

South Australian State of the Environment Report 2023

**Towards healthy Country: a new First
Nations engagement framework for
respecting Indigenous values,
knowledges and expertise**

Report prepared by:

Associate Professor Steve Hemming, and

Professor Daryle Rigney

Indigenous Nations and Collaborative Futures Research Hub

Jumbunna Institute for Indigenous Education and Research

University of Technology Sydney

23 November 2023

Table of Contents

Table of Contents	1
1 Acknowledgements	2
2 Guiding statements: international, national, regional and local	3
3 Executive Summary	6
4 Background and Discussion	8
5 South Australia ‘the greatest estate on earth’ - First Nations Caring for/as Country	11
6 State of the Environment (SoE) reporting at the national and state levels	15
7 International instruments and frameworks	18
7.1 Introduction	18
7.2 UNDRIP implementation in Canada	19
7.3 2030 Agenda for Sustainable Development - Sustainable Development Goals (SDGs)	19
7.4 Kunming-Montreal Global Biodiversity Framework (GBF)	20
8 A First Nations Environment Framework	23
8.1 Introduction	23
8.2 Developing a Theory of Change for the effective engagement of First Nations peoples in SoE reporting and environmental management	23
8.3 Conclusion	25
9 Conclusion	26
10 Proposals for Action	27
11 References	29
Appendix 1: Case study – Ngarrindjeri Yarluwar-Ruwe	33
Introduction	34
Changing unhealthy flows: new spaces of diplomacy, negotiation and creativity	35
A framework for Ngarrindjeri engagement in Caring as Country (Yarluwar-Ruwe)	36

1 Acknowledgements

The authors of this report respect and acknowledge the continuing and unique responsibilities and rights of First Nations peoples to Country.

We pay respects to the Kaurna Nation, the traditional owners of these Lands and waters, their Elders, leaders and young people.¹

We pay our respects to Ngarrindjeri Ancestors, Elders, leaders and young people.

We pay our respects to Elders, leaders and young people of all First Nations in what is now known as South Australia.

We acknowledge the sovereignty of First Nations peoples in Australia and pay respects to their unwavering commitments to Caring for/as Country.

May their spirits find rest and peace as part of their lands and waters.

We commend the Australian government's recent acknowledgement of First Nations peoples in the *2023 Nature Positive Report*.

We acknowledge the Traditional Owners of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present. We are committed to working respectfully with Aboriginal and Torres Strait Islander peoples and give particular acknowledgement to their use, knowledge and custodianship of Australia's native plants and animals over countless generations. We support Aboriginal and Torres Strait Islander peoples and their aspirations to maintain, protect and manage their culture, language, land and sea Country and heritage.

We thank the South Australian Environment Protection Authority (EPA) for the opportunity to submit a report as part of the South Australian *2023 State of the Environment* (SoE) reporting process. We also thank Andrew Solomon EPA Project Officer for his interest, support and suggestions.²

2 Guiding statements: international, national, regional and local

This report begins with a brief selection of local, national and international guiding statements. These words include excerpts from South Australia's *Constitution Act 1934*.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 29.1

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Convention for Biological Diversity - Kunming-Montreal Global Biodiversity Framework, adopted in December 2022

Contributions and rights of indigenous peoples and local communities

(a) The framework acknowledges the important roles and contributions of indigenous peoples and local communities as custodians of biodiversity and partners in the conservation, restoration and sustainable use. The Framework's implementation must ensure that the rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices of indigenous peoples and local communities are respected, and documented and preserved with their free, prior and informed consent, including through their full and effective participation in decision-making, in accordance with relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, and human rights law. In this regard, nothing in this framework may be construed as diminishing or extinguishing the rights that indigenous peoples currently have or may acquire in the future;

(Kunming-Montreal Global Biodiversity Framework 2022)

Australian Government 2022 *Nature Positive Plan: better for the environment, better for business*

When we reform our environmental laws, we will take them from being nature negative, where we oversee an overall decline in our environment, to nature positive, where we protect our land and leave it in a better state than we found it.

(The Hon Tanya Plibersek, *Nature Positive Plan 2022*, p. iii)

The government is committed to working in partnership with First Nations in line with commitments agreed by all jurisdictions through the National Agreement on Closing the Gap. The role of the EPBC Act's Indigenous Advisory Committee will be enhanced to give First Nations a stronger voice in our system of environmental protection.

(*Nature Positive Plan 2023*, p. 2)

To the Prime Minister and every Member of the House of Representatives and the Senate of the Commonwealth Parliament, 22 October 2023³

10. We will maintain the vision of the Uluru Statement from the Heart. We will continue to uphold the outcomes of the Uluru Dialogues to which more than 1,200 Aboriginal and Torres Strait Islander people from across the country contributed – culminating in the Uluru Statement signed by 250 people on 26 May 2017. It is evident that many Australians are unaware of our cultures, our histories, or the racism imbued in the Australian Constitution. That so many Australian people believe there is no race or division on race in the current Australian Constitution speaks to the need for better education on Australian history and better civics education. We have faith that the upswelling of support through this Referendum has ignited a fire for many to walk with us on our journey towards justice. Our truths have been silenced for too long.

Statement from Coalition of Peaks – key partner in the National Agreement on Closing the Gap

As Aboriginal and Torres Strait Islander people, we have been saying for a long time that we need to have a much greater say in how programs and services are delivered to our people, in our own places, and on our own country. The *Australia State of the Environment Report 2021*, released last week, reiterates the importance of this. Among the confronting findings, the report found that governments need to embrace Indigenous knowledge and Caring for Country principles, and that Indigenous people need to be more empowered to share knowledge on our terms.

(Coalition of Peaks, 27 September 2021)

First Nations Clean Energy Strategy (Australia)

First Nations people must be able to have a say and participate in clean energy projects. Our people are critical to sustaining country and culture, making us best placed to determine or manage lands that could host clean energy resources.

(First Nations Clean Energy Strategy Discussion Paper, 2023)

South Australian State of the Environment Summary Report 2018

We acknowledge that the report does not explicitly reflect the perspectives of Aboriginal people as the original custodians of the land and who retain a strong cultural and spiritual connection to Country. A report on the state of the environment would be more complete with this perspective, and this will be addressed in the next report.

(Foreword, 2018 SA *State of the Environment Report*)

South Australian Constitution Act 1934

(2) Following the Apology given on 28 May 1997, the Parliament, on behalf of the people of South Australia:

- (a) acknowledges and respects Aboriginal peoples as the State's first peoples and nations; and
- (b) recognises Aboriginal peoples as traditional owners and occupants of land and waters in South Australia and that:
 - (i) their spiritual, social, cultural and economic practices come from their traditional lands and waters; and
 - (ii) they maintain their cultural and heritage beliefs, languages and laws which are of ongoing importance; and
 - (iii) they have made and continue to make a unique and irreplaceable contribution to the State; and
- (c) acknowledges that the Aboriginal peoples have endured past injustice and dispossession of their traditional lands and waters.

(3) The Parliament does not intend this section to have any legal force or effect.

The Murray Mouth: Exploring the implications of closure or restricted flow

The lands and waters is a living body.

We the Ngarrindjeri people are part of its existence.

The land and waters must be healthy for the

Ngarrindjeri people to be healthy.

We are hurting for our country.

The Land is dying,

The River is dying. The Kurangk (Coorong) is dying

and the Murray Mouth is closing.

What does the future hold for us?

(Tom Trevorrow, Ngarrindjeri leader, Goodwin & Bennett 2002, inside front cover)⁴

3 Executive Summary

This report started with examples of guiding statements from international instruments, national and regional plans and reports, local voices and the *South Australian Constitution*. This brief selection helps illuminate a pathway to a respectful South Australian framework for the inclusion of First Nation values, knowledge and expertise in State of the Environment (SoE) reporting and ongoing environmental management. In this report we recommend the Kunming-Montreal Global Biodiversity Framework (GPF) and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) as guiding international instruments. Importantly, for South Australian environmental management the GBF brings the commitments of UNDRIP into contemporary best practice in sustainable development and biodiversity conservation.

In 2018 the Environment Protection Authority (EPA) drew specific attention to the importance of including Indigenous perspectives in the *2023 State of the Environment Report*. One of the actions that the EPA undertook to address the absence of Indigenous perspectives was to ask the authors of this report to answer the following question. How could we [SA Government] more effectively engage and actively involve First Nations Peoples in monitoring, reporting on, and caring for Country, and what benefits could this achieve? We argue that the *Australian state of the environment 2021* (Australian Government 2021) provides important answers to all aspects of this question. In promoting this ground-breaking report, the Australian Government has emphasised the importance of including First Nations values, knowledges and expertise in what was the first 'holistic assessment of the state of Australia's environment' (Australian Government 2021). Furthermore, the report's *Overview* highlights that, 'this is the first time the report has included Indigenous voices, highlighting the importance of cultural knowledge that has sustained Australia for tens of thousands of years' (Cresswell, Janke & Johnston 2021, p. 8).

We argue that improving First Nations engagement in South Australian environmental reporting and management, firstly requires the recognition of the absence of a formal, structured and resourced process for ensuring respectful inclusion of First Nation values, knowledges and expertise in State of the Environment (SoE) reporting. We draw on contemporary international, national and local mechanisms and ideas to develop some structural suggestions for the most effective ways to address this significant gap. We argue that our suggestions would bring South Australia into line with national and international SoE best practice reporting, and, as a consequence, create a framework for active First Nations involvement in researching, monitoring, reporting on and implementing Caring for Country (environmental management). This approach could be understood as a new First Nation-inclusive, theory of change for environmental management and sustainable development in South Australia. It would align with international recognition that First Nations peoples have an essential role in safeguarding the world's biodiversity. We argue that this approach would enable nationally and internationally aligned SoE reporting, along with the development of improved risk assessment capacity, and ongoing monitoring, research, and environmental co-management.

In addressing the EPA's question about the benefits of more effective engagement of First Nations peoples in environmental management we draw on the weight of national and international research and resulting sustainability policy settings such as the GBF. What is crystal clear is that recognising and supporting First Nations rights and responsibilities to Country is crucial for maintaining global biodiversity and improving the well-being of First Nations and non-Indigenous communities. The establishment of a First Nations Expert Environment Committee would be an important first step in developing a new framework to include First Nations values, knowledge and expertise in SA's environmental management and sustainable development regimes. These kinds of structural changes will also be required to support the work of the SA *First Nations Voice* to Parliament.

The following statement from the *Australian state of the environment 2021: Summary* report draws attention to the importance and benefits of First Nations inclusion in the opportunities and challenges presented by embracing ecologically sustainable development.

A renewed emphasis on engagement across all sectors of society is required to reverse environmental decline and to achieve ecologically sustainable development that underpins future prosperity and the wellbeing of future generations. Renewed focus on restoration of the landscape, and greater recognition and empowerment of Indigenous land management practices, where possible, across large parts of Australia can help us to heal Country and find new ways to gain a broad range of benefits.

(Cresswell, Janke & Johnston 2021, p.12)

We argue that establishing a First Nations Expert Environment Committee and co-developing a First Nations Environment Framework would respond to the recommendations made in the independent review of the national *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and supported in the Australian Government's 2022 *Nature Positive Plan: better for the environment, better for business*. The *Nature Positive Plan* combines the innovations in the Australian 2021 SoE report and the recommendations in the EPBC Act review. These recent reports feature structural changes designed to bring First Nations knowledge and expertise into the centre of sustainable development and environmental management planning and practice.

