimed 'Beverley is almost striking for the lack of civil society involvement and the lack of conventional triggers for peoples' recognition that there was a serious problem unfolding …' (Interview 11 Public 2005). This description parallels the attention given at a conference focused on remote governance, where notions of 'remoteness' and its identification are seen as a key influences on public engagement (Desert Knowledge 2008).

The geographical triggers from Australia's colonialist set of values and metropolitan based decision-making models have a major impact on whether an area is protected or whether an area can be exploited and desecrated. The governance of resources based on centralised models within Australia (Desert Knowledge 2008) has been dominated by a lack of capacity in relation to resources and decision-making powers and subsequent diminished attention to remote Australia in the public psyche. The long history of tensions between centralised decision-making and remote Australia (Desert Knowledge 2008) suggests that approval of the Beverley proposal and subsequent management of the mining site is grounded in a consistent pattern of Westernised political and commercial domination.

Development interest groups have constructed an economic and political geography of 'land use' based on commercial exploitation through mining and pastoralism within the region. A post-approval example of this is found in the expansion being proposed known as the PER Beverley Four Mile Proposal (Heathgate Resources Pty Ltd 2009). The description of land use is dominated by Western land uses that have an economic value. Indigenous land uses are

not included in this document produced by joint proponent Heathgate Resources, despite the EIA guidelines specifically requiring a full description of all past, present and future land uses. The traditional style of geographical understandings gained through Western science continues to prioritise and map physical or commercial resources at the expense of Indigenous cultural resources that have tangible as well as intangible qualities, and I argue this tradition is being exploited today to exclude Indigenous perspectives and Indigenous rights to land.

In physical geographic terms, the Beverley Mine site is located on the eastern foothills of an ancient mountain range 520 kilometres north of Adelaide and approximately 25 kilometres west of Lake Frome. The scientific discovery and use of uranium ore at the Beverley Uranium Mine site occurred in 1969 but did not lead to a commercial operation until 1999 (Uranium Information Centre 2007). The ore deposit being mined is located approximately 150 metres from the Great Artesian Basin in tertiary sediments from the Frome Basin and represents the first commercial operation in Australia to use the 'in-situ leach' mining technique (Uranium Information Centre 2007), controversial because it remains outlawed in many nations globally. The wider area surrounding the Beverley Mine site on the Wooltana lease is renowned within the mining sector as an ore bearing zone, and has been exploited by government and industry since the mid-1900s (Heathgate Resources Pty Ltd 2007). As noted previously, prior to commercial mining, the area that includes Beverley mine was surveyed by government and claimed as a pastoral lease (Wooltana pastoral property) of 2350 square kilometres (Uranium Information Centre 2007).

6.1.4 Chronology and Political Context of the Beverley Environmental Impact Assessment

This Beverley area is part of a larger portion of land that was occupied and utilised for trade and cultural exchange by predecessors of today's Adnyamathanha population (Curr 1886; McCarthy 1939), who have been increasingly displaced by colonisation since the late 1800s (Tunbridge 1986; Mattingley and Hampton 1988). Associations between humans and land within this geographic region have changed rapidly since non-Indigenous invasion of the northern Flinders Ranges. The values assigned by the original occupants have been constantly and repeatedly challenged and overshadowed by Western constructs of land and land use during a relatively short period of colonial domination. Contemporary development regulations and legal frameworks set by governments and industries have brought new pressures that challenge sovereign rights over traditional land including the Beverley area and bear directly on the Adnyamathanha community and Indigenous traditions. The timing and

context of the EIA for Beverley Mine is located in a broader political space of Indigenous heritage protection, government policy on uranium mining, and increased public interest in the nuclear industry during the 1990s (see §4.2).

Indigenous heritage protection protocols can be overridden by industry as seen in other prominent South Australian cases such as the mid-1990s development by Tom and Wendy Chapman of the Hindmarsh Island Bridge and their interactions with the Ngarrindjeri peoples' in the lower Murray region of South Australia (Mead 1995; Aboriginal Law Bulletin 1996), and the development of open cut mining at Olympic Dam by mining giant Western Mining Corporation led to exclusion of Kokotha and Arabunna rights in remote parts of South Australia (Fergie 1996; Burton and Wright 1998; Mineral Policy Institute 1998b). Both cases led to bitter disputation and division within the respective Indigenous communities and the systematic contestation of Indigenous heritage values by proponents. Each proposal is now a profitable business for the developers and for the State government of South Australia and there is yet to be a successful prosecution under the *Aboriginal Heritage Act*. These prominent South Australian cases are likely to have influenced the ways in which Indigenous engagement in the Beverley proposal was understood and implemented, a discussion that will be expanded in regard to the use of precedents.

Beverley Uranium Mine became integral to challenging the 'three mines policy' (ANAWA 2008b) in Australian politics which related to a long-standing Federal government policy that had been upheld by previous governments restricting expansion of uranium mining and the nuclear industry within Australia. This policy was originally intended to phase out uranium mining, and upon closure of the Narbalek mine in 1988, there was a Two Named Mines policy which referred to the Olympic Dam mine in South Australia and the Ranger uranium mine in the Northern Territory (ANAWA 2008b). There were no successful attempts within politics to change this policy until the Howard Liberal government rose to power in 1996. The year of 1996 stands out nationally in the mind of one interview participant (Interview 14 Public 2005) who distinctly remembers starting work in an Environmental Centre in Darwin the same month as the Howard government was elected to office and a sense that '…right from that minute there was the signal of new uranium mines and overturning of the three mines policy …' (Interview 14 Public 2005). The abandonment of the 'three mines policy' allowed exploration and mining to take place in States that permitted uranium mining; this included South Australia. Following the approval of the license to mine at the Beverley site in 1998 further exploration in Adnyamathanha Yarta several new exploration licenses are

being assessed (Heathgate Resources Pty Ltd 2007; Marathon Resources Limited 2007) with at least one additional mining license for the Honeymoon Uranium Mine being approved from the South Australian government in 1996 (AAP 2006). A proposed expansion of the Beverley Four Mile site as a joint venture with Quasar Resources (Heathgate Resources Pty Ltd 2009) is also currently being considered at the time of writing this thesis. These proposals and licenses coincide with broader sweeping changes such as the overturning of a ban on uranium mining in Western Australia by the new Liberal government and Premier Colin Barnett (O'Brien 2008). Arguably the establishment of the Beverley Mine was a major precedent in many ways.

Increased public interest during the mid-1990s at a national level in the nuclear industry also influenced the way the Beverley case was perceived and the amount of external support available for Adnyamathanha. Proposed expansion of uranium mining in the Northern Territory during the 1990s brought public attention to the Jabiluka proposal on Mirrar country in Arnhem Land. The Jabiluka proposal was part of a growing interest from the uranium industry and on Indigenous rights both nationally and internationally (Friends of the Earth 1998; Katona 1998; World Heritage Committee 1998; The Senate 2003).

By the late 1990s Adnyamathanha Yuras were enmeshed in a transitional stage of Indigenous land rights that stemmed from the introduction in 1993 of Native Title legislation (Wooley 2001; Russell 2006). The aftermath of the High Court Mabo decision was described as a '…sense of national crisis …' and a '…political storm…' (Russell 2006, p. 282) dominating Australian politics during 1993 and 1994. At the South Australian level Native Title claims began to emerge by the mid-1990s which brought confusion and uncertainty about Indigenous rights (Aboriginal Legal Rights Movement - Native Title Unit 1998). Within this climate of political change ALRM began in 1999 to build a working group of Indigenous representatives which became known as South Australian Aboriginal Congress made up of Native Title Named Applicants. Congress was designed to be a regional body that would guide local Governing Councils or Native Title Management Committees such as Adnyamathanha Native Title Management Committee (ANTMC). ALRM also began participating in a political alliance; a peak industrial body made up of representatives such as Farmers' Federation and Chamber of Commerce (Russell 2006).

One of the key tasks set before this industrial alliance was to propose amendments to the *Aboriginal Heritage Act* (SA Government 1988). This report was commissioned by the key South Australian agency governing Aboriginal affairs, then named Department of Aboriginal

Affairs and Reconciliation (DAARe), and its key focus was to inform new policy directions in regard to administration of the Act. Many critics, including the State Aboriginal Heritage Committee, claimed the review was a concealed attempt to amend the Act and 'water down' the existing legislation (Jeffries 2003). The report emphasised a need for improved policy to support local Aboriginal heritage committees and strengthen their role in the management and protection of Indigenous heritage. However, these recommendations were never implemented by the South Australian government, and any attempt to amend the Act was abandoned by DAARe. The period of uncertainty created by this review has not been fully analysed, and does not rule out any future plans to review the *Aboriginal Heritage Act*. It is possible that strengthening Indigenous opposition to mining in South Australia prompted this alliance and a proposal to review Aboriginal Heritage legislation.

6.1.5 Conclusion

The geography of the Beverley mine site was an important determinant in shaping public and government perception and interest in uranium mining in the area. Concerns held about construction and operation of the Beverley mine site on the basis of environmental and cultural degradation were at odds with claims of financial benefits and short term gain. In an economically depressed region mining was perhaps regarded by government as a 'logical' or 'inevitable' part of regional development, and the dangers of the nuclear industry were played down by industry and government. Uranium mining in a relatively remote location was promoted by industry and government as safe for the general public due to the sparse population and its physical distance from any regional or metropolitan centre.

Assertion of Indigenous cultural rights, environmental activism and commercial mineral exploration creates a set of contrastive and at times competing values and priorities. The options for Adnyamathanha Yuras are threefold: Yuras can continue negotiating compensation within the Native Title framework, continue to strengthen alliances with others who have concerns about heritage protection and challenge development, or we can passively comply through non-engagement.

Evidence presented in this section suggests the Beverley proposal was subject to a centralised form of decision-making from within government and Indigenous and remote communities. Grass roots involvement in this mining venture has been minimised by lack of decision-making powers. The 1990s represents a period of increased uranium mining and a weakening

of policies and practices in South Australia relating to Indigenous rights. This era leaves a legacy of development proposals that continue to represent a 'business first' attitude within government and industry circles.

6.2 Adnyamathanha Experiences and Perceptions of Engagement

6.2.1 Introduction

Experiences and perceptions of Adnyamathanha are considered in this thesis to be an intrinsic component of understanding and reviewing local governance and impact assessment processes on Adnyamathanha Yarta. As shown in the previous part of this chapter the Beverley case is characterised by a rapidly changing legal and socio-political environment since colonisation. Issues relating to Adnyamathanha heritage and its protection are explored primarily through Adnyamathanha beliefs and traditional knowledge, emerging practices derived from the Native Title framework, protocols for 'impact assessment' procedures, and due process associated with Aboriginal Heritage legislation. Indigenous involvement in caring for cultural resources raises a range of issues including the interpretation and definition of heritage; the role and responsibilities of various players and interest groups; Indigenous and non-Indigenous governance protocols for cultural resources; heritage protection precedents derived from best practice; and levels of access and participation for Indigenous players within heritage protection and resources management (see §3).

Chapter Five provided general insight to Adnyamathanha Muda and Anngurla Yarta through stories of creation, spirituality and ancient human connectedness with the land. The experiential knowledge of Yarta and traditional access to sites is a prelude to Adnyamathanha views on caring for country and the need for heritage protection (see §5). This part of Chapter Six highlights two key aspects in this thesis. The first explores the uniquely Adnyamathanha way of knowing and respecting the cultural landscape surrounding Beverley Uranium Mine. The second aspect explores Adnyamathanha expectations and levels of satisfaction regarding community consultation and negotiations.

6.2.2 Traditional Beliefs and Contemporary Priorities for Anngurla Yarta

Contemporary Adnyamathanha views show continuity through Adnyamathanha recollections that link to pre-contact knowledge and beliefs (Brock 1985; Tunbridge 1986) regarding Anngurla Yarta (spiritual ground). This affirms spirituality and cultural identity are an important part of contemporary life for Adnyamathanha, and helps to build an understanding of how Indigenous views are often at odds with commercial practices associated with

exploration and mining. What follows is a series of recollections and concerns from Adnyamathanha who have shared their views on the Beverley area.

One Adnyamathanha Elder who spoke of the Beverley Site shared his cultural understanding of the meaning of the land in a newspaper article (Arthur Coulthard Snr cited in Jory 1999). He is quoted as saying:

> '… the Dreamtime giant who came to South Australia from the east … stopped at Radium Hill and ate sap from the acacia trees. This made the giant ill and he vomited. He moved west and was ill again at the site we now call Honeymoon, and again at the eastern side of the vast, white, salty expanse of Lake Frome. The giant crossed the lake and vomited again at the area we now call Beverley, before dying in the Gammon Ranges.

Journalist Rex Jory acknowledges that 'Arthur (the Adnyamathanha man) believes the distinctive dome of Mount Painter is the top of the buried giant's head' (Jory 1999). The story of a sick giant described by Arthur Coulthard is echoed in the knowledge recorded by other Adnyamathanha (FRAHCC 1998) who drew attention to the cultural beliefs of Adnyamathanha during the EIA for Beverley Mine. Earlier records of oral accounts (Tunbridge 1986) show extensive knowledge of the Yarta through a criss-crossing of sites, trails and events in the vicinity of the Beverley Mine. At least five distinct oral accounts are noted as having significance and these are: The Euro and the Kangaroo (Tunbridge 1986, pp. 35-39), The Muda Awi Hunters (Tunbridge 1986, pp. 74-75), Valnaapa the Two Mates (Tunbridge 1986, pp. 93-95), Valnaapa Wartalyunnha and Yanggunha (Tunbridge 1986, pp. 96-99), and The Start of the Journey (Tunbridge 1986, pp. 106-107). Hand drawn maps detailing the name places of sites and trails in the Beverley area are also included on pages 35, 74, 92, 98, and 106 (Tunbridge 1986). A key contributor to the knowledge recorded in 'Flinders Ranges Dreaming' was Mrs Annie Coulthard (Tunbridge 1986, p. vi), mother to Arthur Coulthard and maternal Aunt to the Elders cited below.

In 2003 another Adnyamathanha person Kristian Coulthard was working as a Ranger with National Parks; he shared his views with ABC commentator George Negus (Coulthard cited in Negus 2003) on the importance of the land in the Beverley area.

> "This area has a number of Dreaming stories that relate to the cultural significance of the areas, like the Akurra up in Mainwater Pound. Akurra is the Rainbow Serpent … he came out of the water … at Yaki Awi – and he headed out … following Arkaroola

> Creek … out to Munda, which is Lake Frome, out to the east. He drank all the water in the lake … he crawled through the creeks and he formed the gullies because he was really swollen. These animals that are significant to the Aboriginal people, and the plants, really are from the area where these stories evolved. That's why the land is so special to the people'

> (Coulthard cited in Negus 2003)

These comments shared by Coulthard reiterate the interconnectedness of the area around Beverley Uranium Mine and how National Parks are using a cooperative approach to land management, working closely with neighbouring property owners. He speaks of how Adnyamathanha believe the geographical features of the land were created and altered by spiritual icon Akurra, who continues to assert a presence by rumbling and shaking the ground (Tunbridge 1986), known within Western science as seismic activity. In early 2009 the release of a Public Environment Report (PER) for the Beverley Four Mile Proposal to expand the Beverley Uranium Mine (Heathgate Resources Pty Ltd 2009) provides further evidence of the way that people, land, animals, and water live in an interdependent relationship. The Elders responses to the PER (Adnyamathanha Elders Group 2009) have brought a renewed wave of concerns over further exploration and mining in Anngurla Yarta (spiritual country). Anggumathanha Law Adnyamathanha Elders claim:

"The Adnyamathanha Elders who have now passed on would be turning in their graves now if they knew what is happening around Mt Gee and at Beverley Mine"

"Animals drink the awi (water), they're getting sick from it too"

"Old Yura Yapa (trails) and ilda (mud ovens) still there, even women's sites; Enice and Jim were part of the Work Area Clearance team that went out there. But a lot of that stuff just gets overlooked 'cos Udnyu (whitefella mining company people) don't listen"

"When we did the Clearance work, only two women and about nine men; all men. Mining company wanted to do drilling in the middle of the creek, but we told them not to do it. When we tried to tell the Udnyus (whitefella mining company people) not to drill there we got sworn at by their Aboriginal Liaison Officer; he just went off at us for talking about women's sites"

"We don't understand how Named Applicants can sign off on our Yarta (land) and just give it away – our parents left us all in charge of the land, to look after it"

"That Four Mile extension and the drilling at One Tree Dam; that's a very important site to us because it's an old Yura's soak (traditional manmade water source)"

"I don't like all those holes everywhere; it looks like Coober Pedy now. Makes that place worthless to us when it's been dug up like that"

"Our Muda (spirituality) is all across that land; it's like a church to us"

<div align="right">(cited from Adnyamathanha Elders Group 2009)</div>

These comments and recollections demonstrate many Adnyamathanha regard heritage protection as a key priority, especially in the Arkaroola-Lake Frome region where exploration and mining is impacting on Anngurla Yarta (sacred land). For other Yuras the lure of money offered through Native Title has changed the way that some Adnyamathanha view the Yarta and heritage protection. One of the key negotiators under Native Title spoke about personal experiences of frustration saying '…soon as they (Heathgate Resources) offered money … from day one they (Yuras) wanted money, money, money. That land has no dollar value, you know. You can't put a value on our land, because it's our LAND' (Adnyamathanha Elder 2002). As a Named Applicant this person is acutely aware of the limitations of Native Title. In 2009 Adnyamathanha Traditional Owners continue to debate the value of land in dollar terms and in spiritual terms. Some Yuras continue to express their concerns and opposition to the expansion of uranium mining in the vicinity of the Beverley site. One Elder stood up in an ATLA meeting of approximately 130 Adnyamathanha and articulated to the forum: "How much longer will mining companies keep ripping the guts out of our Yarta? We have to stop worrying about royalty and think about our heritage" (Marsh, pers. comm. 2009a). Discussion and decision-making at this meeting was focussed on the Beverley Four Mile Proposal to expand the existing mine site and the significance of royalty money was evident throughout the meeting.

The uranium deposits in Adnyamathanha Yarta around the Beverley area, are renowned as being part of a very sacred story of creation based on the travels of Virdnimuru (Tunbridge no date) another of the cultural hero figures for Adnyamathanha. One Adnyamathanha Elder Martha Wilton (Interview 15 Public 2006) shares her recollections that date back to the late 1970s or early 1980s; she recalls ALRM lawyers acting as negotiators on behalf of mining companies to try and gain Yuras' consent to mine: 'I remember … we all went up for that big meeting, and Wilyaru's (Adnyamathanha senior initiated men) said "No, that's not to be touched" that Beverley Mine area - but look what's happening now' and 'Wilyaru man's

knew that big thing was there, big stuff was underneath' (Interview 15 Public 2006). Another person (Interview 4 Confidential 2006) compared land uses by mining proponents and Adnyamathanha cultural connections to land, claiming that Yuras have a 'much more permanent connection to land' and 'Mining companies are only there for a while and then they are gone … that gets forgotten when damage and disturbance is done to the land' (Interview 4 Confidential 2006). Another comment by this person related to the specific destruction of sites and lack of access to sites on the Wooltana property since Heathgate began exploration.

Public statements that specifically refer to the Beverley case were made by another Yura who claimed '…our land is being damaged against our wishes…' and '…it is our responsibility to look after this country' (Johnson 2000b). In the same press release the oldest then living Wilyaru (Artie Wilton cited in Johnson 2000b) claims he was never consulted over Beverley mine and emphasises the responsibility and right of Adnyamathanha to respect cultural beliefs in these words: 'Inhaadi ngalpurlaru yarta – Adnyamathanharu' which translates into English as 'this is my country – it belongs to Adnyamathanha'. These words echo a sentiment that typifies Indigenous traditions of custodianship and enduring human responsibility. Expressions of the non-monetary value on the Yarta and caring for the Yarta, together with a sense of disappointment at not being equipped to properly respond to developments, poses as a major challenge to Yuras' traditional land uses and beliefs in the significance of country.

Other Yuras expressed their feelings about the importance of caring for country. One woman spoke of the Beverley case and sent an urgent mesSage specifically directed at the Adnyamathanha community saying 'Have a really good look at the little black writing on the paper' and 'Read what you sign, please. Don't get ripped off no more. You've only got one country' (Vicki Wilton cited in Catchlove 2005). A newspaper opinion piece by Adnyamathanha man Dennis Austin claimed '…areas of cultural importance put under threat and destroyed eg. Beverley Uranium Mine' and 'I'm sick of the secret meetings behind everyone's back, decisions being made without Yura's input…'. (Baulderstone 2006, p. 8). Austin also raised concerns at 'How many of these Native Title representatives have been doing the right thing by our community when it comes to Adnyamathanha Land' (Baulderstone 2006, p. 8). These voices echo a cultural value on Adnyamathanha Yarta that goes beyond monetary value and allege a lack of informed decision-making among the community. In particular these people regard some negotiators and signatories as irresponsible, or perhaps unaware of the full consequences of signing of Native Title

exploration and mining agreements on behalf of the whole community. This implies the deals that were negotiated could have taken a stronger position had there been more background investigation undertaken, which could have prevented people feeling as though they had been 'ripped off'. The reference to 'one country' and 'doing the right thing' reiterates what other people have said about valuing and protecting Yarta as a priceless heritage resource in accordance with Adnyamathanha tradition.

Early impressions recalled by a legal representative (Interview 1 Confidential 2005) in the mid-1990s were highlighted by the obvious significance of land for Adnyamathanha during early negotiations in the Beverley case. Proponent engagement with the Adnyamathanha Native Title Named Applicants at the Beverley site was characterised by 'strongly held views' and 'no consensus within the community' in regard to the mining proposal (Interview 1 Confidential 2005). This interview participant recalled how some people were advocating for acceptance of the mine and monetary compensation, whilst others were more concerned about heritage issues based on cultural beliefs that acknowledge a spiritual significance and a wish to not see the area disturbed or damaged. Negotiations prior to the trial mine led to Native Title Named Applicants signing Exploration Agreements under Section 9B of the *Native Title Act* (Commonwealth of Australia 1993, s9B).

A statement of opposition in the form of a petition from the Nepabunna community (Nepabunna Aboriginal Community 1995) signalled a collective viewpoint of Yuras living physically closest to the Beverley Mine site. This statement led other Yuras to speak out collectively for the protection of places of heritage value when exploration commenced in the vicinity of Beverley Mine site (FRAHCC, corresp. 1997; FRAHCC 1998; FREAC 2001). The mining lease was approved by government following the completion of the EIA which briefly outlined the legal process of Native Title negotiation and agreement making (Heathgate Resources Pty Ltd 1997b) as the basis of Indigenous engagement. Despite community concerns raised via FRAHCC throughout the EIA process (FRAHCC 1998), and via the Senate Inquiry into uranium mining (Select Panel of the Public Inquiry into Uranium 1997), the approval process focussed primarily on Native Title negotiations. Denial by government and industry of the heritage values raised by Adnyamathanha reduced opposition and concern to a marginal position throughout and beyond the EIA process.

The belief in significance of place for Adnyamathanha is deeply spiritual yet in a fragile state within Adnyamathanha society and little understood outside of Adnyamathanha culture. Claims of a lack of widespread respect for Adnyamathanha tradition is possibly exacerbated

by the divisive nature of Native Title negotiations driven by ongoing pressures from developers and government. Accelerated rates of exploration and mining require an ever increasing level of engagement from Adnyamathanha but there is a limited level of resources with which to build capacity and facilitate equitable engagement. These issues are discussed in subsequent sections of this chapter.

6.2.3 Indigenous Community Leadership and Cultural Inclusivity

The focus here rests with Adnyamathanha leadership during the Beverley EIA in regard to cultural inclusivity within the internal governance system. Issues such as gender bias within community leadership and site protection engagement are examined to determine the extent to which Adnyamathanha leadership was strong and representative of the needs of the wider community.

The vast majority of interaction continues to take place within ATLA meetings under the guise of Native Title. However, a prominent degree of dissatisfaction concerning conduct and leadership in these meetings remains unresolved. Elders continue to insist that Adnyamathanha cultural traditions must take precedent over Western laws in their strong belief that culturally appropriate decision-making equates to good heritage protection. Rectifying the problems faced by people wishing to participate in consultation and negotiation surrounding cultural resources management presents a difficult challenge for Adnyamathanha Yuras.

6.2.3.1 Interaction between Elders, Women, Men and Young People

The tensions between Elders and young people, and men and women during 1995 and 2003 reveal a key governance issue directly related to Native Title. The roles and responsibilities of Elders, women and men, and young people are important aspects of Adnyamathanha identity and recognition of these are crucial in effective community governance. No documented history of Adnyamathanha experiences of engagement over uranium mining is available prior to the 1990s, so historic information shared by some elderly participants provides a valuable insight to earlier interaction between uranium mining companies and Yuras.

Documentation regarding a series of Adnyamathanha Elders' meetings that commenced in 2003 show that Native Title consultation and negotiations regarding the Beverley case

involved intimidation of many Yuras (Johnson, corresp. 2003b; Marsh and Johnson, corresp. 2003a). The need to find a satisfactory solution for merging the 'old' ways of doing business and 'new' ways of doing business is strongly highlighted in this report, and reinforce the concerns raised by Mrs Johnson (Johnson, corresp. 2003a) to the Tribunal in the same year. The report suggested an approach that could accommodate everyone and sought to enhance the traditional role of Elders as leaders and decision-makers. This report was presented at a Native Title court hearing (Marsh and Johnson, 2003) and raised an important series of issues highlighting the breadth of Adnyamathanha cultural knowledge, Yura Ngawarla language proficiency, the level of Western education and English literacy, and the blending of traditional and contemporary decision-making values.

Other Adnyamathanha Elders who spoke about their experiences claim it was often impossible and sometimes dangerous for them to participate in community consultation and decision-making processes during the Beverley EIA. They felt their status as Elders was deliberately undermined by younger people in the community and by non-Adnyamathanha players such as the lawyers and mining company representatives (Interview 2 Confidential 2005; Interview 10 Public 2006; Interview 15 Public 2006). Similarly, Yuras not considered to be Elders comment on the lack of cooperation between Elders and younger people, and how they feel that their status as 'kids' was used to exclude them from consultation and negotiations over the Beverley EIA (Interview 13 Public 2004; Interview 5 Confidential 2006). These comments suggest a lack of solidarity among Adnyamathanha may be a critical setback to effective protocols for community governance.

One participant (Interview 5 Confidential 2006) claimed the Beverley EIA failed to adequately address Adnyamathanha women's issues about land and thought that this was a common problem in Indigenous affairs. Another person aged early to mid-30s also made a similar statement:

> '… with the EIS (impact assessment of Beverley proposal) there wasn't a wide view. There wasn't a lot of women's type issues that were dealt with in the EIS and that's something lacking not just with our Adnyamathanha people but with Yuras in general' (Interview 4 Confidential 2006).

This person went further to talk about the sense of loss through colonisation as well as the struggle to find a suitable contemporary means of appropriate decision-making 'Unfortunately we can't go back to our traditional way of dealing with things, which is how our old law people made decisions for the community. That's a sad fact that we have to go through now

… we can't make decisions because everyone wants to do their own thing' and '…yakarti's (young people, children) haven't really got that much input in Yuras' way (Adnyamathanha traditions)' (Interview 4 Confidential 2006). These words echo sentiments of frustration regarding the impact of colonisation and hints at the complexities faced by Indigenous peoples seeking empowerment through a contemporary as well as traditional model of governance. Further comments made by this participant suggested a preferred protocol in contemporary leadership must include Native Title Named Applicants in a key role:

> 'I think the people that we've got speaking for us … at the higher level of Yura decision-making … if it doesn't come to fruition the way yakarti's want it, they shouldn't carry on about it … you know, take it as it is. And our Applicants (Native Title) … they're up there for us … for the yakartis' sake. Have a bit of faith, look towards your leaders' (Interview 4 Confidential 2006)

Comments from other Adnyamathanha also around 30 years of age reflect a similar urgent mesSage for clarification of how best to include all Yuras in an informed decision-making process(Interview 13 Public 2004). In a discussion about how to improve the way Yuras come to a decision on heritage and land use matters, this Adnyamathanha woman then aged mid-20s said to me 'I think that some of the younger ones like myself and you … should be allowed to be involved, and be comfortable with saying what we want, and, and what we believe in without being told to sit down and shut up because we're kids' (Interview 13 Public 2004). She claims that many young Adnyamathanha felt frustrated by the lack of recognition they received during the discussions and decision-making around the time of the Beverley EIA. She felt disturbed that young people seemed to have been excluded from the Native Title process, and claimed that many have now lost faith in the Elders. Similarly the comments made by Austin well after the approval had taken place suggest that as a young person he felt '…sick of the way these people [Native Title Named Applicants] are playing God …' (Baulderstone 2006, p. 8).

Interview participants Martha Wilton and Irene Mahomed shared their views and experiences on previous community consultation in a joint interview (Interview 10 Public 2006; Interview 15 Public 2006). Their perspectives are based on the role of Elders in the community, the sense of loss felt by Elders over managing the country according to Adnyamathanha beliefs and values, their past experiences of mining negotiations in the vicinity of Beverley, and their views on the distribution of royalty from Beverley Mine. Neither of these women participated in any heritage surveys on the Beverley lease, and they did not hold any public status in the

Native Title process for Beverley beyond that of being an Elder. Their participation is highly valued within this thesis given that both women were willing to share their recollections of personal involvement in previous historical attempts by mining proponents to establish a mining operation in the vicinity of the Beverley site. Both women felt that the current level of participation was not altogether positive or progressive for Yuras, particularly for people of their age group and generation. These women are aged between 60 and 70 years old, and they are from a generational group of people nurtured with a strong sense of community governance that pre-dates colonial contact and intervention in Indigenous affairs. They are part of the Anggumathanha Law Adnyamathanha Elders group, and their lived experiences are fundamentally different to younger Adnyamathanha.

Another key area of importance (Interview 5 Confidential 2006) was effective communication in meetings, particularly when speakers of different languages (Yura Ngawarla and Udnyu Ngawarla) were having difficulty understanding each other. Comments include: 'The jargon they (non-Indigenous persons) use with our Elders, we need our kids there … that's a good time for our yakarti's to be there. They're helping their parents, and our Elders can understand what the Udnyu's are saying because they've got the educational basis to understand' and further comments: 'Education should be our main goal. Keep the kids at school as long as possible … it's the only way to go' (Interview 5 Confidential 2006).

The degraded role of Elders during the EIA consultation and negotiations is also mentioned in an interview with one of the Native Title case managers (Interview 12 Public 2006) who witnessed several Elders crying in a Native Title meeting where democratic voting was used to bring about a decision to support the development of Beverley mine. Purdy and another participant (Interview 5 Confidential 2006; Interview 12 Public 2006) claimed that people with a position of seniority, especially those with the status of 'Elders' were often excluded through being blatantly ignored or openly sneered at during meetings which were supposed to facilitate community consultation. They found this treatment of Elders unacceptable and quite shocking.

Another non-Indigenous interview participant also expressed shock and sadness at the effects of the Beverley mine on the Adnyamathanha community (Interview 3 Confidential 2005). This person who has played a professional role in community affairs for many years sympathised with the views of Elders who say they 'absolutely hate' the negative impacts of the mine such as the fighting over royalty monies. This participant also witnessed '…grown men emotionally driven to tears…' and commented on the 'bad water' between people and

how 'Some people just can't talk about it' (Interview 3 Confidential 2005). This person was extremely saddened by the tension among families and commented that 'Beverley has really fractured the community' (Interview 3 Confidential 2005).

Personal experiences and views of the Beverley case show a sense of division and mistrust and a need for young people and Elders to try and heal some of the past problems and work more closely together in the future. Interview comments also highlight the recognition among Yuras of the role of women and the existence of women's perspectives, and the lack of importance given during the Beverley case regarding heritage protection and cultural resources management. Recognition and respect for all Adnyamathanha perspectives, not just those who play a dominant role in the decision-making, is clearly important to Yuras.

One of the key issues emerging from this case study is the lack of clarity in relation to the identity of Adnyamathanha, Elders, people not classed as Elders, and women and men. Non-Elders who shared their experiences were asked to comment because of their interests in heritage protection and their hands-on Adnyamathanha and school-based Western education (Interview 13 Public 2004; Interview 5 Confidential 2006). All people interviewed felt frustrated by their experiences of heritage protection protocols and meetings relating to cultural resources management.

6.2.3.2 Adnyamathanha Engagement Protocol and Beverley EIA

The rules of engagement endorsed by Adnyamathanha at the time of the Beverley EIA were fragmented due to the interactive and changing characteristics of community, and to the largely undisclosed nature of modern Adnyamathanha governance. However, it is possible to build a descriptive picture based on peoples' experiences and concerns as a way of understanding Adnyamathanha engagement, and as a way of understanding the pressures that people were facing to comply with a Western model of 'majority-rule' voting and a corporate structure of 'incorporated body' and 'committee' (ATLA 2001). Interview participants were asked to share their experiences of meetings where the Beverley proposal was being discussed. Often it was only after some way during the discussion that people fully disclosed their experiences, and the association people made between the level of frustration and violence emerged.

An Adnyamathanha Elder Mrs Irene Mahomed commented on contemporary changes to engagement by specifically referring to the emergence of Native Title forums at the time of

the Beverley EIA. She stated that '…some of the ATLA meetings were alright, we had no argument' (Interview 10 Public 2006) which suggests that in her view it was important that people be considerate of each other in meetings. Mrs Mahomed talked about how the confusion created by a lack of understanding and frustration often resulted in violence: 'Sometimes you can see when the same questions get asked over and over, no good because the lawyer got a real tight lip, he won't say nothing – they already talked about it and decided before the meeting; so no point in going to meeting sometimes' (Interview 10 Public 2006). She states that many meetings involved physical violence, verbal abuse and confusion and she was concerned at the sanctioning of such behaviour by people convening the meetings.

Often meetings took place in Leigh Creek or Copley which are difficult for many Yuras to access. Questions about the extent of participation in community consultation leading up to the approval for Beverley Mine drew the response that it was '…very hard because of the cost of going to meetings held in places like Copley; I live in Port Augusta, and petrol is very dear. And then it's hard to talk in those meetings sometimes, too many things come up' (Interview 10 Public 2006). The pace in which meetings were conducted was often difficult for people to follow, particularly for Elders and people who had travelled considerable distance to attend. Mrs Martha Wilton who took part in a joint interview with Mahomed adds further comment to this conversation in regard to the presence of physical violence in Native Title meetings by saying 'Naku (yes), all the time uniik-idlha (there are arguments, fights)' (Interview 15 Public 2006), signalling similar experiences to comments made by Mrs Mahomed. Violent assaults not only took the shape of extreme verbal abuse but also in varying forms of physical intimidation. The protocols for engagement associated with travel, the pace of meeting discussion and the frequent outbreaks of violence were all obstacles for Elders and probably for the entire Adnyamathanha community. These engagement protocols were difficult to challenge because they were actively sanctioned by some Adnyamathanha involved in the meetings, hence the claim made during a court hearing by Mrs Gertrude Johnson of being 'shoved aside and abused' (Johnson, corresp. 2003a).