For South Australia's sustainable development initiatives to succeed significant resourcing is required from Commonwealth funded programs, the business and research sectors, international programs and local community commitments. Without strong alignment with emerging best practice frameworks, South Australian bodies such as Landscape Boards and Local Councils will struggle to access the resources to create a healthy sustainable future for all South Australians.

4 Background and Discussion

The South Australian government produces a State of the Environment (SoE) Report every five years. It is concerning that these reports have not included First Nations values, knowledges and expertise. In 2018 the EPA drew attention to this important gap in their foreword to the 2018 Report. They made the following points:

We acknowledge that the report does not explicitly reflect the perspectives of Aboriginal people as the original custodians of the land who retain a strong cultural and spiritual connection to Country. A report on the state of the environment would be more complete with this perspective, and this will be addressed in the next report.

(EPA 2018, p. 3)

In using the phrase ‘does not explicitly reflect’ we understand that the EPA recognise that First Nations people have significantly contributed to the research, policy development and the on-groundwork of South Australian natural resource management (NRM) for several decades. First Nations contribute to environmental scientific research, the broad NRM work of relevant government departments, landscape boards, local councils, and other non-Indigenous agencies. This engagement also takes the form of long-standing collaborations in settings such as co-managed national parks, Indigenous Protected Areas and major NRM and landscape-wide projects. What is often forgotten by non-Indigenous authorities is that First Nations also carry out their valuable, ongoing responsibilities for Caring for/as their Country.

Given the substantial contributions of First Nations people to creating a healthy environment for all South Australians it is an urgent priority that these achievements are valued, understood and reported in crucial contexts such as SoE reporting. South Australia needs to establish better legislative and policy triggers to ensure that First Nations have the mechanisms and resources to effectively contribute to South Australian SoE reporting. This also requires embedding new mechanisms in NRM research, monitoring and reporting, to respectfully incorporate First Nations expertise, knowledges, interests and experiences. This should include the development of key values, shared or First Nation specific, that can be used for assessment of the health of South Australia’s environment.

First Nations’ deep understanding of climate change, unique relationship to the ‘environment’, and resilience in the face of the traumatic experiences of colonisation, add a crucial dimension to the ‘ecologies of repair’ that have become influential in South Australia over a number of decades (see O’Brien & Watson 2014; Hemming & Rigney 2019; Hemming, Rigney & Berg 2019; Nursey-Bray et al. 2020). The growing collaboration between non-Indigenous authorities and First Nations has included: major agreements such as the Kungun Ngarrindjeri Yunnan and Buthera; co-managed National Parks; the Landscape Boards’ Statement of Commitment; negotiations regarding treaties; the SA Aboriginal Regional Authorities Policy (SA Government 2016); the development of a South Australian First Nations Voice to Parliament; and ongoing Reconciliation Action Plans in multiple settings. The South Australian Constitution includes acknowledgement and recognition of important truths concerning Aboriginal peoples that should act as a starting point for legislated reports such as the South Australian SoE. The South Australian Constitution Act includes the following sections:

(2) Following the Apology given on 28 May 1997, the Parliament, on behalf of the people of South Australia:

(a) acknowledges and respects Aboriginal peoples as the State's first peoples and nations; and

(b) recognises Aboriginal peoples as traditional owners and occupants of land and waters in South Australia and that:

- (i) their spiritual, social, cultural and economic practices come from their traditional lands and waters; and
- (ii) they maintain their cultural and heritage beliefs, languages and laws which are of ongoing importance; and
- (iii) they have made and continue to make a unique and irreplaceable contribution to the State; and
- (c) acknowledges that the Aboriginal peoples have endured past injustice and dispossession of their traditional lands and waters.

Given the existing state of South Australian environmental policy, legislative requirements, and collaborative effort in environmental management, the absence of First Nations content in the SoE draws attention to an important structural deficit. To address this gap we propose a new First Nations Expert Environment Committee to lead the co-development of an internationally aligned framework for bringing First Nations values, knowledge and expertise into the State's efforts to protect, restore and report on the health of the environment. International and nationally agreed legal instruments and policy frameworks require South Australia to include First Nation values, knowledge and expertise in research, monitoring, risk assessment, planning and reporting. Given the rapid innovations in the application of new technologies to improvements in all aspects of environmental management and sustainable development, South Australia urgently requires a new integrated framework for the inclusion of First Nation expertise, knowledges and values.

Recent developments at the international level create a firm basis for the development of a South Australian First Nations Environment Framework (FNEF) - in particular, the new Kunming-Montreal Biodiversity Framework (GBF), formerly adopted by Parties to the Convention for Biological Diversity (CBD) in December 2022. As detailed on the Australian Government's Department of Climate Change, Energy, the Environment and Water (DCCEEW) website, the GBF consists of 4 global 2050 goals and 23 global 2030 targets, aligned with 4 broad topics. As highlighted at the beginning of this report it includes the following commitments and acknowledgements:

Contributions and rights of indigenous peoples and local communities

(a) The framework acknowledges the important roles and contributions of indigenous peoples and local communities as custodians of biodiversity and partners in the conservation, restoration and sustainable use. The Framework's implementation must ensure that the rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices of indigenous peoples and local communities are respected, and documented and preserved with their free, prior and informed consent, including through their full and effective participation in decision-making, in accordance with relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, and human rights law. In this regard, nothing in this framework may be construed as diminishing or extinguishing the rights that indigenous peoples currently have or may acquire in the future;

(Kunming-Montreal Biodiversity Framework 2022)

The GBF recognises the rights of Indigenous peoples to their traditional lands and resources and calls for their full and effective participation in decision-making processes related to biodiversity conservation. It also highlights the importance of compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Overall, it is a critical development in international efforts to protect biodiversity, and it emphasises the inclusion of First Nations perspectives and knowledge as essential to its success.

It is important to recognise that South Australia has been doing some valuable collaborative environmental work with First Nations peoples. This includes ongoing reconciliation and collaborative work by South Australian agencies such as: the joint Landscape Boards'

Aboriginal and Torres Strait Islander Statement of Commitment; the Department of Primary Industries and Regions, South Australia (PIRSA) *Innovate Reconciliation Action Plan 2022-2024*; SA Water's *Stretch Reconciliation Action Plan 2020-2023*; and the Department of Environment and Water (DEW) *Stretch Reconciliation Action Plan 2021-2024*. Within these commitments and action plans, PIRSA, for example, identifies the need for staff to be educated in the importance of the UNDRIP so that it can be implemented in policy and practice. DEW identifies the finalisation of a *First Nations Engagement Guideline and Framework* as a priority action, with this action being included as complete in the *National Agreement on Closing the Gap: South Australia's Annual Report 2022-2023* (AGD & SAACCON 2023, p. 67). These initiatives need to inform and support an overarching First Nations Environment Framework that coordinates, supports and contributes to South Australia's environmental reporting requirements.

The authors of this report worked for several decades with the Ngarrindjeri Regional Authority (NRA) and the South Australian Government on a complex array of NRM and water management programs and projects. Much of this work led to published research work and technical reports as part of the Goyder Institute for Water Research. A key collaborative research project was designed to translate First Nations risk assessment processes into water planning risk assessment (Hemming & Rigney 2020). The project recommended changes to the DEW's Risk Management Framework for Water Planning and Management and contributed to drafting of the *First Nations Engagement Guideline and Framework*. In Australia, the Organization for Economic Co-operation and Development's (OECD) 'pressure-state-response' model provides the framework for SoE reporting. Risk assessment modelling such as this drives all government policy development and investment in environmental management. Our collaborative research, supported by the Goyder Institute, developed a methodology for including First Nations in foundational risk assessment. We believe this existing body of research and policy development provides a unique approach that would support effective SoE reporting that incorporated First Nations values, knowledge and expertise.

5 South Australia ‘the greatest estate on earth’ - First Nations Caring for/as Country

When British colonists arrived in South Australia the lands and waters belonged to at least 50 different First Nations groups (Tindale 1974). The descriptors used by the settlers to define First Nations' political and cultural organisation have change many times since 1836. Initially, British understanding was determined by a deep ignorance of First Nation ways of being and Eurocentric, Christian and early scientific world views. 'Aboriginal' or 'native' people were described as nomadic, primitive savages, heathens, and often less-than-human (see Woods 1879; Foster & Nettlebeck 2012; Watson 2015). Under the influence of Social Darwinism and early forms of anthropological research, the dominant story was of 'Aborigines' inevitably becoming extinct in the face of 'progress' and a racially superior British society. The work of missionaries and humanitarians was referred to in this discourse as 'smoothing the dying pillow'. These views remained dominant in Australian government policy and general community attitudes until at least the middle of the 20th century. Racist forms of scientific theory such as eugenics underpinned these policies and attitudes and apartheid-style laws persisted until the early 1970s. Christobel Mattingley and Ken Hampton's *Survival in Our Own Land* (1988) was one of the first accounts of First Nations peoples' experiences of living through these oppressive years. It was written as a contribution to South Australia's sesquicentenary.

More recently, First Nation writers such as Bruce Pascoe (2014) and non-Indigenous scholars such as Bill Gamage (2011) have shaken up dominant myths about First Nations and their complex relations with 'environment' or Country. First Nation ways of being and political aspirations for justice and true collaboration are eloquently expressed in the *Uluru Statement from the Heart* (2017). This important document emerged from a lengthy discussion process amongst First Nations peoples across the country, culminating in a National Constitutional Convention at Uluru in 2017. It begins with a shared explanation of responsibility for, and connection to Country:

Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from 'time immemorial', and according to science more than 60,000 years ago.

This sovereignty is spiritual notion: the ancestral tie between the land, or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.

It is clear in 2023 that First Nations across Australia have continuing responsibilities to care for their countries, and that they are making significant contributions to sustainability and conservation based on their own knowledge systems. This effort is often in collaboration with non-Indigenous governments, local communities, universities and conservationists.

In 1836 King William IV of Great Britain made the following promises in the Colony of South Australia's founding document the *Letters Patent establishing the Province of South Australia 1836*:

... Provided Always that nothing in those our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own Persons or in the

Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives...

(Rigney et al. 2008, p. 163)

This original promise was too soon avoided by colonial authorities. It was not until 1966 that the SA Premier Don Dunstan brought these original promises back into South Australian public discourse with the establishment of the South Australian *Aboriginal Lands Trust*. Fifty years later, in 2016, the South Australian Premier Jay Weatherill committed to negotiating treaties with First Nations in South Australia. These were major events in the history of justice for First Nations peoples in South Australia and they underscore the importance of including First Nations perspectives in key South Australian statements such as SoE reports. These reports are part of South Australia's official account of our State, providing an educational resource for South Australians and anyone from around the world. They need to be consistent with the important commitments made to First Nations peoples in Reconciliation Action Plans (RAPs), co-management plans, and other agreements. According to public commitments made by the South Australian Government SoE reports should include things such as: acknowledgements of First Nations peoples' unique relationship they have to their Country; recognition of the crucial work that First Nations peoples do to sustain healthy lands, waters and all living things; and the inclusion of First Nations values, knowledge and expertise. We argue that SoE reporting provides a valuable opportunity for greater understanding between non-Indigenous and First Nations peoples in South Australia.

The *State of the Environment, South Australia 2013: Summary* (EPA 2013), for example, incorporates early watercolours by the artist George French Angas. One shows an iconic scene from what had been re-named by the colonists as the lower River Murray near the entrance to Lake Alexandrina. Angas is famous for his publication of these watercolours in his book *South Australia Illustrated* (Angas 1847). His watercolours are amongst the earliest representations of First Nations peoples in South Australia. In this lower River Murray scene (Ngarrindjeri Ruwe), painted in the proximity of the Sub-Protector of Aborigines, George Mason's hut, the River (Moorundi) snakes through the dense reed beds with a wisp of smoke rising from Ngarrindjeri cooking fires. Angas provides a lengthy description to accompany his watercolour to ensure that British readers understand that many 'native' people call this river home and make their living here. The following excerpt illustrates this point:

The natives are numerous on both banks of the river; their encampments being scattered along the narrow strip of ground that intervenes between the limestone cliffs and the water's edge; they derive various sustenance from fish, mussels, cray-fish, bulrush-root, and other productions of this large river. The smoke proceeding from the reeds, as represented in the plate, arises from the native women in search of bulrush root, who kindle fires to cook their food, beneath the cover of these lofty reeds.

(Angas 1847, plate 25)

The caption for the iconic Angas watercolour, included in the 2013 SoE report, misses an important opportunity for educating South Australians about First Nations peoples. There is no mention that the wisp of smoke [two cooking fires were excluded from the frame] in the early watercolour rose from fires of Ngarrindjeri people relying on the resources of these wetlands for their wellbeing. Angas himself recorded this fact in the documentation of his painting, and further clarifies the focus of his labours as recording and describing 'the manners and habits of native tribes'. He writes about his objectives in his Preface:

With the hope of preserving true and life-like records of men and scenes, so quickly passing away, I have endeavoured, by pictorial representation, to describe the most interesting and peculiar features of South Australia and its Aboriginal Inhabitants. I have devoted my time and powers entirely to the accomplishment of this task – visiting all portions of the Colony – and making

myself conversant with the manners and habits of native tribes, whose existence is unknown to the world.

(Angas 1847, Preface)

In the 2005 Ngarrindjeri leaders worked with the SA Department of Water, Land and Biodiversity Conservation's (DWLBC) on the Lower Murray Reclaimed Areas Irrigation (LMRIA) project. Ngarrindjeri conducted substantial on-ground work and reporting, however, the SA Government did not have a process for ensuring that this work was included in SoE reporting.

It is important to recognise that South Australian SoE reports reinforce general community ignorance of First Nations peoples in South Australia and the legal fiction of *terra nullius* that was overturned by the High Court of Australia's Mabo decision in 1992. It would be difficult to explain to Ngarrindjeri leaders and Elders that their words in the *Ngarrindjeri Nation Yarlularu-Ruwe Sea Country Plan* (Ngarrindjeri Nation 2007), were not acknowledged in the 2008, 2013 & 2018 South Australian SoE reports. These words include the following:

Ngarrindjeri Vision for Country

Kungun Ngarrindjeri Yunnan (Listen to what Ngarrindjeri people have to say)
Our Lands, Our Waters, Our People, All Living Things are connected. We implore people to respect our Ruwe (Country) as it was created in the Kaldowinyeri (the Creation). We long for sparkling, clean waters, healthy land and people and all living things. We long for the Yarlularu-Ruwe (Sea Country) of our ancestors. Our vision is all people Caring, Sharing, Knowing and Respecting the lands, the waters and all living things.

Our Goals are:

For our people, children and descendants to be healthy and to enjoy our healthy lands and waters. To see our lands and waters healthy and spiritually alive. For all our people to benefit from our equity in our lands and waters. To see our closest friends - our Ngartjis (special animals) - healthy and spiritually alive. For our people to continue to occupy and benefit from our lands and waters. To see all people respecting our laws and living in harmony with our lands and waters.

(Ngarrindjeri Nation 2007, p. 5)

Although Ngarrindjeri have watched the continuing destruction of our lands and waters we will always respect Our Laws of Sharing, Caring and Respect. Because of our knowledge, our inherent rights to our lands and waters, and our Cultural Spiritual responsibility we must be recognised as equal partners in caring and sharing for Country. Until our rights and responsibilities are acknowledged and respected this pain, suffering and continued denial of our inherited rights will be passed down to our children and their children's children.

(Ngarrindjeri Nation 2007, p.16)

More recently, in 2018, a large gathering of South Australian First Nations peoples worked with DEW staff to develop a *Joint Statement of Action: Connection to Country for Aboriginal Health and Wellbeing*. The following excerpt provides an indication of the important principles and recommended actions it contains:

We know that connection and/or re-connection to Country is a significant determinant of health and wellbeing for Aboriginal people, and is part of Aboriginal peoples' sense of belonging and self-determination. Importantly, 'Country' is more than a geographic area: it encompasses the values, places, resources, stories and cultural obligations associated with Aboriginal people's rights and identity. For Aboriginal people, Country, culture and language are intrinsically linked.

This *Joint Statement of Action* is consistent with the multiplicity of First Nations attempts to explain their responsibilities for Country and their deep interconnection with what western tradition has defined as 'nature' (see for example: Ngarrindjeri Nation 2007; Nursey-Bray et al. 2013; O'Brien & Watson 2014).

From an environmental research and policy perspective it is crucial to recognise that Australia at the time of British invasion was not in a 'natural' state. First Nations' management of Country stretches back for thousands of years (see O'Brien & Watson 2014). Restoration and conservation of 'environment' must start with an understanding of the original sustainable form of First Nation 'Countries'. Non-Indigenous historian Bill Gammage argues that his 2011 book the *Biggest Estate on Earth*, 'rests on three facts about 1788':

1. Unlike the Britain of most early observers, about 70 per cent of Australia's plants need or tolerate fire (ch.3.). Knowing which plants welcome fire, and when and how much, was critical to managing land. Plants could then be burnt in patterns, so that post-fire regeneration could situate and move grazing animals predictably by selectively locating the feed and shelter they prefer.
2. Grazing animals could be shepherded in this way because apart from humans they had no serious predators. Only in Australia was this so.
3. There was no wilderness. The Law – an ecological philosophy enforced by religious sanction – compelled people to care for all their country. People lived and died to ensure this (ch. 4)

(Gammage 2011, pp. 1-2)

6 State of the Environment (SoE) reporting at the national and state levels

The Commonwealth's *Australia state of the environment 2021* is the first national SoE report to include significant collaboration with First Nation experts. As a consequence, the report incorporates First Nation knowledge, values, expertise and experience across all themes and sections. Key to this new approach is a First Nations expert as a co-chief author. In their letter to the Minister introducing the SoE report the lead co-authors emphasise the following point:

Indigenous authors have written in almost every part of this report. A report of this nature, which discusses different categories of the environment and heritage in isolation from one another, runs counter to the Indigenous holistic world view where all aspects of the environment and culture are linked. This report emphasises the interconnectedness of environment and culture.

(Creswell, Janke & Johnston 2021, p. 8)

This new benchmark for First Nations contributions to SoE reporting brings Australia closer to international best practice in comparable settler democracies. It also brings into stark relief the absence of First nations voices in South Australian SoE reports. This absence obscures for the South Australian government, the Parliament and broader public an understanding of the contributions that First nations people continue to make to the goals of sustainable development, healthy country and healthy people. This is at a crucial moment when First Nations philosophies, that centre the fundamental interconnectedness of people and Country, are becoming influential nationally and internationally in environmental management and sustainable development literature, policy and practice.

This growing recognition of the importance of First Nations knowledge, expertise and experience is reflected in recent national and State government reports, policy documents and reviews. For example, Graeme Samuel makes the following recommendations in his independent review of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act):

Reform is needed to ensure that Indigenous Australians are listened to and decision-makers respectfully harness the enormous value of Indigenous knowledge of managing Country.

- The National Environmental Standard for Indigenous engagement and participation in decision-making developed by this Review should be immediately adopted to deliver initial improvements.
- The current laws that protect Indigenous cultural heritage are well behind community expectations. They do not deliver the level of protections that Indigenous Australians deserve and the community expects. These laws should be immediately reviewed, and reform should be delivered in line with best practice requirements for Indigenous heritage legislation.

(Samuel 2020, p. ix)

Across State Governments in Australia there is also evidence of significant progress in collaboration between First Nations and non-Indigenous government agencies in developing SoE reports. The Victoria Government, for example, made the following statement in its response to the Victorian *State of the Environment 2018* report:

The Government recognises the importance of Traditional Owners' knowledge and expertise, and the importance of strong engagement with Traditional Owners based on the principles of self-determination, as outlined in the Government's Aboriginal Affairs Framework 2018-2023. The Government has existing relationships with Traditional Owners for environmental and cultural management purposes and will continue to work with the Aboriginal community to drive reforms and initiatives which promote the rights and cultures of, and improve outcomes for, Aboriginal Victorians. This includes strengthening Aboriginal cultural heritage management and protection, and stronger protections for intangible heritage such as stories, songs and languages.

(Victorian Government 2020, p. 7)

The Victorian Government also provided support in principle to the first of the SoE's recommendation (no.1):

That the Victorian Government, in consultation with Traditional Owners and relevant agencies, develop contemporary cultural indicators to inform future environmental reporting. These indicators must reflect the priorities of Traditional Owners, have practical and cost-effective data-collection methods, be meaningful, and demonstrate change within a five-year reporting period.

(Victorian Government 2020, p. 8)

The Government's response continues with a focus on self-determination, structural change and capacity building guided by its *Aboriginal Affairs Framework 2018-2023*. Victoria is also proceeding with treaty negotiations that will also produce changes to environmental management and reporting.

In New South Wales the *NSW State of the Environment 2021* report includes 'Aboriginal Perspectives' developed by the *Aboriginal Peoples Knowledge Group* for each section of the report. The following *EPA Statement of Commitment* to First Nations peoples in NSW is foregrounded in the 2021 SoE report.

We, the NSW Environment Protection Authority, acknowledge Aboriginal peoples as the enduring Custodians of the land, sea, waters and sky of New South Wales. We recognise the entire NSW landscape, including the lands, waters, plant and animal species and seas, has spiritual and cultural significance to all Aboriginal people of NSW. By this understanding there is no separation of nature, wellbeing, and Culture. The health of the natural environment, land animals, marine animals and the health of people and Culture are intimately connected. Upon the release of the NSW 2021 SoE Report and in the spirit of reconciliation, the EPA is committed to:

- Work in respectful partnership with Aboriginal peoples
- Actively learn from and listen to Aboriginal voices, Culture and Knowledge
- Respect Aboriginal people's knowledge and science as an equal to western science
- Weave Aboriginal Knowledges and Science with conventional science into the EPA's decision making
- Act boldly and bravely to play our part to mend and heal Country together
- Ensure Aboriginal Knowledge, Science and Indigenous Cultural and Intellectual Property (ICIP) is protected, and Aboriginal people have Free, Prior Informed Consent.
- Address both the tangible and intangible cultural elements of environmental protection
- Deliver on results that have direct benefits for Aboriginal communities

- Embed consistent, meaningful, and trustworthy engagement with Aboriginal communities
- Develop Aboriginal cultural competency across the agency
- Increase Aboriginal employment across the agency to exceed public sector Aboriginal employment targets and to identify specific occupational gaps
- Monitor the impact of the commitment to Aboriginal peoples, Country, culture and spirit.