Many people claimed that physical violence and verbal intimidation were also sanctioned by Heathgate Resources, the mining proponent (ABC 1999; FREAC 2001). The use of a uniformed police presence with as many as six officers each with guns in holsters at the Hawker meeting which was hosted by proponent Heathgate Resources was claimed as '…part of a general air of intimidation deliberately cultivated to silence dissenting voices' (see Hansard, Wed 25th Feb 1998) (cited in Clarke, Stringer et al. 1998, p. 10). At this meeting

one Adnyamathanha Yura was escorted by two armed police officers on either side away from the meeting for requesting that a Chairperson be elected from the floor. This authoritarian approach was also evident at another event which became widely known as 'the Beverley Bash' (FREAC 2000; FREAC 2001). Following complaints lodged with the Police Complaints Authority, the Honourable Justice Anderson concluded that the events of 9th May 2000 resulted in at least ten individuals, who were attempting to exercise their lawful right to protest, had suffered physical and mental abuse caused by unnecessary police force (Supreme Court of Australia 2010). The Supreme Court ruling found the State of South Australia liable for paying compensation in excess of $700,000, despite an offer from the Plaintiffs to settle out of court for a lesser amount; an offer that was outrightly rejected by Deputy Premier Mr Kevin Foley in late 2009. Mr Foley described the Plaintiffs as "…a bunch of feral protesters who put the safety of our police officers in peril…" and he stated that "The government sends a mesSage to any anarchist group that we will not be a soft touch. They can have their day in court" (Kevin Foley cited in Supreme Court of Australia 2010). The legal finding against the State of South Australia comes in response to SAPOL (South Australian Police) and Star Force officers being found to have acted in an unlawful manner on 9th May 2000; the ruling found that despite a plan of action laid out by SAPOL prior to the event, the actual events on the day constituted a misuse of individual police powers and unnecessary force by both police and Star Force officers, and protesters had been denied their human rights.

Evidence from this study leads to a conclusion that violence and abuse of human rights was not confined to one interest group, and became widespread throughout the consultation period for the Beverley proposal, resulting in police charges being laid on more than one occasion. Violence also extended to individual encounters at Adnyamathanha funerals and in public streets although it is difficult to directly link these incidents with the Beverley case.

In addition to the concerns being raised by Yuras, protocol issues were raised by several 'outside' players as a key concern. Grave concerns of ineffective governance were being expressed at the time of the Beverley EIA by legal representative body ALRM (Aboriginal Legal Rights Movement - Native Title Unit 1998; Clarke, Stringer et al. 1998). Several concerns were raised as a matter of urgency in a Native Title newsletter intended to reach a broad audience including Adnyamathanha. These included a plea from then Manager of the Native Title Unit, Parry Agius, for Adnyamathanha Yuras to work cooperatively and '…present a united voice …' so as to provide '…a stronger negotiating position when dealing with other key stakeholders' (Parry Agius cited in Aboriginal Legal Rights Movement -

Native Title Unit 1998). There was also a mesSage in this newsletter urging Yuras to ensure that they and their families were being adequately represented through the newly formed ANTMC. The mesSage from ALRM/NTU urged individuals not to act in a manner that would 'throw away opportunities' as this could be detrimental to the whole community.

Both of the Elderly Adnyamathanha women that participated in an interview made reference to the chaos within Native Title and felt that the Native Title Named Applicants had to take some responsibility. Ms Mahomed commented '…now it falls back to our Claimants (Native Title Named Applicants) that we got, and we the ones that gave them the okay to fight for Yuras, to be protectors of our land like our Wilyaru fathers were, and what are they doing … they not … they just give it all away to the Udnyu's (non-Aboriginal developers) … and Udnyu's know we got minerals all around place because they survey, they know' (Interview 10 Public 2006). These comments together with others (Interview 5 Confidential 2006) suggest a degree of recognition by the broader Adnyamathanha community that Yuras interacting with contemporary frameworks such as Native Title have a custodial obligation toward heritage protection.

Two non-Indigenous participants that played prominent roles in the Beverley case (Interview 1 Confidential 2005; Interview 6 Confidential 2006) commented on their individual professional experiences of interaction with Adnyamathanha. Each spoke of the complexity involved in trying to come to terms with Adnyamathanha-specific cultural protocols, such as language barriers and the authority to speak or make decisions. One of these people, commenting from a legal perspective, said 'It's very difficult to represent people with unclear decision-making structures' and 'The difficulties arise with Adnyamathanha because there is no longer a structured way of operating, people are widely dispersed, there are a range of identities and interests, and people are geographically isolated from each other' (Interview 1 Confidential 2005). Another comment was made regarding the transition in Adnyamathanha governance from 'traditional' to 'contemporary' structures and how the Native Title process imposes 'an artificial framework and processes' where the Native Title Named Applicants are representative of community. Another person, from the perspective of proponent, claimed experiencing a '…steep learning curve …' (Interview 6 Confidential 2006). This person also made a strong statement that there is always room for improving the EIA process, and suggested that there may have been problems with the Beverley EIA. Reference was also made to knowledge of an emerging national body within the uranium industry that may have the potential to facilitate changes and improvement in the EIA process. Evidence from

these interviews suggests that non-Indigenous players experienced confusion over Adnyamathanha protocol; however, their lack of cultural understanding did not deter them from continuing to play an active role as legal and proponent representatives. Both of these professional interviewees claimed there were major obstacles to effective communication between the proponent, the community and its Native Title representatives, and the legal representatives which diminished the capacity of Adnyamathanha to fully participate.

This highlights the need for Indigenous engagement strategies to be customised for each particular group and an individual case, and demonstrates the difficulties that can arise where there is lack of a clear protocol within the community. Neither person commented explicitly on how to resolve this local governance matter; however, there was acknowledgement made (Interview 1 Confidential 2005) to the effect that the Adnyamathanha community itself was also concerned that decision-making processes were unclear.

This discussion on engagement protocol now turns to claims and concerns expressed by Adnyamathanha regarding protocol endorsed by the mining proponent and government during the impact assessment phase for Beverley Mine. Many Yuras felt that the proponent's focus on Native Title Agreement Making overshadowed equitable consultation and negotiation. At least two sources with direct input from Adnyamathanha (Clarke, Stringer et al. 1998; FRAHCC cited in The Senate 2003) claim that State Government approval of the trial mine occurred without public consultation and that the Adnyamathanha community was being '…pressured to make a decision about its attitude to the mine …' before the Environmental Impact Statement was completed (Clarke, Stringer et al. 1998, p. 11). It was also noted in the Uniting Church report (Clarke, Stringer et al. 1998) that Adnyamathanha Yuras felt that negotiating individually with Native Title Named Applicants was a strategy used by Heathgate Resources to set a precedent for signing agreements that could not be refused by other Named Applicants who would risk being excluded if they did not comply. The strategy of mining proponents negotiating with individuals in a 'representative' capacity as a tool for community engagement has been strongly criticised internationally as politically inappropriate and unethical (Evans, Goodman et al. 2002).

Another tactic allegedly used by the proponent that concerned Yuras was the repeated use of technical language in presentations about the Beverley Uranium proposal. Language used in meetings and written documents was claimed to be '…largely incomprehensible …' (Clarke, Stringer et al. 1998, p. 10) to many Adnyamathanha Yuras. This use of technical language is also evident in the Work Area Clearance form (Johnston and Withers Barristers & Solicitors

1998a) drafted by the legal advisors to the Adnyamathanha Native Title Named Applicants and respective Claimants. More recent attempts through the courts and the Native Title Tribunal by Elders to improve their situation (Johnson, corresp. 2003b; Marsh and Johnson, corresp. 2003a) suggest an ongoing issue of entrenched rules of engagement that continues to exclude an important part of the Adnyamathanha community. In 2009 Adnyamathanha Elders continue to meet regularly as an independent forum for discussion on Native Title and other heritage related issues, and as a show of resistance against what they see as an inappropriate form of governance via ATLA. I argue that the use of Udnyu Ngawarla as the language for communication was not the choice of Adnyamathanha, particularly the Elders, and proved to be culturally inappropriate at the time of the Beverley EIA for information sharing and informed decision-making with Adnyamathanha.

Other ways in which inappropriate procedures endorsed by industry and government may have reduced participation in the EIA was the designated two month period of public consultation. Out of the 1169 public responses to the Beverley draft EIS (Heathgate Resources Pty Ltd 1998a) it is highly probable that no more than one response was received from an Adnyamathanha individual or organisation (FRAHCC 1998). It is likely that only one other submission (Johnston and Withers Barristers & Solicitors 1998b) had a primary focus on local Indigenous concerns with the EIA and these were confined to a legal framework of Native Title legislation. An eight week timeframe was possibly inappropriate for many people simply on the basis that their capacity to comprehend what was in the draft EIS Main Report and respond in an eight week time frame. The draft EIS Report produced by the proponent was written in quite complex English with no translation into Yura Ngawarla, and there were no resources available to facilitate Yura participation. This strongly suggests an engagement process was used that failed to adequately engage the Adnyamathanha community, and excluded many Adnyamathanha on the basis of communication barriers and lack of resources.

Multiple levels of exclusion through the entrenchment of inappropriate protocols signify the degree of difficulty for Indigenous players to move beyond the issues at hand and to try and visualise or implement any form of improvement. Hopelessness, frustration and cynicism regarding the status of Indigenous players together with limited suggestions on how best to improve the situation arose from the comments made by people, some of whom were directly involved in the development process and others that were not directly involved. The impact

of colonisation has left Adnyamathanha with a difficult and complex task of re-asserting our role as Indigenous peoples and decision makers.

Evidence suggests there was an inequitable set of protocols endorsed by government and industry during the negotiations and consultation at the time of the Beverley EIA, and a strong sense of resistance from Adnyamathanha. The procurement of 'agreement-making' under the auspices of Native Title suggests Adnyamathanha enjoyed a position of equal footing with other players directly linked to the Beverley EIA, particularly the proponent, which contradicts evidence given over many years. This points to what may be an underlying factor as to the reasons for unclear rules of engagement: various levels of experiential knowledge in regard to governance and the imposition of Western democracy have led to disparity between traditional Anggumathanha governance and contemporary governance within Native Title.

6.2.3.3 Adnyamathanha Responses and Initiatives prior to Impact Assessment

The EIA for Beverley was preceded by a complex situation for Adnyamathanha given that government approval of the 'trial' mine at Beverley coincided with the implementation of Native Title legislation in South Australia. Native Title claims were lodged by Adnyamathanha individuals recognised under Native Title legislation as Native Title Named Applicants (Johnston and Withers Barristers & Solicitors 1998b). The Native Title Named Applicants sought formal negotiation with Heathgate Resources regarding mineral exploration, on behalf of the entire Adnyamathanha population. This initiative took place on the basis of Named Applicants believing that a legal interpretation of Adnyamathanha rights via the Native Title legislation would recognise Yura custodianship and help protect Yarta (Adnyamathanha Elder 2002; Interview 1 Confidential 2005; Interview 4 Confidential 2006). Following the signing of Exploration Agreements and broader public knowledge of the Beverley proposal a series of further responses and initiatives was forthcoming from the Adnyamathanha community.

The Nepabunna community began meeting informally to talk about what they had heard of the proposal for a uranium mine called Beverley and decided to circulate a petition (Nepabunna Aboriginal Community 1995) with the intention of trying to stop the mining proposal on the basis that the area was sacred to Adnyamathanha and disturbances of uranium was considered dangerous. In mid-1997 Nepabunna Yuras through their community spokesperson Kelvin Johnson sought the support of FRAHCC (FRAHCC 1988) as a

community-based organisation facilitating Adnyamathanha consultation under the *Aboriginal Heritage Act* (SA Government 1988).   This approach was probably seen by concerned members of the Nepabunna Aboriginal Community as the only option for gaining support given the scarcity of resources available to Yuras. No other Adnyamathanha or independent Aboriginal organisation existed at this time to represent community-wide views on heritage protection for Adnyamathanha.   Adnyamathanha had no established links with other community-based Indigenous organisations or environmental groups, had no resources to develop heritage protection protocols and had no means of financing cultural resources management initiatives.

During the latter part of 1997 there was a growing awareness among Adnyamathanha regarding the possibility of a new uranium mine in Anngurla Yarta (spiritual country) but there was still little understanding of the mining proposal or the different stages of development and current legislative requirements that governed this process (FRAHCC, corresp. 1997).   A meeting hosted by Adnyamathanha heritage organisation FRAHCC at Balcanoona in December of 2007 was the first and possibly the only time where Adnyamathanha Yuras met with non-government and non-industry persons to independently discuss this new development (FRAHCC 1998; Marsh 1998). It was also the first time that the broader Adnyamathanha community gained public confirmation that Exploration Agreements between Heathgate and Native Title Named Applicants (Heathgate Resources Pty Ltd 1998a, p. 2-9) had been negotiated and signed on behalf of the entire Adnyamathanha community. Statements read out at the Balcanoona meeting included a motion of opposition passed at a FRAHCC Committee meeting:

> "Our Committee instructs the Secretary to send letters to Heathgate Resources, Premier John Olssen, State Opposition, Native Title Unit, and the Federal Government stating that FRAHCC is not willing to negotiate over the issue of Uranium mining; that as representatives of the Traditional Owners of our area we are opposed to Uranium mining at Beverley and elsewhere; that we are not willing to conduct a Site Inspection of the area; and that we regard actions taken by Heathgate Resources in going ahead with their trial programme as a breach of the *Aboriginal Heritage Act*"

(cited in Marsh 1998)

Discussion at the Balcanoona forum resulted in another statement of opposition being drafted whereby many people present declared that:

"We, the undersigned, as members of the Adnyamathanha community, were present at a community-based gathering held at Balcanoona on 13th and 14th December 1997. Our main purpose was to discuss our concerns about the Beverley Uranium mining proposal, and to hear from environmental groups the concerns they have regarding Beverley. As a result of our meeting we declare our opposition to uranium mining and our refusal to negotiate with Heathgate Resources over Beverley. *We want uranium mining at Beverley stopped*"

(cited in Marsh 1998)

Records (FRAHCC, corresp. 1997) suggest that letters of opposition and concern were sent as instructed all of which were undermined through the approach of 'agreement-making' under the Native Title process. Minutes from a Native Title governing committee meeting held in the late 1990s (cited in Marsh 1998) suggests an air of despondency among the community, or a sense of 'giving-up' reflected in a motion put to the floor which reads:

'The Adnyamathanha people reluctantly agree to negotiate over mining. The Adnyamathanha people do not think our wishes for our land are respected but, if the mine is to go ahead, we want to have input into the conduct of the mine and receive compensation, royalties and other benefits, which include environmental issues.'

(cited in Marsh 1998)

Records from the actual time of the EIA include a series of conversations recorded in 1998 by a team of Uniting Church Consultants (Clarke, Stringer et al. 1998). The Uniting Church sought to engage with approximately 60 people from the Adnyamathanha community regarding commercial development of the Beverley site. Notations cite long-term residents from the township of Copley who felt that '…there was no possibility of stopping the development under current governments' (Clarke, Stringer et al. 1998, p. 3) and '…because the land was already damaged … you can have your mine – just give me my title' (Clarke, Stringer et al. 1998, p. 1). The authors of this paper (Clarke, Stringer et al. 1998) claim that based on their discussions it became obvious that many Adnyamathanha were experiencing a deep sense of 'dissatisfaction' (Clarke, Stringer et al. 1998, p. 7) and 'suspicion' (Clarke, Stringer et al. 1998, p. 11) regarding the consultation and negotiation process between the proponent and the Native Title Named Applicants who represented the wider Adnyamathanha community, and people claimed that it was the proponent who primarily benefited from '… its initial approach of simply dealing with the designated claimants and ignoring the wider

Adnyamathanha community…' (Clarke, Stringer et al. 1998, p. 11). Many people including the Named Applicants referred to the cultural significance of the mine area and 'what the old people had said' yet there were signs of a lack of authority to uphold Adnyamathanha customary law in regard to site protection. These comments made in this report suggest a number of key issues including concerns of irreversible damage to country, suspicion regarding monetary compensation, and a loss of control over the way the land is used. What emerges from these statements is a sense of an inevitable outcome of land use, and no clear understanding of how best to achieve an outcome that would satisfy Adnyamathanha priorities. However, the willingness of people to share their concerns publicly stands as a testimony to the denial of Adnyamathanha rights in regard to the Beverley case.

Other responses and initiatives from Adnyamathanha began to emerge regarding community consultation and negotiations and the approval for a commercial license for Heathgate Resources. Public media statements claiming that the community was under duress were made by Adnyamathanha Yuras in leadership roles during the pre-development stages of Beverly Mine (Vince Coulthard cited in FRAHCC 1998; ABC 1999). An important post-EIA example of the initiative show by Elders is found in the media release from the Nepabunna Community in which Adnyamathanha Elder and last living senior initiate Artie Wilton publicly states he '…was never consulted and has never agreed to the Beverley and Honeymoon mining projects … the Beverley Mine must be stopped, dead stopped …' (Artie Wilton cited in Nepabunna Aboriginal Community 2000). These claims and comments demonstrate perseverance as well as frustration from Adnyamathanha leaders regarding responsibility and rights in the face of limited cultural respect for our Yarta and our Muda. Public concern expressed by these Elders suggests that neither the contemporary framework of Native Title nor the ancient rites of pasSage according to Anggumathanha Law were sufficiently recognised by the proponent or the government in regard to community engagement over the Beverley Mine proposal.

A further example of Adnyamathanha Elders taking the initiative to speak out publicly about feeling disempowered by early stage negotiations via the Native Title process is seen in the development of oil and gas exploration (Michael 2001). The dejected expression on the photographed image of Elder Ron Coulthard and his comments 'what good is money to us' (Ron Coulthard cited in Michael 2001) clearly signals a feeling of despair and dissatisfaction. This sense of despair sits in sharp contrast with senior government representatives quoted in this article such as the Minister for Minerals and Energy Wayne Matthew who viewed Native

Title as merely a 'sticking point' for future development (Michael 2001). This attitude from government representatives suggests little institutional regard for the rights of Indigenous people within cultural resources management. The courage shown by members of the Adnyamathanha community in publicly expressing their views suggests that despite feeling disempowered Elders were prepared to speak up for their cultural rights throughout the Beverley EIA.

Opportunity for potential change was the intention of some Adnyamathanha to bring about greater empowerment for the respected traditional leaders in the community, the Elders. For example an Elders Forum was written into the ATLA Governing Committee constitution (ATLA 2001); however, this initiative failed to empower Elders when it ceased to operate as a functional body. Ms Mahomed makes particular reference to one of these Elders Forums held before an ATLA Governing Committee meeting stating: 'Ended up in a fight. Thathy (one of the female Named Applicants who is also an Elder) got punched that time' (Interview 10 Public 2006). Other Yuras sought repeatedly to assert the traditional role of Elders and improve governance by questioning the validity of ATLA via the Native Title Tribunal and the courts (Johnson, corresp. 2003a; Marsh and Johnson, 2003). These initiatives highlight the recollections from Adnyamathanha regarding the time of the Beverley EIA and draw attention to the limited extent to which Adnyamathanha traditions were recognised and respected despite repeated attempts to improve governance.

Given the lack of independent resources available to Adnyamathanha during the Beverley EIA the use of media became an important tracking tool for Adnyamathanha. Media representation (Evans 1998) issued at the time of the EIA suggested the Beverley case was orderly and equitable on the basis that Adnyamathanha representatives under Native Title acted with legal authority to enter into a mining 'agreement' and the main component of royalty distribution was an appropriate form of recompense for Adnyamathanha. However, a media statement released twelve months later stated that '…Adnyamathanha Aboriginal people in South Australia's far north claim a mining agreement with Heathgate Resources was signed under duress' (ABC 1999). This article quoted one of the individual Native Title Named Applicants Vincent Coulthard who signed off on the mining 'agreement' raising concern that '…some aspects of the negotiated outcomes have not been met by Heathgate…' and '…Heathgate haven't kept up their promises…' (Vincent Coulthard cited in ABC 1999). These claims imply that leadership by people at the community level during the time of the Beverley Mine proposal was difficult to manage and there was a sense of mistrust between

Yuras and proponent. Evidence suggests the people who were directly involved in engagement with the proponent experienced sufficient tension and inequity during negotiations which urged them to speak publicly about their experiences and their concerns.

6.2.4 Conclusion

Experiences and perceptions show a pattern of frustration as well as courageous resistance by Adnyamathanha players. Adnyamathanha Yuras and many non-Indigenous players claim the Beverley case was characterised by limited recognition of and respect for Adnyamathanha heritage during development. The changing nature of cultural resources management and lack of independent resources at the community level was clearly a major issue of concern for Adnyamathanha as evidenced by the disjointed and inequitable interface between proponents, governments, NGOs and Indigenous players.

Personal experiences shared in this study suggest that pre-approval discussions and responses were surrounded by confusion as to where the appropriate levels of authority resided in the community, and that the issue of internal governance as well as lack of external support resulted in violence, community division, and systematic disempowerment. As well as the issues which arose during interviews there were also issues implied by the lack of discussion during interviews. For example, most community people did not articulate their views in an analytic sense, choosing instead to simply describe their experiences and raise their concerns. The EIA as a topic of discussion attracted limited attention and specific detail; possibly the EIA was not regarded as a separate or well understood entity during interviews.

Views expressed from individuals focussed on a range of realities depending on which sector they belonged to. For example participants from the Green NGO sector and those Adnyamathanha who had a Western education sometimes placed emphasis on environmental and cultural rights, whereas Adnyamathanha Elders placed greater emphasis on the role of Elders and their dissatisfaction with the processes used in the Beverley case. Another example of difference relates to the absence of a clearly defined protocol or set of rules for Indigenous engagement. Information shared in interviews and through public statements suggests that Yuras participation was largely devoid of negotiated and agreed-upon rules and this was linked to inequitable representation, consultation and negotiation for Adnyamathanha, particularly for Elders in the community. No interviewees used the terms 'best practice' or discussed how engagement protocols could be used to improve community

governance; however, all participants spoke of the frustration they had experienced in not being clear about the rules for engagement.

Resolution of obscurities and inequalities in regard to engagement will require a much greater appreciation of Elders in particular, given their traditional role of leaders for Adnyamathanha and their depth of cultural knowledge and experience. The voices of women and young Adnyamathanha also deserve more inclusive positions, as custodians of maternal sites and as the future leaders for Adnyamathanha. Once a more inclusive model is achieved Adnyamathanha will be positioned to play a more equitable and harmonious role in regard to community engagement and heritage protection in the future.

6.3 Commercial Development of Beverley Uranium Mine

6.3.1 Introduction

A descriptive analysis of the Beverley Environmental Impact Assessment (EIA) and how this project became a commercial entity offers a grounded view of impact assessment 'best practice' and Indigenous heritage protection. The interpretation and application of different pieces of legislation and policy in the Beverley proposal are used to determine the extent to which a consistent and equitable approach to planning and development is available in South Australia, particularly in relation to recognition of Indigenous values. The purpose is to better understand how future engagement can be improved through strategies that simultaneously empower Indigenous peoples and protect cultural heritage.

Data reviewed in this section includes the Guidelines for an Environmental Impact Assessment on the Proposed Development of the Beverley Uranium Project by Planning SA and Environment Australia (Planning SA and Environment Australia 1998), an Assessment Report by the South Australian and Commonwealth government (Minister for Primary Industries Natural Resources & Regional Development SA and Environment Australia Department of the Environment 1998b), and the Commonwealth report known as the Environmental Assessment Report and Related Documents: the Beverley Uranium Mine Proposal (Environment Protection Group and Environment Australia 1999). Various documents that critique the impact assessment process post-approval are also examined. Interview participants and players provide a wide range of views regarding the Beverley case.

6.3.2 Regulation of Legislative Requirements and Impact Assessment Practices

During the late 1990s there were three possible levels of impact assessment or EIA under the *Development Act 1993* (SA Government 1993); an Environmental Impact Statement or EIS, a Public Environmental Report or PER, and a Development Report or DR (Thomas and Elliot 2005). All of these levels require public engagement, and in the case of an EIS or PER specifically require a public meeting. A draft proposal is required by the proponent and circulated for public comment. The proponent is issued with copies of submissions and is expected to respond to issues raised before a final report is drafted. The final report at the end of the process is intended as an independent assessment prepared by the Minister, which may include amendments to the assessment based on erroneous or incomplete information. The

completion of an EIA comprises all of these stages, but in the case of the Beverley proposal mining was permitted by government outside of the EIA process.

The *South Australian Mining Act 1971* (SA Government 1971) was utilised at the discretion of government to facilitate a formal regulatory process prior to an EIA process for the Beverley project. Mining began with government approval for a 'trial' operation using a non-public review process known as Declaration of Environmental Factors (DEF). Permission was granted by the South Australian government during September 1997 (Heathgate Resources Pty Ltd 1997a) for the trial mine based on a series of statements drafted by mining proponent Heathgate Resources in accordance with *South Australian Mining Act 1971* regulations. The decision by government and industry to endorse a regulatory process that allowed uranium mining to commence without an EIA sparked controversy and public concern over the Beverley proposal.

The State regulatory processes during the impact assessment phase of the Beverley proposal were not well understood by Adnyamathanha according to interview data (Interview 13 Public 2004; Interview 11 Public 2005; Interview 10 Public 2006). Yura participation in the public consultation process was primarily confined to concerns regarding heritage protection (FRAHCC 1998; Johnston and Withers Barristers & Solicitors 1998b). Lobbying from Greenies started at around the same time Adnyamathanha that concerns arose via FRAHCC and the Nepabunna Community (see §6.2); however, Green groups and Adnyamathanha were yet to form an alliance.

Scrutiny from environmental watchdogs such as the Australian Conservation Foundation became a critical aspect in raising public awareness. Outrage from Green NGOs escalated when they were denied access to DEF documentation. David Noonan from the Australian Conservation Foundation claimed that the public was being unnecessarily forced to seek access through a 'Freedom of Information' (FOI) request (Australian Conservation Foundation 1997b; Noonan, pers. commm. 1997). The DEF documentation was circulated among industry and government but only released to the general public after the FOI claim was lodged from the Australian Conservation Foundation (Australian Conservation Foundation 1997b; Minister for Primary Industries Natural Resources & Regional Development SA 1998a). Several letters from members of the public were also sent directly to Heathgate Resources and media releases from Green NGOs began publicly protesting at the 'secrecy' surrounding the trial operations (Australian Conservation Foundation 1997b;

Australian Conservation Foundation 1997b; Simpson and Moody, corresp. 1997; Heathgate Resources, corresp. 1997a; Heathgate Resources, corresp. 1997b).

The public release of DEF documentation (Heathgate Resources Pty Ltd 1997a; Heathgate Resources Pty Ltd 1997b) confirmed that the Beverley Mine DEF was confined to technical mining issues, did not include any explanation regarding the lack of public consultation, and failed to include any review of Indigenous issues. Industry and government responses were dismissive of public concerns and the proponent issued statements such as '…the public has many opportunities to participate and is encouraged to do so' (Heathgate Resources, corresp. 1997a) and 'testing of mining techniques' was regarded by Heathgate Resources Managing Director and President as the result of an '…exhaustive environmental assessment…' (Heathgate Resources, corresp. 1997a). The trial tests were later employed as '…part of the Beverley Environmental Impact Assessment process' (Heathgate Resources Pty Ltd 1998c). Tension between State-proponent and public-NGOs was driving a wedge between interest groups and raising questions about the credibility of impact assessment procedures.

On the one hand the process of trial mining was regarded by proponent and government as a way of avoiding duplication; on the other hand it was regarded by the public as secretive and rushed. Claims of secrecy were dismissed by a senior government representative who despite the belated release of DEF documentation claimed 'There is nothing secret about the Beverley Project' (Minister Rob Kerin cited in Nuclear Issues Coalition 1998, p. 3). As Minister for Primary Industries and Natural Resources Rob Kerin spoke positively of the government's decision to hasten development of Beverley. Kerin claimed the South Australian government's intended to amend mining legislation some time during 1998 was in order to to fast-track the exploration license application process. Kerin insisted that the role of government was to facilitate mineral exploration and mining developments, and he indicated that government had plans to seek to legislate 'fast-tracking'. This strategy endorsed by industry and government was clearly favourable for mining and suggests an approach that deliberately sought to minimise public awareness and opposition to the expansion of uranium mining in South Australia. Arguably the DEF also allowed the proponent an opportunity to shed its corporate responsibility regarding public consultation prior to commencement of mining and undermine the standard regulatory process of EIA.

The State government and mining proponent announced that the Environmental Impact Statement (EIS) report for public comment might be released as early as March 1998 (Nuclear Issues Coalition 1998) but this did not eventuate until June 1998 (Heathgate Resources Pty

Ltd 1998a). As part of the public consultation phase within the impact assessment process there were two public meetings held, one in Port Augusta on 28 February and another in Adelaide on 5th August of 1998 (Heathgate Resources Pty Ltd 1998a) effectively allowing only one public forum for discussion after the release of the draft EIS Main Report. This met the minimum requirement according to the *Development Act 1993* (SA Government 1993) but was arguably less than an '…exhaustive environmental assessment…' (Heathgate Resources Pty Ltd 1998c) as claimed by the proponent. The EIA was a complex assessment process that resulted in a final impact assessment report which drew heavily on the DEF and included a series of documents collectively known as the Environmental Assessment Report and Related Documents (Environment Protection Group and Environment Australia 1999).

The lack of transparency in the development process emerged as an ongoing issue between developers, government and the public. In contrast to Minister Kerin's views, deep concern at the use of 'fast-tracking' was expressed by the Select Panel of the Public Inquiry into Uranium. Findings from this inquiry claimed the uranium industry had silenced public debate on uranium by excluding the Australian public with '…ad hoc but intricate system of development acts, indenture acts, 'fast-tracking' government collusion and media manipulation …' (Select Panel of the Public Inquiry into Uranium 1997, p. 32). The Australian Conservation Foundation also claimed there had been systematic manipulation by both government and industry of the *South Australian Mining Act 1971* and DEF process (Australian Conservation Foundation 1998b). The Conservation Council of South Australia also claimed this inequitable process had became an officially endorsed strategy to enable the proponent, mining industry, and government to legally bypass scrutiny prior to mining, and cloud the impact assessment processes set out under Commonwealth and State legislation (Conservation Council of South Australia 1998). The procedure used in the early stages of the Beverley case was regarded as '…a travesty of the environmental impact assessment process' (Conservation Council of South Australia 1998) and lacked a transparent and fair process by government and proponent. These claims suggest that 'best practice' was not regarded as a priority by State-industry players.

This concludes discussion on the DEF and turns to a closer look at the EIA procedure for Beverley Mine beginning with a brief critique of policy guidelines. The term 'environment' was used in impact assessment policy to broadly include '…all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings … and includes the natural environment, the built environment and social aspects of our

surroundings' (Planning SA and Environment Australia 1998, p. 1). Terms such as 'Aboriginal' or 'Indigenous' were not used in policy guidelines for either the Beverley proposal (Planning SA and Environment Australia 1998) or a later proposal also assessed in 1998, the Honeymoon Uranium Project (Planning SA 1998). This omission contradicts the 'all aspects' inclusive approach stipulated at the very beginning of this policy document and sends a mesSage to proponents drafting proposals that Indigenous peoples and lands can be readily assimilated into a generic discussion. The wording used in both the Beverley and Honeymoon documents is in places identical suggesting a generic approach may be commonly used by government in establishing EIA guidelines. Plagiarising pasSages of text within government guidelines sends a mesSage that these projects being discussed are bureaucratic by nature and only require a superfluous commitment from proponents.

Evidence suggests that an alliance between industry and State enabled an extraordinary situation of mineral extraction to occur before an EIA was implemented and prior to a commercial license being granted. The approval for a trial operation based on a DEF preceded the release of the impact assessment statement for public comment which did not take place until several months after uranium was being extracted, thus blurring the lines between a public and non-public process. Public access to the DEF documentation only became available following a letter to government department Mines and Energy South Australia (Noonan, pers. commm. 1997) followed by a Freedom Of Information (FOI) request from the ACF office (Interview 11 Public 2005).

I argue that the formation of an alliance between State and industry, and the use of a 'fast-tracking', are in keeping with the 'dig and deliver' model for mining (Brereton 2004, p. 15) critiqued by Brereton and other international commentators (see §4.2). The Beverley case offered an opportunity where the South Australian government and the mining industry could have been showcasing best practice for environmental and social planning. Instead the authorities responsible for regulation of the Beverley Mine proposal used a model that denied public rights, bypassed the standard regulatory process, and demonstrated an aggressive assertion of industry and government powers.

This discussion now turns to Indigenous heritage protection laws and Ministerial powers in South Australia (1988) which were relevant in three ways to decision-making during the impact assessment phase. The Minister acted firstly as a legal determinant of the heritage value of a site, second as a legal authority to disturb or destroy a site, and third had the power to provide an avenue for community advice to be sought for consideration in making

decisions. At the time of the Beverley impact assessment government agency Division of State Aboriginal Affairs (DOSAA) and the Minister for Aboriginal Affairs Dorothy Kotz along with the advisory body known as the State Aboriginal Heritage Committee (SAHC) were ultimately responsible for administering the *Aboriginal Heritage Act* and facilitating heritage protection.   However, I found no evidence suggesting an active Ministerial role was played at any stage of the DEF or EIA in making a determination under the *Aboriginal Heritage Act*.

Due to restricted access to SAHC documentation it is difficult to know with complete certainty if there was any formal liaison between the Minister and the SAHC on the Beverley proposal, however FRAHCC records (FRAHCC, corresp. 1997; FRAHCC 1998) suggest that SAHC played no role in this matter even though FRAHCC had contacted the Minister voicing concerns and requesting a determination. Ministerial intervention regarding the Beverley case was limited to Minister Kotz responding to a request from FRAHCC to inform Adnyamathanha there was no funding available to facilitate independent community consultation or a site survey of the Beverley area (FRAHCC, corresp. 1997).   Lack of Ministerial intervention and consultation with the SAHC suggests a low priority was placed on heritage protection on the Beverley site by DOSAA and Minister Kotz. In 1999 the State Aboriginal Heritage Committee Chairperson who was also a DOSAA employee raised general concerns with the Minister at the increasing level of oversight of the *Aboriginal Heritage Act* since inception of Native Title legislation and claimed this was having an adverse impact on heritage protection in South Australia (Wilson, pers. comm. 1999).

One Indigenous interview participant (Interview 16 Confidential 2005) with extensive knowledge and experience of South Australian Indigenous affairs within the public service at an executive level expressed concern on how government interpretation of heritage legislation took place during the 1980s and 1990s. This person claimed a '…history of 'gate-keeping' and lack of accessibility and accountability within the government system' regarding Indigenous affairs within South Australia. This person felt disappointed and frustrated that heritage matters were being '…managed primarily by non-Indigenous people, many of whom have been repeatedly employed across various government departments to control and dominate in a 'white' way' (Interview 16 Confidential 2005).