(NSW EPA 2021, p. iii)

We argue that establishing a First Nations Expert Environment Committee and prioritising the co-development of a First Nations Environment Framework would align South Australia with the First Nations related recommendations made in the Samuel report and supported in the Australian Government's 2022 *Nature Positive Plan: better for the environment, better for business*. The *Nature Positive Plan* combines the innovations in the Australian 2021 SOE report and the recommendations in the independent review of the EPBC Act. In South Australia structural reform and continuing resource allocation are essential to lead and coordinate existing disconnected objectives or actions in Landscape Boards policies, or departmental and sector Reconciliation Action Plans.

7 International instruments and frameworks

7.1 Introduction

We argue in this report that Australia's international commitments to good global citizenship, such as the ratification of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and more recently the Kunming-Montreal Global Biodiversity Framework (GBF), should form the baseline for appropriate First Nations engagement in South Australian environmental management and SoE reporting. This approach would be consistent with comparative nation-state engagement with First Nations peoples in natural resource management, water management and fisheries management. Our understanding is based on work with First Nations internationally, and associated literature review research drawing our attention to valuable comparative case studies in the USA, Canada, New Zealand and Sápmi (Samiland) (see Bignall et al. 2016; Muller et al. 2019; Hemming et al. 2019; Rigney et al. 2022).⁵

We argue that Canada has made significant legislative and policy advances towards bringing UNDRIP into all aspects of government practice, including sustainable development and environmental management. The Canadian model provides a valuable guide for the development of a South Australian First Nations environmental engagement framework. Australia has started the process of aligning with commitments under the UNDRIP. For example, the topic has been the subject of a Commonwealth Senate enquiry (2022), recommendations from the Australian Human Rights Commission; incorporation into State Government policy in Victoria; and a substantial report from the Law Council of Australia (2022). In South Australia, PIRSA's Innovate RAP recommends that staff are educated about the implications of the UNDRIP for government practice and policy. It is important to emphasise that the UNDRIP includes several articles that relate specially to environmental protection along with being considered the most comprehensive international framework addressing the rights and responsibilities of First Nations peoples.

At the 2021 International Union for Conservation of Nature (IUCN) World Conservation Congress (WCC), global First Nation representatives, constituting the Indigenous Peoples' Organisation (IPO - Members of the IUCN), presented the *Global Indigenous Agenda for the Governance of Indigenous Lands, Territories, Waters, Coastal Seas and Natural Resources 2021*. The agenda includes the following context setting statement:

At this 2021 IUCN World Conservation Congress (WCC), we are participating for the first time as Indigenous Peoples' Organization Members of IUCN. We acknowledge the mandate of the IUCN Congress to set the direction of our collective work toward global conservation initiatives through our combined efforts to conserve nature and accelerate the transition to sustainable development. Consistent with this objective and our contributions, we have discussed and agreed upon by consensus this *Global Indigenous Agenda for the Governance of Indigenous Lands, Territories, Waters, Coastal Seas and Natural Resources* as an outcomes document for the World Summit of Indigenous Peoples and Nature at the IUCN World Conservation Congress 2021.

The *Global Indigenous Agenda's* 'Call to Action' to IUCN Member States (this includes Australia) includes the following:

States: As Parties to international conventions, ensure integration of indigenous priorities in global environmental agreements we call on States, including IUCN Member States, to:

- a. Undertake all necessary measures for the full and effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ratification of the ILO [International Labour Organization] Convention 169;
- b. Create permanent spaces for the full and effective participation of indigenous organizations in development and implementation of public policies that affect their traditional relationship to nature;
- c. Promote and respect indigenous peoples' participation as recognition of their indigenous rights in protected areas creation; and
- d. Promote, develop and implement affirmative measures that protect Indigenous Peoples as environmental defenders.

Given the strong relationship between South Australian government agencies and the IUCN, the *Global Indigenous Agenda* should be influential in shaping contemporary policy initiatives.⁶ It identifies principles and actions that further advance the findings of continuing international research linking the health of biodiversity and ecosystems to First Nations contributions.

7.2 UNDRIP implementation in Canada

Recently in Canada there has been significant focus on the relationship between the UNDRIP and environmental policies. The implementation of the Canadian *UN Declaration on the Rights of Indigenous Peoples Act 2021* required the Government to work with First Nations peoples to co-develop a draft action plan for the broad implementation of UNDRIP. The following UNDRIP Articles 25 & 29 are important in guiding First Nations engagement in sustainable environmental management:

Article 25: Indigenous peoples have the right to maintain and strengthen their relationship with their traditionally owned lands, territories, waters, coastal seas, and other resources and to uphold their responsibilities to future generations in this regard.

Article 29: Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

The *United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan 2023-2028* was the result of two years of work between the Canadian Government and First Nations, Inuit and Métis from across Canada. The Action Plan is designed to map out the process required to achieve the objectives of the UNDRIP. This includes a lengthy process of legislative change to ensure federal laws are consistent with the UNDRIP. There are relevant and specific recommendations in the Action Plan relating to territories, resources and environment that could form the basis of initiatives in the South Australian context. The Canadian Action Plan, alongside recent approaches to First Nations engagement in Australian States such as Victoria and NSW, provides a useful benchmark for the development of South Australian environmental policy and practice. During their last term in power the South Australia Labor Party instituted a strong platform for progressing Australia's commitments to the UNDRIP, with the adoption of an Aboriginal Regional Authorities policy and a commitment to treaties with First Nations.

7.3 2030 Agenda for Sustainable Development - Sustainable Development Goals (SDGs)

In 2015 the United Nations General Assembly adopted a resolution to enact 'Transforming Our World: the 2030 Agenda for Sustainable Development' (70th Session, Agenda items 15 & 16). The UN make the point that First Nations peoples were actively engaged in the development of the 2030 Agenda, and this resulted in First Nations interests appearing in six contexts - 'three

times in the political declaration, and two in the targets under Goal 2 on Zero Hunger (target 2.3) and Goal 4 on education (target 4.5)' (UN website, SDGs). Two indicators refer directly to First Nations peoples (Indicator 2.3.2 and 4.5.1). Apart from the direct references, many of the SDGs and associated targets are important for First Nations peoples, particularly indicator 1.4.2 and 5.a.1 on land rights. First Nations peoples are also required to be involved in progress reporting from nation-states. This highlights the importance of First Nations engagement frameworks being grounded in the international principle of Free, Prior and Informed Consent and consistent with the UNDRIP.

The SDGs are a set of targets and indicators that aim to promote sustainable development worldwide. However, they can be implemented by nation-states without reference to other international instruments such as UNDRIP. Australian scholars such as Mandy Yap and Krushil Watene (2019) have drawn attention to the negative impacts on First Nations peoples of international indicators such as the implementation of SDGs in Australia and New Zealand. They argue that First Nations have their own ways of monitoring the wellbeing of their people and their lands and waters and engaging in development that benefits their nations. They propose that combining specific First Nations indicators with the commitments in the UNDRIP can provide pathways to the development of better engagement frameworks. We agree with this approach and have conducted similar work with the Ngarrindjeri Nation in the development of a formal relational agreement framework – often referred to as Kungun Ngarrindjeri Yunnan (listen to Ngarrindjeri speaking) (see Hemming, Rigney & Berg 2019). This approach has a Ngarrindjeri Yannarumi (Speaking as lawfully as Country) risk assessment framework at its centre, enabling assessments to address Ngarrindjeri goals, principles and indicators (Hemming et al. 2020).

There are a growing number of international reports that promote the importance of First Nations knowledges to conservation and sustainable development, and the continuing need for justice for First Nations peoples. For example, the 2019 *Global assessment report on biodiversity and ecosystem services* emphasises the fundamental importance of including First Nations peoples in the urgent challenge of repairing and conserving 'nature' or 'Mother Earth'. The following key messages illustrates this point:

D.9 Recognizing the knowledge, innovations, practices, institutions and values of indigenous peoples and local communities, and ensuring their inclusion and participation in environmental governance, often enhances their quality of life and the conservation, restoration and sustainable use of nature, which is relevant to broader society. Governance, including customary institutions and management systems and co-management regimes that involve indigenous peoples and local communities, can be an effective way to safeguard nature and its contributions to people by incorporating locally attuned management systems and indigenous and local knowledge.

(2019, p. xxii)

Reports such as this, and sustained First Nation engagement in all international legal and policy settings, inevitably produces positive changes in the alignment between First Nations interests and global conservation and sustainability frameworks.

7.4 Kunming-Montreal Global Biodiversity Framework (GBF)

We have argued that recent international developments in biodiversity conservation policy create a firm basis for the development of a new South Australian First Nations Environment Framework (FNEF). In particular, we draw attention to the new Kunming-Montreal Global Biodiversity Framework (GBF), formerly adopted by Parties to the Convention for Biological Diversity (CBD) in December 2022. As detailed on the Australian Government's Department of Climate Change, Energy, the Environment and Water (DCCEEW) website, the GBF consists of

4 global 2050 goals and 23 global 2030 targets, aligned with 4 broad topics. As highlighted at the beginning of this report it includes crucial commitments and acknowledgements relating to First Nations peoples:

Section C. Considerations for the implementation of the Kunming-Montreal Global Biodiversity Framework

7. The Kunming-Montreal Global Biodiversity Framework, including its Vision, Mission, Goals and Targets, is to be understood, acted upon, implemented, reported and evaluated, consistent with the following:

Contribution and rights of indigenous peoples and local communities

- (a) The Framework acknowledges the important roles and contributions of indigenous peoples and local communities as custodians of biodiversity and as partners in its conservation, restoration and sustainable use. The Framework's implementation must ensure that the rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices of indigenous peoples and local communities are respected, and documented and preserved with their free, prior and informed consent, including through their full and effective participation in decision-making, in accordance with relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, and human rights law. In this regard, nothing in this framework may be construed as diminishing or extinguishing the rights that indigenous peoples currently have or may acquire in the future;

Different value systems

- (b) Nature embodies different concepts for different people, including biodiversity, ecosystems, Mother Earth, and systems of life. Nature's contributions to people also embody different concepts, such as ecosystem goods and services and nature's gifts. Both nature and nature's contributions to people are vital for human existence and good quality of life, including human well-being, living in harmony with nature, and living well in balance and harmony with Mother Earth. The Framework recognizes and considers these diverse value systems and concepts, including, for those countries that recognize them, rights of nature and rights of Mother Earth, as being an integral part of its successful implementation;

(Kunming-Montreal Global Biodiversity Framework 2022)

The Australian Government's DCCEEW website emphasises the importance of Australia as a biodiversity hotspot and stresses that Australia 'actively engaged in the negotiations that led to the adoption of the GBF'. We recommend that the South Australian Government use the GBF to frame its approach to policy and legislative changes that ensure First Nations peoples are central to environmental management and sustainable development. The GBF is an international agreement that sets an urgent global biodiversity agenda. It emphasises the need for countries to work together to address the causes of biodiversity loss and promote sustainable development. Importantly, the GBF includes a strong acknowledgment of First Nations peoples' unique relationship with the environment and reliance on biodiversity for cultural, spiritual, and physical well-being. This acknowledgement echoes clauses in the South Australian Constitution and the *Landscape South Australia Act 2014*. The GBF recognises the rights of Indigenous peoples to their traditional lands and resources, and calls for their full and effective participation in decision-making processes related to biodiversity conservation. It also highlights the importance of compliance with the UNDRIP. Overall, it is a critical development in international efforts to protect biodiversity, and it emphasises the inclusion of First Nations perspectives and knowledge as essential to its success.