In addition to the general public meetings a report was submitted to Heathgate Resources by a group of academic consultants acting on behalf of Adnyamathanha Native Title Named Applicants (Centre for Environment and Recreation Management and Australian Water Environments 1998b). This report was not initiated or funded by any Adnyamathanha organisation and was not reviewed or sanctioned by FRAHCC. The report raised a number of issues in relation to the EIS including ill-defined participation by Adnyamathanha, inappropriate terms of reference, and a confusing approach to consultation. The report is authored by CERM and AWE for 'The Adnyamathanha people' (Centre for Environment and Recreation Management and Australian Water Environments 1998a) and used a methodology that was possibly not appropriate for claiming to represent the views of the entire Adnyamathanha group. A series of three meetings were held with participants mostly from within the Native Title sector to gather data for this report. The report does not directly quote any of the concerns raised by Adnyamathanha in these meetings, nor does it describe the content of discussion at these meetings or the process by which the meetings were conducted. In effect, this trivialises the views of Adnyamathanha. The report lacks evidence of Adnyamathanha capacity for independent and culturally appropriate participation and suggests Adnyamathanha perspectives were trivialised.

Inter-governmental responses prior to and during the EIA provide insight to the way in which Adnyamathanha and other Indigenous Australians are regarded by State agencies in relation to commercial development. A number of government agencies had the potential to inform the scoping of the Beverley EIA under Section 46B of the *Development Act 1993* (SA Governemnt 1993, s46B) and this included written advice submitted by the Chief Executive Officer within Department of Environment, Heritage and Aboriginal Affairs Mr John Scanlon (DEHAA 1998). This submission raised several points, one in direct relation to requirements of the *Aboriginal Heritage Act* (SA Government 1988). Scanlon (DEHAA 1998) referred to Ministerial powers and claimed that the role of the Minister for Aboriginal Affairs was usurped by the proponent's investigating consultant who proceeded to determine what should or should not be placed on the Register of Aboriginal Sites and Objects (Heathgate Resources Pty Ltd 1998a, p. xxxiii). The submission by Scanlon claims this was inappropriate since power of determination rested solely with the Minister.

The Scanlon submission (DEHAA 1998) does not in any way draw attention to existing engagement protocols or the lack of existing protocols in the Beverley case that could have been employed to facilitate community consultation under the *Aboriginal Heritage Act*. For

example, there is no acknowledgement of the role of FRAHCC in administering a Site Inspection process (FRAHCC 1991), or the role of the State Aboriginal Heritage Committee as an advisory body that reports directly to the Minister for Aboriginal Affairs. The Scanlon submission failed to acknowledge that the scope of the *Aboriginal Heritage Act* recognises the rights of Traditional Owners and must include a complete gambit of heritage protection measures, an issue strongly raised in another submission (Environment Australia 1998) and on separate occasion by the Chair of the SAHC (Wilson, pers. comm. 1999). As the CEO responsible for reporting directly to the Minister for Aboriginal Affairs (DEHAA 1998) Scanlon shows limited understanding of either the legislation, policies or usual practices associated with Indigenous heritage protection in South Australia or more broadly at a national level. This is reiterated by comments made by one of the interview participants who at the time of the Beverley EIA played a major role in Indigenous heritage protection in South Australia (Interview 16 Confidential 2005) who commented: 'Legislation and policies remain disjointed, and now many of the experienced people have been replaced'. Omissions in the Scanlon submission suggest little understanding of the practices associated with community engagement which was raised as a key concern by other government departments such as Environment Australia (Environment Australia 1998). Manager Caroline Chapman within the Environmental Impact Assessment Branch raised a number of issues regarding Indigenous heritage and community consultation (Department of Environment Heritage and Aboriginal Affairs 1998; Environment Australia 1998). This submission identified possible gaps in the consultation process particularly in relation to community consultation with Indigenous players and in relation to the protection of Indigenous heritage at the Beverley site.

Chief Executive Dennis Mutton within Department of Primary Industries and Resources saw fit to prioritise the possibly negative social impact that the Beverley project might have on Nepabunna Aboriginal Community due to '…social issues relating to the control of "new wealth" and '…emergent concerns relating to alcohol abuse …' (Department of Primary Industries and Resources 1998), but does not mention any possible impacts on Indigenous heritage in the region. This incredibly biased and stereotypical statement by a government official signalled that discussions between departmental officers and members of the Nepabunna Aboriginal Community were problematised by government in a paternalistic way that made it seem 'normal' to expect Indigenous peoples to not be able to effectively manage their own affairs in the face of change.

Deputy Premier and Minister for Primary Industries, Natural Resources and Regional Development Rob Kerin (Kerin 1998b) claimed in a letter he wrote to the Australian Conservation Foundation that 'Agreements have been reached between the companies and the appropriate Aboriginal groups regarding Aboriginal heritage considerations …' and '…negotiations with the appropriate parties toward Native Title agreements are well advanced' (Kerin 1998b). Kerin also claimed in a newspaper article (Kerin, corresp. 1998) that Indigenous dissent was as a result of radical environmentalists brainwashing people. The attitude from within some government ranks was less than sympathetic or understanding of Indigenous issues and the lack of specific detail suggests scant knowledge existed within government ranks regarding the reality of Indigenous engagement. There was also possibly an assumption that systematic consultation with the Adnyamathanha community in relation to heritage protection had been undertaken via Native Title.

In conclusion to this section on heritage protection I argue that State Ministers showed little understanding of Indigenous affairs surrounding the Beverley case and subsequently ministerial powers failed to enact legislation at a critical period which may have maximised Adnyamathanha heritage protection. Literature from the Hindmarsh Island case and Olympic Dam case (see §3.1.4) confirms that Aboriginal Heritage legislation in South Australia is not providing an effective means of heritage protection. A national inquiry into Aboriginal heritage protection (Evatt 1996) confirms widespread failure of government regulation. Therefore the Beverley case stands as part of a pattern of non-intervention by government agencies responsible for regulating heritage protection and an undermining of heritage laws by industry that is having detrimental effects on Indigenous peoples and cultures in Australia.

6.3.3 Professional Intervention during Beverley EIA

A range of professionals provided services in direct relation to the Beverley EIA, either as a result of their employment or due to a long standing interest in Indigenous affairs. The term 'professional' is used to refer broadly to individuals with specialised expertise in fields such as media, hydrology, chemistry, law, public relations, and research. Some professionals were paid for their efforts by external bodies such as ABC Radio or Australian Conservation Foundation; none were funded by any Adnyamathanha organisation. A range of volunteers provided advice and support at their own expense. This part of Chapter Six aims to highlight the existence of professionalism, public advocacy and the influential role these played in the Beverley case.

6.3.3.1 Public Advocacy

The role of professional journalists and media outlets became an important tool in expressing opinions and concerns, sharing information publicly, and in gaining wider support for the respective positions of players. Literature produced through media outlets such as ABC radio and television, and local newspapers *The Advertiser* and *Adelaide Voices* add greater understanding of the perceptions surrounding consultation and negotiation and the power base held by various interest groups.

Media produced around the time of the Beverley impact assessment was used by all players to share information and to promote their respective positions publicly. Claims began to circulate that documented the experiences of players in the EIA process (Australian Conservation Foundation 1997a; Australian Conservation Foundation 1997b; Holden 1997; Australian Conservation Foundation 1998a; Australian Conservation Foundation 1998b; Marsh 1998; Marsh, pers. comm. 1998). Concern over the heritage values of the Beverley site and dissatisfaction with the impact assessment process were key issues raised by Indigenous players and environmental advocates. In contrast, the mining industry and government used media representation to portray high levels of success and satisfaction with regards to Indigenous engagement (Holden 1997).

Often there were passionate and conflicting claims within a single article (Holden 1997). Heathgate Resources spokespersons claimed a proud relationship between the company and Adnyamathanha; another interest group (Flinders Ranges Aboriginal Heritage Consultative Committee) claimed that the State Government and Heathgate Resources struck a secret deal with two families at the exclusion of all other Adnyamathanha; yet another group (Native Title Named Applicants) were opposed the mine but claimed having no option other than to give clearance because of the likelihood of losing a possible court challenge by the proponent. Adelaide newspaper *Adelaide Voices* later published an article (Marsh 1998) about the link between Adnyamathanha cultural knowledge and opposition to Beverley Mine, and the feelings of being ignored or intimidated prior to government approval for a commercial operation to commence.

ABC journalist Rose Crane was one of several professional journalists that faced scathing criticism from the Minister for Primary Industries, Natural Resources and Regional Development (Kerin, corresp. 1998; Kerin 1998b) and subsequently internal pressure from the ABC hierarchy regarding claims of unprofessional conduct. Crane stated that she felt the

Minister was questioning her credibility as a way of dismissing the claims made and felt that this was an attempt to silence the voices within the community that she was trying to represent (Marsh, pers. comm. 1998). She found his manner highly intimidating but this did not surprise her given that the same Minister had been highly vocal in criticising a number of interest groups including Aboriginal voices (Kerin cited in Holden 1997; Kerin 1998b) whom expressed concerns over the way in which the Beverley proposal was administered. In 1998 Rose Crane was joint winner of the inaugural Jill Hudson Award for Environmentalism in South Australia, an award granted by the Conservation Council of South Australia. She has since left South Australia to pursue her career elsewhere.

Expertise from within environmental NGOs with a conservation ethos was another form of professionalism. Environmental advocacy from these NGO members often known as 'Greenies' provided the general public and Adnyamathanha in particular with a distinctively 'grass-roots' approach to information sharing, networking and public campaigning in relation to impact assessment, planning and development. Many people who identify collectively and individually as 'Greenies' do so through organisations such as the Wilderness Society, Friends of the Earth (FoE), and the Australian Conservation Foundation (ACF). Two Greenies that agreed to participate in an interview with me were David Noonan and Jayne Weepers. Their engagement across environmental and Indigenous issues contributed a complex understanding of campaign experience and specialised environmental knowledge that characterises them as professionals. The offices for South Australian Conservation Council and the South Australian branch of ACF were physically located at the same premises throughout the period leading up to and following the development of Beverley mine.

Prior to ACF and FoE engagement with Adnyamathanha the Conservation Council had been called upon for assistance from one of the Adnyamathanha Native Title Named Applicants Mr Gordon Coulthard seeking advice on his Native Title claim and its interaction with the Beverley mine proponent (Interview 11 Public 2005). However, the Conservation Council claimed they were 'not in a position to take it up' which David Noonan suggested '…may be an example of organisations not being placed to deal with the complexities of issues' (Interview 11 Public 2005). This request for assistance shows that some Adnyamathanha recognise a role for Greenies but like many Indigenous peoples this may be confined to a vague sense of Greenies being part of a mainstream environmental movement. Noonan comments that the inability of Greenies to take up a strong position may often equate to a

mistaken understanding of getting no help, which meant that Aboriginal people may feel '…they had played the field in a sense and they didn't get a commensurately resourced or helpful response' therefore assuming 'I can't go there because there's nothing on offer' (Interview 11 Public 2005). This self-directed critique suggests that environmental NGOs as part of a professional body need to be 'better placed to properly engage' when dealing with Indigenous groups. Another Greenie, Jayne Weepers, working in an NGO out of Darwin in the Northern Territory also raised concerns at the role-playing capacity of Green groups claiming that:

> '…trying to operate at a policy and political level out of Darwin from a very, very small organisation with limited resources … one of the dilemmas I think, in moving into the arena of liaising with Aboriginal mob is having the resources to understand the policy environment you are stepping into, and the legislative framework and the Aboriginal political environment, particularly to do with the representative bodies …' (Interview 14 Public 2005)

Jayne Weepers' involvement in 1996 with coordinating activities within the Environment Centre was a significant learning process for her in working with Indigenous interest groups. The realisation of how important it is for Indigenous interest groups to have access to their representative bodies became a critical strategic tool for Weepers and others working with ACF and Gundjemi Aboriginal Corporation, a then fledging organisation which later became instrumental in the Jabiluka case. Jayne commented on the difficulties faced by Traditional Owners in establishing and maintaining a position of power and how '…it took a lot of years for Traditional Owners to seek a whole range of other avenues to get their view heard … in that case it probably worked for ERA (the mining proponent) more than it worked for anyone else' (Interview 14 Public 2005).

Another key aspect relating to the capacity of Greenies working with Indigenous groups raised by Jayne Weepers related to trying to establish a voice within the impact assessment process used by governments and mining proponents. Jayne commented that in the case of Jabiluka '…there really wasn't a satisfactory process to answer peoples' concerns…' and '…all of the processes such as EIS are explicitly designed to facilitate an approval and they are difficult because they don't actually start from a premise of 'Should a project proceed?' it just starts from 'It will proceed and what conditions do we need to put in place?' which suggests a gap in the understanding among Green groups and Indigenous groups about what

to expect from an impact assessment process and how to interact in a way that brings maximum benefit.

David Noonan spoke about learning from other Green NGO colleagues and from personal experience regarding the issues faced by Indigenous peoples and how best to support these people (Interview 11 Public 2005). His earlier involvement with impact assessment processes raised two key issues:

> 'one was the power games that were played against Aboriginal interests by the formal assessment players, and the other in the difference between what you might say is the Aboriginal peoples' cultural understanding of landscape compared to what the government regulatory processes accepted as relevant …' (Interview 11 Public 2005)

The insight gained by Noonan through involvement as ACF Campaign Officer with the Lake Eyre Basin World Heritage proposal, his links to other Greenies and Green groups, and his formal education in environmental issues provided a body of knowledge and a network of experience to Adnyamathanha that was absent prior to the Beverley case.

Noonan also spoke of the limitations he felt when first beginning to interact with Adnyamathanha. One of the key difficulties he and other Greenies faced was trying to understand contemporary Adnyamathanha governance and the prior experiences that shaped current issues: 'We were missing the map of the community in its contemporary form, and we were missing the right depth of understanding of where they had been and how that influenced where they were today' (Interview 11 Public 2005). As a result there were gaps in cross-cultural understanding, as well as gaps in what Noonan referred to as the availability of 'a strategic power map'. These gaps meant Adnyamathanha had to educate the Greenies and vice-versa on what were the key issues, how best to support each other, and what resources were available. Articulation of these gaps was at times as basic as 'What about mining; what about uranium; what about community being able to oppose something or protect their interests' (Interview 11 Public 2005).

Jayne Weepers also recalls 'A really critical part of being able to work with Aboriginal people is understanding the decision-making process to some extent. I think as an outsider you're never really going to understand it, but at least have an idea of it' (Interview 14 Public 2005) which poses as a major complexity for small support groups that sometimes tend to associate indirect communication and a distinct cultural framework with 'slowness' when trying to accommodate pressures such as media deadlines and coordination with various campaigns.

The comment was made 'It's just a question of getting those non-Aboriginal groups to understand that … it's a critical part of the process' (Interview 14 Public 2005) highlighting the concept of 'slowness' as a critical component for Indigenous groups coming to grips with development, but also non-Indigenous counterparts needing to spend considerable time coming to grips with Indigenous priorities and ways of working.

Jayne makes a quite specific comment about the perception of professionalism and how she has witnessed time-related processes being used against Indigenous players by mining proponents and governments. She comments:

> 'I think there are a bunch of assumptions; either that people don't care, that it wasn't an important discussion for that group, or that they can't get themselves organised … it reinforces every time that Aboriginal people can't get it together, or they're fighting amongst themselves, or they don't care. It's a terrible thing to watch when they set up a bunch of processes that don't match' (Interview 14 Public 2005).

It was clear to me in our interview that Jayne sees an ongoing professional role for Greenies. However, the focus was very much on trying to bring about a level of understanding and confidence within Indigenous groups that enables greater autonomy and empowerment for Traditional Owners and representative bodies. Jayne saw autonomy as critical to Indigenous engagement with mining proponents and government agencies, but she also recognised that not everyone has the necessary skills or abilities. For example, she claims that some people '…can recognise that stuff and call it' and there are Traditional Owners that 'do fantastically' whereas others '…without some assistance would just feel disempowered…' (Interview 14 Public 2005). Jayne acknowledges that relationship building between Green and Indigenous groups has a history of opposition, but that in the past decade she has seen a fundamental shift leading to '…a genuine good partnership that's managed to hold firm' (Interview 14 Public 2005). This shift is confirmed by the Indigenous-Green movement during the 1980s-90s known as Australian Nuclear Free Alliance and the presence of Indigenous voices within Greenie websites (Australian Conservation Foundation 2004-09; Friends of the Earth 2008).

Noonan spoke of discussions he had held with other Greenies as well as with Adnyamathanha during the period prior to the trial mining at Beverley. They concluded that in order for Green NGOs to offer a professional and worthwhile role '…you would need to be able to deal with the pressures of this long term and not think that whatever you do in the shortest window can change the company or the proponent' (Interview 11 Public 2005).   These reflective comments by David Noonan signal an understanding of the complexity of the issues that

Indigenous players were face with at the time early development of the Beverley mine site. They also verify the negativity of the 'pressured' relationship which emerged between Adnyamathanha and other interest groups particularly the mining proponent Heathgate Resources and the sole legal service provider Aboriginal Legal Rights Movement (ALRM). These perspectives shared by two professional environmentalists demonstrate how cross-cultural understanding grounded in experience and perseverance can pay dividends. Their views offer an honest and realistic appraisal of building and maintaining meaningful relations with Indigenous players.

It was also claimed by David Noonan that two interest groups who had the capacity to offer a high level of professionalism failed to adequately accommodate the needs and interests of Adnyamathanha. Noonan commented that '… originally I would have assumed that there would have been proper support from groups such as ALRM ….' and '… these people (Adnyamathanha) – when they take up a strong position – will have assistance from their own Aboriginal organisations, but what we found in reality was that the environmental groups would have to take up all those roles or else those roles wouldn't get done' (Interview 11 Public 2005). The stark reality of this situation became apparent when David began conversing with ex-ALRM personnel who felt they had been 'forcibly removed' from the organisation partly in relation to their willingness to advocate for all positions held by Adnyamathanha including those Yuras who were against the development of the Beverley site.

Noonan also commented on legal issues and '…the really complex native title and ALRM 'grants-style' political roles within the community' and how '…legal issues were used against the community, and the organisations that should have been protecting community like ALRM…' failed to facilitate '…proper outcomes and proper representation of due process' (Interview 11 Public 2005). The mention of 'roles of support' by David Noonan clearly acknowledged the need for but lack of professionalism within the Beverley case. In his view 'proper' support is based on a broad spectrum of advice, facilitation of due process and opportunities that enable Indigenous players to be heard and listened to by other interest groups. However, David also openly stated that 'As individual campaigners we took a personal responsibility for countering the uranium mine and facilitating those in the community who wished to oppose the mine' (Interview 11 Public 2005) suggesting an advocacy approach was used based on opposition to the nuclear industry. This approach meant '…you weren't simply doing a professional job to see how it worked out' (Interview

11 Public 2005). A show of solidarity was extended to Adnyamathanha on the understanding that any personal responsibility felt by Greenies '…would presumably be only a part of what an Adnyamathanha person felt in that cultural association of the same sites and issues…' (Interview 11 Public 2005).

Hydrologist Dr Gavin Mudd (Mudd 1998) also shared his expert scientific knowledge of groundwater with Adnyamathanha and used his academic role to liaise between Indigenous and Green ideologies of water. Together with retired chemist Dr Dennis Matthews (Marsh, pers. commm. 1999) these two experts provided endless hours of voluntary work listening to and working with Indigenous groups including Adnyamathanha grappling with uranium mining. Gavin's role at the time of the Beverley EIA was prominent in supporting the Mirrar people via Gundjemi Aboriginal Corporation in their campaign to stop the Jabiluka proposal in the Northern Territory of Australia. He continues to provide an ongoing consultancy service where needed. Dennis Matthews, David Noonan and Gavin Mudd were three of the group of about 12 Greenies invited to meet with Adnyamathanha to discuss community concerns about the Beverley proposal prior to the granting of government approval. The FRAHCC hosted Balcanoona Meeting in December 1997 (FRAHCC, corresp. 1997) was the initial meeting that triggered an alliance between Green NGOs and Adnyamathanha Yuras. The process of sharing knowledge in a critical manner in regard to relevant legislation and policies, demonstrations of advocacy, and a desperate need to learn more and gain some sense of empowerment brought Adnyamathanha Yuras and Greenies together as part of a new direction in Adnyamathanha affairs.

The level of advocacy played by Greenies in the Beverley case suggest that although there was a limited financial capacity within Green NGOs to be able to support Adnyamathanha as part of a key campaign, the willingness of volunteers who were often also experts in a particular field provided a new resource that was not available from either the proponent or the government. However, the comparative level of public articulation from Green groups on other current campaigns, the coordinated efforts across different Green NGOs and the inexperience within Adnyamathanha may have led to an expectation from some Yuras that Greenies were in a much more powerful position than Yuras.

6.3.3.2 Public Law and Order

South Australian Police (SAPOL) professionalism was also a feature of the Beverley case due to public law and order became dangerously close to full scale violence around the time of the EIA (Interview 3 Confidential 2005). Police presence may have sometimes been seen within the community as positive in promoting safety but at other times it was seen as an attempt to intimidate Yuras. As with Green NGOs, members of SAPOL are aware of the necessity for cross-cultural understanding which comes with experience and a willingness to accept cultural diversity. Individuals also shared their views on a personal as well as professional level, suggesting there is a genuine desire for SAPOL professionals to work cooperatively with Indigenous peoples.

A Police Officer based in the vicinity of Adnyamathanha Yarta agreed to do a confidential interview (Interview 3 Confidential 2005). This person was part of a team of Police Officers that were called upon for assistance or advice in close proximity to the time of approval for Beverley mine. SAPOL was noted by this interviewee as having specific policies relating to dealing with Aboriginal people and '…probably one of the few government organisations that his its own guidelines and an ongoing educational thing for officers to make sure we are culturally aware…' followed by further comment that '…it's then safer for us working out in the field, being culturally aware … gives a better working relationship' (Interview 3 Confidential 2005).

Discussion in this interview highlighted some common strategies used by professional law enforcement officers when dealing with Aboriginal peoples and issues. Interview comments included: 'I think governments play politics policy. They'll appease Indigenous people but they want to appease more the general voters' and '…a lot of Australians are empathetic in regard to Aboriginal issues, but a great majority aren't' (Interview 3 Confidential 2005). A further question sought elaboration on these strategies in regard to educational levels and language barriers that may pose a problem for Indigenous players which brought a series of related comments such as: 'One of the things, at Adnyamathanha Native Title meetings … I think at one stage lawyers outnumbered Claimants' and '…Claimants had absolutely no idea what was really going on' (Interview 3 Confidential 2005). Further remarks conclude that '…historically the meetings could be quite violent…' being directly attributed to '…discussion on issues that are really quite close to the heart…' and '…until recently meetings were quite large' (Interview 3 Confidential 2005). This frank recall suggests there

was an imbalance of power between Yuras and professionals in meetings which may have directly influenced the level of understanding among Yuras and the outcome of meetings. These comments highlight the minority status of Indigenous Australians and the choices faced by professionals working in government and their regard for Indigenous peoples and land issues.

This interview participant shares experiences and views that strongly suggest issues of orderly conduct at meetings were an intimidating and frustrating element within the Adnyamathanha community and for other parties involved in the Beverley case. This person claims the greatest demand for a police presence at meetings came from 'the lawyers' in other words legal professionals associated with Adnyamathanha Native Title Named Applicants and possibly also lawyers associated with the proponent. The interview participant claimed that '…those that hadn't dealt with Indigenous people before … when they see people yelling and arguing and screaming … some of them felt quite intimidated…' (Interview 3 Confidential 2005) suggesting that there may have been a high level of intimidation and a lack of cross-cultural experience on the part of the legal professionals.

The emotional status within meetings was also acute and intensely divisive based on this interviewee's comments. When asked to describe perceived effects of the Beverley Mine on the Adnyamathanha community this person claimed '…the divisions that have been set up are really quite hurtful. I've seen grown men emotionally driven to tears' and 'Some people just can't talk about it' (Interview 3 Confidential 2005). These observations illustration the tensions and divisions that became apparent immediately following government approval for Beverley mine. The emotional impact on everyone involved in community engagement regarding the Beverley case was clearly evident from the description given by this interview participant. However, the EIS documentation does not engage with the level of emotional impacts created by the Beverley proposal.

SAPOL professionalism was seen as controversial by some players involved in the Beverley case. Two occasions are noted in this thesis where professional intervention by SAPOL was possibly in breach of human rights conventions. One occasion relates to an intimidating Police presence at the Hawker meeting hosted by the proponent Heathgate Resources supposedly intended to facilitate Indigenous engagement (see § 6.2.3.2). Another occasion was the on-site protest event that took place at the perimeter of the Beverley mine lease became known as the 'Beverley Bash' due to the extreme level of violence.

According to interview comments the SAPOL fraternity '…would get intelligence about protests that were happening' (Interview 3 Confidential 2005) and SAPOL generally dubbed the Beverley protest as an unfavourable and harmful toward addressing Aboriginal and environmental concerns. A small minority of the protesters were regarded as 'professional protesters' and 'professional shit stirrers' and their actions were described as 'mischievous' (Interview 3 Confidential 2005). The point was made by this interviewee that these actions were in no way seen by Police as typical of Aboriginal or Adnyamathanha SAPOL Star Force personnel who were regarded as positive law enforcers by the proponent and SAPOL (Interview 3 Confidential 2005). A nine year old Adnyamathanha girl was sprayed in the face and eyes with pepper spray outraging local Yuras and others who took part in the protest. The alternative view held by environmentalists and Yuras who participated in the event labelled this protest the 'Beverley Bash' (FREAC 2000; FREAC 2001).

A growing awareness of the proposal to mine uranium at Beverley and experiences from incidents such as the Hawker meeting and the 'Beverley Bash' led to heightened levels of uncertainty and frustration for all players. Strategies relating to public law and order common during the Beverley impact assessment included 'personal safety' measures (Adnyamathanha Elder 2002; Adnyamathanha Elders Group 2003) such as Elders only going to meetings when they had younger members of their family with them or as part of a group of Elders in solidarity. Sometimes there was a request made by members of the community for a Police presence.

Police presence was evident on many occasions throughout the impact assessment for Beverley and became most prominent during the tense period surrounding the government approval of the Beverley mining license. Police intervention became a professional form of attempting to maintain 'acceptable' levels of public order and personal safety at many Adnyamathanha meetings where Beverley mine was being discussed. Often it was deemed necessary by one or more interest groups to request police involvement due to acute levels of violence and abuse, public trespassing, and as a preventative measure. There were also occasions when police presence was viewed as a form of intimidation that worked in the favour of dominant interest groups. These recollections suggest strategic use of 'law and order' by lawyers, the mining proponent and Adnyamathanha Yuras in the form of Police intervention.

6.3.3.3 Legal Advice and Representation

Legal expertise and professionalism came from within ALRM primarily through its contemporary role as the sole Native Title Service Provider known as the Native Title Unit (NT) and for its traditional role as legal services provider for Aboriginal people in South Australia. ALRM was part of an alliance formed with industry and government that provided the financial and political arrangements necessary to employ and provide experience to lawyers in the fledging field of Native Title administration during the early 1990s. Two ex-employees within ALRM-NTU (Interview 8 Public 2005; Interview 12 Public 2006) were willing to share their experiences; however, a key leader within ALRM and Native Title Mr Parry Agius declined to be interviewed. Fry and Purdy were both critical of the level of support provided to Adnyamathanha and felt the concerns and opposition being voiced in the community were marginalised by an overwhelming push from with NTU to facilitate agreements and work cooperatively with industry and government. Although professional dialogue within NTU urged Adnyamathanha to unite (Native Title Unit 1998) there was political push within NTU that may have created internal disunity and resulted in limited advocacy for Yuras at a critical time.

Interpretation of Native Title legislation required professional legal services which influenced practices used to determine and report on community consultation and negotiations regarding heritage issues in the Beverley case. The advisory services that were available provided by legal professionals played an important role in establishing a new governance hierarchy within the Adnyamathanha community, in shaping the decision-making protocols adopted in meetings, in negotiations with mining companies, and when interacting with and representing the Adnyamathanha community. However, this was limited to the realm of Native Title proceedings. Outcomes from this service included Native Title Work Area Clearance guidelines, ATLA Governing Committee protocols, Mining and Exploration 9B Agreements, and confidential Royalty distribution arrangements.

Legal advice and representation from Johnston and Withers Barristers & Solicitors and professional consultancy work from anthropologist Bob Ellis has been funded by the Native Title Tribunal and State Government of South Australia to process the Adnyamathanha claim. During the 1990s the Aboriginal Legal Rights Movement (ALRM) was identified as one of three Native Title Representative Bodies in South Australia by ATSIC (Native Title Unit 1998) and was funded to manage Native Title claims through a sub-branch of its organisation

known as the Native Title Unit. Applications were made by Adnyamathanha individuals seeking to register a series of Adnyamathanha claims during the mid 1990s (Native Title Unit 1998), and these people remain party to the existing amalgamated Adnyamathanha Native Title Claim.

No funds were available through ALRM to provide an independent legal service to Adnyamathanha Yuras regarding the impact assessment or heritage protection issues for the Beverley proposal. Given the total absence of legal advice and representation on heritage matters prior to the emergence of Native Title, it is probable that limited legal professionalism in addressing the Beverley proposal only became available as a direct result of Johnston and Withers Solicitors' involvement with Adnyamathanha Native Title claims which happen to include the Beverley region. The EIS submission drafted on behalf of Adnyamathanha (Johnston and Withers Barristers & Solicitors 1998) demonstrates professional intervention that may not have otherwise been available to Adnyamathanha at this crucial time.

One participant (Interview 1 Confidential 2005) spoke of a sense of frustration at trying to provide legal advice to Adnyamathanha amidst issues relating to cultural diversity. This person described the Adnyamathanha group as being made up of people with a strong sense of identity that was neither 'tribal' nor 'urban' and spoke of '…unclear decision-making structures' among people that are 'widely dispersed' and 'geographically isolated' from each other with '…a range of identities and interests' amidst an unstructured way of operating (Interview 1 Confidential 2005). All of these factors made a challenging experience for any legal practitioner and made it very difficult for both the ATLA group and the lawyers to act in a representative manner.

Cross-cultural training and awareness emerged as another key issue in this discussion. The situation of a legal professional trying to interpret emerging and evolving Native Title legislation in a cross-cultural not familiar to individual lawyers suggests a lack of capacity among some professional players involved in the Beverley case. This is reiterated by comments made to the effect that at the time of the interview in 2005 the participant was not aware of any strategic guidelines or cultural awareness training available within the legal fraternity that could guide how a professional should interact with Indigenous peoples (Interview 1 Confidential 2005). In addition to the lack of guidance within the legal profession, there were no formal initiatives in place that promoted or enabled liaison across legal and government bodies in the field of Native Title. The only opportunities that were in place included the Native Title Tribunal's records which allowed access to precedent cases,

contact with organisations such as the Central Land Council, and informal networking that existed across different law firms. The limited support available meant that legal representation relied on 'an individual approach' among legal practitioners (Interview 1 Confidential 2005).

These issues relating to cross-cultural awareness and lack of understanding and experience may in part account for a strong lawyer presence being commonly seen at meetings with Yuras to the extent that others such as local Police Officers (Interview 3 Confidential 2005) viewed this as a domineering force within Native Title proceedings particularly in the early days around the time of the Beverley EIA.

Another key area of discussion focussed on the extent to which the role of Native Title legal representation overlapped with Aboriginal Heritage protection. Based on comments made in the interview (Interview 1 Confidential 2005) there appears to be no clear distinction either among the legal fraternity or the Adnyamathanha community in regard to how and when heritage protection is relevant to Native Title. The interviewee spoke decisively in stating that advice of a 'legal nature' is only one way of interpreting, analysing and responding to 'heritage issues' and there were other ways of dealing with Aboriginal heritage beside legal avenues (Interview 1 Confidential 2005).

Although the connection between advice given by legal practitioners to the Adnyamathanha representatives and instruction issued by these representatives to legal practitioners is both complex and open to interpretation, it is possible to assume that there were very strong grounds for the wider Adnyamathanha community to feel bewildered, disenchanted, excluded and frustrated given that there were no resources readily available to facilitate independent community consultation. ALRM funding was only provided specifically for Native Title claims to be administered and Heathgate Resources (the mining proponent) were required to fund Johnston and Withers for negotiation over the Beverley mine (Interview 1 Confidential 2005). The level of impartiality and professionalism, as well as the representative capacity of the Native Title Named Applicants, had to have been almost certainly impacted on by this situation which relied heavily on funds from the mining proponent.

Working as a legal professional required an acknowledgement or distinction between 'the law' and 'the community' which often created tension between lawyers, Native Title representatives and broader community concerns (Interview 1 Confidential 2005). The interview participant recalls that pressure on Adnyamathanha players was created during the EIA phase due to the existence of formal agreements entered into by Heathgate Resources

under the auspices of the Retention Leases held by the proponent since 1980s. These agreements between Heathgate Resources and the first three Adnyamathanha individuals seeking to lodge a Native Title claim constituted 'valid acts' under the *Native Title Act* and were therefore 'not in conflict with the *Native Title Act*' (Interview 1 Confidential 2005).

Although 'environmental issues and concerns' were raised through ANTMC meetings, the focus for legal practitioners and other Native Title players was on the Native Title process which offered two options: resist signing off on Mining Agreements and the proponent would most likely proceed with ERD court action risking loss of compensation (royalty), or sign off on Mining Agreements and secure compensation (royalty) for the commercial lifetime of the mine. Another aspect of legal advisors in a professional role during negotiations over the Beverley mine is that of their capacity to participate given the claim that 'legal representatives were kept out of the loop by the company' which made it difficult to work effectively with the client group of Native Title Named Applicants (Interview 1 Confidential 2005).

However, as this interview participant notes several times throughout the interview a lawyer is in a relationship with a client that relies on 'instructions' before an lawyer can act (Interview 1 Confidential 2005) which raises the question as to what extent the client group fully understood their powers of 'instruction' and how confident this group of people would have been in asserting themselves given their possible limited experiences in dealing with lawyers. There is also a 'maturity' process noted by the interviewee in regard to the Adnyamathanha community based on the following: better understanding of what's involved in negotiations, economics, and environmental issues; and a greater sense of interest in cultural matters and site protection (Interview 1 Confidential 2005).

6.3.4 EIA Engagement between the Proponent and Adnyamathanha

Following the three month field leach trial at Beverley during 1997-1998, the proponent Heathgate Resources sought government approval for a larger scale operation under a commercial license which was regarded as a 'major development' according to Ministerial decision-making. Under 'impact assessment' regulation the public consultation process included a report of the proposed project by the proponent (Heathgate Resources Pty Ltd 1998a) that had to be released for public comment followed by a response document from the proponent addressing arising issues.

A two month public consultation period took place following publication of the draft EIS Main Report. During this time one public meeting was advertised and held in Adelaide, and a

several hundred public submissions were received and responded to by the proponent. As an individual that personally attended the Adelaide meeting I observed that only two Adnyamathanha persons (including myself) present or were represented at this meeting. A review of the public submissions shows that only one submission came from an Adnyamathanha or Indigenous organisation (FRAHCC 1998).