Conservationists highlight the GBF's invigoration of SDG Goal 15 which focuses on conserving life on land by protecting and restoring terrestrial ecosystems, managing forests sustainably, combating desertification, halting and reversing land degradation, and stopping biodiversity loss. First Nations peoples understand the interconnected relationship 'humans' have with what western societies categorise as nature. The GBF recognises the value of First Nations understandings of complex interconnection and values this knowledge and expertise. Diverse approaches are required to change humanity's relationship more broadly with 'nature' and recognise that nature is the foundation of life on Earth. The recently adopted GBF provides renewed momentum for Goal 15, with four outcome-oriented goals to be achieved by 2050 and 23 targets to be achieved by 2030.

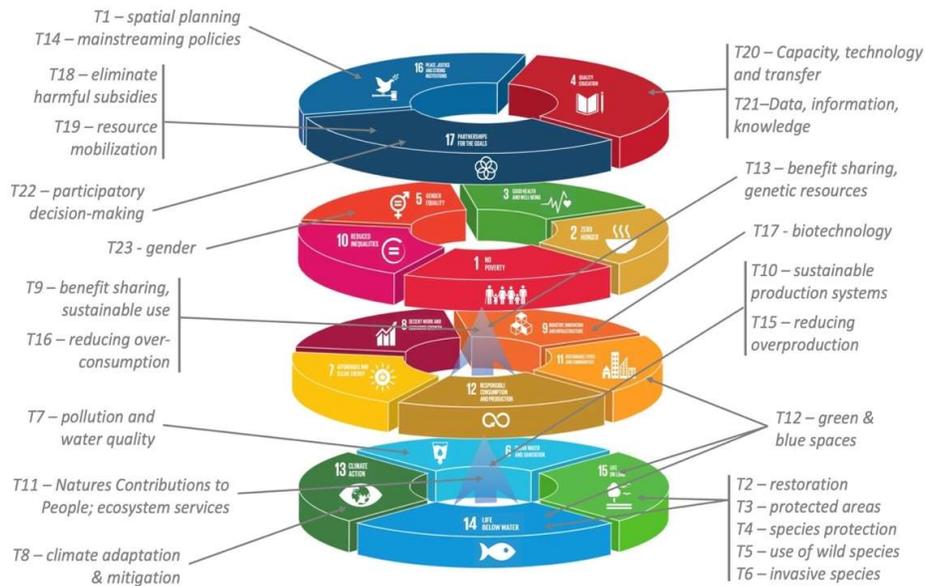


Diagram 1. The GBF targets and the Sustainable Development Goals (SDGs) (One Earth 2023)

8 A First Nations Environment Framework

8.1 Introduction

In this report we make a series of specific proposals for action based on an analysis of the gaps in South Australia's capacity to report on, and support, First Nation contributions to Caring for Country (environmental management) and sustainable development. Our ideas for structural change are designed to create long-term capacity in South Australia's bureaucracy, in First Nations and local communities. Our approach is grounded in support for First Nations self-determination and the value of 'Indigenous nation (re)building' as a methodology for improving First Nations people's wellbeing (see Rigney et al. 2022). For several decades we have worked with the Ngarrindjeri Regional Authority (NRA) and its predecessors on NRM, water management and cultural heritage projects. Much of this work was in partnership with the South Australian Government on what was known as the *South Australian Murray Futures Programme*. It is clear that SoE reporting lacks structural connections to important environmental work such as this and many other examples from across South Australia.

This section of our report provides a further discussion of the theory of change required to align First Nations engagement in South Australian SoE reporting and environmental management with contemporary national and international policies, instruments and frameworks. We have identified the UNDRIP and GBF as crucial examples that should inform the development of a new First Nations Environment Framework – a theory of change. These international instruments will guide the alignment of a new South Australian framework with the emerging research, monitoring and reporting frameworks at the national level. This includes the Federal Government's *Nature Positive Plan* (2022) and Australia's 2021 *State of the Environment Report*. In developing this approach, we have also considered other key policy settings such as the National Closing the Gap Agreement, the Murray Darling Basin Plan, South Australia's new Indigenous Voice to Parliament, State-based treaty developments, clean energy initiatives and climate change planning.

8.2 Developing a Theory of Change for the effective engagement of First Nations peoples in SoE reporting and environmental management

A new First Nations Environment Framework (FNEF) would provide the coordinating structural change required to facilitate effective First Nations engagement in SoE reporting. The Framework should feature in commitments made to First Nations peoples in RAPs, Statement of Commitments and other key policy setting contexts. The South Australian Government would need to assemble a broad range of relevant information to work with a First Nations Expert Environment Committee (FNEEC) on significant structural change. This information would include identifying existing mechanisms for ensuring that First Nations expertise, knowledge and values are included in environmental, research, reporting, monitoring and management. The Government should identify all the contexts that South Australia reports on the health of 'the environment' – at the local, state, national and international levels. This information could be made available in an interactive flow dashboard, with this dashboard becoming the basis for the State's real-time report card on First Nations engagement mechanisms and content compliance.

As we have argued in this report a FNEF would be designed to comply with national and international frameworks. The new Kunming-Montreal Global Biodiversity Framework (GBF) provides the best practice international framework given its interconnection with the SDGs and the UNDRIP. Recent national reports such as the review of the Commonwealth Environment

Protection and Biodiversity Conservation Act (EPBC Act) draw attention to Australia's urgent need to improve its compliance with UNDRIP. The new GBF facilitates this improvement.

The SA Department for Environment and Water (DEW) First Nations Engagement Guideline is a useful document to support the process of identifying principles in a new FNEF. The Ngarrindjeri/DEW Cultural Knowledge agreements provide a strong basis for First Nations to engage in these activities in a 'culturally safe' way. Ongoing resourcing is required to support the work of the FNEEC, a joint working party to develop the new FNEF, and the ongoing work required for effective First Nations engagement in environmental management. This ongoing work will include research, policy development and crucially resources to support negotiations and a consulting structure with South Australian First Nations and regional collectives.

South Australia's input into the development of National Environmental Standards under the new EPBC Act review should include input into the development of the national standard for First Nations engagement and participation in decision-making. A new SA FNEF will need to align with this national standard. Given the fact that many First Nations in South Australia have Country that cross into other States or Territories, a FNEF will provide these external authorities with a valuable alignment mechanism. It is possible that a South Australian FNEF could assist the Commonwealth Government with policy ideas for improved coordination and improved capacity for reporting to national and international bodies. The SA FNEF could act as a template for thinking about a similar instrument at the national level.

The SA Government should establish a working group after discussion with First Nations experts and leaders in 'Environmental Management' (with representation from across First Nations in SA) to begin the work of establishing and resourcing a First Nations Expert Environment Committee. The initial terms of reference of this working party could form the basis for the development of a Statement of Commitment (SOC) between the SA Government and First Nations experts and leaders in environmental management. The terms of reference could develop from existing commitments such as Departmental RAPs and the SA Landscape Boards' SOC. This work should be understood as a proactive move providing infrastructure and capacity to First Nations people in support of the South Australian First Nations Voice to Parliament.

First Nations 'cultural heritage' is named in the *Nature Positive Report* and the requirement to report on the state of the First Nations 'cultural heritage' in SA has not been happening in recent SoE reports. The complexity of First Nations interconnection to Country and the importance of not separating people from Country ('nature') will be an important issue for the new FNEF. The Nature Repair Market discussed in the *Nature Positive Plan* connects the health of 'nature' with health and wellbeing of people. This approach provides a mechanism for productively engaging with First Nations understandings of Country. The Plan makes the case for a First Nations Country based approach to be crucial in 'Nature Positive' sustainable development. The Ngarrindjeri Nation Yarlular-Ruwe Plan (2007) was an early example of this 'nature positive' approach and more recently whole-of-country First Nation planning is being prioritised in South Australia (e.g. 'Healthy Country' plans).

Ngarrindjeri risk assessment methodologies applied in South Australian water planning risk assessment identify methods for effectively translating First Nations interests into risk assessments that sit at the base of whole-of-Country planning and sustainable development. The South Australian Government has a draft set of guidelines for First Nations engagement in water planning risk assessment with applicability to environment planning (see Hemming et al. 2021). Recommendations to improve DEW's risk management framework for water planning and management included a new multi-layered category of 'risks to First Nations'. Importantly, a First Nations engagement guideline was developed to support the implementation of the modified risk management framework.

The South Australian Government is creating a new Biodata system with partners such as the South Australian Museum and the State Herbarium. This project will be important to the development of a new FNEF. Questions will need to be addressed such as: what data will this include; how will it be classified; what are the First Nations data sovereignty issues; has there been a critical analysis of the knowledge systems being used to structure the data; how do First Nations knowledges, information, and expertise enter this space; and should there be a First Nations biodata system developed as part of the ongoing work of SoE reporting?

8.3 Conclusion

It may also be necessary for formal First Nations acknowledgements and recognitions to be inserted into previous reporting spaces to highlight the reporting gaps in previous South Australian SoE reporting. These sources are still used and form an active resource for research and policy development. The suggestions we make in this report for addressing the structural gaps in the SoE reporting mechanisms are drawn from a significant body of published reports and academic work from First Nations scholars and leaders and non-Indigenous researchers and public servants in South Australia (see Hemming et al. 2020). This body of work should lead to improved processes for reporting First Nations engagement in environmental management, research, monitoring and reporting.

9 Conclusion

In 2018, South Australia's SoE report provided no indication that First Nations people contributed to a broad range of environmental research, monitoring and management. Given the significant work undertaken by First Nations, often in collaboration with government agencies and research bodies in the five-year reporting cycle leading up to the reporting, we conclude that a major structural intervention is required. In fact, other than the reference to a gap in 'Aboriginal perspectives' in the summary report's foreword, readers of the report would find no indication that First Nations peoples exist in South Australia. At the national and in most state contexts this persistent gap in state of the environment reporting is being filled with the Commonwealth, Victoria and New South Wales providing valuable examples.

We start this report with examples of guiding statements from international instruments, national and regional plans and reports, and local voices. We have used these statements as a framework to guide our suggestions for the development of a South Australian framework for the inclusion of First Nation values, knowledge and expertise in SoE reporting and ongoing environmental management. We argue that the *Australia State of the Environment 2021* report breaks new ground and provides valuable lessons for South Australia's engagement with First Nations peoples. It emphasises the importance of including First Nations values, knowledge and expertise in what was the first 'holistic assessment of the state of Australia's environment', highlighting the importance of cultural knowledge.

Improving First Nation engagement in environmental reporting and management in South Australia requires the identification of a fundamental absence of a formal, structured and resourced process for ensuring respectful inclusion of First Nation values, knowledge and expertise. This paper proposes that a State-level structural response is required to improve alignment between South Australian SOE reporting and Commonwealth and international monitoring and reporting regimes.