A previous associate of Heathgate Resources that took part in an interview links '…early stages of consultation when there were many new ideas on the go…' with Adnyamathanha Yuras being '…often very outspoken, loud, aggressive, physically and verbally abusive toward others in meetings…' (Interview 6 Confidential 2006). This person spoke of this in the context of how difficult it was to try to gain a 'working understanding' of the Native Title legislation and how this was probably the case for all parties concerned. When asked to share views on the South Australian EIA process in terms of its ability to adequately cover social and cultural impacts the interviewee's response was clearly in favour of improving the existing regime. Corporate responses shared via an organisation known as the Uranium Industry Framework (UIF) Committee also favoured changing the regulatory system as part of a national set of guiding principles that would precede the impact assessment process. These comments of a proposal to shift the timing of Indigenous engagement is regarded by this interview participant as beneficial to all parties given that it has the potential to better protect Indigenous cultural heritage and gives greater certainty to mining proponents and industry.

The engagement strategy that was used by Heathgate Resources is explored below in an attempt to determine the effectiveness of Adnyamathanha participation. In the Executive Summary of the draft EIS report under Section 15: Aboriginal Heritage (Heathgate Resources Pty Ltd 1998a) the proponent highlights several key factors in relation to its engagement strategy employed with Adnyamathanha Yuras. First, the commencement of negotiations under provisions of the *Native Title Act* (Commonwealth of Australia 1993) and the existence of three legally binding agreements with Native Title Named Applicants was noted as a milestone event that preceded EIA public consultation. The content of these agreements included '…consultation on heritage, mining and environmental matters, Aboriginal employment, cross-cultural training of Heathgate workers, support for Aboriginal businesses and compensation payments related to the value of mineral production' (Heathgate Resources Pty Ltd 1998a, p. xxxii) and the establishment of an Aboriginal Heritage Centre at the mine site. During the 'public consultation' period for the draft EIS Main Report the remaining

Native Title Named Applicants representing Adnyamathanha interests also signed off on a second round of formal agreements; however, the report does not acknowledge these Native Title agreements remain unconfirmed through the court system and are therefore pending. Nor does the proponent describe consultation with any other community-based organisations or individuals, or any community meetings that had been held with the wider Adnyamathanha community.

The negotiation of a 9B Mining Agreement with the Adnyamathanha Native Title Named Applicants acting on behalf of the entire Adnyamathanha community prior to completion of the public consultation period raised concerns of equity under the conditions stipulated by the EIA process (FRAHCC 1998; Interview 11 Public 2005). The existence of three Agreements signed off as part of the Retention Lease also raises a question of equity given that these early Native Title negotiations effectively overrode participatory rights for Adnyamathanha particularly on issues relating to cultural heritage and cultural resources management. It can be argued that a pattern emerges suggesting consultation and negotiation for Adnyamathanha was dominated by the timing of crucial 'signing off' stages under Native Title legislation. However, a counter-argument emerged through interview discussions with a known associate of Heathgate Resources who insists 'You need to get approval from the local Native land owners if you are going to drill a hole … you have to start with the people whose land it is to find out if you can actually get to the point where you need to do a more formal assessment of the environment or put in an application for a mining lease' (Interview 6 Confidential 2006).

Further comments highlight an approach that insists on early intervention using the '…best of your ability to deal with individuals who are knowledgeable of the local circumstances as much as possible, as early as possible' with public meetings and an approach that is 'custom tailored to the situation'(Interview 6 Confidential 2006). These were regarded by the proponent as crucial components of a successful Indigenous engagement strategy. Discussion also turned to how a proponent is able to determine who the right people are to consult with, what time of the day suits people best for site visits, and what strategy works best to try and resolve differences. This was seen as 'challenging' and 'complicated' and often resulted in conflict which required a proponent to '…operate as professional and compassionate and sensitive … from the beginning' (Interview 6 Confidential 2006). In the case of Adnyamathanha the use of a 'third party' such as an Anthropologist was seen by this person as the easiest way to help facilitate resolution to conflicts (Interview 6 Confidential 2006).

An Indigenous engagement strategy does not appear to be fully articulated either in the documentation or when speaking with the Heathgate ex-employee.

A professional legal commentator involved in the Beverley case stated that the *Native Title Act* (Commonwealth of Australia 1993) gave no guidance to parties regarding the issues surrounding heritage protection and mining (Interview 1 Confidential 2005). This may suggest a heavy reliance on a show of goodwill on the part of the proponent in the Beverley case. Further claims made in this interview allege the proponent constantly showed a 'reluctance to communicate' with the legal team and that this was a 'deliberate strategy based on divide and rule tactics' (Interview 1 Confidential 2005). Claims were made in this interview that legal professionals found Native Title a difficult piece of legislation to comprehend, and this was compounded by the absence of heritage guidelines within the *Native Title Act* (Interview 1 Confidential 2005). The 'right to negotiate' under Native Title legislation particularly in relation to mineral and petroleum exploration may have been heralded as an added layer of heritage protection '…that Aboriginal heritage laws operating in the State have, for many years failed to provide' (Wooley 2001). It can be argued that unwillingness on the part of the proponent to work cooperatively with the Native Title legal team severely impaired the effectiveness of Adnyamathanha to negotiate on heritage issues, and that this may have been part of a deliberate strategy employed by the proponent to maintain ultimate control over any consultation or negotiations with Adnyamathanha. Strategically these circumstances surrounding engagement placed the proponent in a very powerful position and Adnyamathanha Yuras in a very weak position.

Another key factor in Section 15 on Aboriginal Heritage within the EIS Main Report (Heathgate Resources Pty Ltd 1998a) linked to the proponent's engagement strategy relates to anthropological and archaeological surveys with two Native Title Named Applicants undertaken in 1997 which constitute part of the EIA process (Heathgate Resources Pty Ltd 1998a). The language used in Section 15 includes terms such as 'myths' and 'Dreamtime' which are generally regarded in contemporary commentary as offensive, racist and out-of-date with current broad protocols used in mainstream Australian society. The use of archaic language such as this in reference to Indigenous heritage in a public document is patronising and not reflective of best practices used elsewhere. This reflects an outdated approach by the proponent in its regard to engagement with Adnyamathanha peoples and culture. Insensitivity on the part of the proponent suggests a pattern of consultation that is neither appropriate nor empowering for Indigenous players.

In addition, site survey evidence was used by the proponent as a means of qualifying the significance of sites and justifying its approach to engagement. For example, the proponent claimed that although there are many sites '…considered to be of significance … no sites were identified as requiring entry on the South Australian Register of Aboriginal Sites' (Heathgate Resources Pty Ltd 1998a, p. xxx111). The draft EIS Report also notes sites of '…major significance to Aboriginal people…' (Heathgate Resources Pty Ltd 1998a, p. xxxv) but does not disclose further details such as the source of this information, which groups of people are specifically referred to in these matters, or how mining may impact on these areas.

The proponent clearly prioritised engagement with registered Native Title representatives during site surveys, and regarded the Native Title players as having the authority to act on behalf of all Adnyamathanha. The assumptions drawn in the section on Aboriginal Heritage suggests a narrow interpretation of what constitutes 'heritage'. The vague reference to 'sites of significance' and the use of archaic language suggests a complacent attitude toward Indigenous cultural heritage that is patronising and tokenistic. It is possible that had there been a more inclusive strategy used by the proponent a more culturally sensitive approach could have been used and vague and offensive terminology may have been avoided.

This section further explores the idea of 'consultation' between Adnyamathanha players and the proponent throughout construction of the Beverley impact assessment specifically the drafting of the Environmental Impact Statement (EIS) Main Report. The purpose is to determine the extent to which the 'public consultation' process was accessible to Adnyamathanha. Accessibility to the public consultation process for Adnyamathanha is examined as an issue of equity and informed decision-making. The meaning of consultation will emerge through scrutiny of how terms such as 'consultation' and 'representation' were idealised as an equitable way of sharing information within the community and for decision-making on behalf of the entire Adnyamathanha group; through examination of the extent to which Adnyamathanha concerns were raised and incorporated into recommendations within the ensuing Supplementary report (Heathgate Resources 1998b); and through the comments made by interview participants that contributed to this project.

Dialogue from the proponent regarding 'consultation' stated that key Adnyamathanha players were identified on the basis of the Native Title legislative framework and these people were consulted specifically in relation to Aboriginal heritage issues as part of the Beverley impact assessment (Heathgate Resources Pty Ltd 1998a, p. xxxii). However, no details are provided within any of the impact assessment publications of what took place during 'consultation', an

issue of concern raised in the EIS submission prepared on behalf of Adnyamathanha (Centre for Environment and Recreation Management and Australian Water Environments 1998b). This lack of detail suggests that the proponent deemed it sufficient to acknowledge 'consultation' with Adnyamathanha interest groups under a legislative framework but felt no further obligation to ensure the wider community was properly engaged through the 'representative' approach being tried within Native Title for information sharing, discussion and decision-making. Native Title representation was validated by the proponent as the sole model of governance despite numerous concerns being raised at the time of the Beverley EIA that Adnyamathanha governance under Native Title was in disarray.

In the early stages of consultation in December of 1997, then current Beverley Project Manager for Heathgate Resources Chuck Foldenauer verbally admitted in public that he felt '…ashamed by the unrepresentative consultation process with Adnyamathanha…' (Foldenauer cited in FRAHCC, corresp. 1997) despite having stated in a letter to a student body that 'South Australian and Federal Government regulations incorporate an extensive public consultation process for all uranium mining proposals, and the Beverley project is certainly no exception' (Heathgate Resources, corresp. 1997a).

Another Beverley Project Manager for Heathgate Resources Lonnie Tracy stated in August 1997 that he was fully satisfied with the consultation process established by Heathgate Resources with Aboriginal stakeholders claiming it to be a '…clear consultation process with Aboriginal groups …' and that Heathgate Resources was '…committed to consultation as an ongoing process.' (Heathgate Resources, corresp. 1997b). However, there is no specific reference in this letter regarding whom 'Aboriginal stakeholders' represent, which groups they belong to, or in what capacity they are acting on behalf of a wider Aboriginal cohort. Also, there is no explanation of what the 'consultation process with Aboriginal groups' consists of and how the process was developed.

This discussion highlights how the interface between the proponent Heathgate Resources and Adnyamathanha groups was manipulated by the proponent. The consistent absence of any depth of explanation across the literature relating to the Beverley case suggest that terms such as 'Aboriginal' and 'consultation' are assumed to be commonly understood by all interest groups and individual players and therefore do not need to be clearly articulated. To give any further detailed explanation would possibly jeopardise the proponent's position. An Adnyamathanha Elder that took part in an interview claimed '…they know how to get around us' (Interview 2 Confidential 2005) referring to experiential knowledge of the Beverley case

and how the mining proponent was skilled at negotiating outcomes with Indigenous players that were primarily set to benefit the proponent's interests. Authors who have explored Indigenous engagement and mining during the 1970s and 1980s such as Colin Tatz (Tatz 1982) strongly claimed the existence of an unequal playing field for Indigenous players and the loose interpretation of commonly used terminology. It is argued here that little has changed to overcome this inequality or change the status quo within Indigenous engagement and mining.

The next part of this discussion explores the extent to which equity in consultation and negotiation is a priority for Adnyamathanha Yuras in community engagement. Adnyamathanha Native Title Named Applicants consisted of a small group of individuals known under Native Title legislation as representatives of Adnyamathanha Claimants or members of the wider Adnyamathanha community. In light of what was Yuras have said about traditional ways of doing business (Adnyamathanha Elder 2002; Adnyamathanha Elders Group 2003; Interview 10 Public 2006) this 'representative' approach of a small group of individuals having legal powers over decision-making is a relatively new way of doing business. Prior to Native Title Adnyamathanha had only recently grown accustomed to democratic decision-making, possibly since the inception of FRAHCC back in 1988 (FRAHCC 1988). The maintenance of Adnyamathanha traditions regarding human relations and internal governance (Marsh, corresp. 2004) has always been fiercely defended by Adnyamathanha particularly the Anggumathanha Law Elders. However, there has been no literature produced that specifically reviews the effectiveness of a 'representative model' for Adnyamathanha.

An Adnyamathanha Elder and Native Title Named Applicant (Adnyamathanha Elder 2002) speaking about the interaction between Adnyamathanha and mining proponent Heathgate Resources gave a clear view on the unsatisfactory state of community consultation over land development, claiming a greater need to acknowledge traditional ways of doing business (see §5.1.4). Adnyamathanha meetings during the Beverley negotiations were described as 'Very poor. Instead of getting and listening there was just argument from day one.' with a specific example of the trigger to many arguments 'and only in the company's eyes to pay people out' (Adnyamathanha Elder 2002). However, this person also recognised that the current process of Native Title consultation and negotiation is a primary opportunity for contemporary engagement even though it does not fully recognise the fragmentation of our traditional way of doing business. The comments made by this Elder and Named Applicant clearly indicate a

high level of priority on the urgency attached to finding an effective and appropriate communication framework.

Another interview participant (Interview 4 Confidential 2006) that has had extensive involvement in community politics both personally and professionally was asked to reflect on the community consultation and negotiations. This person raised a number of key issues including the timing of discussions and decision-making, the conduct of meetings, and the resources available to Yuras. Comments include '…the EIA process for Beverley and Agreement signing was very poorly timed…' and '…there was inappropriate overlap in timeframes so Native Title Agreements were signed off before the EIA was complete' (Interview 4 Confidential 2006) alleging that the Indigenous engagement strategy used by the proponent was less than satisfactory. The expectation of full participation rights in both the EIA and in Native Title raises a key issue of equity for Indigenous players and a case of unethical practice on the part of the proponent.

This person also commented 'You know what some of the meetings have been like – Yura urniandha, yabmi inaanggu' (people fight and argue). So no wonder ALRM don't want to fund us, I can fully understand their position' (Interview 4 Confidential 2006). These reflective comments mirror those made by the Manager of ALRM (Aboriginal Legal Rights Movement - Native Title Unit 1998) who urged people at the time of the Beverley negotiations to work together as a united front. The intense frustration apparent from this interviewee's experiences of the lack of protocols for engagement during the Beverley impact assessment is a demonstration of the urgency Yuras are expressing for improved mechanisms for community consultation and negotiations.

This interview participant also claims that at the time prior to the commercial license being granted for Beverley there was little priority placed on independent funding which could have improved consultation or negotiations. This person said '…limited funding has meant limited consultation with the community…' and claims '…there is an obvious partnership between the mining industry and governments, and this cuts Yuras out when it comes to negotiations. We just don't have the same capacity' (Interview 4 Confidential 2006). The recognition by this Yura of a need for an appropriate level of 'capacity' strongly suggests a priority for appropriate and adequate engagement existed within Adnyamathanha players involved in Native Title. Access to professional expertise, greater availability of funding, and broader networking with other Indigenous groups before and during the Beverley EIA may have set

much needed protocols and brought a much stronger result for Adnyamathanha. The need for strong leadership in the community is explored further in the following section.

In the case of the Beverley Mine, the recently published Public Environment Report (Heathgate Resources Pty Ltd 2009) by mining proponent Heathgate Resources and Elders raised concerns by many Adnyamathanha (Adnyamathanha Elders Group 2009). This signals that the proponent and community remain at loggerheads after more than 10 years of so-called consultation and negotiation.

6.3.5 Conclusion

Development legislation and impact assessment policy was used to regulate commercial development of the Beverley Uranium Mine in a way that favoured commercialism and thwarted community engagement. It demonstrates how the level of professional intervention significantly influenced engagement and outcomes within the impact assessment process. For example, the professional role of legal advisors working with Adnyamathanha during the Beverley EIA was under utilised by the players that had the power to instruct lawyers according to the Native Title process.

An examination of the role of professionals concludes that the long term preparedness and sustainability of professional expertise available to Adnyamathanha in the future is critical for improving engagement strategies. The realm of Indigenous expertise is discussed in the section relating to Indigenous Community Leadership (see §6.2.3). Professionalism and professional intervention continues to influence and maybe even pre-determine the extent to which effective participation in processes such as impact assessments take place. A lack of cross cultural understanding was also a critical factor that failed to provide fair representation of Adnyamathanha interest groups and players. For example, the 'steep learning curve' experienced during the early stages of discussion over the Beverley Mine (Interview 1 Confidential 2005) alludes to the ability of lawyers to interact effectively with their client group was limited by a lack of cross-cultural understanding that preceded formal negotiations and decision-making.

The need for an equitable process of consultation is strongly recognised as a priority within the Adnyamathanha community; the challenge of actually bringing about change is a daunting one for all players and requires genuine leadership within the key interest groups, particularly those that are currently in powerful positions.

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Chapter 7. Critical Analysis of Heritage Protection and Resources Management relevant to Impact Assessment

This chapter provides a critical analysis of the data presented in previous chapters and reveals findings and new understandings based on a theory building approach to this exploratory case study. The aim is to synthesise the experiences, ideas and perceptions from people who participated in this thesis or were in some way connected to the Beverley case, with wider trends that have occurred within mining and Indigenous engagement. Privileging of Indigenous perspectives remains a central idea within this chapter, and as such, a critique of Indigenous community governance and engagement is presented prior to a critique of the impact assessment known as EIA according to the Udnyu (whitefella) tradition of land management. Experiences and perceptions are examined in conjunction with a critique of policies and practices relating to community governance and engagement relevant to cultural heritage management and resources management.

The review of Yura and Udnyu processes takes place through two units of analysis aimed at addressing the objectives and questions outlined earlier (see §1.3.1). One unit of analysis focuses on Indigenous cultural heritage management and Adnyamathanha decision-making protocols, so as to better understand the key issues relating to Indigenous engagement and heritage protection. The purpose is to shed light on the relationships between players and their interests with regard to land use, and the extent to which regulations embrace Indigenous participation in resources management. Another unit of analysis critically examines the Beverley Uranium Mine EIA and the role of Indigenous engagement in mineral exploration and mining. This offers an in depth explanation of the effectiveness of EIA as a heritage protection strategy. Theoretical constructs relevant to impact assessment and Indigenous engagement are used to identify good governance strategies that may further empower Adnyamathanha and other Indigenous groups.

In this chapter, practices and perceptions relating to impact assessment and Indigenous engagement in the Beverley case are interpreted, along with a rethinking of broader theoretical ideas, as part of a new contribution toward Indigenous ways of caring for country.

7.1 Indigenous Engagement and Governance: Why the Beverley Case failed to Deliver Heritage Protection

7.1.1 Introduction

This part of Chapter Seven identifies some distinctions and connections between Indigenous peoples' experiences of engagement and governance. Each sub-section discusses key issues arising from the Beverley case and incorporates broader evidence to reach conclusions. Data from previous chapters is used to construct arguments regarding the social, economic and political implications of mining for Adnyamathanha Yuras and Yarta. The interface between Indigenous identity, Indigenous governance, and Indigenous engagement is found to be a fundamental part of this discussion.

This study provides an international dimension to local experiences. Findings are revealed through an examination of literature and field-based data presented in previous chapters; within this process, Indigenous capacity building and EIA best practice are identified as key areas in need of improvement. The ideology of Indigenous engagement is of particular relevance to impact assessment as it informs protocols of consultation and negotiation and sets precedents for future development.

7.1.2 Complexities of Contemporary Adnyamathanha Governance

Understanding Yura ways of working through exploration of the Beverley case reveals that post-contact governance has become increasingly complex due to the richness of Anggumathanha Law and the added cross-cultural dimension of Udnyu protocols and processes. Evidence (see §3, §5, and §6) shows that Yura and Udnyu perspectives influence the way that Adnyamathanha congregate regularly to discuss community-wide business, and the purpose of such forums is inherently linked to land uses and heritage protection. Further complexity is evident from post-contact efforts to unite Adnyamathanha, for the purpose of contemporary governance, and this has involved the merging of various interrelated sub-groups into one cultural group known as Adnyamathanha, which still retains multiple identities. The effectiveness of engagement remains overshadowed by a limited ability within Adnyamathanha to successfully assert a strong collective position, and a lack of cross-cultural understanding of Adnyamathanha traditions and their contemporary relevance. This study reveals that although characterisation of Adnyamathanha expertise and leadership based on Western values has become highly influential in shaping our contemporary identity, the

qualities that are widely respected by Yuras remain ill-defined and largely detached from traditional values. A desire for 'going back to the old times' (Adnyamathanha Elder 2002) was expressed by one participant as a possible solution, and this view reverberated in other interviews. One way of applying this suggestion is to treat this as a plea for greater philosophical recognition of the role of Elders, and greater acknowledgement of the continuity that exists between traditional governance and contemporary governance.

7.1.2.1 The Difficulties of Asserting Adnyamathanha Identity

Social and environmental pressures over the past 100 years as a result of colonisation have influenced the evolution of Adnyamathanha identity to the present day, and this has changed how we do business when it comes to caring for our Yarta. Prior to colonisation, the main forums included traditional camp meetings known as 'wimila' (Adnyamathanha Elders Group 2009) and these were governed through Wilyaru authority (Interview 9 Public 2006; Interview 10 Public 2006; Interview 15 Public 2006; Adnyamathanha Elders Group 2009), and guided by Ngangginyi Wiri Wiri and Ngapi Ngapi (Marsh 2003; Marsh, corresp. 2004) in accordance with Anggumathanha Law. These provided a set of governance principles and rules that connected Yuras through Muda and experiential knowledge to the land and the broader environment. Strict adherence to Anggumathanha Law was important and any breach could lead to severe punishment or death (Brock 1985; Tunbridge 1986).

Evidence (see §5) strongly suggests that Adnyamathanha have experienced an acute identity crisis as a result of colonisation, both through the denial of custodianship of Yarta, and through the confusion over how best to manage Adnyamathanha affairs, particularly in regard to heritage and resources. For example, at an individual level there are disputes over who has the right to claim themselves as Adnyamathanha according to the Mothers' Rule (Marsh, pers. comm. 2004), an issue which remains largely unresolved.   Case data confirms that societal sub-groups such as Kuyani and Biladapa exist according to Yura Ngawarla clusters or dialects, clan groupings, and affiliations with particular areas of Yarta. These sub-group alliances are evident today, as seen by the values dating back to the camp arrangement (Adnyamathanha Elders Group 2003; Interview 18 Confidential 2004), the families or Core Groups that make up ATLA (ATLA 2001), and the adherence to Anggumathanha Law by Adnyamathanha Elders (Adnyamathanha Elders Group 2003).   Language protocols and collaboration between young and old people are particularly important, as expressed by one young Adnyamathanha who claimed: '…the jargon they [mining proponents and lawyers] use

with our Elders, we need the kids there. You know, that's a good time for our yakarti to be in there' and 'they're helping their parents or our Elders understand what the Udnyus are saying…' (Interview 5 Confidential 2006). The difficulty has been in finding new ways to assert a collective identity and customary values at critical times of information sharing and decision making.

The resurgence of Anggumathanha Law Adnyamathanha Elders and wimila-style meeting process aligns with pre-contact traditions of governance and has been found to be particularly suited to the needs of today's Elders, yet this form of governance is not widely recognised as a contemporary solution to current land use politics. Elders who have opted for wimila-style meetings find this private and small scale arrangement to be a safe and non-violent setting that has increased their confidence in voicing their concerns regarding heritage (Adnyamathanha Elders Group 2003; Adnyamathanha Elder 2008; Adnyamathanha Elders Group 2008; Adnyamathanha Elders Group 2009). Many of these Elders insist they are entitled to a rightful place in the Native Title arena; however, current arrangements are not meeting their wishes of consensus voting, use of Yura Ngawarla and plain English, and adequate time to thing about, discuss and make informed decisions. In addition to primary data gathered in this study, key documents (FRAHCC 1988; YLCG Inc 1993; ATLA 2001) show that identity and protocols or 'ways of working' in regard to Adnyamathanha governance have never been formally investigated or articulated; however, this case study suggests wimila offers a preferred way of knowing who is who, and for doing business. There is an urgent need to further resolve these matters internally to ensure that Elders do not remain marginalised.

Evidence from interviews suggests many young people and professionals fail to understand and appreciate wimila (Interview 1 Confidential 2005; Interview 2 Confidential 2005; Interview 5 Confidential 2006). In a contemporary setting of Yura politics, following pre-contact tradition may be regarded by some as leaning toward a conservative approach to governance which is no longer practical in today's world. The entrenchment of Udnyu or whitefella ways of doing business challenges our cultural identity and adds another layer of complexity to Adnyamathanha governance. The emergence of new Native Title legislation at the time just prior to the Beverley impact assessment meant that Adnyamathanha identity was being questioned, and that land management and community engagement was in a weakened and vulnerable state. The lack of clarity across and within the various interest groups involved in community consultation or negotiations around the time of exploration at the

Beverley site further confused players (Interview 1 Confidential 2005; Interview 6 Confidential 2006) and maintained the status quo of colonial domination.

Udnyu assumptions about the role and identity of Yuras were claimed to be a dominant force within the Beverley case and a hindrance to Adnyamathanha empowerment (Interview 16 Confidential 2005; Interview 5 Confidential 2006). Interview data suggests that improved Adnyamathanha identity and governance was a community priority in the early stages of establishment of the Native Title Prescribed Body Corporate and is desirable for greater unity among Adnyamathanha (Native Title Unit 1997; Native Title Unit 1998). It is possible that the establishment of post-contact Committee-style forums such as ATLA, now known as the Prescribed Body Corporate for Native Title purposes, together with limited understanding of the Native Title legislation, suppressed the wimila-style of governance and effectively fragmented community participation. This may be part of the reason why the understanding among legal advisors (Confidential Interview Participant 2005) was that there was no recognisable form of traditional governance; hence the adoption of a Committee to oversee the management of Native Title. The identity and role of Elders remained ambiguous, given that the Constitutional rules of the ATLA Committee allude to age as the indicator of Elder status (ATLA 2001), which does not necessarily reflect social rules based on experience and knowledge. Hence the expression by two participants '…everything fallen to pieces' (Interview 10 Public 2006; Interview 15 Public 2006) refers to what they see as a failure within Native Title governance to accommodate Anggumathanha identity and social coherence. This study suggests the lack of formal recognition of wimila-style meetings during the early stages of engagement may have been instrumental in denying Adnyamathanha a strong platform from which to independently govern. A key challenge for Adnyamathanha and for Udnyu service providers is to find new ways of incorporating valued traditions into our contemporary identity and the way we do business.

Many Elders remain adamant (Clarke, Stringer et al. 1998; Adnyamathanha Elders Group 2009) that more effective heritage protection will only happen when Adnyamathanha identity and Anggumathanha traditions for governance are taken seriously by government and industry prior to site disturbances. This shift will encourage culturally appropriate ways of addressing the needs of Elders in particular, and serve to counteract the disrespectful and at times dangerously violent practices and protocols associated with ATLA and Work Area Clearances under Native Title (see §5.2.5 and §6). The emergence of a hybrid approach to governance, as seen in the Anggumathanha Elders forums, grounded in wimila-style as well

as Committee-style meetings, responds to both heritage and resource management issues through a combination of traditional and contemporary protocol. A similar approach may also be useful to formulate a process for determining individual and group identity.

7.1.2.2 Resilience Despite an Assimilatory Process for Decision-Making

The lack of a widely endorsed decision-making protocol when negotiating across the various interest groups confuses and frustrates players, and weakens the overall ability of Adnyamathanha to form a united and strong position. Sometimes decision-making is based on consensus as used by the Anggumathanha Law Adnyamathanha Elders group, or alternatively the democratic 'show of hands' or 'majority rules' voting model is widely used in Committee-style governance, as exemplified by ATLA and during Work Area Clearance engagement. The initiative demonstrated by Elders (Adnyamathanha Elders Group 2003) to reinstate consensus voting is an extraordinary example of resilience and determination which has rejuvenated their role as leaders in the community. Interview data suggests that democratic voting is misrepresentative as it can be used to intimidate people, and culturally inappropriate as it fails to fully acknowledge cultural protocols of Anggumathanha Law based on informed discussion, traditional authority, and consensus. Possibly the single most outstanding achievement for Adnyamathanha over the past five years is the way in which Elders have rallied together in solidarity despite experiencing violence and disrespect, and having very limited resources to draw on.

Another example of resilience is evident from the knowledge some Yuras have acquired about engaging with mining proponents. Comments such as 'We need to be able to negotiate an ILUA before drilling exploration takes place – this will offer us better protection' (Interview 4 Confidential 2006) suggest that at least some Yuras understand where they can find a stronger decision-making platform via early participation in mining development. However, there is still hesitancy among some people that continues to divide the community. One Adnyamathanha Elder stated at an ATLA Native Title meeting on 16th May 2009, in regard to discussion on the Beverley Four Mile proposal: 'We have to start saying no to some things; they [mining companies] can't just keep on raping the land' (Marsh, pers. comm. 2009g), whereas another Elder at the same meeting stated: 'I think we should just sign off on the Agreement; if we refuse, they [mining proponent] will just take it to ERD Court and then we will get nothing' (Marsh, pers. comm. 2009c). Elders have witnessed first hand or learned of the destruction of sites from drilling, the extraction of culturally significant minerals from the

earth, the contamination of water sources and water courses, the building of road works and air strips, and other disturbances to sites. This has created a sense of chronic loss of control over Adnyamathanha Yarta, and a feeling that both the Yarta and the Yuras are being assaulted. Interview data from a former Heathgate employee (Interview 6 Confidential 2006) also suggested that some people within the mining sector who were intimately involved in the Beverley case agree that early engagement is critically important to building positive relationships, and that there is much room for improvement in the engagement process. A review of the engagement process used under Native Title done in 2009 as part of a cultural heritage assessment (Sutherland 2009) suggests that engagement remains culturally inappropriate and denies Yuras the right to participate in fully informed decision-making. These claims pivot around evidence suggesting a denial of cultural identity, and a culture of violence and intimidation at Native Title meetings.

I would argue that Adnyamathanha governance continues to be subject to an assimilatory process by the imposition of Native Title legislation, by professional legal advisors not fully comprehending the status of traditional knowledge, and ultimately by some Adnyamathanha key individuals who have benefited from Udnyu traditions. It is possible that some Yuras closely associated with Native Title in particular, were not paying sufficient attention to detail when new structures were established, and some deliberately sought to enhance their positions of power. Evidence shows that all parties were conscious of the need for early intervention, yet repeated claims of 'duress' during Native Title negotiations, and recognition within the mining sector of the need for improvement, signals an experience by some players of an inequitable playing field during the engagement process. This reveals that all players feel there is potential to improve community engagement through earlier intervention prior to exploration as a means of preventing damage to sites before drilling takes place. However, it remains unclear as to the extent to which all parties prioritise heritage protection as part of this process. The effect is a weakened and vulnerable state of land rights for Adnyamathanha. In the case of the Beverley impact assessment, the transitional period of Adnyamathanha governance from FRAHCC and heritage legislation, to ATLA and native title legislation, has resulted in a serious failure to protect Adnyamathanha heritage and a denial of Elders' expectations. Some elements of this failure are based on lack of consistency in asserting Adnyamathanha traditions, whilst others are more closely aligned with the priority being placed on Udnyu (whitefella) traditions of land use at critical stages of development, the domination of Udnyu ways of sharing of information, and Udnyu ways of making decisions.

In summary, the difficulty of asserting an Adnyamathanha position within the Beverley case was twofold. First, an identity crisis as a result of ongoing assimilatory practices and cultural complexities has frustrated and weakened Adnyamathanha ability to negotiate as a united group. Second, the disempowerment of Adnyamathanha during the impact assessment phase has led to a failure to adequately protect Adnyamathanha heritage.

7.1.2.3 The Culture of Violence within the Beverley Case

Evidence strongly suggests a culture of bullying and violence was nurtured during the establishment of Native Title claims on behalf of Adnyamathanha, and via negotiations over the Beverley proposal. This culture has now become an entrenched part of Adnyamathanha governance which continues to limit the effectiveness of Adnyamathanha participation in managing and caring for cultural resources. The use of 'duress' where the Native Title Named Applicants were forced into signing agreements (ABC 1999) suggests an undue amount of pressure was placed on Adnyamathanha players by other parties. This claim of duress is a direct attack on the proponent and possibly the legal advisors who acted as case managers of the Adnyamathanha Native Title claim at the time of the Beverley EIA. Since this time, many Adnyamathanha have shared their experiences of being brutally subdued and intimidated in community meetings and at public protests, and some also claim to have been verbally abused by Heathgate employees during Native Title negotiations (Marsh, pers. commm. 2005a; Marsh, pers. commm. 2005b).

Claims made by Elders in particular highlight the brutal violation of rights that many Adnyamathanha have felt in regard to the Beverley area (Adnyamathanha Elder 2008; Adnyamathanha Elders Group 2008; Adnyamathanha Elders Group 2009). The occurrences of intimidation and experiences of grief (Interview 3 Confidential 2005; Interview 12 Public 2006) are linked to particular events such as the drafting of community responses to imminent deadlines for agreement-making, peak times of acute levels of frustration or mistrust, and repeated feelings of loss and grief in regard to the damage or threat of damage to cultural sites. Violence was also apparent by the way in which protesters, including Traditional Owners, were treated at the Beverley Mine site as they exercised their democratic right to protest; an issue which took almost a decade to resolve through court action (FREAC 2000; FREAC 2001; Supreme Court of Australia 2010). The legal outcome ruled in favour of compensating applicants for the physical and emotional abuse they had been subjected to as a result of Police and Star Force security misuses of power. Each of these incidents show how

a culture of bullying and violence directly reduced effective participation by Adnyamathanha during the Beverley impact assessment.

These testimonials reveal the extent to which emotional impacts of the Beverley case have adversely affected Yuras with a range of different interests. The Beverley case raises questions about the absence of emotional impacts within the impact assessment process generally; this factor has been raised as a key area worthy of including in heritage protection best practice (Walker 2002). The repeated use of bullying to achieve particular outcomes and to exercise power has contributed to Indigenous engagement and governance in the Beverley case being tainted by intimidation, rather than a demonstration of Adnyamathanha participation in resources management for future cases.

7.1.3 Due Process Fails to Protect Indigenous Rights and Cultural Heritage

At a broader scale of examination, the application of government due process, even when strictly adhered to, does not honour Indigenous rights because non-Western philosophies and attitudes continue to have little impact on Western institutional arrangements, as demonstrated in EIA processes (Thomas and Elliot 2005). For example, mining proponent WMC was able to successfully gain exemption from environmental and cultural regulation including Aboriginal Heritage legislation (Fergie 1996; Burton and Wright 1998; Mineral Policy Institute 1998), because of the powerful Western belief that 'development' is positive and necessary. An institutional shift in emphasis from heritage protection (ICHM) to resources management (ICRM) suggests that due process and best practice are being determined by the commoditisation of resources, at the expense of cultural value of heritage resources such as the spiritual meanings of the land for Indigenous people, and the non-commercial uses of bush food and other resources (see §4). The ideology of 'best practice' has been created as a part of this Western regime, to accommodate government decision-making and collaboration with industry. The Beverley case illustrates how Western ideas of 'due process' and 'best practice', as seen in the impact assessment, remain inappropriate measures for protection of Indigenous rights and Indigenous lands.

7.1.3.1 Colonisation of Adnyamathanha 'due process' and Cultural Resources

The relationship between Adnyamathanha participation and the ongoing security of cultural heritage is fraught with difficulties borne out of a colonial history and a development process

that continues to place low priority on Indigenous rights and heritage protection (see §4 and §5). The use of land resources such as minerals prior to colonisation was always on the basis of cultural trade and exchange and was deeply influenced by ancient spirituality (McCarthy 1939). Adnyamathanha Yuras have faced continual pressure to compromise on our values and beliefs since colonisation began in the late 1800s, and this includes losing the right to follow 'due process' according to customary traditions associated with land uses, trade and exchange. The influx of pastoralism and restructuring of land tenure, the establishment of townships and the exemption system, Christianity and the missionary influence, and more recently Native Title negotiations and commercial mining, are key factors in the demise of customary laws. Each has systematically contributed to the dismantling of Anggumathanha Law and the destruction of spiritual areas such as Yurlu's Muda at Leigh Creek Coalfield (see §5) and the Beverley Uranium Mine lease (see §6). For Adnyamathanha, as few as four generations exist from the time of colonial invasion to the present, and rapid change has taken place through the domination of Western values and views on land and land uses.

Contemporary 'due process' is governed according to Udnyu laws known as legislation, and government policies that are far removed from Yura values and beliefs. The relatively recent introduction of legislation in South Australia serves as a reminder that post-contact land rights exists in a very young and narrow context in this part of Australia; nonetheless, this is not a plausible reason for the lack of decolonising policies, strategies, and practices according to one prominent leader (Interview 16 Confidential 2005). Post-contact corporate commercial scale mining has reduced Adnyamathanha custodianship to a position of negotiated compensation for destruction of cultural sites. Although the mining proponent in the Beverley case claimed that Native Title negotiations showed recognition and respect for Adnyamathanha (Heathgate Resources Pty Ltd 1998a), these claims are matched by counter-claims that the mining company behaved in a predatory fashion and utilised an economic dependency approach to engage with Yuras (Interview 4 Confidential 2006; Interview 5 Confidential 2006; Interview 10 Public 2006). The 'due process' which led to approval of the Beverly Mine license, despite the raising of concerns by the Adnyamathanha community, reflects an institutionalised neo-colonial attitude within industry and government where 'development' is seen as inevitable, progressive, economically prudent, and environmentally safe. A key finding in this section relates to the ongoing presence of a colonial Australian psyche which directly inhibits protection of Indigenous cultural heritage.

Decolonisation of the way in which heritage protection policy is constructed, implemented and evaluated in regard to land use is yet to be implemented in South Australia, and despite modified rhetoric (see §3) there is little progress toward a culturally inclusive heritage framework. The issue of entrenched colonialism in relation to the Beverley case is uniquely complicated by a time span of approximately 100 years since initial contact between Adnyamathanha and colonisers; a relatively short period compared to many other Indigenous groups in Australia and elsewhere impacted on by colonisation. Cultural continuity between Adnyamathanha Yuras, our Muda and our Yarta is paradoxically well recognised among Adnyamathanha and in some institutional settings such as schools, yet constantly threatened, particularly by governance issues relating to mineral exploration and development. Evidence of neo-colonial shackles is visible both internally and externally in regard to Indigenous governance, Indigenous engagement, and in regard to the meanings of 'due process'.

The Beverley case illustrates how adherence to a narrow Western legal ideology of land use dominated Adnyamathanha engagement and reduced the effectiveness of internal Adnyamathanha governance. As noted earlier in this chapter, this study strongly suggests the corporate Committee-style of governance used by ATLA and the Work Area Clearance procedures endorsed by Heathgate Resources effectively dismissed Adnyamathanha protocol and may have been instrumental in silencing Anggumathanha Law Adnyamathanha Elders. This may have also triggered a fundamental resurgence of our cultural identity, particularly the overarching governance structure used by Adnyamathanha Yuras until as recently as the early 1900s. This thesis reveals that Adnyamathanha decision-making practices in post-contact times have not previously been scrutinised, and this contributes an important finding worthy of further investigation.

In conclusion to this discussion on the changing face of 'due process', Adnyamathanha participation and heritage protection, there is scant evidence of empowering processes for Indigenous peoples generally who wish to care for country in the context of development. Interview data and literature suggest that the ongoing yet fragile existence of Indigenous cultural knowledge and connection to the land in post-contact Australia is regarded by the mining industry and governments as a threat to 'due process' associated with commercial development. This cultural knowledge may also pose as a threat to some Adnyamathanha who regard the commercial value of land as more important than spirituality and tradition. The long standing pattern of manipulation of the regulatory processes is evident in the informal deregulation process that undermines non-commercial heritage laws, policies and

practices. This trend of maintaining the status quo for governments and the mining industry and constraining the capacity of Indigenous players amounts to neo-colonialism. Ongoing colonial domination is often overwhelming, yet there are signs of persistence and determination by some Adnyamathanha who continue to value cultural knowledge and wish to assert a right to 'due process' that protects heritage sites.

7.1.3.2. The Domination of Commercial Interests over Sovereign Rights

The community consultation phase and Native Title negotiations in the mid-1990s were two critical aspects of engagement, both of which failed to deliver an equitable playing field for Adnyamathanha in protecting our cultural heritage. According to Elders' statements (cited in Adnyamathanha Elders Group 2009) made earlier in this thesis (see §6, pp. 138-139), allegations of being repeatedly ignored or ridiculed during Work Area Clearances raises serious concerns over the prior relationship between Heathgate Resources and Adnyamathanha. Allegations of mistreatment also stem back to the initial engagement strategy used by Heathgate to meet 'in secret' to secure Exploration Agreements, and only agreeing to hold a public forum once this was demanded by the community (FRAHCC 1998), and after the signing of legally binding Native Title Exploration Agreements. These comments came in stark contrast to the claims of fair treatment made by the proponent (Heathgate Resources Pty Ltd 1997b; Heathgate Resources Pty Ltd 1998a; Heathgate Resources Pty Ltd 2007).

Reflections on the timing and conditions of negotiations between Native Title players and the proponent, and between Adnyamathanha interest groups and government, reveals that site protection was compromised by the early period of development (Interview 8 Public 2005; Interview 4 Confidential 2006; Sutherland 2009). FRAHCC attempts to engage with government agencies regarding concerns of fast-tracking were denied support from two departments that had previously been relatively supportive of Indigenous engagement (FRAHCC, corresp. 1997). The absence of social or cultural issues in the DEF documentation (Heathgate Resources Pty Ltd 1997a) set a precedent that was used repeatedly during the Beverley case (Heathgate Resources Pty Ltd 1997b; Heathgate Resources Pty Ltd 1998a). A high level of dissatisfaction was expressed by Adnyamathanha regarding the confidential negotiation of Exploration Agreements and Mining Agreements (see §6.1) prior to the EIA. The exclusion of Anggumathanha Law Elders from this process and the

proponent's failure to meet the requirements of the *Aboriginal Heritage Act* remain key concerns for Adnyamathanha (Sutherland 2009).

An analysis of the procedure initiated by the South Australian government in the Beverley case strongly suggests that a denial of Indigenous and public rights occurred during impact assessment. Government chose to bypass community engagement and Indigenous heritage protection requirements during the trial mining stage using what became known as 'fast-tracking' (see §6 'Government Approval for Trial Mining and the Declaration of Environmental Factors'). As a result Heathgate Resources gained extraordinary support from the South Australian government regarding the impact assessment for the mineral extraction process to commence prior to full approval of a mining license and despite public opposition (Australian Conservation Foundation 1998a). This may be similar to the pressures experienced by Aboriginal Traditional Owners in the Kimberley region of Western Australia where the State government used its power to fast-track engagement (Perpitch 2009). As noted in the previous paragraph, the DEF did not include an assessment of the cultural values of the area or the actual ore body. The range of perceptions surrounding 'fast-tracking' of the Beverley project varied immensely depending on the core values and priorities of players and this in itself illustrates the ideological gap between Indigenous interests, and those of government and industry. Given the close resemblance of the DEF scope to the Beverley EIS report (Heathgate Resources Pty Ltd 1998a), it is likely that the concept of fast-tracking went beyond the trial mining stage and set a precedent which effectively led to approval of the mine. The use of fast-tracking associated with the original Beverley license suggests an alignment with the traditional 'dig and deliver' attitude by the mining industry (Brereton 2004, p. 15).

The mining proponent has firmly claimed they have consulted and negotiated 'in good faith' with Adnyamathanha Native Title representatives and fairly compensated Yuras for the use of land (Heathgate Resources 1998b). In contrast, many Elders claim that negotiations have failed to empower the wider community in regard to heritage protection amidst mineral exploration and mining activities on Adnyamathanha Yarta. Despite rich cultural knowledge that connects people and land, the granting of a Native Title Consent Determination in March of 2009 (Federal Court of Australia 2009) remains a vexed issue for all players concerned about heritage site protection.

The PER (Public Environment Report) process used by government in 2009 over the Beverley Four Mile proposed an expansion of operations using terms of reference that were

also confined to western concepts of impact (Heathgate Resources Pty Ltd 2009). As was the case with the Beverley EIA during the early 1990s, Adnyamathanha dissatisfaction with the PER Four Mile report has raised (Adnyamathanha Elders Group 2009) claims of cultural significance and adherence to the requirements of the *Aboriginal Heritage Act* (SA Government 1988). The Minister for Aboriginal Affairs Jay Weatherill subsequently decided to commission an anthropological investigation (Sutherland 2009), which signalled a stronger adherence to the *Aboriginal Heritage Act* than by previous Minister, Dorothy Kotz.

Elders' sustained level of concern through the Anggumathanha Law Adnyamathanha Elders group has, in the instance of the proposed expansion, altered the approach being endorsed by government, if not by industry and Native Title interests. The stand taken by Elders highlights how community players not satisfied with the process of engagement, regardless of their marginal position and their limited resources, have found some political space to engage in heritage protection. Their willingness to speak out and their persistence have attracted an increasing level of independent expert and community resources sympathetic to their interests. This small breakthrough in asserting community rights has the potential to lead to a more equitable power balance and scope for consultation and negotiation, which may in turn influence participation over the entire development phase. However, entrenched domination of land uses by the mining industry and government is likely to find new ways of sidestepping any responsibility toward sustainable and culturally appropriate land management.

7.1.4 Problems with Engagement Principles and Best Practices in Mining

Examinations of engagement models based on centralised decision-making (Howitt, Crough et al. 1990; Christie 1991; Lane 2003; Dirk Moses 2004) provide an understanding of Western domination in the commercial development process. Major development cases involving Aboriginal heritage issues that preceded the Beverley case in South Australia (see §3), and the critical evaluation of impact assessment (see §4), collectively illustrate how government approval processes and developers dismiss Aboriginal heritage and dominate the outcomes of impact assessments and land uses. An analysis of evidence suggests that fast-tracking effectively denies Indigenous and community rights, and creates divisions among community interest groups, further limiting participation and informed decision-making. This sense of division and mistrust of the mining industry is historically steeped in previous Indigenous cultural ties to land having been severed: many Adnyamathanha Yuras claim that countless culturally significant sites have already been sacrificed through commercial

development (Education Department of South Australia 1992; Marsh, Marsh, pers. comm. 2008ab; Marsh, pers. commm. 2009d). In order for industry to genuinely bring about effective engagement principles and best practices, there will need to be a reconciliatory phase that heals the hurt of past injustices and openly endorses Indigenous heritage rights as a central part of consultation and negotiation. This part of Chapter 7 explores the problems posed by government and industry that suggest limited commitment to engagement principles and best practices.

7.1.4.1 Fast-tracking a Hindrance to Effective Community Consultation

Concerns rose during the Beverley impact assessment regarding 'fast-tracking' which were clearly and repeatedly stated at the public level (Mercer 1995; Select Panel of the Public Inquiry into Uranium 1997, p. 32; Australian Conservation Foundation 1998b). The use of technical language, the lack of public information, and the short period of consultation, were key areas in which public concerns were raised. The response from government (Minister for Primary Industries Natural Resources & Regional Development SA 1998a) endorsed 'fast-tracking' in the early stages of development despite public outcry, and this created a precedent that influenced the entire approval process in the Beverley case. This response from government facilitated an attitude of contempt and mistrust between the powerful corporate players and less powerful players. The 'fast-tracking' and 'separatist' strategies used by government and industry throughout the DEF and EIA can be interpreted as exploitation of corporate power and a divide-and rule strategy.

I would also argue that the use of 'fast-tracking' hindered Indigenous engagement to a far greater degree than the general public. Indigenous players face greater barriers than non-Indigenous players' in regard to an ability to cope with a 'fast-tracking' process; these include English as a second language, limited cross-cultural representation in the terms of reference used in impact assessments, and a level of spirituality and emotional connectedness to land that is uniquely Indigenous. All of these factors are severely undermined during a process of approval that offers scant public participation.

7.1.4.2 Limited Capacity for Indigenous Engagement

This section begins with a proponent perspective regarding responsibility toward effective engagement. Comments made by an ex-employee of Heathgate Resources (Interview 6

Confidential 2006) and one of several legal advisors for Adnyamathanha (Interview 1 Confidential 2005) on the difficulties of cross-cultural engagement described a steep learning curve and a lack of guidance for outsiders attempting to engage with Adnyamathanha. These participants expressed concern that a set of clear guidelines in relation to cross-cultural engagement would have assisted Adnyamathanha in participating more effectively in the negotiations surrounding Beverley, as well as offering clearer guidance to outsiders. A suggestion for improvement by a mining sector participant was the timing of Indigenous engagement, and how the EIA '…is really some way down the path, maybe three, four, five, ten years down the path. So you have to start with the people and you need to determine what needs to be done at the first meeting …' (Interview 6 Confidential 2006). These comments coincide with the frustrations felt by Adnyamathanha, who felt they were not being understood or listened to during the Beverley EIA (see §6).

The content of the draft EIS Main Report (Heathgate Resources Pty Ltd 1998a) and subsequent documents (Heathgate Resources Pty Ltd 2000; Heathgate Resources Pty Ltd 2001) suggest the proponent did not explore existing protocols or strategies to guide community consultation, and instead opted to focus on the Native Title legislation as its guide for site surveys and agreement-making negotiations with Adnyamathanha players. Despite decades of legislation, voluntary guidelines and principles being published by academics, and the existence of local guidelines and practices, governments and industry continue to impose engagement strategies that do not work for Indigenous players. The proponent's perspective on how to include Elders and recognise traditional knowledge remains a key concern for TOs (Traditional Owners), both within and outside of the Native Title process. The proposed expansion of Beverley Four Mile raised similar community concerns (Adnyamathanha Elders Group 2009), and according to an independent inquiry commissioned by Jay Weatherill, Minister for Aboriginal Affairs, (Sutherland 2009) engagement with TOs was not sufficiently addressed.

Besides evidence from Adnyamathanha, this study found that all other interest groups expressed concern at the lack of engagement guidelines available at the time of the Beverley impact assessment (Interview 1 Confidential 2005; Interview 8 Public 2005; Interview 6 Confidential 2006; Interview 12 Public 2006). The set of 'site avoidance' guidelines released after the Beverley impact assessment (known in this case as the Beverley EIS) completed by the Office of Minerals and Energy Resources South Australia (Office of Minerals and Energy Resources South Australia 2002) may help educate industry and government personnel

regarding effective engagement with Indigenous players. However, this is likely to be viewed with scepticism by the wider community given the comments cited from one interviewee who worked closely with Adnyamathanha over the Beverley case and Nungas over the Hindmarsh Island case (Interview 12 Public 2006). Purdy stated she had been told 'it's always up to us Nungas to spill our guts; there's never a real opportunity to voice our concerns, there's never a genuine chance to say no, because we are never classed as the 'experts' (Interview 12 Public 2006).

Principles and practices that promote effective Indigenous engagement and good governance were outlined (see §3) in regard to ICHM (Indigenous Cultural Heritage Management) and ICRM (Indigenous Cultural Resources Management). However, there is little evidence that these have been transformed into practice in the Beverley case. An overview of some of the dominant geographical concepts used to determine and influence the ways in which land is valued in Australia (see §6) exposes why Indigenous perspectives remain marginalised. Evidence suggests that a critical review of heritage protection must involve an overhaul of the philosophical approach to land use, and must occur through an Indigenous lens, in order to recognise and actively support the worth of Indigenous heritage protection.

Examination of the Beverley case reveals a neo-colonial engagement experience that is not isolated or unique to Adnyamathanha nor acceptable by international or national standards of Indigenous and human rights. This study adds further evidence to the body of literature that suggests state-industry alliance facilitated an inequitable process of community engagement and forces Aboriginal people to comply with commercial interests. This situation sets precedents that widen the gap between sovereign rights and commercial interests and hinder decolonisation in Australian society.

7.1.4.3 Chronic Absence of Appropriate Methodology

Improved engagement with Adnyamathanha must address concerns of existing problems. Field surveys and reports conducted by the anthropological consultant employed by Heathgate (Interview 9 Public 2006) did not articulate a methodology or engagement strategy regarding the way in which interaction between proponent employees and Work Area Clearances were conducted. The absence of an independent anthropologist or archaeologist also raises questions regarding adherence to best practice by ATLA in its representative role of the wider community. This suggests a failure by the proponent and by ATLA to formally sanction

culturally appropriate mechanisms (Adnyamathanha Elders Group 2003; Adnyamathanha Elders Group 2009; Marsh, pers. comm. 2009a; Sutherland 2009). Interview data and observations have helped piece together consistent anecdotal evidence, and together with existing research literature there are grounds for demanding both the proponent and the community body ATLA adhere to best practice principles.

At the ATLA Special General Meeting on 17th January 2009 (Marsh, pers. commm. 2009d), I sought to observe what changes might have taken place with regard to guidelines and protocols since completion of fieldwork several years earlier. The key agenda items discussed were existing royalty investments as per the Heathgate-Adnyamathanha Native Title Mining Agreement, and Adnyamathanha engagement regarding the Beverley Four Mile project, a proposed expansion to the existing operation. At this meeting there was no reference by the proponent or from ATLA to any guidelines for facilitating the process of engagement for this new proposal at Four Mile. Observations (Marsh, pers. commm. 2009d) and written materials provided at the meeting demonstrate no shift towards greater commitment from Native Title Named Applicants or the ATLA governing body regarding engagement in the mainstream process of PER public consultation. I then proceeded to offer to facilitate a draft submission on behalf of Adnyamathanha Elders in attendance at the ATLA meeting, who invited me to their next Anggumathanha Law Adnyamathanha Elders meeting. Although the submissions from the consultation process were not made public, based on the observations made at the ATLA meeting on 17th January 2009, it is possible that the only Adnyamathanha Yuras to have participated in the PER public consultation were those belonging to the Anggumathanha Law Adnyamathanha Elders group (Adnyamathanha Elders Group 2009).

Likewise, there appeared no change within ATLA toward development and implementation of a set of governance or engagement principles and practices, including fair decision-making protocols that might help safeguard Adnyamathanha interests in an equitable manner. Despite the development of Native Title ILUA Heritage Clearance Procedures in 2003, which was published in 2004 in template form as part of the Minerals Exploration ILUA Template (Crown Solicitor's Office 2004b), there was no evidence to suggest that principles from these guidelines were being transferred or implemented at the local Adnyamathanha level of Work Area Clearances or ILUA negotiations. This suggests a breakdown in communication between government and community, and shows a limited commitment from industry towards improving relations with Indigenous players.

It could be argued that royalty funds from the agreements negotiated with Heathgate potentially provide the space for developing and improving engagement principles and community guidelines for engagement with the mining industry. Despite a large sum of royalty compensation being provided to Adnyamathanha and at least 30% being directly distributed to community groups and Native Title Named Applicants, there have been no funds set aside to facilitate independent funding of meetings for the ATLA Committee or the 32 core groups feeding into ATLA (Marsh, pers. commm. 2009d). Ten years of engagement under Native Title have also failed to deliver guidelines or protocols for community engagement, and limited distribution of written information provided to the wider Adnyamathanha community prevails.

Besides the Native Title ILUA Heritage Clearance Procedures in 2003, detailed guidelines for resource management and community engagement (Natural Heritage Trust 2004a; Natural Heritage Trust 2004b) and industry guidelines for best practice (Minerals Council of Australia 2004b) have also been developed in 2004. These potentially provide an excellent foundation for Adnyamathanha to start developing our own ways of working; however, none have been openly discussed by either ATLA or the proponent. Heathgate claimed it '…recognises that different community groups may require specific mechanisms for consultation' (Heathgate Resources Pty Ltd 2000, p. 25), but anecdotal evidence (Adnyamathanha Elders Group 2009; Sutherland 2009) suggests an ongoing disparity between Heathgate's approach to Indigenous engagement and the guidelines available from the Minerals Council, Crown Solicitor's Officer, Natural Heritage Trust. There is also a stark contrast between community claims regarding the appropriateness of consultation, and those of the proponent, Heathgate Resources.

Improved engagement also alludes to better understanding the relevant legislation by the proponent and greater transparency within Native Title. A recent majority vote by members of the Beverley Advisory Committee (Marsh, pers. comm. 2009b) in favour of heritage protection was voted against by the two Committee members representing Heathgate's interests, on the basis that 'The Heathgate reps were unsure as to what it meant to vote in favour of a Section 12 under the Heritage Act' (Marsh, pers. comm. 2009b). This suggests that Heathgate Resources remain confused as to their obligations under the *Aboriginal Heritage Act*. Disparity over the sharing of information and claims of secrecy by non-Native Title Adnyamathanha players also remains unresolved. Indigenous Native Title representatives previously requested that documentation of their quarterly meetings with

Heathgate Resources remain confidential (Heathgate Resources Pty Ltd 2001) yet the wider community continually express concerns at not being properly informed and the wielding of too much power by Native Title players (Interview 8 Public 2005; Interview 10 Public 2006).

7.1.4.4 An Impact Assessment that Failed to Meet Heritage Best Practice

This study reveals there was minimal consideration of best practice for Indigenous engagement in the Beverley case and considerable room for improvement at a national level (see §6.3.4). Reference to government guidelines (Planning SA and Environment Australia 1998) offered a generic approach to guidance of the Beverley EIA; however, the proponent did not specifically demonstrate how Adnyamathanha engagement met these requirements. Codes of practice noted in the Beverley draft EIS Main Report were confined to the transport of dangerous goods and radioactive substances, and the management of radioactive wastes and milling of radioactive ores (Heathgate Resources Pty Ltd 1998a, p. 2-10). The *Native Title Act* (Commonwealth of Australia 1993) was quoted as the key mechanism for Indigenous engagement, yet no reference was made to consultation under the *Aboriginal Heritage Act* (SA Government 1988) or to relevant codes of best practice relating to heritage. This is consistent with widespread claims (Evatt 1996; Malone 1996; Taubman 2002) that both State and Federal heritage laws are failing to protect Aboriginal cultural heritage.

Implementation of the impact assessment framework in the Beverley case excluded Indigenous views from the scoping of terms of reference through a demonstrably narrow interpretation of 'environmental' in the DEF and EIS documentation. At this early stage of development, documentation published in September of 1997 (Heathgate Resources Pty Ltd 1997a) confirms that technical issues in relation to the in-situ leach mining technique were the sole focus of the DEF. The choice made by the proponent to confine discussions to mining technicalities, and to omit issues surrounding community engagement, did not prevent a commercial license being issued by government. The commencement of negotiations with Native Title parties continued despite failure to address site avoidance responsibilities under the *Aboriginal Heritage Act* (Office of Minerals and Energy Resources South Australia 2002), exposing a failure to acknowledge Indigenous traditional custodians and a deficiency in the administration of this legislation. A lack of any formalised plan such as an Indigenous Resources Management (IRM) plan allowed the mining proponent and fledgling Native Title sector to refute existing local practices and guidelines established through FRAHCC, and a lack of regional or State guidelines led to non-compliance with heritage protection according

to the *Aboriginal Heritage Act* requirements. This reveals a flaw in the accountability requirements set for developers by government, and possibly serves to explain the hastening of the approval process under the 'fast-tracking' regime.

Agreement-making on the basis of negotiating a Native Title Exploration and Mining Agreement severely reduced the overall decision-making capacity for Adnyamathanha players. No attempt was made by the proponent to incorporate any existing guidelines for Aboriginal Heritage legislation and policy and no Ministerial determination was sought or made during the Beverley impact assessment. This suggests that negotiating parties in the Beverley case were engaging in a way that did not meet best practice locally or elsewhere. The level of empowering support mechanisms for Adnyamathanha to protect heritage sites was at an all-time low during the Beverley EIA, and this limited capacity to engage meaningfully in resources management and site protection.

The domination of technical and commercial issues and the physical sciences within impact assessment (see §3 and §4) suggests that decision-making in regard to the environmental and cultural values of the area were of a low priority to government and industry. One research critic (Lane 1993) argued that one way of overcoming the domination of physical sciences was to ensure an EIA that is inclusive of all perspectives; in other words an EIA that implements a process as stipulated in impact assessment guidelines to include social, cultural, economic and environmental concerns. Other major developments in South Australia and the lack of any successful prosecutions under the *Aboriginal Heritage Act (SA) 1988* (see §3), suggest that South Australian implementation of heritage protection consistently falls short of fully including Indigenous perspectives, and this trend is acknowledged as a shortfall within government (Evatt 1996; Malone 1996; Taubman 2002; Interview 16 Confidential 2005).

Indigenous relationships with industries are widely regarded as a part of a complex set of human rights issues (World Heritage Committee 1998), and the Beverley case is an example of Indigenous human rights being systematically abused. Within Indigenous heritage protection and cultural resources management there is evidence that mining companies, the mining industry, and Australian governments continue to trivialise the human cultural significance of land for Indigenous Australians in favour of mining (World Heritage Committee 1998). The alliance between the South Australian government and the mining industry strongly suggests a corporate approach is being used to diminish the powers of ordinary citizens. International diplomatic exposure may be of benefit as an effective strategy

for greater compliance with human rights on a national scale, and is also likely to offer much benefit on a local scale.

I argue that in the absence of specific guidelines for cross-cultural conduct or agreement making principles, both prior to and during the impact assessment phase, Indigenous heritage protection in the Beverley case was confined to a proponent driven procedure. This suggests that a lack of guiding principles on ICHM and ICRM, together with limited capacity and leadership, severely depleted Indigenous participation.

7.1.5 Conclusion

This first part of Chapter 7 highlights some findings that continue to influence Adnyamathanha identity and decision-making within governance of land uses, resources management and heritage protection. These findings reveal why the Beverley case failed to deliver heritage protection for Adnyamathanha. This case study clearly shows that traditional or customary Adnyamathanha values and beliefs are being repeatedly challenged, and in some ways overridden, by interests more closely aligned with the commoditisation of resources than the protection of heritage. This tension between resources management and heritage protection will continue to influence Adnyamathanha politics in the future, and will be largely determined by the effectiveness of participation and the extent to which Adnyamathanha expectations are met.

A most outstanding finding of the Beverley case is the identification of a strong alliance between government and proponent which facilitated speedy approval of Beverley Mine. This alliance manipulated the mining legislation and development legislation, enabling the proponent to incorporate a 'trial mine' into the mineral exploration phase. This effectively granted the proponent the right to commence extraction of uranium ore and the destruction of Adnyamathanha cultural sites before a commercial license was granted, and before a Ministerial determination was made under the heritage legislation. This study reveals that a pattern of Indigenous engagement goes beyond mining, to include all forms of development. Governance of heritage sites and land resources in the absence of clearly defined and agreed on guiding principles and best practices for Indigenous heritage protection is not providing an adequate framework for heritage protection or Indigenous engagement.

Another finding relates to the proponent's legal ability to engage solely with Native Title Named Applicants, at the exclusion of the wider Adnyamathanha community. The legal

positioning and vested interest held by the proponent, and individual Native Title players, enabled strategies that brought about an efficient process for government and proponent; this situation of using the Native Title framework arguably reduced community consultation to a level of tokenism during the EIA and sanctioned the destruction of Aboriginal heritage sites.

Further findings that emerge from this analysis of the Beverley EIA show use of unethical strategies for community engagement, an absence of best practice in the Beverley case, and a lack of Indigenous capacity.   The lack of responsible leadership by Adnyamathanha, and ineffective cross-cultural communication (see §6) meant that leaders, as well as ordinary community members, struggled in trying to convey an understanding to outsiders of what the land means to Adnyamathanha. Many of the non-Adnyamathanha players were confused and frustrated by what seemed to be a lack of cohesive leadership and governance. This was clearly a difficult but important challenge for people, particularly those in leadership roles genuinely seeking an equitable environment for consultation and negotiations (see §6.2.2.2). In dealing with this among many other pressures, Adnyamathanha persons playing a key role in engagement became overwhelmingly redundant and had little space to exercise any responsible level of leadership.

Lack of best practice by all parties involved in the Beverley case must be placed into context with the widespread perpetuation of colonialism within ICHM and ICRM. Broader literature in regard to 'best practice' suggests an ongoing attitude of complacency (see section on Land Resources Development in §4). It is therefore arguable that the proponent and government agencies responsible for implementation of 'best practices' in the Beverley EIA should have taken much greater measures toward ensuring Indigenous issues were properly addressed according to an identified code of best practice. This investigation finds a deep-seated problem that shows the perpetuation of colonialism through the repeated dismissal of Indigenous rights and Indigenous perspectives.

The next part of this chapter turns to a broader appraisal of Indigenous self-governance and identifies ways for all players to significantly improve their understandings of, and ways for implementing cross-cultural engagement. For Indigenous players, this is a fundamental step toward independent governance without having to sacrifice effective heritage protection.

7.2 A Paralysis of 'participation' within Aboriginal Engagement, Heritage Protection and Impact Assessment

7.2.1 Introduction

Data from this study is used to develop abstract ideas of professionalism, cultural appropriateness, and two-way engagement to build on existing understandings of heritage protection and Indigenous participation in commercial land use.

7.2.2 Deconstruction of Professional and Volunteer-based Intervention

Professional intervention through journalistic media outlets, South Australian Police (SAPOL), and the legal fraternity involved in the Beverley case highlights a group of players that were a subsidiary, yet at times, intimate part of the power relationship that surrounded information sharing and decision-making (see §6.3.3). Within the Beverley case, lawyers and other professionals were recognised through standardised monetary reward and are characterised by a capacity to provide expert guidance and advice using the dominant language of Udnyu Ngawarla and Western concepts. In comparison, the vast majority of Adnyamathanha participants at meetings contributed as volunteers, some with limited knowledge or experience of Western law and impact assessment; some with a deep richness of Adnyamathanha cultural knowledge and experience. The issue of professional power has been raised as a significant influence in other cases (Young 1995d; Katona 1999) where the level of professionalism was questioned for its bias against community wishes. The discussion below highlights the influences of professionalism in the Beverley case and how this disempowered many Adnyamathanha players.

At times there was an air of violent intimidation that came from Police intervention which directly influenced the extent to which Adnyamathanha felt comfortable in participating (Marsh, pers. commm. 1999; FREAC 2001). One Native Title Unit Case Study Manager claimed the Hawker meeting hosted by Heathgate Resources complete with armed police was 'outrageous' and 'a real display of power – not at all to do with community consultation' (Interview 12 Public 2006); more to do with 'who counted and who didn't' and 'the attitude that dominated was "Do as we [Heathgate] say, or get dragged off [by armed Police] (Interview 12 Public 2006). This not only disempowered Yuras on the day, it reinforced views that Adnyamathanha governance was tainted by internal conflict (Interview 3

Confidential 2005). Although this aspect of Police powers is not examined as a core unit of analysis in this thesis, the shared experiences and published evidence strongly suggest that the use of professional violence was instrumental in suppressing Adnyamathanha participation. The use of Police and security personnel as seen in the Beverley case suggests an existence of State authoritarian control used to maintain corporate power over public dissent. The use of violence and intimidation in the public arena became a normalised part of Adnyamathanha governance and community engagement.

Another form of professionalism was evident from the way in which Green NGOs and Yura began to collaborate. For the first time in Adnyamathanha history, Green NGOs and Yuras came together to share concerns about the potential dangers of uranium mining, and to listen and learn from each other. This took place at a voluntary and occasionally para-professional level via the 'Alliance Against Uranium' (now known as Australian Nuclear Free Alliance or ANFA) movement, which enabled Adnyamathanha to connect with other Yuras and learn about environmentalism from a non-Indigenous perspective. The term 'para-professional' is coined in recognition of the many hours of voluntary time given by TOs (Traditional Owners), skilled Indigenous and non-Indigenous professionals such as film-makers, freelance journalists, chemists, medical doctors, and environmental scientists that donated their expertise to ANFA and Aboriginal communities in Australia. A key factor underpinning these new relationships relates to a shared concern for social and environmental justice. This type of engagement is quite distinct from the corporate sector, where professional expertise in exchange for monetary reward underpins the conduct and purpose of community engagement. In this situation, engagement is more akin to a business transaction designed to facilitate a favourable outcome for industry rather than address the concerns of community.

Beverley-related media literature suggests minimal representation of Indigenous issues in media publications. Views from within the Indigenous sector were rarely quoted or directly referred to in media dialogue, suggesting a number of possible explanations. Media professionals attempting to interact with the Indigenous sector may have experienced awkwardness in not fully knowing how best to adequately represent Indigenous players given that we are part of a sub-culture not widely understood within Australian society. Media professionals unable to make the relevant connections between Indigenous concerns and the impact assessment process may have struggled to validate an argument on behalf of Yuras. Another explanation relates to the level of representation by government and industry within media and the Western scientific and legalistic focus on the impact assessment procedure.

Coordinated efforts between the mining proponent and SAPOL, government representatives such as Members of Parliament or Parliamentary Ministers may have normalised language such as 'dissident' or 'protest' or 'anti-uranium' (Holden 1997) used to characterise Aboriginal positions via popular media.

Professional journalism through mainstream local television and newspaper media consistently maintained a narrow Westernised view on the impacts of mining and Indigenous concerns (Holden 1997; Lunn 1997; Evans 1998; Marsh, pers. comm. 1998; ABC 1999; Jory 1999), similar to the literature being produced in reports by the proponent which marginalised Adnyamathanha voices of concern and Indigenous perspectives on land use. The necessary skills for producing media releases and maximising chances of being quoted in articles relating to the Beverley case were quite difficult for most Adnyamathanha, and whilst the audio-visual character of television and journalist interviews was partially accessible to Yuras, there were likely to have been many missed opportunities due to cultural barriers such as English language proficiency, public campaigning, and confidence in speaking or writing publicly. This was even more evident by the limited response from Adnyamathanha during the time of the release of the Beverley draft Impact Statement. Adnyamathanha responses to the call for public comment were limited to two submissions, suggesting that written media was perhaps equally as difficult for Adnyamathanha to engage with as was audio-visual communication.