The establishment of a First Nations Expert Environment Committee would be an important first step in developing a new framework to include First Nations' values, knowledge and expertise in South Australia's environmental management and sustainable development regimes. We argue that this Committee could co-develop a First Nations Environment Framework to bring South Australia into line with national and international SoE best practice reporting, researching, monitoring, and management. Our proposal can be understood as a new 'First Nations-inclusive' theory of change for environmental management and sustainable development in South Australia. It would align with international recognition that First Nations peoples have an essential role in safeguarding the world's biodiversity.

10 Proposals for Action

Proposal 1: It is recommended that the SA Government establish and resource a First Nations Expert Environment Committee to be a partner in the co-development and co-implementation of a new internationally aligned framework for bringing First Nations values, knowledge and expertise into the State's efforts to protect, restore and report on the health of the environment, working together to look after Country.

- ❖ Establish a South Australian First Nations Expert Environment Committee with an initial Terms of Reference designed to provide expert advice to government on environmental management. A key role of this committee should be to lead the development of a new engagement framework with appropriate mechanisms to ensure that First Nations values, knowledges and expertise are respectfully included in SA
- ❖ Establish a South Australian First Nations State of the Environment joint working party. The terms of reference of this working party could form the basis for the development of a Statement of Commitment (SOC). This SOC could be co-developed by the State Government and the First Nations Expert Environment Committee. Resourcing the operations of this working group will be essential.
- ❖ This joint working party should, as a matter of priority, co-develop a First Nations Environment Framework (FNEF) – a new Theory of Change.
 - A new FNEF would identify shared principles, values, goals and capacity requirements to ensure respectful inclusion of First Nations content in SoE reporting.
 - The FNEF should guarantee the allocation of resources to support ongoing First Nations research, monitoring, reporting and environmental management.
 - It should rest upon First Nations understandings of Country and a recognition of the fundamental interconnection between all things.
 - It would include recognition of unique First Nations responsibilities, rights and values. Importantly, this will identify the supporting structures, resources and processes required for co-development and co-implementation.
 - The FNEF should align with UNDRIP and the GBF. International best practice nationally and internationally should inform the FNEF.
 - The FNEF will align best practice engagement of First Nations peoples in environmental research, monitoring, risk assessment, management and reporting. This framework will facilitate and generate SA's national and international reporting requirements and the broad sweep of Australian environmental and sustainable development reporting requirements under the National Closing the Gap Agreement. This framework will be translatable into emerging real-time AI driven solutions.
 - The joint working party should monitor the inclusion of FNEF in any relevant State environmental and development planning and in Reconciliation Action Plans.
 - The new working party should develop a new a risk assessment framework to support SoE reporting and broader SA Environmental management. This will require the co-development of environmental values and associated First Nations indicators.
- ❖ The SA Government should resource broader negotiations and consultations in relation to newly developed proposals for improved engagement and reporting frameworks with First Nations, and First Nations peoples in South Australia, to ensure that full, prior and informed consent is prioritised.

Proposal 2: Support the development of relevant educational curriculum in primary, secondary and tertiary settings to ensure improved understandings of the importance and value of First Nations understandings of Country to environmental research and management, and sustainable development.

Proposal 3: Resource research into SoE reporting in Australia, and internationally, to support the work of the First Nations Expert Environment Committee, and the Joint Working Party, to provide expert input into South Australian processes. This also requires research into First Nations management of Country in SA.

Proposal 4: That the South Australian Department of Environment and Water (DEW) enact the following recommendations of the Goyder Institute for Water Research technical report 20/09 'Translating Ngarrindjeri Yannerumi into water resource risk assessments':

- DEW's First Nations Engagement Guideline be applied across DEW programs and in other relevant South Australian Government sectors.
- DEW adopt proposed changes to the Risk Management Framework for Water Planning and Management to include a new multi-layered category of 'Risk to First Nations'.

Proposal 5: That the South Australian Government appoint a First Nations environmental expert (SA First Nations person) to the South Australian Environmental Protection Authority.

Proposal 6: That the First Nations Expert Environment Committee provide advice to the new South Australian First Nations Voice to Parliament. This advice should include an annual report.

Proposal 7: That formal acknowledgement of First Nations unique relations and commitments to healthy Country should be included in previous SoE reporting spaces. These sources are still used and are an active part of present environmental management research.

11 References

- Angas, G.F 1847 *South Australia Illustrated* London: Thomas McLean.
- Attorney General's Department, SA (AGD) 2023 *National Agreement on Closing the Gap: South Australia's Annual Report 2022-2023*, AGD and the SA Community Controlled Organisation Network (SAACCON), Adelaide.
- Barad, K. 2007 *Meeting the University Halfway: Quantum Physics and the Entanglement of Matter and Meaning*. Durham, NC: Durham University Press.
- Bignall, S., Hemming, S., & Rigney, D. 2016 'Three Ecosophies for the Anthropocene: Environmental Governance, Continental Posthumanism and Indigenous Expressivism' in Special Edition, Deleuze and Guattari in the Anthropocene, *Deleuze Studies* 10(4): 455-478. DOI: <http://dx.doi.org/10.3366/dls.2016.0239>)
- Burchell, G., Gordon, C. & Miller, P. (eds) 1991 *The Foucault Effect: Studies in Governmentality*. Chicago: The University of Chicago Press.
- Coalition of Peaks, 2021 'State of the environment report highlights need for improved action under the National Agreement on Closing the Gap', 27th July 2021. <https://www.coalitionofpeaks.org.au/media/state-of-the-environment-report-highlights-need-for-improved-action-under-the-national-agreement-on-closing-the-gap>
- Commissioner for Environmental Sustainability, Victoria 2018 *State of the Environment Report 2018: Summary Report*, Office of the Commissioner for Environmental Sustainability, Melbourne. www.ces.vic.gov.au/sites/default/files/publication-documents/SoE2018_SummaryReport.pdf
- Conference of the Parties to the Convention on Biological Diversity (COP-15) 2022 *Kunming-Montreal Global Biodiversity Framework (GBF)*, Adopted at COP-15 Part II, Montreal, Canada, 7-9th December 2022, Agenda item 9A.
- Cresswell, D, Janke, T. & Johnston, E. L. 2021 *Australia state of the environment report 2021: overview*, independent report to the Australian Government Minister for the Environment, Commonwealth of Australia, Canberra. DOI:10.26194/f1rh-7r05
- DCCEEW 2022 *Nature Positive Plan: Better for the Environment, Better for Business*, Department of Climate Change, Energy, the Environment and Water, Canberra. <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>
- Department for Environment and Heritage (DEH) 2010 *Securing the Future: Long-Term Plan for the Coorong, Lower Lakes and Murray Mouth*, South Australian Government, Adelaide.
- Department for Environment and Water (DEW) 2021 *Stretch Reconciliation Action Plan December 2021- December 2024*, DEW, Adelaide. <https://cdn.environment.sa.gov.au/environment/docs/dew-first-nations-stretch-reconciliation-plan.pdf>
- Department of Environment, Water and Natural Resources (DEWNR) and Ngarrindjeri Regional Authority (NRA). *Kungun Ngarrindjeri Yunnan Agreement. Listening to Ngarrindjeri People Talking. KNYA Taskforce Report 2010–2011*, June 2012. DEWNR, Adelaide.
- Department of Primary Industries and Regions (PIRSA) 2022 *Innovate Reconciliation Action Plan September 2022- September 2024*, PIRSA, Adelaide. https://pir.sa.gov.au/data/assets/pdf_file/0006/433059/reconciliation-action-plan.pdf
- Environment Protection Authority (EPA) 2008 *State of the Environment Report for South Australia 2008*, EPA, Adelaide.
- Environment Protection Authority (EPA) 2013 *State of the Environment, South Australia 2013: Summary*, EPA, Adelaide. [https://www.epa.sa.gov.au/soe_2013/downloads/SOESA-WEB-SUMMARY-02\(27Aug13\).pdf](https://www.epa.sa.gov.au/soe_2013/downloads/SOESA-WEB-SUMMARY-02(27Aug13).pdf)

- Environment Protection Authority (EPA) 2018 *South Australia State of the Environment Report 2018: Summary*, EPA, Adelaide. https://www.epa.sa.gov.au/soe-2018/files/14003_soer2018_print-summary_cover.pdf
- First Nations Clean Energy Network (Australia) 2023 *First Nations Clean Energy Strategy Discussion Paper*, Australian Government and First Nations Clean Energy Network. <https://www.fneces.org.au/>
- Foster, R., Nettlebeck, A. 2012 *Out of the Silence: the history and memory of Australia's Frontier Wars*, Kent Town: Wakefield Press.
- Garage B. 2011 *The Biggest Estate on Earth: How Aborigines Made Australia*, Crow's Nest, NSW: Allen & Unwin.
- Hemming, S., Trevorrow, T. & Rigney, M. 2002 'Ngarrindjeri Culture', in M. Goodwin & S. Bennett (eds) *The Murray Mouth: Exploring the implications of closure or restricted flow*, Department of Water, Land and Biodiversity Conservation, Adelaide, Chapter 1, 13-19.
- Hemming S. & Rigney D. 2008 'Unsettling sustainability: Ngarrindjeri political literacies, strategies of engagement and transformation', *Continuum: Journal of Media and Cultural Studies*, 22(6), 757-775. doi:10.1080/10304310802452438
- Hemming S. & Rigney D. 2016 *Restoring Murray Futures: Incorporating Indigenous Knowledge, Values and Interests into Environmental Water Planning in the Coorong and Lakes Alexandrina and Albert Ramsar Wetland*. Goyder Institute for Water Research Technical Report Series No.16/8. Adelaide, South Australia. <https://goyderinstitute.org/reports/?tag=restoring%20murray%20futures&author=restoring%20murray%20futures>
- Hemming S. & Rigney D. 2019 'Towards Ngarrindjeri Co-management of Yarluwar-Ruwe (Sea Country - lands, waters and all living things)'. In Mosley, L., Ye, Q. Shepherd, S., Hemming, S. & Fitzpatrick, R. (eds) *Natural History of the Coorong, Lower Lakes, and Murray Mouth Region (Yarluwar-Ruwe)*, Adelaide: University of Adelaide Press on behalf of the Royal Society of South Australia, 501-522. doi:[10.20851/natural-history-cllmm-4.5](https://doi.org/10.20851/natural-history-cllmm-4.5)
- Hemming, S., Rigney, D. & Berg, S. 2011 'Ngarrindjeri futures: negotiation, governance and environmental management', in S. Maddison & M. Brigg (eds), *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance*, Sydney: Federation Press, 98-113.
- Hemming, S., Rigney, D. & Berg S. 2019 'Ngarrindjeri Nation Building: Securing a Future as Ngarrindjeri Ruwe/Ruwar (Lands, Waters and All Living Things)'. In W. Nikolakis, S. Cornell, & H. Nelson (eds) *Reclaiming Indigenous Governance: Reflections and Insights from Australia, Canada, New Zealand, and the United States*, Tuscon, USA: The University of Arizona Press, 71-104.
- Hemming, S., Rigney, D., Berg, S. 2022 'Ngarrindjeri Yarluwar-Ruwe (Sea Country, lands, waters and all living things): Negotiating and monitoring respectful spaces for First Nation engagement with settler colonial natural resource management', International Conference for Sustainable Development 2022, Theme: Amplifying all voices for SDG achievement: Indigenous alliances for sustainable development.
- Hemming S., Rigney D., Bignall S., Berg S. & Rigney G. 2019 'Indigenous nation building for environmental futures: Murrundi flows through Ngarrindjeri country'. *Australasian Journal of Environmental Management*, 26(3), 216-235. DOI:10.1080/14486563.2019.1651227
- Hemming S. & Rigney D. 2019 'Ngarrindjeri Vision for the Ecological Character Description of the Coorong and Lower Lakes'. In Mosley, L., Ye, Q. Shepherd, S., Hemming, S. & Fitzpatrick, R. (eds) *Natural History of the Coorong, Lower Lakes, and Murray Mouth Region (Yarluwar-Ruwe)*, Adelaide: University of Adelaide Press on behalf of the Royal Society of South Australia, 495-500. doi:[10.20851/natural-history-cllmm-4.5](https://doi.org/10.20851/natural-history-cllmm-4.5)
- Hemming, S., Rigney, D., Rigney, G., Sutherland, L., Wilson, H., Overdeest, N., Della-Sale, A. & Maxwell, S. 2020 Translating Ngarrindjeri Yannarumi into water resource risk assessments. *Goyder Institute for Water Research Technical Report Series No. 20/09*,