In addition to the pressures felt by Indigenous persons, evidence suggests that during the Beverley case, there were articles raising environmental concerns over the Beverley proposal submitted to South Australian media sites including 'The Advertiser', that were constantly rejected or undermined by editorial privilege (Australian Conservation Foundation 1997a; Australian Conservation Foundation 1997b; Australian Conservation Foundation 1998a; Conservation Council of South Australia 1998b; Marsh, pers. commm. 1999; FREAC 2001). David Noonan, from the Australian Conservation Foundation (Interview 11 Public 2005), commented on his previous experience of what he referred to as a 'blocking strategy' used by government to manipulate media representation. He claimed to have become highly aware of the 'blocking' strategy employed by Federal government (at the time under Liberal leadership) in response to an AIATSIS report. He stated the government utilised its authority and effectively '…prevented it going further, and ignored their (AIATSIS) recommendations…' (Interview 11 Public 2005). Claims of a media conspiracy by the defending women in the Hindmarsh Island case (Simons 2003, p. 437) also suggest that media

coverage can be an area of privilege used by the powerful players. I would argue that the extent of media privilege in Australia in areas such as development, particularly when there is considerable public opposition or concern, is something worthy of further investigation.

The Beverley case highlights a chronic lack of understanding of the state of play within land use by many Yuras, the 'normalisation' of violence and politically-loaded language, and how the role of paid experts employed in an advisory capacity at times extended to a negotiating and decision-making capacity. Uninformed decision-making and inequitable participation by Adnyamathanha players was widely recognised as a major issue by all interview participants; however, the dependency relationship between professionals and TOs requires further examination beyond this study.

Further investigation of Adnyamathanha engagement and governance in land use is particularly important, given that accessibility to written sources from which to learn from mining engagement within Indigenous communities remains largely in the hands of non-Indigenous professionals. Political and social understandings of the Beverley case have been told predominantly through the eyes of Udnyu lawyers, Udnyu anthropologists and Udnyu miners and sit in stark contrast to the views of many Yuras who participated in the Beverley case. I argue that the domination of a Western ideology throughout the Beverley case is consistent with the assimilated state of play within land use and heritage protection in Australia and the Western world. The paradigm shift Australians are witnessing toward the commoditisation of Indigenous resources through Native Title negotiations represents a disturbing phenomenon on a scale not seen before in geopolitics.

7.2.3 Equity Based Engagement for Greater Sustainability

Reviewing the balance of power and knowledge involves striking a balance between the ideology of sovereign and commercial rights, as well as between Aboriginal values and Western science. This will also require greater assertion of gendered, age-specific, and knowledge-based, perspectives to create the spaces for women, Elders and young people to participate freely.

7.2.3.1 Spirituality and Politics within Neo-Colonial Boundaries

Indigenous spirituality and religion continue to be politicised and commoditised through 'frozen-culture' perceptions of Aboriginal identity (Russell 2005c, p. 136) and romanticised

constructs of Aboriginal practices and attitudes (Royee and Daphney 1991). Jacobs and Gelder claim (Gelder and Jacobs 1998) that the construction and rejuvenation of 'sacredness' amidst modernity in Australia marginalises Indigenous Australian cultures and peoples in a political sense that sets new boundaries for colonialism which go beyond the denial of Indigenous spirituality and religion to another level of 'uncanny' exclusion; this is referred to as a form of 'post-colonialism' by Jacobs and Gelder. I argue here that economic development within these new colonial boundaries places Aboriginality and Indigenous resources in a commodity driven vacuum that industrialise and commoditise our lives and our cultures. Colonial perceptions integrated with a commercial valuation on Indigenous resources and knowledge creates a management process fraught with inconsistencies, conflicts, and confusion. This commoditisation of Indigenous resources and peoples reworks colonialism into a more sophisticated entity that suggests Australia is experiencing a neo-colonial era of cultural supremacy and domination. The political climate of corporate dominance and economic globalisation and the industry-based approach to Indigenous rights are leaving little space for Indigenous peoples and cultures to survive and flourish. Political resistance to, and reform of, industrialised neo-colonialism through heightened recognition of Indigenous sovereignty is possible through peaceful assertion of human rights and global, national and regional solidarity.

7.2.3.2 A New Approach Needed in Development

Existing impact assessment is dominated by corporate power because it sets up an artificial playing field that is unsuitable for Indigenous participants (Evans, Goodman et al. 2002; Brereton 2004; Lawrence 2007). Examination of the Beverley case draws similar conclusions. New methodology for Indigenous resources management suggests a hybridised approach aimed at maximising local input with an emphasis on collaboration between players (Lane 2002; Lane 2003; Lane and Corbett 2005). Together with an ideological shift among key players regarding the spiritual values of land, this may provide part of the solution needed for genuine sustainable land use in Australia. However, the pro-development alliance between government and industry deserves greater scrutiny within future modelling both in Australia and in other countries. Claims that State and capital alliances destroy the social and environmental fabric in society (Muhammad, Wogan et al. 1998) are comparable to the Beverley case where government and proponent clearly formed a collaborative base from which to fast-track production and to suppress dissent. The concept of decentralisation must

move beyond structural change and include a level of ownership by Indigenous players. Collaboration and local input should not be at the expense of Indigenous players having to forfeit cultural rights to protect heritage. Nor should Indigenous players have to bear the burden of asserting our rights in the absence of professional support and advocacy.

Constructions of race (Russell 2005c) are as much a critical determinant of identity in rural Australia as is gender, and together these ideologies present a complex barrier for many Indigenous players through manifestation in governance of Indigenous resources. Evidence from the Beverley case such as inappropriate governance and engagement strategies suggests racial identity contributed to the imbalance in both power and knowledge, which in turn secured commercial mining rights over Adnyamathanha sovereign rights with minimal challenge or accountability.

Understandings of environmental sustainability are being reconstructed within corporate Australia (and this includes the mining industry and government) using a framework that scrutinises commodity exploitation and economic capitalism to explain and justify human impacts on the environment, many of which are irreversible and detrimental to the long-term survival of humanity and biodiversity. Concepts of 'sustainability' and an emphasis on the need for 'certainty' within the mining industry suggest that a level of security for everyone is enjoyed through the ongoing domination of resources management in its current form. These understandings imply that any change to or questioning of resources management has the potential to threaten or destabilise the economic, social and environmental capital from which all Australians supposedly benefit. These ideas of hybridisation and sustainability are not widely endorsed in the decision-making that currently informs Indigenous engagement or impact assessment.

Further theoretical insights are offered as part of the recommendations in Chapter Eight, particularly in regard to ways for improving Indigenous participation and for improving the planning phase of development.

7.2.4 Conclusion

Three important conclusions help to define issues from an Indigenous perspective in this case study and offer some analytical understanding of the case study at hand. First, this study has identified Adnyamathanha knowledge of mineral deposits and our spiritual attachment to the land as being part of an intimate association developed over countless generations. In this

context, the roles and responsibilities of Adnyamathanha Yuras in cultural resources management are seen by Yuras as ongoing and long standing in the northern Flinders Ranges region, regardless of any commercial and non-commercial ventures that have occurred in the past or may arise in the future.

Second, this study concludes that a continuing pattern of colonial attitudes and practices are associated with land use, planning, and recognition of rights over commercial mineral extractions in the Flinders Ranges. Investigation shows how Adnyamathanha were excluded from the decision making process surrounding rights to mine, and how royalties from mining were utilised as a key aspect of Indigenous engagement. This approach to engagement has legitimised commercial mining of land resources and the interests of mining companies as a higher priority than the heritage or environmental values placed on the region by other players.

Third, this study outlines a clear connection between a lack of resources within the community and the continued sense of frustration and confusion regarding cultural resources management among Adnyamathanha. Whilst this can be partially addressed through an action based research approach, it does not offer a sustainable solution to the ongoing need for greater resourcing or the increasing demands likely to be placed on Adnyamathanha players involved in heritage matters. Empowerment for Adnyamathanha is only likely to emerge when there is improved clarity regarding how Yuras define cultural heritage, how we seek to engage in heritage protection and resources management, and what our expectations of other parties consist of during consultation and negotiations. The emergence and evolution of cultural resources management in Adnyamathanha Yarta is yet to be clearly defined and fully developed as a workable and sustainable resource for all players involved in this field. All three aspects outlined above are highlighted as interconnected matters in the following set of recommendations.

This study has found that a range of different interest groups influenced the approval process of the Beverley uranium mine. For example, professionals played an influential role in the public arena which became an important force in determining government endorsement and a successful outcome for the proponent. This study also revealed the different types of professionalism, and showed how professionalism partly filled the gap in capacity for those Adnyamathanha who were less than satisfied, and openly critical of, the impact assessment procedure and community engagement, but had little knowledge of how to structure a public campaign. Networking with NGOs and other Indigenous peoples, as well as building stronger

networks within the community, has become an important strategy for many Indigenous players, who felt they were being silenced and misrepresented via resources management processes within Native Title, Aboriginal Heritage and Environmental Impact Assessment. A review of engagement at a theoretical level reveals that both structural and ideological shifts are needed to ensure greater equity for Indigenous players. The final concluding chapter in this thesis focuses on recommendations aimed at providing new insight to all players involved in heritage protection and land use negotiations, particularly Indigenous players who are seeking new ways to strengthen their internal capacity. Chapter Eight also aims to assist government agencies and mining proponents develop new ways for facilitating genuine Indigenous engagement according to world's best practice.

Chapter 8. Reflections & Recommendations

Chapter Eight offers grounded recommendations aimed at respecting the priorities of all participants that contributed to this study, particularly Adnyamathanha, through reflection on practical, institutional, and philosophical issues regarding heritage protection. The purpose is to provide Adnyamathanha and other Indigenous Australians with some worthwhile suggestions that may lead to reform of contemporary internal governance so as to make engagement more effective. Another aim is to inform and assist government and industry on how to improve their roles in Indigenous engagement to the standard of world's best practice.

Heritage protection is treated in this study as a positive aspect of Australia's identity, rather than as a problematic issue that can be ignored within the policy framework of State and Commonwealth government and industry compliance measures. The objectives of this thesis have focused on heritage as a key value, and therefore any improvement assumes respect for traditional values and beliefs. Findings from this study have been used as the basis for making recommendations in the first part of this chapter, and these encourage a substantial departure from Western science as the basis for heritage and impact assessment. A rethink of corporate priorities within resources management is also recommended.   In addition to the above, this chapter recommends ways of enhancing development theories so as to improve community, government and industry capacity for meaningful engagement, both through a shifting of paradigms, and through implementation of genuine best practice.

The final part of this chapter reflects on the use of Participatory Action Research and its application in this study.

8.1 Reform of Indigenous Participation in Heritage Protection and Resources Management

8.1.1 Introduction

The identification of recommendations in this thesis is primarily aimed at assisting Adnyamathanha players to find solutions to problems for land use governance and engagement, and at pinpointing some broad issues in most need of attention. These are based on the findings presented and analysed in the previous chapter, with a purpose of drawing together the knowledge and experiences of many individuals and organisations, in a way that is useful to Aboriginal Traditional Owners and particularly Adnyamathanha Yuras. Adnyamathanha participation in Native Title negotiations has been far from satisfactory in terms of heritage protection (see §7.2), and this is consistent with many Indigenous experiences across Australia. Adnyamathanha experiences include instances where Yuras felt forced to engage in a development process that did not value Adnyamathanha perspectives, the prevalent use of bully tactics was employed to silence people, and consultation briefs were hard to understand. This suggests the Beverley impact assessment was conducted using an inappropriate framework which has impacted negatively on Yuras' sense of wellbeing, and perpetuated a justification for damage to Adnyamathanha Yarta. Suggestions are presented as ways of working for the betterment of Aboriginal communities and corporate engagement, and whilst these are not offered as a blueprint, they provide a set of guiding principles from which more detailed priorities can be identified and a strategic plan formulated.

Recommendations include a series of suggested steps necessary to reform and revitalise Adnyamathanha participation in land management, particularly in regard to issues of cultural identity and internal governance. These local recommendations go hand in hand with suggestions on how to reform and improve current institutional arrangements for impact assessment and Indigenous engagement at a regional, national, and international scale. Recommendations also arise from reflection on grounded theory and how it can be utilised to inform and improve Indigenous engagement.

8.1.2 A Sustainable Model for Adnyamathanha Participation in Land Management

A sustainable model is one that has a long term capacity to address recurrent and new problems such as social and political disunity within Adnyamathanha, can overcome funding

crises and economic dependencies that impact directly on information sharing, and can ensure all parties honour an agreed protocol for heritage protection and resources management. Sustainability requires an approach that deals with all stages of land use, including legislation that governs planning and proposed developments, as well as policies and practices that guide all players along a pathway of free and informed participation and decision making.

8.1.2.1 Strong Identity, Strong Internal Governance

Questions of identity are not uncommon within Indigenous communities (Natural Heritage Trust 2004b) and highlight a key area worthy of developing as part of a plan for governance and engagement. This study reveals that characterisation of expertise and leadership remains highly influential in shaping Adnyamathanha identity since colonisation yet these qualities have become ill-defined and often sit outside of traditional boundaries. A literal interpretation of 'going back to the old times' (Adnyamathanha Elder 2002) would be quite impossible; however, one way of applying this suggestion is to treat it as a plea for greater recognition of Elders and greater acknowledgement of the continuity that exists between traditional governance and contemporary governance. Until there is clearer definition of legal and cultural rights, and until these are properly synchronised, it is likely that organisational representation will continue to fail to protect Adnyamathanha heritage. Part of the healing process for Adnyamathanha will require positive reflection on cultural identity and coming to terms with the destabilising effect colonisation has had on Adnyamathanha (see §5 and §6, also §7.1.2.1 and §7.2.3.5). This is likely to involve both individual and collective efforts over a lengthy period of time.

Revelations of how important customary law is to Adnyamathanha participation suggest a strong experiential knowledge base, from which contemporary identities that make up Adnyamathanha could emerge. The Wilyaru and Ngapi Ngapi traditions provided strict social order and united Adnyamathanha through trade and cultural exchanges, and the contemporary interpretation of the role of 'Elders' and 'Anggumathanha Law' offers an adaptation of previous social and political entities and laws prior to colonisation. This investigation reveals that Elders have drawn on their experiences of Anggumathanha or camp law, their knowledge of Committee protocol and Christian protocol, and their experiences of public service protocol. Yuras associated with the Anggumathanha movement have responded to the negative impacts of Native Title and the approval of Beverley mine by formulating a post-

contact political identity that attempts to blend both traditional and contemporary values in a way that is both equitable and culturally appropriate.

Contemporary Adnyamathanha identity is characterised by a blend of European kinship, Western ideas of governance, and Adnyamathanha tradition. Adnyamathanha tradition includes gender and Ngapi Ngapi, age and knowledge, ongoing connections to our culture and lands, and the experiential knowledge of Anggumathanha or camp people. The scope of this case study provides a comprehensive starting point on how players interact with each other, and the adaptation shown by Adnyamathanha since first contact with Udnyus. This is particularly important in identifying Indigenous perspectives of the Beverley case; this also helps identify the future potential for capacity building and leadership among Adnyamathanha. Currently, the sub-identities that make up Adnyamathanha have an important yet ambiguous membership and role in relation to resources management and heritage protection. Greater recognition and respect for customary law within the Adnyamathanha community would enable Yuras to spiritually and socially reconnect with Muda and our experiential knowledge, and help clarify how we can relate traditional practices and beliefs to contemporary management of land and the broader environment. One practical way of ensuring greater respect for Adnyamathanha beliefs and values is through developing a comprehensive appreciation of human rights principles and how these could be used to promote pride in Yuras' identity at a local level.

An interrelated part of this discussion has its focus on ways of improving governance. The experiences and concerns voiced in interviews (Interview 8 Public 2005; Interview 11 Public 2005; Interview 12 Public 2006) and in case literature (Clarke, Stringer et al. 1998; FRAHCC 1998; Enice Marsh JP 2003; Supreme Court of Australia 2010) shows that many people felt disheartened or shocked by the systemic dismissal of cultural heritage protection under the new regime of Native Title, and the failed community consultation which characterised the Beverley impact assessment. Yuras who felt strongly about their cultural ties felt powerless to do anything about culturally significant sites sacrificed through commercial development (Education Department of South Australia 1992; Marsh, Marsh, pers. comm. 2008b; Marsh, pers. commm. 2009d). In part this was due to not knowing when Adnyamathanha rights had been breached, and not knowing how to assert our rights. Many Yuras see greater internal cooperation as a fundamental step toward improved governance and engagement despite the perceptions of a current rift between young people and Elders, which may also be described as a tension between contemporary values and traditional values (Interview 13 Public 2004;

Interview 11 Public 2005; Interview 5 Confidential 2006). As a result, Anggumathanha Law Adnyamathanha Elders (Adnyamathanha Elders Group 2009) are attempting to stand firm on their traditional values and beliefs, offering Yuras an alternative to ATLA forums, despite the ongoing pressure to conform to Native Title and its resources-driven agenda. A wide range of Adnyamathanha players (Interview 4 Confidential 2006; Marsh, pers. comm. 2008ba; Sutherland 2009) are insisting that sites of cultural significance can and should be protected from commercial enterprise. The initiative shown by Elders may be part of a vital process that has the potential to facilitate the decolonisation of peoples' minds, and to nurture independent leadership consistent with the idea of self-determination (see §7.2).

I argue that Adnyamathanha can learn from the experiences of other Yuras, and from understandings that the existence of sovereignty of cultural resources can be guided by 'control over resources' (Howitt, Connell et al. 1996a) and the 'relationships of control over these resources' (Howitt, Connell et al. 1996a) act as key indicators of justice for Indigenous players. Indigenous leaders Noel Pearson of Cape York (Pearson 2000; Pearson 2009) and Wayne Bergmann of the Kimberley (Perpitch 2009a; Perpitch 2009b) sent an urgent mesSage to Aboriginal players that stresses the importance of informed participation by TOs and their representatives to ensure resource developers are locked into conditional use of land with terms that directly benefit the local people.

Bergmann acknowledged that James Price Point would require extensive dredging, and construction would cause massive environmental damage. He said it's about finding the right balance between managing the country and the long-term interests of Kimberley people, and finding opportunities to break away from welfare dependency rather than wait for government to solve Indigenous problems. "This is about Aboriginal people taking a lead role in taking responsibility and taking a risk for change for the better," (Bergmann cited in Perpitch 2009a, p. 13). Other TOs in the region claim the majority decision reached to sign the deal fails to protect cultural heritage. Native Title Claimant Joseph Roe says not all native title claimants agreed and he voted "no" as part of his responsibilities to protect the cultural "songline" from north of the Dampier Peninsula to James Price Point and south to Bidyadanga. "I don't think you've got to give up one part of the area to save the Kimberley. I want to keep my culture and heritage alive, not destroy it" (Joseph Roe cited in Perpitch 2009a, p. 13). The voices of these Aboriginal people are examples of leadership that highlight the complexity within socioeconomic issues relating to land use, and they urge others to address such matters through a strong commitment to cultural entity and dignity.

A key recommendation arising in this section is for Adnyamathanha to engage in a healing process that will help develop a stronger sense of pride in our identity, and a stronger sense of political unity. This study suggests that Yuras need to develop greater awareness and understanding of Anggumathanha Law through a contemporary lens, which may include human rights and governance training, in order to achieve a strong and sustainable Adnyamathanha cultural identity and governance strategy. This will require Adnyamathanha individuals and groups seeking out, and actively nurturing, a range of comfortable cultural spaces such as the Elders forums, community-based research projects, and language revitalisation activities. This may include individuals taking responsibility for actively participating in promoting Adnyamathanha traditions in such forums, and will necessitate existing bodies openly embracing a healing process. One of the ways in which this is being addressed is through the creation of safe meeting places and a show of greater outspokenness by Elders (Adnyamathanha Elders Group 2009). Another possible solution is through increased knowledge and assertion of rights during engagement; for example, the right to understand what is being said in ATLA Native Title meetings, and knowing that Yuras have the right to engage using Yura Ngawarla as the preferred means of communication when negotiating with mining companies. However, due to the seriously fragmented state of our cultural knowledge and practices, attention is urgently needed from all Adnyamathanha to find appropriate ways of respectfully acknowledging and reinforcing Anggumathanha Law. Maintenance and revival of Yura Ngawarla, as seen in community projects such as the dictionary research and the 'Adnyamai Project' (YLCG 2008) and the emergence of the Anggumathanha Elders Adnyamathanha Law forums suggest a pattern of resilience by Elders; a greater emphasis on cultural activities for youth also has the potential to develop internal political strength among young Adnyamathanha.

Another part of this recommendation relates to improved functionality and leadership within Adnyamathanha governance, particularly in regard to Elders and young people working more cooperatively. This suggests a need for all Adnyamathanha to demand opportunities to openly discuss, and find solutions to problems relating to ineffective governance. For example, some Yuras may wish to be involved in developing practical codes of conduct that highlight respect for each other, perhaps something like a code of ethics or best practice, that individuals are willing to abide by should they wish to participate in Adnyamathanha forums such as ATLA meetings, Elders' wimila, or Native Title Work Area Clearances. These discussions could take place through the existing forums, or could be driven by one

organisation such as the Elders' group. The aims may include developing new ways of dealing with internal conflict, encouraging greater respect between young people and Elders, and to develop opportunities for leadership based on mutual trust and obligation. This is discussed in further detail in the next part of this chapter.

8.1.2.2 A Vision for the Future: Planning and Capacity Building

Planning and implementation of a contemporary strategy for empowerment remains a difficult concept for many Adnyamathanha to visualise or articulate. This is especially relevant to the elderly people who experienced life on Nepabunna mission under assimilatory rule (Mattingley and Hampton 1988), for those who have experienced alienation from traditional land and customary law (Brock 1985; Tunbridge 1986), and for those who have felt systematically abused via Native Title meetings (Adnyamathanha Elders Group 2003; Adnyamathanha Elder 2008; Adnyamathanha Elders Group 2009). Evidence shows the idea of self-governance within Adnyamathanha remains a challenging task and a remote concept for many Yuras, and will require a sustained decolonising process over several generations (see §5). All of the interview participants expressed a need for Yuras to get better at doing business, and all felt unclear as to what constituted appropriate rules of engagement (see §6); therefore, it was difficult for people to articulate how these problems might be resolved. It is possible that some Yuras with an interest in heritage protection and resources management remain focussed on being *inwardly critical,* and were hesitant to look *outside* of our situation and consider information or advice from elsewhere as part of a reform process. To plan for better engagement, there are a number of steps that could be taken. Some Yuras feel there is a need to positively utilise the range of skills and knowledge within the Adnyamathanha community, and to provide longer-term opportunity for youth and women. This study suggests community planning could be improved by using a new approach that embraces both old and new traditions, and by moving away from a welfare-driven and internal-only focus. This may foster greater recognitions of Yuras' ways, help build Adnyamathanha capacity, and facilitate a strong vision for future engagement. For Adnyamathanha, this would bring about a plan that is effective in navigating the development pressures from industry and governments, without compromising on heritage values. This would help facilitate more long-term outcomes, and encourage Yuras to identify with, and positively celebrate, customary wisdom alongside contemporary milestone events.

As part of this review process, a focus on the interface between commercial and non-commercial interests will be critical in building a realistic and experience-based picture of what to expect, and how best to deal with, the range of interests at the negotiating table. A degree of independent financial autonomy through profit or some other economic arrangement may also need to be assessed for its potential to bring a truly effective long term solution for Adnyamathanha heritage protection. I argue it is important for Indigenous players to have access to a variety of organisational models where they can freely define an approach that suits their needs without feeling compromised or threatened. In the case of Adnyamathanha it is critical that a combination of methods be considered given the cultural and experiential diversity within our group, and the lack of heritage protection enjoyed via Native Title.

Another recommendation is for Yuras to develop greater familiarity with Native Title and Aboriginal Heritage legislation so as to have the confidence to assert a strong political engagement position based on individual and collective rights. This would offer a more effective decision-making platform for Adnyamathanha players, and promote improved heritage protection at both State and community level. It is vital that Adnyamathanha actively own this process of becoming more informed, and develop new ways to positively recognise this new knowledge as part of a contemporary Adnyamathanha paradigm. For example, Yuras should learn about the proposed amendments to the heritage legislation (AARD-DPC 2009) through participation in workshops or through the development of community-based submissions, and this knowledge could form the basis of a new type of community heritage leadership skills set that elevates traditional knowledge. Experience has proven it is not sufficient to rely entirely on second-hand knowledge of lawyers or other professionals. State support through regional workshops (AARD-DPC 2009), has been offered to people wanting to learn about proposed amendments to the *Aboriginal Heritage Act* (SA Government 1988), but there are no resources available to help Aboriginal players understand and effectively engage with the range of laws that relate to land use. Additionally, much more community participation at the local level is required to ensure organisations such as ATLA are acting in an informed and representative manner regarding land use governance.

This recommendation urges all Adnyamathanha to take more responsibility for broadening individual and collective knowledge of relevant legislation, and also prompts government to provide the necessary resources to ensure that all Aboriginal people in South Australia have full access to the legislation that governs Aboriginal heritage protection and land use. This

would not only reduce the relationship of dependency that Aboriginal people have on the State to uphold legislative requirements, it would also empower Aboriginal people to participate generally in a more informed way in discussion and decision-making regarding land use planning and subsequent regulation.

8.1.2.3 Community Education to Develop Best Practice

Indigenous organisations committed to a self-determining model of sustainability must take on the responsibility of learning about community governance, human rights, and environmental and cultural protection as a way of developing their own model of 'best practice'. This will enhance participation in cultural heritage protection and economic independence especially in regard to protecting and benefiting from resources valued by Indigenous players (Pearson 2000; Pearson 2009). One situation where Adnyamathanha could have benefited from greater awareness of 'best practice' elsewhere and therefore been better supported in their efforts to protect heritage relates to the protest event known as the 'Beverley Bash' (see §6). Elders and other Adnyamathanha that chose to participate were likely to have been severely traumatised by the brutality of this event, and due to a limited knowledge of their rights as humans, as Traditional Owners, and as Australian citizens. Better knowledge would encourage better practice, and Adnyamathanha bodies should be demanding 'best practice' in accordance with engagement standards that originate from wider standards of international human rights, and from the Yuras they represent. Implementation and evaluation of best practice must involve a strategy of constant improvement and accountability, and an expectation that leaders will be actively supportive of this vision to empower the wider community.

Engagement based on non-Indigenous protocols during the Beverley case not only confined the space within which Adnyamathanha could participate but also influenced the way in which *other* players came to perceive the capacity and potential capacity of Adnyamathanha (Interview 1 Confidential 2005; Interview 6 Confidential 2006). The absence of substantial advocacy and representation from an independent NGO or semi-government organisation such as a functional Land Council was a telling sign of a lack of capacity within this case study. Interview participants (Interview 11 Public 2005; Interview 4 Confidential 2006) were aware that without an NGO to conduct community driven research and provide expert independent advice to Adnyamathanha there was only a limited manner in which Adnyamathanha players could participate in the Beverley case. For Adnyamathanha to grow

into a competent and truly representative body of heritage protection negotiators and resources managers a great deal more knowledge and experience is required to address this gap.

This study suggests that royalty funds received by Adnyamathanha from the Beverley Mine could be better utilised to establish a fully-functional NGO for Adnyamathanha with the aim of improving internal governance and future engagement. Current financial management of these monies includes a large portion managed by Heathgate Resources which remains undisclosed to Adnyamathanha (Adnyamathanha Elders Group 2009). This and the lack of transparency via ATLA meetings (Austin 2006; Marsh, pers. commm. 2009e) suggest Adnyamathanha are not enjoying a sense of financial freedom or independence as a result of royalty monies. The novelty of royalty-driven rights to negotiate remains a strong force in Adnyamathanha politics, and needs to be revisited in similar fashion to the Mirrar (Katona 1999), who chose after two decades of receipt from the Ranger Uranium Mine in the Northern Territory, to divert their portion of royalty away from a welfare model toward a more sustainable land rights model. In the case of Adnyamathanha it is important to remember the 'newness' of the experience of receiving royalty, and the increasing sense of urgency needed to make a departure from economic welfare dependency. The next section explores new ways of how Adnyamathanha could adopt a more sustainable solution to land use and land management.

8.1.2.5 Community-driven Capacity Building

Capacity building is widely recognised as a key aspect of empowerment for Aboriginal people and the need to '… develop a systematic and clear understanding of the constraints and issues they face in dealing with resource companies …' (O'Faircheallaigh 1996, p. 184). The need to build capacity has been recognised within government; for example, the implementation of Indigenous Natural Resource Management (INRM) good practice (Natural Heritage Trust 2004a; Natural Heritage Trust 2004b) provides a contemporary platform for Indigenous players. This may be more appropriate in accommodating the needs of Indigenous folk concerned about heritage and offers an alternative to the generic guidelines for best practice developed for environmental protection by government (Environment Australia 2002) and the mining sector (Minerals Council of Australia 2004b).

This study revealed several interlinked issues relevant to the reasons why there was a lack of capacity within the community. These include a leadership model that was unable to accommodate Anggumathanha Law, and disunity between young and old people which impacted on decision-making by being dismissive of Adnyamathanha traditions (see §5.1.3). These led to inappropriate communication such as the use of technical language and preference for Udnyu Ngawarla by lawyers and the proponent (see §6.2.3.2), which created a deep lack of understanding and confusion among Yuras that restricted participation in the impact assessment and denied Adnyamathanha, particularly the Elders, the right to informed decision-making. Other factors include the contrastive experience of a history of restricted financial and capital resources compared to the 'financial flood' created by royalty compensation (see §3.2.2, §5.1.3, and §6.2.2). Limited Adnyamathanha capacity emerged as a key weakness that severely hampered effective participation in community consultation, negotiated agreement-making, and information sharing throughout the Beverley impact assessment. However, the limited capacity of professionals and proponent representatives was also a key factor that effected Adnyamathanha participation. This will be discussed in further detail in the following section relating to institutional arrangements.

The recommendation emerging from this discussion has its focus on building long term capacity, driven by an assertion of traditional knowledge and community priorities, and an awareness of cultural heritage which is likely to be challenged by economic assimilation. Adnyamathanha need to consider seeking the resources necessary to improve community capacity, either through the Anggumathanha Law Adnyamathanha Elders group or through ATLA, or perhaps in collaboration. This is made on the basis that recognition of Indigenous knowledge and a planning process that focuses on Indigenous ways of working has the potential to strengthen community governance and engagement. Good governance and effective engagement is only likely to eventuate when stronger capacity emerges at the community level and best practice standards become more stringent within development regulation.

Programs such as the Caring for Country (NRM Team 2008) and its Indigenous approach to NRM including an Indigenous Knowledge Support (IKS) plan could be of benefit to Adnyamathanha and other communities involved in exploration and mining and provide a satisfactory solution to some of the key difficulties currently experienced by the mining sector and Indigenous groups. Development of an IKS plan (Natural Heritage Trust 2004a) includes recognition of Indigenous interests in natural resources management based on spiritual,

totemic and economic relationships with many plants and animals, and an assumed need for protection of Indigenous cultural heritage places. Improved awareness of government initiatives such as this has the potential to play a critical role in governance and engagement reform. A willingness from Adnyamathanha to engage in awareness raising would assist in identifying principles appropriate to our needs and priorities, help us learn how to engage assertively, and develop empowering strategies for long term protection of heritage sites.

The above recommendations intersect with ideas relating to participatory planning theory (Porter 2004; Sandercock, Hibbard et al. 2004) that suggest a review of planning systems and planning education has the potential to offer real benefits for Indigenous peoples. For Adnyamathanha this will require a willingness to look critically at how internal governance has evolved and been managed since colonisation, the level of inclusion and leadership that Yuras have experienced during the past two decades, and what Yuras want for the future. A community education strategy would enhance heritage leadership from within the Elders sector and offer a form of empowerment for Adnyamathanha not previously experienced since colonisation. This is by no means an easy pathway or swift moving resolution for cultural resources management; however, this thesis is an example of the level of scrutiny needed to start addressing the issues and the key challenges facing Indigenous players.

8.1.3 A Critical Review of Current Institutional Arrangements

Exploration of commercial development regulation in this study, particularly in regard to Indigenous heritage protection, reveals a need for Australian impact assessment to be more appreciative and inclusive of Indigenous and community perspectives in order to adhere to best practice (see §4). The following recommendations are aimed at addressing current deficiencies in local as well as regional and national ideology and the practical regulation of Australian impact assessment.

8.1.3.1 A Critical Review on a Local Scale: Beverley Case Management

Examination of the Beverley case revealed widespread calls for the governing body ATLA to show greater transparency within the wider Adnyamathanha community and to improve future processes for informed decision-making and community participation (see §6 and §7). This study reveals that the key decision-making bodies involved in resources management within the Beverley case participated predominantly through a Udnyu or whitefella welfare-

driven model. Many Yuras feel they have been denied access to the negotiating process, and to the financial details of ATLA and the Native Title Named Applicants who acted as key negotiators during the proposal stage of the Beverley mine, and this has set an unacceptable precedent for Native Title Exploration or Mining Agreements. What has become very clear is that Yuras need to ensure that the representatives of the community and mining proponents are using a clear set of engagement principles, including a more transparent and accountable means of including and respecting Traditional Owners and Yarta, particularly Anngurla Yarta (spiritual country), in the future. On a local scale, this thesis has directly helped facilitate an alternative process through enabling the researcher to work closely with those who participated in interviews, and with the Elders group, to start addressing some of the key concerns that were troubling many Yuras. As a result, the Elders group known as Anggumathanha Law Adnyamathanha Elders has continued to develop into a strong collective voice for Elders, and its capacity is further enhanced by the recent appointment in 2009 of an independent legal advisor. A recommendation emerges from this study that Elders must continue to build their resources, and receive greater respect from the wider community in regard to their cultural knowledge. Bullying, violence, and disrespect must be acknowledged by the wider Adnyamathanha community as detrimental to good governance and not acceptable within our culture and our way of doing business.

To improve the general situation for all Adnyamathanha, development of a behavioural code of conduct by ATLA is urgently needed. This should be based on community-driven discussion, drafted and distributed widely among Adnyamathanha for further comment, which if used as a reminder at the start of each meeting may help ensure order is maintained during meetings. Another recommendation from this investigation relates to Work Area Clearances (WAC) and the need for a more comprehensive procedure that offers Yuras greater personal protection for participants, especially women and Elders. A first step may involve all of the Work Area Clearances done to date being made readily available to the community for scrutiny with a purpose of improvement. The cost of this should be borne by the agency wishing to engage with Adnyamathanha and any payments to community consultants should be through an independent source such as a qualified accountant. A set of principles that focuses on culturally appropriate methods of engagement with women and youth could be developed by ATLA in conjunction with the Elders group to ensure greater inclusivity. Concerns raised in this study about the role of paid expert consultants such as anthropologists and lawyers highlights another important issue, particularly in regard to the level of

dependency and possible conflicts of interest created through their participation in community governance. One way of resolving this could be through adoption of a culturally appropriate tender process facilitated by ATLA and the Elders group. To address concerns about the lack of transparency in the decision making processes and financial status of ATLA, design and implementation of a plan is needed where all financial records, proponent presentations, negotiated Agreements, Work Area Clearance reports, and other correspondence can be easily shared and stored in a keeping place that is fully accessible for all Yuras.

8.1.3.2 A Broad Review of Institutional Engagement with Aboriginal Communities

This case study reiterates the chronic level of dissatisfaction in regard to institutional engagement with Indigenous players in the area of heritage protection (Berndt 1981; Evatt 1996; Fergie 1996; Burton and Wright 1998; AARD-DPC 2009). The review of the South Australian Aboriginal heritage legislation (AARD-DPC 2009) shows some signs of adopting a community-focused but government-driven approach to the review process which suggests a potential for legislative reform at a regional level. Together with the review of the *ATSI Heritage Protection Act 1984* (Commonwealth of Australia 1984) there is evidence that greater empowerment for Traditional Owners is lacking and this matter is in urgent need of attention. The current arrangement encourages this requirement through voluntary codes of conduct but it is not a mandatory step; as a result many mining companies including Heathgate Resources opt to avoid codes of best practice. This study suggests a review of the practices and responsibilities of mining proponents regarding Indigenous engagement at the stage of development proposals take place through an independent inquiry. Legislating for greater recognition of Indigenous heritage values, and accountability through a mandatory code of best practice within the mining industry, is possibly the only way of demanding more stringent adherence to policies and best practices.

A review of institutional practices and legislation with a focus on heritage protection could act as a potential trigger for an examination of the role and responsibilities of local and regional governance entities such as Native Title Prescribed Body Corporate (PBC), and the State Aboriginal Heritage Committees, and how these represent the interests of Traditional Owners. A comprehensive and independent audit of institutional arrangements may encourage stronger adherence to best practice standards for proponent engagement with Aboriginal community people, and raise greater awareness of best practice standards at the level of regional governance.

Impact assessment is also in need of reform in order to promote a systematic and standardised approach to engagement with Aboriginal peoples in regard to development, so as to ensure greater equity at a national and regional level, whilst still taking into consideration perspectives that are unique at the local level. In the Beverley case, a key criticism of fast-tracking of the impact assessment process was based on claims of an elitist decision-making process that severely restricted public consultation. Fast-tracking was particularly effective in excluding the voices and concerns of Adnyamathanha, as alleged in a Ministerial report commissioned in August 2009 (Sutherland 2009) and via interviews undertaken for the purpose of this study. This report included allegations of misrepresentation of Traditional Owner views, rushed consultation and decision-making, and an unclear negotiating process that resulted in a lack of accountability on the part of the proponent, and a lack of recognition of the cultural heritage value of the area for Adnyamathanha. Interview participants from the legal and mining sector were acutely aware of the unclear negotiating process and found it difficult to engage effectively. Adnyamathanha interviewees expressed frustration and suspicion in regard to community engagement and felt that their needs were being ignored throughout the EIA.

One way is to improve the culture within corporate industries and government agencies responsible for facilitating community consultation in regard to impact assessment. Another way of improving impact assessment may be through a community education program that helps Aboriginal people better understand the impact assessment legislation and procedures. For example, Aboriginal people need to be better represented through informed discussion at each of the decision making stages of development. Early intervention is a key aspect of this recommendation as it would provide greater public transparency and accessibility, particularly for Indigenous players and interests, throughout the entire development process. Another key recommendation emerging from this case study is the need for industry and government to address heritage protection legislation as a central component prior to the impact assessment phases.

8.1.3.3 Improved Best Practice within Impact Assessment

The concept and existence of best practice has been discussed throughout this thesis (see §4.1.4, §5.2, and §7.4) to raise discussion on the effectiveness of impact assessment during the approval stage of the Beverley mine. The approach used by industry and government to engage with public concerns was known as 'fast-tracking', and this was regarded by these two

key players at the time of approval as an appropriate model for expansion of the uranium industry in South Australia. Community concern regarded fast-tracking as a strategy to silence opposition to uranium mining and exclude informed participation. A recommendation is therefore made that the 'fast-tracking' model not be used by government and industry in future; instead, there needs to be a much more inclusive and culturally sensitive model developed and implemented by both State and Federal governments. Impact assessment can only become a meaningful part of development if international and national benchmarks for best practice are institutionalised through legislative and policy reform.

Adherence to international and national guidelines for best practice are recommended so as to provide a more standardised response to some of the deficits currently experienced in Australian impact assessment, Indigenous engagement, and Indigenous governance. Examples include Akwe:kon international voluntary guidelines (Secretariat of the Convention on Biological Diversity 2004), the United Nations Declaration on the Rights of Indigenous Peoples (UN General Assembly 2007), the United Nations Permanent Forum on Indigenous Issues (Garcia-Alix 2003), human rights endorsement (Human Rights Council 2007) and industry-based guidelines (International Council on Mining and Metals 2003). Collectively, these provide comprehensive international benchmarks that must be implemented in order to strengthen Indigenous capacity within engagement strategies in Australian resources development and to streamline best practice. This directly links to an urgent need to boost the limited independent resources available to Indigenous players in comparison to mining proponents.

A standardised Australia-wide impact assessment process for commercial development would set a national commitment toward including social and cultural perspectives thus strengthening DEF, SIA and EIA processes. Greater emphasis on social and cultural perspectives and strategies for engagement into the terms of reference used to scope an impact assessment procedure would offer standardised recognition and reflect international benchmarks. A template for a methodological approach could be established to guide the scoping and assessment process relating to impact assessment, and this would acknowledge the existence of cross-cultural geographic interpretations of Australian landscapes.

Evidence from interview data (Interview 1 Confidential 2005; Interview 6 Confidential 2006) and literature (Young 1995d; Howitt 2001; Storey and Jones 2003) suggests that despite the use of fast-tracking, there may be a possibility that some industry players are prepared to show greater willingness to follow community protocol, providing it is clearly stated from the

onset of engagement. In reflecting on the Beverley case, there is a need for greater appreciation of Adnyamathanha culture and the heritage concerns of Traditional Owners (see §6 and §7). One of the key examples highlighted in this study is the role of Yura Ngawarla and the need for mining proponents and government bodies to engage in two-way communication so as to show greater respect and deeper understanding of Adnyamathanha perspectives. The use of Yura Ngawarla as an information sharing tool is likely to encourage more informed and well-rounded discussion, and would help highlight the obligations of Ngangginyi Wiri Wiri (relationships between people). This would also strengthen the role of Anggumathanha Elders. Experiences elsewhere (Pearson 2000; Kupa Piti Kungka Tjuta 2005; Four Nations NRM Governance Group 2007) suggest that stronger internal governance, including respectful integration of local languages, leads to more effective engagement for Aboriginal players. The use of Yura Ngawarla as the key language of engagement would recognise the 'old ways' of doing things, help bridge the gap in cross-cultural understanding, and help determine which individual players have a rightful place as an identifiable Traditional Owner during negotiations.

This case study strongly reveals Indigenous engagement as a 'whitefella' process driven by industry and government. To meaningfully use the term 'Indigenous' there needs to be a reform of this process to ensure it is grounded in clearly stated Indigenous protocol. To make Indigenous engagement a worthwhile process for Indigenous players, it must include a set of strategies that are derived from a human rights approach to best practice for engagement. In the Beverley case, this has the potential to offer multiple benefits including less confusion over who are the right players for industry and government to engage with, greater unity within the community, increased linguistic recording of a language which is in a fragile state, and improved internal governance. Placing priority on Yura Ngawarla during the early stages of consultation and negotiation would assert the rights of Adnyamathanha and offer a uniquely Indigenous perspective within impact assessment. This would help formulate an empowering code of best practice for Yuras, and an industry approach to engagement that is respectful of Indigenous Australians. Further community-driven research and development that focuses on Yura Ngawarla as the spoken and written language of Adnyamathanha Yuras, and Indigenous human rights, would help to define better protocol and better practice.

On the basis of widespread claims of negative Indigenous experiences of the nuclear industry spanning several decades (Tatz 1982; Forrester 1984; O'Faircheallaigh, Webb et al. 1989; Katona 1998; Marsh 1998; Katona 1999; Marsh, pers. comm. 2009g), this study recommends

that the Australian Government respond to the ANFA request for a national Inquiry or Royal Commission into Uranium Mining in Australia and its impact on people and country (ANFA 2009a). An inquiry of this type will help determine how non-commercial interests and natural resources are affected by the mining of uranium. The call for a public inquiry into the impacts of uranium mining on South Australia's water resources (ANFA 2009b) is also highly recommended by community participants. To be effective, the terms of reference for these inquiries must reflect the priorities of Traditional Owners with an interest in heritage protection and non-commercial interests. One of the key aims of this inquiry should be to address the sustainability of continued depletion of water sources, all of which are regarded as highly significant to Traditional Owners and commercial interests. This would help determine the level of demonstrable protection of water sources in South Australia by mining proponents in Australia's nuclear industry. Another key aim of both inquiries should be to investigate environmental and cultural concerns of waste management that directly relate to the mining techniques and waste disposal methods such as the tailings ponds, disposal of contaminated soil and water, and disposal of core samples from drilling.

Where there is an existing Native Title claim or claims, policies and practices that ensure greater synchronisation of ILUA and EIA are likely to lead to an improved outcome for everyone because it would streamline the early planning stages in a way that would offer standardised intervention steps on engagement issues. This approach would also give greater certainty to interest groups that operate outside of or in addition to Native Title such as Elders who currently do not enjoy adequate representation, and would align with the idea of decision-making that is empowering for all interest groups (Lane 2003; Lane and Corbett 2005). There would also need to be an evaluative component to ensure the approach does not become static.

In order to reform some of the major inadequacies of current policies and practices associated with resources management and heritage protection it would be of benefit to all players if greater funding opportunities were available for community development projects and academic researchers to work cooperatively in the areas of governance training, human rights training, and community engagement. Limited case study research in South Australia highlights the need for increased levels of critical thought on a regional and local scale. Universities and political parties striving for greater social engagement and policy reform, the mining industry in its bid to meet international impact assessment standards, and

reconciliation movements seeking improved Indigenous human rights and self-determination will play a key role in driving this initiative in the future.

8.1.4 Theoretical Issues Arising from this Case Study

The Beverley case was examined using a participatory action-based approach, and grounded or pattern theory (see §2.2), with the aim of offering some new insights relevant to the fields of CHM (Cultural Heritage Management) and resources management. The focus in this part of Chapter Eight is on some of the more abstract issues this case study presents for consideration.

The chronic pattern of oppression and dispossession of Indigenous peoples, our lands and our identities has its roots in theoretical suppositions that continue to render us less worthy than other humans. As one author states: 'European understandings of what makes Indigenous peoples not just different but inferior have gone through several transformations' (Russell 2006, p. 30). Religion, the 'science' of human evolution, and a belief in the inability of Indigenous peoples to adapt and survive in a modern capitalist society, are fundamental assumptions that confine Australian society to a neo-colonial position of inequality (see §3 and §4). The basic imperialist presumption of Western cultural superiority continues to be reworked within state institutions, and this has become a problematic feature of defining and managing Indigenous heritage and resources in Australia, particularly at the forefront of engagement between industry, government, and Indigenous players.

Theoretical implications from the Beverley case include an underlying assumption of Western superiority regarding the worth of the mine area, and an assimilatory approach to engagement with Adnyamathanha from both industry and government (see §6). This case study shows that several generations of post-contact interaction has suppressed an Adnyamathanha standpoint on heritage issues, to the extent where institutionalised leadership reflects a predominantly Udnyu style of governance in regard to resources management. Suppression of sovereign rights has forced some Yuras to seek new ways of validating Adnyamathanha interpretations of cultural sites and the way we do business, and Adnyamathanha ways of knowing, which has led to a renaissance movement in heritage protection. Recognising the right to negotiate compensation for loss does not equate to recognition of sovereignty. Understandings from this case study are consistent with claims (Gillespie, corresp. 2008) of

widespread neo-colonial impacts on Indigenous living conditions, laws and religions, and land use within contemporary society.

In principle, incorporating an Indigenous ontological perspective into heritage and resources management will force greater recognition of Indigenous ways of knowing and of the significance of heritage sites and oral accounts. Development of an approach based on Indigenous heritage planning must recognise Indigenous heritage participation as an integrated part of land use. The approach must be capable of strengthening Indigenous heritage protection at all levels of decision-making including the development of plans, the public consultation phase of proposal impact assessment, and the regulation and evaluation of any development project. Due to the focus on heritage implications at the pre-development phase, this study has not fully explored the post-production phase, such as the rehabilitation of an area that has been used for mining. This new approach with its suggested Indigenous perspective has the potential to generate a larger space for Indigenous players to participate as heritage players in decision-making over land uses, both prior to and beyond commercial use of natural resources. An Indigenous heritage planning approach, perhaps with a legally-binding heritage protection agreement (this could be formally known as a Heritage Protection Agreement), could help overcome the welfare dependent approach currently being endorsed by key players.

Economic exchange has become the foundation of Indigenous engagement from the early planning stages through to the commercial stages of mineral exploration and development (see §4). As an assimilatory tool, royalty dollars for Indigenous negotiators have proven to be an effective means of confining the role of Traditional Owners and their heritage concerns to a discussion of compensation for losses, and for dividing communities along social and political lines of short term commercial gain, as opposed to long term traditional priorities of custodianship. In this case study of Adnyamathanha participation and the approval process for the Beverley uranium mine, the commoditisation of Indigenous cultural resources via the imposition of Native Title negotiations is clearly an example of neo-colonialism in Australia. The lack of community decision-making power with regard to heritage protection represents an inadequate and antiquated political framework within impact assessment, and fails to recognise or accommodate social impacts. The vulnerability of community power in the case of Adnyamathanha governance was particularly evident from the rapid move away from heritage protection (ICHM), to resources management (ICRM) with its commercial connotations. In the case of Traditional Owners asserting our rights and responsibilities over

Indigenous lands of which we have been custodians for generations, this new arrangement breaches international human rights (UN General Assembly 2007). Economic assimilation can be linked to the imbalance of political power perpetuated through male hegemony and voluntarism.

Theories of sustainability and change in colonised countries are grounded in the belief that nationhood and nation building are fundamentally linked to whiteness and hegemonic masculinity (Alston 2005), which catapult aggressive forms of development such as mining in rural and regional areas. Gender relations sustain a marginalised position for women and maintain male-dominated ideologies within mainstream research and policy, based on concepts that segregate women into a category of 'other' in similar fashion to the 'otherness' allocated to Indigenous peoples. Social exclusion is seen in the increasingly polarised status between the wealthy and impoverished, highly educated and poorly educated, and those who have access to resources and services which allow greater participation in society and those who do not.

Examination of gender in rural Australia (Cocklin and Alston 2003; Alston 2005) bears testimony to the 'unremarkable' status of inequitable control over environmental impacts and the unequal distribution of benefits, and how this is normalised through hegemonic masculinity. Male hegemony within Indigenous governance and mining is prevalent and remains largely unchallenged by lack of attention to gendered perspectives and the normality of paternalism and patriarchy (Berndt 1981; Rowell 1983; Bird Rose 1995; Robinson 1996; Dacanay and See 1997). The Beverley case also highlights the downtrodden status of Aboriginal women (Interview 13 Public 2004; Interview 18 Confidential 2004; Interview 5 Confidential 2006; Adnyamathanha Elders Group 2009).

The resources management sector in Australia has the ability to create a particular 'truth', through masculinised and racialised concepts which offer a view on sustainability that is acceptable because of the marginal status of both women and Indigenous peoples. Evidence of a decrease in the sites for male hegemony and a growing alliance between women and other marginalised groups (Alston 2005) suggests increased options for resistance that will further challenge the unequal balance of power and knowledge in society and shift the current ideology of sustainability. Collectively, these examples span a period of more than 20 years suggesting that male domination remains entrenched.

The philosophy of voluntarism in regard to ethical engagement within commercial development is evident from the voluntary codes of conduct, which are not legally binding,

and rely heavily on an assumption of mutual trust and goodwill (see §6); these codes have been introduced by industry and government at the international (Figgis 2003; Secretariat of the Convention on Biological Diversity 2004) as well as Australian level of Indigenous engagement (Brereton 2004), as a way for major players to address moral and social obligations. Another facet of interest in regard to the idea of mutual trust and goodwill is the effectiveness of voluntarism within impact assessment and the voluntary environmental audit process (see §4.3.4).

This study suggests that voluntarism continues to fail in the safeguarding of Indigenous and community rights, primarily because it only requires minimal adherence to regulatory standards and processes by commercial developers. What is needed is a stronger legal framework to ensure use of commercial resources does not encroach on sustainable heritage protection. This type of approach would prioritise heritage values of Indigenous peoples and lands through a stronger legal definition, and offer greater protection of land after commercial use has ended. It would increase the onus on industry to ensure legal obligations are met and commercial breaches of legislation are heavily penalised. Penalisation needs to go beyond a monetary model to one that restricts future access to development by proponents where a breach has occurred. A stronger legalistic approach would need to go hand in hand with a greater emphasis on education.

8.1.5 Conclusion

This study concludes that the ongoing denial of Indigenous peoples' human rights remains a burning issue on a global scale. Institutionalised racism has enabled the annexation of Indigenous lands by imperialist powers, the classification of Indigenous peoples as non-human or sub-human persists through the denial of human rights, and these assumptions dominate the ongoing acquisition and disturbance of resources for commercialisation. In comparison to other colonised nations such as Canada and New Zealand (Russell 2006) Australia stands out as 'being more extreme' in two ways; its denial of Indigenous peoples' and human rights, and its lateness in beginning the process of removing its colonial shackles. A third marker of recognition includes the stubborn and arrogant position maintained by industry and government regarding their unwillingness to engage with the public, and particularly with Indigenous players, in regard to development and impact assessment.

Indigenous and environmental philosophies are comparable in some ways given that both express concerns at the current unsustainable use of resources, and both seek a new order for the management of lands and resources; one that harbours greater respect for the idea of human rights and a sustainable world. These philosophies demand drastic changes to land management, and meaningful engagement by government to ensure a new approach be institutionalised through legislative and policy reform, as well as through education and improved best practice.

8.2 Participatory Action Research as a Suitable Methodology in Research and Development

8.2.1 Introduction

The approach and outcomes in this thesis acknowledge that social research has traditionally undermined Indigenous aspirations and distorted the meanings of research data in ways that have brought little or no benefit to Indigenous peoples (Scougall 1997; LT Smith 1999). The use of an inbuilt evaluation process is therefore seen as a particularly important way of ensuring research fulfils its intended objectives and decolonises the research process. This case study has been primarily concerned with using contemporary qualitative research as a means of empowering Adnyamathanha so as to see our situation more clearly, to be able to speak freely about our concerns, and to determine for ourselves what changes are needed for greater social justice. A review of the four research principles endorsed in this thesis (see §2) reveals that this study has largely fulfilled an obligation set by myself as the researcher to work *with* Adnyamathanha as opposed to doing research *about* Adnyamathanha peoples and cultures.

8.2.2 An Action-Based Approach to Maximise Direct Benefit for Adnyamathanha

The use of Participatory Action Research (PAR) has proven to be a suitable methodology because it enables real issues to be addressed in a timely manner without further polarising views. Having the ability to create space to explore aspects of this case at a broader and more abstract view has been on a par with helping people to better understand and make sense of its internal characteristics. Direct involvement of research participants and the role of the researcher acknowledged the growing movement of resistance within Adnyamathanha and other Indigenous communities against neo-colonialism. PAR has offered a framework beyond the artificial boundaries of 'research' that has a real potential to enhance future exploration and explanation of Indigenous governance and engagement within cultural resources management and heritage protection.

Validation of the complex research environment highlights the importance of appropriate outcomes that are timely and useful for Indigenous participants as well as for the researcher. For example, a researcher taking on a support role through advocacy work must still maintain as neutral a position as possible particularly during fieldwork and in presenting research data.

I believe that flexibility has been important to this action-based approach to fieldwork including interviews, and by necessity has involved a degree of 'risk taking' on my part as the researcher. Throughout this thesis it was important to maintain but often difficult to manage a level of flexibility, and completing the written thesis as a 'final' product within a reasonable timeframe has therefore been challenging and time consuming. What follows is an evaluation of the extent to which this project actually achieved direct benefits for Adnyamathanha through an action-based approach. To facilitate this process I revisit the four principles outlined in Section One through an evaluative commentary.

8.2.2.1 Social Justice Advocacy

The first principle emphasises social justice advocacy and benefits for Indigenous participants. The Information Sheet describing my study and Informed Consent form ensured that the purpose of the study and fieldwork participation were based on realistic expectations and likely outcomes and did not generate a false sense of achievement or engagement within the community. As the key researcher I have shown an awareness of the political nature of research, and I believe that the actions of participants in this study have contributed to changes in the existing balance of power and control within Adnyamathanha governance and engagement.

As a researcher I have attempted to channel some of the ideas and principles that have emerged through ongoing discussion with individual Yuras, YLCG, and the Elders forum. I believe there have been changes to some people's thinking but it is difficult without ongoing investigation to gauge the extent to which my advocacy role has influenced the actions of people. One example might be through the Anggumathanha Law Adnyamathanha Elders group who have continued to challenge the impact assessment and approval of the Beverley Four Mile proposal and recently acquired an independent legal advisor to assist in this process.

The absence of published research and community development, and the obligations I have toward Adnyamathanha Elders regarding direct benefit from this study, has led me as the key researcher to undertake a series of small consultative efforts among the wider community. This includes the drafting of guidelines and statements that assert a strong position on heritage protection and engagement protocol, which has helped secure the services of an independent

legal advisor for the Anggumathanha Elders group. In practical terms, such steps may have only been possible because the researcher is a member of the Adnyamathanha community, has a high level of awareness of many issues prior to commencing this thesis, and also has a sufficiently trustworthy relationship with Adnyamathanha Elders and members of the wider community involved in cultural resources management.

The growing outspokenness of the Elders bears tribute to their show of strength as leaders and their insistence on heritage protection. Any 'shift' is impossible to measure as an outcome and I have witnessed subtle changes to the way that Adnyamathanha participate in governance and engagement due to the acquisition of new experiences and knowledge. Some of this can be directly attributed to Yura participation in this research. For example, the evolution of the Adnyamathanha Reference Group (ARG) and the Anggumathanha Elders group has heightened the strength and persistence of Elders, many of whom have participated in this research. This demonstrates their growing sense of self-confidence and self-determination as cultural leaders in the community. Over the past 2 years Elders concerned about cultural heritage protection have continued to meet separately from the Native Title governing body known as ATLA. I have been invited on more than one occasion to support this movement through direct facilitation as well as through background liaison. Many Elders feel it is crucial to keep their group functioning as it provides a way of filling the gap in their ability to speak out and in gaining proper understanding of what is happening.

8.2.2.2 The Privileging of Indigenous Voices

The second principle of privileging of Indigenous voices in this project is evident throughout the reviewing literature as well as during the 'fieldwork' stage. I have sought ways to include and prioritise Adnyamathanha voices as a demonstration of respect for Indigenous ways of knowing and as part of a cultural obligation to properly and adequately represent Adnyamathanha. This has taken place through my choices as a researcher to directly quote and lead with the voices of Adnyamathanha and to incorporate Yura Ngawarla into the dialogue as well as the intellectual discussion of this thesis. I believe the encouragement of Yura Ngawarla in interviews and within this written thesis contributes to a sense of pride and relief to many Elders that our language and cultural meanings are valued and promoted in a contemporary and 'broader than community' sense. As an Adnyamathanha researcher trained in linguistics I have been able to readily capture the expression and meaning of what people

are saying in a way that is accurate and pertinent to this research topic. A key regret is my inability due to time constraints to translate the entire thesis into Yura Ngawarla.

I feel this has been an important principle to follow and has at times been a challenge to justify in the face of academia, especially in the first year of my candidacy when I was 'green' and my supervisors were often perplexed by my insistence on a thorough investigation into the philosophy of social research ethics, Indigenous research methodology, and how I wanted to tailor this project to suit the needs of Adnyamathanha.

8.2.2.3 Indigenous Ways of Knowing and Working

The third principle of incorporating Indigenous ways of knowing and working into this case study is evident in the incorporation of Adnyamathanha metaphors found in *Yura Ngawarla,* the language used by Adnyamathanha. Yura Ngawarla with its culturally-steeped metaphoric descriptions and understandings of Adnyamathanha experiences, perspectives and perceptions has featured strongly in this thesis. This meets the needs of community groups and individuals keen to record and disseminate knowledge of Yura Ngawarla for current and future generations, and also adds a uniquely Adnyamathanha slant to the experiences shared and understandings gained from this thesis.

Adnyamathanha ways of working have also featured within this research project. 'Ways of working' refers to the complexities of respect, obligation, the act of sharing knowledge, and historicity within Adnyamathanha culture that influence decision-making. Recognising Adnyamathanha ways of working has meant showing an understanding of Ngangginyi Wiri Wiri and how governance is linked to social relationships. My active commitment to self determination in our community has helped to define appropriate protocols relating to community governance and engagement. It has also guided me in the gathering of data, the analysis of data, and the sharing of data throughout and beyond the life of this thesis.

Ways of working and ways of knowing have demanded close collaboration between the researcher and members of the Adnyamathanha Reference Group (ARG). Although it has been difficult at times to fulfil regular contact with a group of people, it has proven a valuable tool in firming up individual relationships that have guided the progress of fieldwork and shaped the overall direction of this case study.

8.2.2.4 Respecting Other People's World Views

The fourth principle of using an approach that respects people's world views is important because it provides a reminder of the importance to capture peoples' lived experiences in ways that make sense of their entire world as well as the focal points of this case study. This was perhaps one of the most difficult principles to fulfil given the breadth of time and space necessary to conduct fieldwork, review literature and write up a thesis. However, the reflexive nature of this thesis has allowed participants to gain deeper insight to the case study issues through their own eyes and through discussion with other people including myself. Participants spoke about their experiences of not being able to properly understand the stages or purpose behind impact assessment, or their confusion and frustration regarding Adnyamathanha ways of working, or their sense of disempowerment in regard to heritage protection. This thesis preserves the historical and social context in which people have shared these comments and identifies patterns and trends. As a future reference point this thesis will also provide the basis for developing even further understanding of the issues that puzzled or confused or frustrated people. One of the post-doctoral tasks I aim to fulfil is to produce a simplified and more user-friendly version of this thesis, either in part or in whole, to make the content of it more accessible to Yuras and other interested players.

8.2.3 Reflection on Ethics and Positionality

Human Research Ethics Committee (HREC) restrictions meant I was unable to establish a reference group until after receiving HREC approval which took place almost 12 months after the official commencement of my doctoral candidacy. Therefore, the ARG could not formally assist in the final design of the thesis scope as I was unable to engage in the early stages of determining the key areas for consideration. I had to rely instead on my own experience and knowledge and the broader body of knowledge accessible through published literature. However, due to the close personal relationship between myself as key researcher and the Adnyamathanha community it was possible to consult prior to developing my Thesis Intention. The process of designing an interview schedule was guided by the ARG, and the writing of the thesis was also informed through casual encounters with members of my family, some of whom became part of the ARG at a later date. During this early period I have been fortunate in having many discussions with members of my family and friends interested in this case study and in my candidacy. These discussions parallel those held with research

students in my peer group and have informed my choice of topic and methodological approach, and have continued to influence the direction and scope of this thesis throughout its lifetime. Communication about the case study and community events and developments continue to filter my way because people are aware of my research focus, and this acts as a reciprocal tool which keeps all interested parties updated about the progress of my study and the evolution of the Beverley case.

Reciprocity has been a key aspect of working with the Elders and others who have participated in this case study. Members of the ARG have guided the researcher's identification of participants and any cultural protocols required by the researcher when initially engaging with the Adnyamathanha community. I have drawn on the expertise of this group when gathering primary data and when feeding information such as findings back into the community. There has also been an evolving feature of the ARG which although beyond my control has provided a broader range of experiences and opportunities for me and for other Adnyamathanha participants than initially anticipated. I have encouraged opportunities for reciprocity through sharing of knowledge and skills, widening of Adnyamathanha networks, and strengthening of Elders' ability to participate. I believe my role as a researcher will become increasingly recognised by Adnyamathanha youth and future generations as a worthwhile contribution to positive social reform.

I accept that as a researcher and an Adnyamathanha person I have played a subjective role in this research thesis. In highlighting my participatory and subjective role I acknowledge that the positions I have taken or been placed in at different stages of the research have influenced the way in which data is interpreted and presented in the thesis. I argue this has been a beneficial aspect of this case study as it counters concerns of 'the other' distorting information through a cross-cultural lens (Cowlishaw 1992; Scougall 1997) and it gives greater voice to Aboriginal participation within the research process. I also claim that the active role of a researcher is a normal part of every research process and the subjectivity of a researcher is inevitably reflected in the types of data gathered, the interpretation placed on the data, and the way that data is presented.

A form of resistance scholarship (Katona 1999; Pearson 2000; Plumwood 2003; Coates 2004) has emerged in this thesis which considers the full field of players and scrutinises the historically debilitating practices and policies of government regulation. This has provided a useful analytical tool; however, some examples of 'resistance scholarship' (Coates 2004) have largely focussed on land resource developments and impacts on Indigenous peoples in a one

dimensional way, whereby developers and newcomers are portrayed negatively and stereotypically, or as an inevitable sacrifice required by Indigenous peoples in the absence of government initiative (Pearson 2000; Pearson 2009). Historic colonial influences are often highlighted as the primary means of describing and understanding what is happening in the current climate of big business and Indigenous rights, inevitably deepening the divide between players and excluding Indigenous players from the negotiating environment (Abernethy, cited in Coates 2004). The emerging recommendations from findings strongly suggest an importance in this thesis to insist on accountability for past injustices, but of equal importance was the need for an inclusive discussion to prevail with the aim of not repeating mistakes through reinforcing a one-dimensional argument.

8.2.4 Research Achievements and Significance of this Study

The significance of this case study rests with its relevance to broader Adnyamathanha and Indigenous participation in heritage protection and land use issues; this thesis makes a valuable contribution to the existing body of knowledge in relation to socioeconomic issues relating to heritage protection and resources management. At an international level this thesis sheds led on Indigenous Australian experiences and perceptions of colonialism and decolonisation and contributes to an enhanced understanding of Human Rights and reconciliation. This thesis also makes a significant contribution to the recording of Indigenous peoples' experiences of the nuclear industry.

As both a researcher and as a member of the Adnyamathanha community, I have developed a responsible approach to exploring a topic that is highly political, culturally sensitive and in great need of further case study research. I have highlighted respect and dignity as fundamental components in the research process and emphasised practical strategies which make a real contribution to self-determination. I believe my decision to establish an Indigenous Reference Group has been beneficial in that it has enabled me to form a strong relationship with Anggumathanha Law Adnyamathanha Elders; however, in the initial stages of working with 3 individual people this idea was difficult to sustain. The nature of researcher responsibility is important in any thesis, and wider academic as well as community peer assessment will continue to scrutinise my approach once this thesis is published.

Key achievements within this case study include developing greater understanding through case study research of the grass roots issues affecting Indigenous Australians and Indigenous

heritage protection and resources management. This study has drawn a distinction between Indigenous engagement and governance and historical documents as well as contemporary experiences of Adnyamathanha from an Adnyamathanha perspective, with data never before recorded. I believe my ability to record the diverse understandings of Adnyamathanha connections to land and cultural practices was enhanced through prior knowledge of Yura Ngawarla and cultural socialisation, as well as my knowledge of contemporary experiences of mining and regulatory processes in Adnyamathanha Yarta. My unique insight has enabled me to compile a valuable resource and identify new ways of looking at Adnyamathanha governance and engagement that will benefit all players in the future.

This case study has expanded my own research knowledge and I feel that creating the academic space to explore and develop deeper understanding of the complexity of Adnyamathanha experiences and views without compromise has been a challenge and a major achievement. Managing the time constraints of a doctoral study has taught me a great deal about what to expect from fieldwork and the limitations of trying to include large numbers of interview participants as opposed to working with a small number. The ethnographic approach used in fieldwork has facilitated a culturally appropriate way of interacting with people and possibly enabled me to speak with people who may have declined had I not made the effort to interview on their terms and in the spaces they were most comfortable with. Whilst this approach has extended the completion time of my thesis I feel it has been worthwhile and due to my prior research training I was aware of the necessity of taking time to listen to people and respond to people's wishes as part of the research process.

The significance of the research process rests in the way that Adnyamathanha voices and concerns regarding heritage protection have been respected and actively nurtured throughout this study. Exploring the experiences and views of Adnyamathanha in regard to land use and in particular mining has captured information never before recorded. Sources of information might have remained available through oral and written literature, but in a scattered and fragmented form. This case study creates a significant historical record as well as working document in an area that is largely unexplored and undocumented in South Australia's social justice field. It also provides an action based research environment in which Adnyamathanha can find a space to have their say and to continue developing skills and a knowledge base for more effective participation in the future.

This thesis contributes to academic discourses in disciplinary areas such as anthropology and archaeology particularly when investigating Indigenous governance in relation to Native Title

issues, during consultative work relating to site protection, and in developing greater understandings of decolonisation and Indigenous self-determination. Theoretical developments emerge in this thesis from new understandings of frameworks used in resources management, in cultural and geographical studies, and in methodological approaches for Indigenous research. The methodological and ethical sections make a significant contribution to the emerging body of theoretical and practical knowledge surrounding social research with Indigenous peoples and cultures. This work resonates with the objectives identified by research sponsor DK-CRC at the time of the project's inception, particularly the *Governance, Management and Leadership for Sustainable Futures* themes.

Due to the wealth of mineral resources in Adnyamathanha Yarta, the issues surrounding resource management (Howitt, Connell et al. 1996a) are likely to remain closely associated with commercial mineral exploration and commercial mining operations. Exploration for uranium in Adnyamathanha Yarta at a site known as Mount Gee (Marathon Resources Limited 2007), an extension pending on the Beverley Four Mile site (Primary Industries and Resources South Australia 2008), and approval for a second uranium mine at Honeymoon (Environmental Protection Authority South Australia 2006) necessitates ongoing engagement between Yuras and mining companies in regard to the nuclear industry. It is therefore vital that Adnyamathanha continue striving for a strong capacity to interact with developers and to have our voices and interests heard.

The process of exploring this case study and analysing the data offers a clearer and broader understanding of the processes that took place regarding the EIA for Beverley Uranium Mine proposal, and the importance of land to Adnyamathanha. Over time this may strengthen links between Adnyamathanha and other Indigenous groups impacted on by mining and the nuclear industry, and lead to improved future negotiation and consultation strategies for Adnyamathanha. This thesis aims to contribute to the development of a more resilient basis for Adnyamathanha and other Yuras to engage with cultural resource issues and mining issues specifically from an Indigenous perspective. The role of an Adnyamathanha researcher working through a controversial case such as the Beverley Uranium Mine may encourage other Indigenous individuals and organisations to become more informed and empowered through expanding their practical understandings of local, national and international Indigenous perspectives on cultural resources management and uranium mining.