- Adelaide, Goyder Institute for Water Research.
<https://goyderinstitute.org/reports/?tag=Yannarumi&author=Yannarumi>
- Hemming, S., Rigney, D., Muller, S., Rigney, G. & Campbell, I. 2017 'Indigenous nation building. A new direction for water planning?' *Journal of Ecology and Society* 22 (2): 13.
<https://doi.org/10.5751/ES-08982-220213>
- Independent Group of Scientists appointed by Secretary General 2023 *Global Sustainable Development Report 2023: Times of crisis, times of change: Science for Accelerating transformations to sustainable development*, United Nations, New York.
- Indigenous Knowledge Research Infrastructure 2023 *Indigenous Knowledge Research Infrastructure (IKRI) A Tool to support the implementation of UN SDG's and 2030 Agendas*.
<https://ikri.org>
- Joint Statement of Action: Connection to Country for Aboriginal Health and Wellbeing, South Australian Indigenous Statement on Country 2018*, Healthy Parks Healthy People SA, Connection to Country for Aboriginal Health and Wellbeing Working Group, Department for Environment and water (DEW), Adelaide.
<https://cdn.environment.sa.gov.au/environment/docs/joint-statement-of-action.pdf>
- Kungun Ngarrindjeri Yunnan Agreement (KNYA), 2009. Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee for and on behalf of the Ngarrindjeri people and The Crown in Right of the State of South Australia, 5th June 2009. <https://www.environment.sa.gov.au/files/99a78c73-2602-463a-a5c3-9f9e00b2d40b/cllmm-gen-kungunngarrindjeriyunnanagreement.pdf>.
- Landscape Boards of South Australia 2021 Aboriginal and Torres Strait Islander *State of Commitment: Landscape SA Boards, DEW, Adelaide*.
<https://cdn.environment.sa.gov.au/landscape/docs/Statement-of-Commitment.pdf>
- Mattingley, C. & Hampton, K. (eds) 1988 *Survival in Our Own Land: 'Aboriginal' experiences in 'South Australia' since 1836*, Kent Town: Wakefield Press.
- Mosely, L., Ye, Q., Shepherd, S., Hemming, S. & Fitzpatrick, R. (eds) 2019 *Natural History of the Coorong, Lower Lakes, and Murray Mouth Region (Yarluwar-Ruwe)*. Natural History Series, Royal Society of South Australia, Adelaide: Adelaide University Press, 495-500.
- Muller, S., Hemming, S. & Rigney, D. 2019 'Indigenous sovereignties: relational ontologies and environmental management', *Geographical Research*, 1-12. DOI:10.1111/1745-5871.12362
- Ngarrindjeri Nation 2007 *Ngarrindjeri Nation Yarluwar-Ruwe Plan: Caring for Ngarrindjeri Sea Country and Culture*. Prepared by the Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee, Ngarrindjeri Land and Progress Association. Camp Coorong, Meningie, South Australia.
<https://data.environment.sa.gov.au/Content/Publications/CLLMM%20Natural%20Historie%20Chpt%201.pdf>
- NSW Environment Protection Authority (NSW EPA) 2021 *NSW State of the Environment Report 2021*, State of NSW and the NSW EPA, Paramatta, NSW.
https://www.soe.epa.nsw.gov.au/sites/default/files/2022-02/21p3448-nsw-state-of-the-environment-2021_0.pdf
- Nurse-Bray, M., Fergie, D., Arbon, V., Rigney, L-I., Palmer, R., Tibby, J., Harvey, N. & Hackworth, L. 2013 *Community based adaptation to climate change: The Arabana, South Australia*. National Climate Change Adaptation Research Facility, Gold Coast, 133 pgs.
- Nurse-Bray, M., Palmer, R., Stuart, A., Arbon, V., & Rigney, L. I. 2020 Scale, colonisation and adapting to climate change: Insights from the Arabana people, South Australia. *Geoforum*, 114, 138-150.
<https://www.sciencedirect.com/science/article/pii/S0016718520301408?via%3Dihub>
- O'Brien, L. & Watson, I. 2014 'In conversation with Uncle Lewis: Bushfires, weather-makers, collective management', *AlterNative: an international Journal of Indigenous peoples* 10(5): 450-461. <https://doi.org/10.1177/117718011401000502>

- Parliament of South Australia, *South Australian Constitution Act 1934 - 12.5.2023*
- Pascoe B. 2014 *Dark Emu*, Broome, WA: Magabala Books.
- Rigney, D., Bignall, S., Vivian, A. & Hemming, S. 2022 *Indigenous Nation Building and the Political Determinants of Health and Wellbeing*. Discussion Paper, Lowitja Institute Melbourne. DOI: 10.48455/9ace-aw24
- Rigney D., Hemming S. & Berg S. 2008 'Letters Patent, Native Title and the Crown in South Australia', in Hinton, M., Rigney, D. & Johnston, E. (eds) *Indigenous Australians and the Law*, 2nd Edition, London & New York: Routledge-Cavendish, 161-178.
- Samuel, G. 2020 *Independent Review of EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra. <https://epbcactreview.environment.gov.au>
- State of Victoria Department of Environment, Land, Water and Planning (DELWP) 2020 *Victorian Government response to the State of the Environment 2018 Report*, DELWP, Melbourne. https://www.environment.vic.gov.au/data/assets/pdf_file/0017/504008/Victorian-Government-response-to-the-State-of-the-Environment-2018-report.pdf
- Statement for Our People and Country, 'To the Prime Minister and every Member of the House of Representatives and the Senate of the Commonwealth Parliament', October 23, 2023, The Uluru Statement from the Heart. <https://ulurustatement.org/statement-for-our-people-and-country/>
- South Australian Government 2016 *Aboriginal Regional Authorities Policy*, SA Government, Adelaide.
- Stoler, A. L., 2002 'Colonial Archives and the Arts of Governance', *Archival Science* 2: 87-109.
- Tindale, N. B. 1974 *Aboriginal tribes of Australia: their terrain, environmental controls, distribution, limits, and proper names*, Canberra: ANU Press.
- Uluru Statement from the Heart* 2017 <https://ulurustatement.org/the-statement/view-the-statement/>
- United Nations Declaration on the Rights of Indigenous People* (UNDRIP) 2007 G.A Res. 61/295, UN Doc A/RES/47/1.
- Whyte, K. P., Caldwell, C. & Schaefer, M. 2018 "Indigenous lessons about sustainability are not just for 'all humanity'." in Sze, J. (ed) *Sustainability: Approaches to Environmental Justice and Social Power*, New York: New York University Press, 149-179.
- Watson, I. 2015 *Aboriginal Peoples, Colonialism and International Law*, Abingdon: Routledge.
- Woods, J.D. (ed.) 1879 *The Native of Tribes of South Australia*, Adelaide: E.S. Wigg & Sons.
- Yap, M. L-M., Watene, K. 2019 'The Sustainable Development Goals (SDGs) and Indigenous Peoples: Another Missed Opportunity?' *Journal of Human Development and Capabilities* 20(4): 451-467.

Appendix 1: Case study – Ngarrindjeri Yarluwar-Ruwe

Looking back at the past year as the Chair of the Ngarrindjeri Regional Authority, I am pleased to be able to say that the Kungun Ngarrindjeri Yunnan Agreement (KNYA) has been a success. The KNYA has provided opportunities for the Ngarrindjeri people to extend the work that we are doing as a Nation that otherwise would not have been possible. The negotiation of the KNYA between the NRA and the Government [South Australian Government] assisted us to address the terrible effects of the drought on our Ruwe Ruwar [Country], which had caused great stress to the Ngarrindjeri people. We have achieved a number of positive outcomes through the KNYA that have helped to heal our Country and our people.

Another of the positive outcomes has been the opportunity to get to know Government people and to begin the process of creating a respectful relationship between them and the Ngarrindjeri people. My hope is that we can extend the KNYAs and respectful relationships we have begun with the current members of the Taskforce to all areas of Government.⁷

(Tom Trevorrow, *KNYA Taskforce Annual Report*, 2012, p. 6)



Plate 1. Joint DEWNR and NRA revegetation assessment, 2012.⁸

Introduction

We include this brief case study as a recent South Australian example of a successful, long-term partnership between a First Nation and government agencies in a challenging NRM and water management setting (see Hemming et al. 2022).⁹ In this case a negotiated and co-developed First Nation engagement framework was critical to addressing the challenges of the Murray-Darling Basin's Millennium Drought (see Hemming & Rigney 2019; Hemming et al. 2020). The *Murray Futures* partnership between the Ngarrindjeri Regional Authority and the SA Government won the first, First Nation-led, Australian Riverprize. The agreements, protocols, joint working parties and other 'tools' developed during this work have been analysed and discussed in a broad variety of publications and reports (see for example: Hemming, Rigney & Berg 2019). We argue that they represent a valuable body of work that can inform the development of a state-wide First Nations environmental reporting, monitoring, researching and management framework.

For the Ngarrindjeri First Nation in South Australia, Ngarrindjeri means belonging to Yarluwar-Ruwe (Sea Country – lands, waters, people, spirits and all living things) – the Lower Murray River, the Lakes and Coorong region. In 1836 the British established the Colony of South Australia heralding a period of violent invasion, dispossession, oppression, and the ongoing colonisation of Ngarrindjeri Yarluwar-Ruwe. Elders describe living through colonisation as being in a perpetual state of longing for wellbeing – 'parpun miwi' (Hemming et al. 2020, p. 7). In the face of British colonisation Ngarrindjeri have not ceded sovereignty, nor fundamental responsibility to speak lawfully as Country – as Yarluwar-Ruwe (Ngarrindjeri Nation 2017, pp 52-55). Ngarrindjeri maintain deep interconnection with Country under extremely difficult circumstances.

Non-Indigenous, human-induced climate change has brought with it huge flows of resources into remedial NRM, and with these flows, opportunities for strategic Ngarrindjeri transformation and re-direction. For several decades some of these flows of resources and energy have been re-directed by nation leaders to support the work of Ngarrindjeri nation (re)building. Former chair of the Ngarrindjeri Regional Authority (NRA), Tom Trevorrow, emphasised the success of this approach in his statement at the beginning of this case study. He attributed success to the development and negotiation of a new form of relationship agreement – the Kungun Ngarrindjeri Yunnan Agreement (KNYA - Listen to Ngarrindjeri Speaking). These contract law agreements are treaty-like in form, establish nation-to-nation relations and begin a new respectful dialogue between the parties (Hemming, Rigney & Berg 2011). They stand in stark contrast to the problematic subject position of the consulted 'stakeholder', instead assuming an authoritative Ngarrindjeri speaking position on Ngarrindjeri terms.