8.2.5 Future Research Directions

This case study confirms a need for much greater emphasis on grounded case study research within planning and resources management, and suggests some ethical boundaries for other researchers wishing to engage with Indigenous peoples and cultural issues. This study blends research philosophies, methods and techniques in a unique way that encourages future researchers to show similar initiative in achieving an academically credible piece of work without compromising the needs and priorities of Indigenous peoples.

I feel my skills as a researcher have grown immensely and my future role will involve supporting other Indigenous postgraduate research students in achieving their aspirations and in assisting non-Indigenous supervisors and support staff in building their capacity to provide cross-cultural understanding and a quality service to Indigenous researchers. My commitment to improving Adnyamathanha engagement and governance remains steadfast, and I hope to continue to actively contribute in both grass roots as well as academic activities beyond the completion of this thesis.

In the spirit of reconciliation within Australia this thesis may strengthen understandings between the Adnyamathanha community and external organisations that are sympathetic and supportive of Indigenous self-determination. This may lead to future work that implements findings into a framework that effectively monitors and evaluate issues primarily from an Indigenous perspective. This thesis may also trigger an internal (Adnyamathanha) process that continues to identify new strategies for securing and sustaining Adnyamathanha resources in a dynamic and conciliatory way. As part of an ongoing need for research into cultural resources management, the focus on sustainability and security helps refine existing models and create broad principles and approaches that offer new applications and insights.

8.2.5.1 Contributions to Human and Indigenous Geographies

This thesis makes significant contributions to human and Indigenous geographies by providing a uniquely Indigenous approach to the design and implementation of methods and methodology, a critique of institutionalised ethics and the scale of politics, and it highlights ways to decolonise Indigenous engagement.

First, this research critically examines the impacts of research on Indigenous peoples and cultures and identified an appropriate methodology of research which demonstrates how to engage Indigenous people in the research process and some of the difficulties likely to arise in

participatory research. The study shows how to ensure that engagement is conducted sensitively so as to include a diverse range of Adnyamathanha opinions; also, how to recognise the role of the researcher as a participant within the research process. It provides a major contribution for others involved in or contemplating a similar multi-disciplinary research approach, and makes a strong contribution to Indigenous geography by example of how to use a grounded research practice and processes that are not traditionally found in Western, non-Indigenous domains (Howitt and Suchet-Pearson 2003). This is derived from an acceptance of, and respect for, the body of knowledge and collective wisdom derived from Indigenous experiences of land use and cultural diversity stemming back many generations and thousands of years. The focus on Yarta (land), Yuras (people), and muda (spiritual connections) provide a unique space to develop greater understandings of Adnyamathanha aspirations regarding land and land uses, as well as an understanding of mining proponents and government representatives. This use of an inclusive and culturally appropriate methodology contributes to new academic discourses that embrace ontological pluralism (Howitt and Suchet-Pearson 2003). I therefore offer other researchers, including human geographers, an Indigenous approach to research that may be useful when analysing the integrity of their role and their understanding of land use and commercial development.

Second, this work is significant to improving institutional recognition of ethical standards and expectations of Indigenous peoples, developers, researchers in the field of Human Geography, and University HREC members. A key challenge in understanding and embracing Indigenous experiences and values involves a process of facilitating meaningful engagement with Indigenous peoples, spaces and places. This process is far more challenging than many of us feel comfortable with, and is not always held in great esteem as a central issue within the justification for new development proposals, or the design of a new research proposal. I have highlighted the failures of impact assessment processes and challenges the rhetoric of corporate social responsibility, particularly as these relate to Indigenous engagement. One of the greatest challenges within Geography relates to the pressure to actively recognise Indigenous peoples rights at the philosophical as well as practical level (Hodge and Lester 2006; Johnson, Cant et al. 2007). My thesis therefore contributes to improving and actively demonstrating adherence to ethical protocols within communities, among corporate bodies, and within research bodies.

Third, this study contributes to greater understanding of the ideas of 'local scale' (Agius, Jenkin et al. 2007) and 'scale-jumping' (Newstead, Reid et al. 2003) through an examination

of Adnyamathanha governance, legislative reform of Indigenous land rights in Australia, and government-industry collaboration. An analysis of Indigenous perspectives in conjunction with the views of mining proponents, the mining industry and government provide local, regional and nation-wide insights to land and land use. This review of the Beverley Mine reveals a regulatory process used to facilitate community consultation and an absence of community decision making powers, consistent with resources management in other cases involving Indigenous interests. The Beverley case exposes a rebuttal of Adnyamathanha aspirations for land use by government and industry, seemingly at odds with the recent Native Title Consent Determination granted over a significant portion of Adnyamathanha Yarta, and the establishment in 1998 of Nantawarrina in Adnyamathanha Yarta, as the first Indigenous Protected Area in Australia (Muller 2003, p. 29).

Fourth, my thesis contributes to an open and honest understanding of Indigenous engagement, particularly the risks associated with highlighting '… difference and disagreement rather than …negotiation and consensus building' (Walker 2010, p. 317). I highlight a diverse range of Adnyamathanha voices and effectively allay any possible misconceptions of a harmonious and universal Adnyamathanha political position that is either pro-conservation or pro-development. This case study therefore makes a significant contribution to the analysis of Indigenous governance and internal politics, as well as a contribution to the process of decolonising Geography as a discipline, particularly in regard to the often assumed views about Aboriginal people's priorities for land use (Muller 2003, p. 32; Hodge and Lester 2006). The so-called 'voluntary' participation of Aboriginal people in decision-making and agreement-making (Muller 2003, p. 30; Agius, Jenkin et al. 2007, p. 197) which takes place in regard to development planning, resources management, and land use has been examined in the Beverley case using a unique set of insights. This case study encourages further critical review of the current Indigenous engagement process in Australia's resources development sector, with a purpose of strengthening the position of Adnyamathanha and other Indigenous peoples.

Privileging the voices of Indigenous participants in the research process draws out the existence of a contested landscape both within and external to Indigenous experiences of colonisation and contemporary governance. An advocacy role in human geography is particularly relevant to building decolonised understandings of cultural resources, resources management, planning and development, and improving the impact assessment process. The Beverley case study reinforces the need for '…responsible and sustainable engagement with

indigenous peoples …' (Howitt and Lawrence 2008, p. 87), and change to corporate cultures and the current impact assessment processes in Australia. This work suggests that institutionalising social impacts and participatory methods into environmental decisions is critical to Indigenous engagement, as has been argued in the UK on the basis of '…making impact assessment more sensitive to questions of social difference' (Walker 2010, p. 317). The privileging of Adnyamathanha voices shows how research can effectively map out as well as challenge '…colonial power relations and racialised rural landscapes …' (Marika, Yunupingu et al. 2009, p. 405). This is possible through research that offers some strategic support at the local level, particularly where there are chronic difficulties faced by Traditional Owners in their bid to gain greater control over their cultural heritage, especially in regard to heritage protection and good governance.

8.2.6 Conclusion

The focus on the dynamics of relationships between players offers a unique account of the perceptions held by individuals in regard to their own knowledge and experiences pertinent to this case study. Listening to the understandings of people has helped map out priorities and values of Adnyamathanha, as determined by Adnyamathanha, and bring these to the forefront of this investigation. This has encouraged Yuras to build their capacity and improve their level of participation in governance and engagement relating to land use. The emergence of a politically active group of Elders was incorporated into a broader discussion that inextricably weaves the rights and responsibilities of all players involved in land use.

Achievement takes the shape of fine-tuning my skills such as enhancing my cultural insight as a researcher to appropriately represent people's views and to add to the body of knowledge currently available in areas such as geography. I feel this is a major achievement for me personally and for Indigenous research. The development of my own cultural knowledge has led to significant contributions to both academia and the Adnyamathanha community.

APPENDIX 1: Yura-Udnyu Ngawarla Translations

Adnyamathanha - Collective name of the peoples that are biological and social descendents of the Yura language group and Ngangginyi Wiri Wiri family groupings; a literal translation is 'the people of the rocky country'

Adnyamathanha Yarta - lands traditionally cared for (owned) and occupied by Adnyamathanha

Anngurla Yarta - sacred, spiritual ground of highest importance for Adnyamathanha Yuras

Anggumathanha Law – traditional Adnyamathanha law and order, dates back to pre-contact

Ararru – north wind totemic family grouping, inherited at birth from mother

Mathari – south wind totemic grouping, inherited at birth from mother

Muda –spiritual knowledge of land, creation, and human existence; recognition that places and spaces have an importance that is contextual and complex and interconnected; also spelt *'mura'*

Ngangginyi Wiri Wiri - social relationships that follow the mother's line of descent according to Mathari and Ararru, and provide a social identity for each individual

Ngapi Ngapi - moiety ruling comprised of two sub-groups and totemic figures or symbols. Social alignment is designated from birth in accordance with the mother's side (ie. matrilineal kinship structure)

Udnyu - non-Aboriginal person or tradition, sometimes used in plural form 'Udnyus'

Vardnapa – first stage male initiate; puberty rite

Virdnimuru – spiritual Creator, a type of God figure for Yuras

Wilyaru - ceremonial title for second stage male initiate; also refers to high-level knowledge and authority

Wimila – Adnyamathanha concept for meeting or forum, according to traditional Yura way of sharing information and making decisions

Yarta – land, or soil eg. manyi Yarta refers to slate or shale ground surface

Yura Ngawarla - dialectic language used by five interrelated groups collectively referred to as Adnyamathanha in contemporary society

Yura - Adnyamathanha person or tradition, sometimes used in plural form 'Yuras'

Yura Yakarti - Adnyamathanha children

Yurlu –spiritual Creator and leader of ceremonies; also spelt *'Yulu'*

Note: Copies of this list will be forwarded onto the Yura Language Consultative Group and Anggumathanha Law Adnyamathanha Elders body, as well as a Plain English version of the thesis document.

APPENDIX 2: Interviews, Personal Communication, & Correspondence

INTERVIEWS

Interview 1 Confidential (2005). Interview with non-Indigenous person on 15th July 2005, recordings held by Jillian Marsh.

Interview 2 Confidential (2005). Interview with Indigenous person on 20th November 2005, recordings held by Jillian Marsh.

Interview 3 Confidential (2005). Interview with non-Indigenous person on 6th May 2005, recordings held by Jillian Marsh.

Interview 4 Confidential (2006). Interview with Indigenous person on 4th May 2006, recordings held by Jillian Marsh.

Interview 5 Confidential (2006). Interview with Indigenous person on 18th October 2006, recordings held by Jillian Marsh.

Interview 6 Confidential (2006). Interview with non-Indigenous person on 22nd May 2006.

Interview 7 Public (2005). Interview with Enice Marsh on 9th September 2005. Gladstone, SA, recordings held by Jillian Marsh.

Interview 8 Public (2005). Interview with Justin Fry on 31st August 2005. Adelaide, recordings held by Jillian Marsh.

Interview 9 Public (2006). Interview with Bob Ellis on 28th March 2006. Adelaide, recordings held by Jillian Marsh.

Interview 10 Public (2006). Interview with Irene Mahomed on 16th May 2006. Port Augusta, recordings held by Jillian Marsh.

Interview 11 Public (2005). Interview with David Noonan on 5th August 2005. Adelaide, recordings held by Jillian Marsh.

Interview 12 Public (2006). Interview with Jeannine Purdy on 14th June 2006. Hawker-Perth Phone Link, recordings held by Jillian Marsh.

Interview 13 Public (2004). Interview with Charlene Tree on 2nd December 2004. Hawker, recordings held by Jillian Marsh.

Interview 14 Public (2005). Interview with Jayne Weepers on 26th August 2005. Alice Springs, recordings held by Jillian Marsh.

Interview 15 Public (2006). Interview with Martha Wilton on 16th May 2006. Port Augusta, recordings held by Jillian Marsh.

Interview 16 Confidential (2005). Interview with Indigenous person on 20th November 2005. Adelaide, recordings held by J. Marsh.

Interview 17 Public (2005). Interview with Kelvin Johnson on 27th May 2005. Nepabunna. recordings held by Jillian Marsh.

Interview 18 Confidential (2004). Interview with Indigenous person on 18th December 2004, recordings held by Jillian Marsh.

PERSONAL COMMUNICATION AND CORRESPONDENCE

FRAHCC (1993). Correspondence: Letter to Department of Aboriginal Affairs re: Request for heritage protection resources. Subject of Letter: lack of registered sites in Wooltana Station area. 21 October 1993. Copy held by FRAHCC secretary.

FRAHCC (1994). Correspondence: Letter to Department of Aboriginal Affairs re: request for heritage protection resources. Attention: Honorary Michael Armitage Minister for Aboriginal Affairs. 12 April 2004. Copy held by FRAHCC secretary.

Gillespie, N. E. (2008). Correspondence: "Draft letter: Special Rapporteur on the Human Rights of Indigenous Peoples Complaint" re: the discriminatory underfunding of the Aboriginal Legal Rights Movement in Australia. 13 May 2008. Adelaide, SA, ALRM. Office of the United Nations High Commissioner for Human Rights

Heathgate Resources Pty Ltd (1997a). Correspondence: Letter of response to V. Simpson of Students' Association University of Adelaide regarding Beverley project. C. J. Foldenauer. 14 April 1997. Adelaide, SA, Heathgate Resources Pty Ltd.

Heathgate Resources Pty Ltd (1997b). Correspondence: Letter to S. Baker of FoE regarding the Beverley uranium project. L. Tracy. 9 August 1997. Adelaide, Heathgate Resources.

Johnson, G. (2003). Correspondence: Letter to B. McFarlane raising concerns on behalf of Adnyamathanha Elders. 26 March 2003. Adelaide, copy held by E. Marsh, Gladstone, SA

Kerin, R. (1998a). Correspondence: Letter to Jillian Attrill News Editor ABC. 11 August 1998. Adelaide, PIRSA. Copy held by D. Noonan, ACF, Adelaide, SA.

Kerin, R. (1998b). Correspondence: Letter to J. Gray of ACF Sydney concerning matters relating to uranium mining in South Australia. 4 June 1998. Adelaide, SA, Government of South Australia.

Marsh, E. (2004). Personal communication: Mother's culture and Yura's moiety: Mathari the south wind, Ararru the north wind. Private meeting between Gerty Johnson and other Adnyamathanha in Leigh Creek Hospital. 19th June 2004. Notes held by E. Marsh, Gladstone, SA.

Marsh, J. (1998). Personal communication with Rose Crane at the Conservation Council, Jill Hudson Award. Adelaide. Notes held by J. Marsh.

Marsh, J. (2002). Personal communication: Confidential talk with Adnyamathanha Elder on 18 December 2002, notes held by Jillian Marsh. Gladstone, SA.

Marsh, J. (2005a). Participatory observation: alliance against uranium Indigenous/green forum held at Quorn, South Australia, Notes held by J. Marsh.

Marsh, J. (2005b). Participatory observation: ATLA governing committee AGM. Hawker. Recordings held by J Marsh.

Marsh, J. (2005c). Participatory observation: national park and Adnyamathanha joint management meeting. Hawker. Recordings held by J. Marsh.

Marsh, J (2005d). Participatory observation: small group conversation between J Marsh and Adnyamathanha Yuras. Recordings held by Jillian Marsh. Hawker

Marsh, J. (2005e). Participatory observation: alliance against uranium indigenous/green forum held at Quorn, South Australia. Recordings held by Jillian Marsh.

Marsh, J. (2005f). Participatory observation: ATLA governing committee AGM. Recordings held by J. Marsh.

Marsh, J. (2008a). Personal communication with Coulthard, D. 9 October 2006 re: cultural significance of Mount Gee and Mount Painter. Adelaide, SA. Notes held by Jillian Marsh.

Marsh, J. (2008b). Personal communication: in conversation with members of YLCG on 17 January 2008. Port Augusta. Notes held by J. Marsh.

Against Uranium, notes held by Jillian Marsh. Gladstone, SA.

Marsh, J. (2009a). Personal communication with small group of Adnyamathanha Yuras at ATLA Annual General Meeting, 16 January 2009. Quorn, SA. Notes held by Jillian Marsh.

Marsh, J. (2009b). Personal communication: with Michael Anderson re: Beverley Advisory Committee, 8 October 2009. Phone linkup. Notes held by Jillian Marsh.

Marsh, J. (2009c). Personal communication with Adnyamathanha, Elder Terrence Coulthard, who speaks in favour of Beverley Four Mile proposal at ATLA meeting. Adnyamathanha community. 16 January 2009. Quorn, SA. Notes held by Jillian Marsh.

Marsh, J. (2009d). Participatory observation: interaction between adnyamathanha, mining proponent, and native title legal advisors. ATLA Special General Meeting held in Hawker on 17th January 2009. Recordings held by J. Marsh.

Marsh, J. (2009e). Personal communication: talking with Adnyamathanha Yuras at ATLA annual general meeting held 17 January 2009. Hawker. Recordings held by J. Marsh.

Marsh, J. (2009f). Personal communication: telephone discussion between M. Anderson and J. Marsh re: Beverley Advisory Committee meeting held in October 2009. 11 September 2009. Whyalla-Pt Pirie Phone Link. Notes held by Jillian Marsh.

Marsh, J. (2009g). Adnyamathanha Elder Thathy Anderson speaks against Beverley Four Mile proposal at ATLA meeting. Adnyamathanha participants. Quorn. Notes held by Jillian Marsh.

Matthews, D. (1999). Personal communication - interview with J. Marsh, 9th October 1999. "Heathgate Resources public consultation with Adnyamathanha a form of intimidation" Adelaide, SA unpublished: original notes held by author, Blackwood, SA.

Noonan, D. (1997). Correspondence: ACF letter to MESA re: Request for access to the two DEF and MESA approvals regarding the 'Beverley project'. 29th August 1997. Adelaide, SA. Copy held by author, ACF.

Simpson, V., and L. Moody (1997). Correspondence: Letter of protest towards plans to mine uranium at Beverley and levels of secrecy. 9 March 1997 Adelaide, SA Students' Association of the University of Adelaide. Held on file at University of Adelaide, SA.

Wilson, G. (1999). Correspondence: Letter from State Aboriginal Heritage Committee to Minister for Aboriginal Affairs. 17 June 1999. Department of State Aboriginal Affairs, Adelaide, South Australia, State Aboriginal Heritage Committee. Held on file at DPC-AARD Office, Adelaide, SA.

<u>APPENDIX 3: Map of Adnyamathanha Yarta</u>

NOTE:
This map is included on page 291 of the print copy of
the thesis held in the University of Adelaide Library.

Map courtesy of *Flinders Ranges Dreaming* by D Tunbridge (1986)

APPENDIX 4: Timeline of Significant Happenings

DATE/ YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
1920 -'60	Mining industry + Government	Ngumbabadanha (Mt Painter) mineral resources	Scientific discovery and extraction of minerals including uranium; Government support for uranium mining in northern Flinders Ranges region of SA	Damage to culturally significant sites (Virdnimuru's resting place) due to exploration and mining; concern by Adnyamathanha Elders regarding the preservation of cultural heritage, and sense of powerlessness under colonial rule
1955	Mining industry + Government	Yurlu's fires – coal mine at Leigh Creek	Commencement of coal mining at the Leigh Creek Coalfields	Damage to culturally significant sites (Yurlu's fires) due to exploration and mining; early Adnyamathanha experience of mining, and its impact on the preservation of cultural heritage and Adnyamathanha governance
1965	Adnyamathanha Elders Wilyaru Men	Adnyamathanha Yarta	Cessation of Wilyaru 2nd stage of initiation rites	Clearly signals disintegration of Adnyamathanha governance structure; also signals a collective response to the impacts of coal mining at Leigh Creek
1969	Andy Coulthard, Wilyaru Man and Heritage Ranger	Journal Article: *'Cooperation is Leading to Preservation'*	First Adnyamathanha person actively engaged in heritage protection in SA (South Australia)	Adnyamathanha Elder recognises the significance of heritage protection, mining development, and reconciliation, and is provided with a 'non-Indigenous space to articulate his views

DATE/YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
1971	Government + Mining Industry	Mining and Rehabilitation Program (MARP)	Governance of mining according to *Mining Act 1971*: A Mining Lease under the *Mining Act 1971* may be granted by the Minister	Approval must include consideration of the results of an extensive assessment, including assessment of the likely environmental impacts, pre-Aboriginal Heritage and Native Title legislation
1978	Syd Jackson, Wilyaru Man + Park Ranger Trainees	Sharing of cultural knowledge and concerns re: mining	Destruction of Yurlu's sites (coal mining) raises further concern by Elders at the destruction of sites due to mining	Damage to culturally significant sites (Yurlu's fires) due to exploration and mining; concern by Adnyamathanha Elders regarding the preservation of cultural heritage, and sense of powerlessness under colonial rule
1982	Uranium Mining Proponents	The RPC Act provides for various categories of license and registration, including a License to Mine or Mill Radioactive Ores.	*The Radiation Protection and Control Act 1982* This legislation controls activities that involve radiation and radioactive materials in South Australia, including mining and milling of radioactive ores.	The Mining Act specifies that consultation must occur to ensure that a proposed MARP is in accordance with the *Development Act 1993*, and that the outcome of these consultations be considered when approving the MARP. Development and approval of a MARP generally requires an environmental impact assessment.
1988	Adnyamathanha individuals + ALRM Lawyers + Minister	ALRM/FRAHCC/govt heritage protection legal framework	Formation of inaugural heritage protection body, and appointment of a determining Minister, according to Aboriginal Heritage Act (1988) proclaimed in SA	The Aboriginal Heritage Act provides Aboriginal people with a new post-contact era of 'whitefella' heritage land management and site protection regime based on Ministerial decision-making power for heritage protection and heritage destruction

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1990	Heathgate Resources Pty Ltd	Company formed, as an affiliate to General Atomics, US company	Historical ban on new uranium mines in Australia overruled to enable exploration at Beverley site	Uranium mining becomes a possibility in SA, after political overturning of the '3 Mines Policy' which generates new uranium mining interests
1991	Adnyamathanha community	FRAHCC mtg in Hawker	Community engage with heritage legal framework. A new 'Site Inspection Procedure' and guidelines improves communication	Written guidelines and protocol developed by Yuras to facilitate heritage consultation re: development
1993	Government	Parliament	*Development Act 1993* Introduction of new Bill	No consultation with Aboriginal people who can speak for country
1993	Government	Parliament	*Native Title Act 1993* Introduction of new Bill	Major ramifications for land management and recognition of Indigenous rights in Australia
1994	Gordon Coulthard	Fed Court SC 94/1 NT claim legal process in federal courts	First NT (Native Title) Named Applicant for Yuras Adnyamathanha Native Title precedents Individual engagement with NT process	These Acts not known or understood by NT player or Yuras generally First claim lodged, enabling a negotiations process btw proponent and community via *Native Title Act 1993* Initial use of Native Title Act used to negotiate first Exploration Agreement with Heathgate re: Beverley site Precedent set for individual bargaining power on behalf of all Adnyamathanha

DATE/YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
1995	Angelina Stuart	Fed Court SC 95/3 NT claim	NT Named Applicant for Yuras Individual engagement with NT process	Native Title application for determination Individual bargaining power on behalf of all Adnyamathanha
1995	Ngarrindjeri + Tom and Wendy Chapman (developers)	Hindmarsh Island Bridge proposal *Aboriginal Heritage Act SA (1988)*	Bitter disputation between Traditional Owners and developers; negative aftermath on Aboriginal peoples and communities	This case relevant as it illustrates the might of developers, the failure of the legal system to protect Indigenous rights, and the hollow victory of compensation awarded post-development
1995	Beverley Patterson	Fed Court SC 95/6 NT claim	NT Named Applicant for Yuras Individual engagement with NT process	Native Title application for determination Individual bargaining power on behalf of all Adnyamathanha
1995	Mark McKenzie	Fed Court SC 95/1 SC 95/4 NT claim	NT Named Applicant for Yuras Individual engagement with NT process	Native Title application for determination Individual bargaining power on behalf of all Kuyani and Adnya-Kuyani
1995	Heathgate Resources Negotiates with 3 NT Named Applicants	NT Exploration Agreement privately negotiated	New NT legislation used to gain community consent for exploration	3 individuals granted the legal power to represent all Adnyamathanha Yuras
1995	Aboriginal Legal Aid in SA - ALRM/NTU ANTMC, later known as ATLA	Community meeting hosted by sole NT agency in SA	Formation of ANTMC, later ATLA Committee Sole agency for NT in SA begins a legal process with Adnyamathanha	Whitefella governance system put in place to manage Native Title process and land use negotiations; Adnyamathanha encouraged to use a representative form of decision making
1997	Thathy Anderson Individual engagement	Fed Court SG 97/1 NT claim	NT Named Applicant represents Yuras within NT process	Native Title application for determination Individual bargaining power on behalf of all Yuras

DATE/ YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
26 May 97	FRAHCC + MESA (Mines & Energy SA)	Beverley proposal	Letter to MESA requesting info re: Heathgate interests	FRAHCC initiates consultation with MESA following lack of information from Named Applicants
26 May 97	FRAHCC + Heathgate Resources	Beverley proposal	Letter to Heathgate requesting information of exploration	FRAHCC initiates consultation with proponent, requests FRAHCC Site Inspection Procedure be followed
10 Dec 97	FRAHCC + Minister for Aboriginal Affairs	Letter of concern	FRAHCC express concern at lack of consultation, also request Sect 23 of *Aboriginal Heritage Act* be upheld	Communication between Aboriginal Affairs Minister (Dorothy Kotz) and FRAHCC initiated by FRAHCC; reply asserts all negotiations will occur within Native Title framework
8 May 97	Australian Conservation Foundation	Press release	ACF uses media to raise public awareness of govt/proponent secrecy	PR title: 'in situ and in secret - uranium trials in SA: government helps miners go underground with the facts
Mid 1997	State and Fed Govt	Govt regulatory system	Preparation of guidelines for EIS	Opportunity for govt agencies to comment on proposal prior to public comment
5 Sept 1997	Heathgate Resources	DEF released	Internal government consultation but no public consultation	No facilitation with Yuras, no input from Yuras, despite NT Agreement being signed in 1995
Nov 97	Michael Davis ABC Reporter	Report	Growing awareness of deficits in Native Title engagement process	Title: Indigenous knowledge and native title: understanding indigenous perspectives in agreements and mediation. A report prepared for the national native title tribunal.

DATE/ YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
14th Nov 97	Heathgate Resources + State Government	Trial Mine at Beverley	Approval for trial ISL (in situ leach) mine to commence operation	Extraction of uranium ore enabled under the 'trial mine' phase, including groundwater pollution *Aboriginal Heritage Act* requirements not met
Dec 1997	Heathgate Resources+ Planning SA + MESA	Joint venture	Environmental baseline studies carried out, published by Hames Sharley SA	Studies of flora, fauna, soils, water used to measure the potential impact and minimise future impact. Contains no acknowledgement of Adnyamathanha input or values
13/14 Dec 97	Yuras & Green Groups	Balcanoona Woolshed Gammon Ranges National Park	First ever independent public forum on Beverley proposal; first ever meeting between Yura/Green groups	Initial contact between Yura/Green groups forms a new relationship that will grow over next few years
Jan to Dec 1998	Heathgate Resources	Beverley trial mine	Small 'field leach trial' commences at Beverley mine site	Used to confirm feasibility of mine and meet requirements of EIS;
28 Feb 98	Native Title Lawyers + Adnyamathanha NT Claimants	Port Augusta	Yuras express concern over Beverley Mine and heritage value	Evidence of heritage value raised by Elders via Native Title forums
9 Mar 98	FRAHCC + Heathgate Resources	Letter to D Brunt, CEO with Heathgate	Yura concerns raised directly with mining proponent	Request for documentary evidence of Yura support for mine
22 Apr 98	Heathgate Resources + NT Named Applicants	Confidential negotiations	Legal consent from Traditional Owners granted via NT Named Applicants (they represent all Adnyamathanha) Royalty payments commence with individuals	NT Mining Agreements signed on behalf of all Adnyamathanha; commencement of a welfare-based negotiating framework for Adnyamathanha under NT. Royalties paid in the absence of an auditing process that will be accountable to all Adnyamathanha

DATE/YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
29 June 1998	Heathgate Resources + Minister for Urban Development and Planning + Minister for Mineral Resources Development	Govt regulatory system The *Development Act 1993* Draft EIS (environmental impact statement) for Beverley Mine published	Draft EIS produced by proponent released for public consultation. Act mandates that applications to carry out operations of "major social economic or environmental importance" must be referred to the Minister for Urban Development and Planning. Public consultation process; 2 month period for comment	First in-situ leach acid mine in Aust and western world. EIS process not fully accessible to Yuras, raises concerns that EIS failed to address Heritage issues Planning SA, a division of PIRSA, undertakes an EIS after which the Minister provides advice to the Minister for Mineral Resources Development to be considered in developing conditions of approval. Consultation period poorly accessed by Adnyamathanha due to short period of time; lack of access to language; and tensions within Native Title framework
Oct 1998	Heathgate Resources	Government regulatory system	Response document produced by proponent	Concerns addressed during public consultation period addressed in written form
Late Dec 1998	Federal Environment Minister, Senator Hill	Government regulatory system	Announced "no environmental reason why project could not proceed"	18th March 1999 resulted in full approval to issue mining license. Aboriginal heritage issues ignored
1998	Federal Government	Nuclear industry	*Australian Radiation Protection and Nuclear Safety Act 1998*	Not known to Adnyamathanha community

DATE/ YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
1998	NT Named Applicants + Heathgate Resources	Sign off prior to completion of EIS process	Mining Agreements signed on behalf of all Adnyamathanha	The agreement with Gordon Coulthard, was entered into on or about the 27 February 1998; with Thathy Anderson on or about the 22 April 1998 and with the third defendants on or about 27 July 1998
4 Jan 1999	NT Named Applicants	Federal Court SC 97/2 claim	Amalgamation of claims instigated 25 July 1997, reaches court almost 2 years later	Brings together the various claims and the collective bargaining power on behalf of all Adnyamathanha
Mid 1999	Heathgate Resources	Beverley site	Construction of ISL plant	Destruction of sites and extraction of ore prior to commencement of commercial mining, and prior to a determination under the *Aboriginal Heritage Act*
1999	Legal changes to environmental regulation	*Environment Protection (Impact of Proposals) Act 1974* (the EPIP Act);	the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act); Environmental legislation not understood by Yuras	'…the principal legislative means by which the environmental impacts associated with the mining, use and disposal of nuclear material are regulated …' The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) requires that a "nuclear action" (eg. a proposed uranium mine) be referred to the Australian Government Minister for the Environment and Heritage for approval,

DATE/ YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
24 Mar 2000	NT Named Applicants+ NT Lawyers+ Heathgate Resources	Private negotiations	Beverley Fund established; Trust established for the purposes of relieving poverty and such other charitable purposes. Welfare-driven negotiations	Raises the issue of possible corruption during the period of initial negotiations btw mining proponent and individual Yuras in positions to bargain on behalf of community.
24 Mar 2000	Heathgate/NT negotiators Flinders Trustees Ltd (Flinders Trustees), Ms Anderson and her son	Trust Fund Adnyamathanha SC97/1 Beverley	Fund to be established under cl 8.2.1 of the Agreement is provided for in a deed dated 24 March 2000 called the Adnyamathanha Community Trust (the Trust).	Flinders Trustees is an independent corporate trustee. The Trust was established for the purposes of relieving poverty and such other charitable purposes as the trustees may from time to time confirm concerning Aboriginals (defined to mean the Adnyamathanha People).
Jan 2001	Heathgate Resources	Beverley Mine site	Commercial production begins at Beverley site	Uranium extraction formally sanctioned by Australian government against the wishes of Traditional Owners and general public in Australia
16 Mar 2001	ATLA (Native Title representative body) + Lawyers	Community meeting	Questions continue re: financial relationship btw proponent and individual Adnyamathanha	ATLA resolution directs chairperson to instruct its legal representatives to take all reasonable steps to restrain mining companies from distributing funds to individual members of the Adnyamathanha People
12 Feb 2001	ATLA + NT Lawyers	Constitution according to ACAA	ATLA body has a set of rules to follow, based primarily on whitefella protocol	*Aboriginal Councils and Associations Act 1976* (Cth). The purpose of ATLA is to benefit the community of Adnyamathanha People, yet it reinforces whitefella protocol.

DATE/ YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
May 2000	Green groups and Yuras or "protestors" + Heathgate Resources + Star Force Security + Deputy Premier of SA, Kevin Foley	Beverley on site protest or 'Beverley Bash'	Protestors at loggerheads with Heathgate Resources, Star Force security, and Kevin Foley; Public outcry from both Aboriginal and Green groups	'Beverley Bash' illustrates several issues: (1) the reactionary and inflammatory nature of relations between mining proponent, Green groups, Yuras, and Kevin Foley (2) effectiveness of Green-Black alliance in raising concerns and gaining recognition (3) alliance between mining industry/government
2003	Gertie Johnson + Enice Marsh (Elders) + Anggumathanha Law Adnyamathanha Elders (unincorporated body)	Port Augusta private forum instigated by Adnyamathanha Elders; inaugural meeting of 30 Elders	Breakaway group from ATLA and Native Title formed to ensure safety and respect for Elders; this group formed as a result of internal lobbying by Enice and Gertie	Demonstrates discontent and disunity within ATLA forums and 'whitefella' governance; difficulty faced by Yuras is consistent with many other Indigenous peoples whose traditional governance system is strong but being jeopardised by colonial governance
2009	Heathgate/Quasar Joint mining proponents	Public Environment Report (PER) for public comment re: Beverley Four Mile	Expansion of mine an industry-dominated process consistent with other Indigenous experiences eg. Canada	Highlights how Indigenous engagement processes and mainstream processes continue to fail Yuras in bid for recognition of rights and heritage protection
2009	Adnyamathanha Native Title Claimants + Lawyers	Federal Court of Australia	NT Consent Determination granted to Claimants (Adnyamathanha Yuras) over a portion of Adnyamathanha Yarta; Change to the decision making powers of NT Named Applicants	Illustrates ongoing and lengthy level of legal pressure faced by Adnyamathanha during negotiating period with mining proponents including Heathgate; also demonstrates that Native Title legal recognition does not guarantee site protection or an effective engagement process

DATE/YEAR	PLAYER/S	PLACE/SPACE	PHENOMENON	SIGNIFICANCE TO CASE
2010	Green Groups and Yuras or "protestors" + Heathgate Resources + Star Force Security + Deputy Premier of SA, Kevin Foley	Settlement sought for damages re: Beverley on site protest or 'Beverley Bash'	Refusal by Deputy Premier of SA Mr Kevin Foley to negotiate out of court settlement; $700,000 awarded to Plaintiffs in compensation for damages	Compensation for victims of 'Beverley Bash' illustrates several issues: (4) the timeframe for justice is lengthy and costly (5) a Green-Black alliance is essential for future cases (6) alliance between mining industry/government continues

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