Ngarrindjeri Yarluwar-Ruwe is part of the living body of Murrundi or what is described by the broader Australian community as the Murray River. The Murray is the longest river in the Murray-Darling Basin (M-DB) - Australia's food bowl. It is often described as the 'life-blood' of the nation. For several decades the M-DB has been in crisis due to non-Indigenous, human induced climate change and unsustainable, extractive management practices. In the early decades of the twenty first century the 'Millennium Drought' witnessed the Murray mouth closing, major restrictions to potable water for regional cities, interruptions to water diversion for irrigation, the exposure of acid sulphate soils, and other ecological catastrophes. This 'environmental crisis', brought with it intense flows of complex non-Indigenous interests, and significant resources intended by non-Indigenous governments to improve ecological conditions (DEH 2010). Ngarrindjeri diplomatic, political, and legal strategies required a complex understanding of the force, characteristics and interconnectedness of these changing conditions. In response, Ngarrindjeri leaders and advisors developed strategies, such as the KNYAs, designed to change the quality, speed and intensity of these flows to support Ngarrindjeri understandings of wellbeing and to secure the resources required for healthy Yarluwar-Ruwe. This case study focusses on the legal, political, diplomatic and policy work required to successfully form a long-term working relationship between an Australian First Nation and a complex and potentially colonising form of 'governmentality' - natural resource management (NRM) (see Burchell, Gordon & Miller 1991; Hemming & Rigney 2008).

At the start of the new millennium South Australia's River Murray region was plunged into a major drought (the Millennium Drought) that severely restricted the flow of fresh water through

Ngarrindjeri Yarluwar-Ruwe. Human-induced climate change and over-allocation of water by industry and non-Indigenous governments, led to massive degradation of Ngarrindjeri County. Under the banner of the *Murray Futures Program*, the state and federal government began major plans for large-scale environmental restoration, engineering works and supporting ecological research. These plans appeared to Ngarrindjeri leaders like a rapid intensification of colonisation, exhibiting no evidence of understandings of Ngarrindjeri interconnections with Yarluwar-Ruwe, recognition of the ongoing injustice of colonisation or an indication that there was a need to negotiate with the Ngarrindjeri nation.

During this period Ngarrindjeri leaders had been working towards the establishment of the NRA as a new peak nation body to lead political negotiations with the settler state. One of the first things this body did, after its inauguration in 2007, was to adopt the *Ngarrindjeri Nation Yarluwar-Ruwe (Sea Country) Plan* as a whole-of-nation foundational document. The *Yarluwar-Ruwe Plan* is a key part of Ngarrindjeri nation (re)building giving voice to Ngarrindjeri authority, prioritising the displacement of racist and archaic representations of Ngarrindjeri, and designed to tame what we describe as the destructive power of the Foucauldian 'colonial archive' (Stoler 2002). The Plan makes plain the 'pain and suffering' caused by ongoing colonisation:

Since European arrival, terrible crimes have been committed against the lands, the waters and all living things, and against the Ngarrindjeri People. Ngarrindjeri are living with the pain and suffering from the acts of terror and violence that were inflicted upon our Old People. This pain has been passed down to us through the generations. Our lands and waters were stolen, our children were stolen and our Old People's bodies were stolen from our burial grounds.

(Ngarrindjeri Nation 2007, p. 14)

The Yarluwar-Ruwe Plan also includes an explanation of key elements of Ngarrindjeri ways of being, a Ngarrindjeri account of the impacts of colonisation, and centres the KNYA strategy as the appropriate mechanism for non-Indigenous engagement with the Ngarrindjeri nation. The South Australian Minister of Environment, Jay Wetherill, formally launched the Plan in March 2007 – an important publicly respectful step made by the South Australian Labor Government. Despite the South Australian government's formal acknowledgement of the Yarluwar-Ruwe Plan, difficult and lengthy negotiations began between Ngarrindjeri leaders and the South Australian government in relation to the proposed Murray Futures Program. Eventually mid-way through 2009 a whole-of-government KNYA was negotiated beginning the radical re-shaping of the colonising relationship Ngarrindjeri had with the settler state. This agreement framed the introduction of a radically different form of Indigenous engagement in NRM, one that transformed the Murray Futures Program towards a co-managed, environmental strategy for Ngarrindjeri Country. By 2015, the Ngarrindjeri Nation, in partnership with the South Australian government, had won the Australian Riverprize for best practice in river management.

Changing unhealthy flows: new spaces of diplomacy, negotiation and creativity

To provide force to Ngarrindjeri nation (re)building, Ngarrindjeri require flows of fresh water to come with justice, respect, recognition and resources. Positive force can be understood as a 'just' realignment of relations supporting the flow or movement of resources, energy, and human effort into activities that nourish Ngarrindjeri nation goals. A Ngarrindjeri-led program of research has been integral to securing these changed flows, developing and refining methods for identifying 'risks' to Ngarrindjeri wellbeing that combine theoretically informed political literacy and long-standing Ngarrindjeri decision-making processes – this decision-making methodology is called Ngarrindjeri Yannarumi (Ngarrindjeri speaking lawful as Country) (Hemming et al. 2020, pp. 9-11). Through Ngarrindjeri nation (re)building, KNYAs, and Yannarumi assessments, unhealthy and unjust 'intra-actions' can be monitored, challenged and transformed (see Barad 2007).¹⁰ This form of politically literate Indigenous nation building was significantly refined during the NRA's, KNYA-framed engagement in the South Australian broader *Murray Futures Program* (2009-2017). For example, the Yannarumi methodology was tested and further developed in settings such as small-scale wetland planning, Ramsar wetland planning, water planning risk assessment, educational policy and business development (see

Hemming et al. 2017). This work required complex translation and connection methodologies specific to often very different contexts.

Ngarrindjeri leaders' decisions addressing non-Indigenous invasion have always identified risks to Ngarrindjeri Yarluwar-Ruwe based on Ngarrindjeri lawful ways of being. These decisions have sought to minimise risks to core aspects of Ngarrindjeri ways of being, and create ways to resist potential damage, or transform incursions into positive opportunities. Ngarrindjeri authority, however, has been severely impaired by British invasion from the earliest times through to the first KNYAs.¹¹ More recently, Ngarrindjeri nation (re)building has been invigorated by an evolving Yannerumi methodology, sharpened by growing Ngarrindjeri political literacy. This theoretically informed, political and legal policy work supports Ngarrindjeri leadership in complex contact zone 'intra-actions' requiring translation, negotiation, and articulation. The aim is to resist, understand and transform risks to Ngarrindjeri wellbeing emerging from sectors such as mainstream NRM. This enables Ngarrindjeri to generate new relationships with the settler state, monitor them in a range of settings, and articulate the principles of these relationship into projects, everyday practices, policies and new ways of living together with Ngarrindjeri Yarluwar-Ruwe.

From a Ngarrindjeri nation (re)building perspective the consequences of an active and a healthier Ngarrindjeri nation also creates beneficial flows towards the agencies of the South Australian Government. The mixing of these flows, channelled through respectful relations (such as KNYAs or as treaties) has the potential to create healthier outcomes and restore 'interconnected benefit' for Ngarrindjeri Yarluwar-Ruwe (the lands, waters, all people and all living things). Ngarrindjeri attempted to embed this relational thinking into a new Ecological Character Description (ECD) associated with the management of major Ramsar listed wetlands on Ngarrindjeri Country (Hemming et al. 2019). A Ngarrindjeri-led team conducted a Yannerumi wellbeing assessment centred around healthy flows and relationships reproducing beneficial consequences. The Ngarrindjeri assessment included the identification of Ngarrindjeri qualities of such as ngroi (pleased, disposed towards wellbeing) and katjeri (beautiful, healthy, lawful, reproductive). This Ngarrindjeri policy and planning work with the South Australian government on projects such as re-writing a Ramsar site management plan required the production of new, potentially health-giving spaces of engagement produced by the foundational KNYAs.

Through targeted Ngarrindjeri-led research projects, focussed on understanding the complexities of settler state NRM, Ngarrindjeri identified KNYAs, along with associated agreements and protocols, as a suite of negotiated risk management tools that establish the basis for what counts as respectful relations between Ngarrindjeri and the settler state. This research produced a new relational language of translation and the development of specific connection methodologies in contexts such as water planning risk management. When discussing KNYAs in NRM contexts they can also be understood as a form of regulator or weir. At the height of the Millennium Drought, for example, Ngarrindjeri negotiated the final form of environmental engineering proposals through a KNYA with the South Australian Government. This KNYA included an agreement to disagree in a respectful manner, and through a compromise, the construction of a set of regulators that temporarily blocked River flows into the Lower Lakes, Coorong and Murray Mouth Region (Hemming, Rigney & Berg 2011, p. 1). If colonisation for Ngarrindjeri Yarluwar-Ruwe is conceptualised as a flow of energy and resources towards ever-increasing non-Indigenous naming, control, management and exploitation, then KNYAs are an attempt to redirect these flows, halting colonising ways of 'speaking into being', providing time/space to think, negotiate and create differently. In this way the concept of estoppel in British law takes form in KNYAs in the service of diplomacy, peace-making and the disconnection of continuities in settler speaking and acting that have produced a 'white' South Australian space.

A framework for Ngarrindjeri engagement in Caring as Country (Yarluwar-Ruwe)

This is a summary of the risk management strategies that the NRA developed with the South Australian Government in the context of NRM, water management and cultural heritage management on Ngarrindjeri Yarluwar-Ruwe (the Lower River Murray, Lakes and Coorong

area). The summary also includes key elements of the NRA's nation (re)building strategy for 'Caring as Country' – a strategy that has at its core the importance a relational approach that does not separate environmental water management from NRM, Cultural Heritage Management (CHM) and Ngarrindjeri wellbeing (see Hemming & Rigney 2019):

- A sovereign First Nation approach to engagement. Ngarrindjeri nation have not ceded sovereignty and continue to hold the South Australian government accountable to the original promises contained in the *South Australian Letters Patent 1836*
- Kungun Ngarrindjeri Yunnan Agreements and a Speaking as Country Deed to re-set the relationship between the Ngarrindjeri nation and external parties, and identify agreed 'truths'. They are a form of 'estoppel' agreement - contract law agreements that establish the principles for engagement frameworks.¹²
- Ngarrindjeri Regional Authority (NRA) is the peak body of the Ngarrindjeri nation. Coordinates interactions with non-indigenous governments and agencies. The NRA develops strategic goals for Ngarrindjeri nation wellbeing.
- Leaders-to-Leaders relationship with State Government, Local Councils and NRM Boards. Regular meeting to address key issues of interest and concern.
- The development of the NRA Yarluwar-Ruwe Program – Caring as Country, building Ngarrindjeri capacity and provides expert advice.
- Development of a unique Cultural knowledge protection regime – including clauses in contract law agreements, project agreements and other contexts.
- Ngarrindjeri Ruwe/Ruwar philosophy of all things connected - integrated into Natural and Cultural 'Resource' Management and community development.
- Using formal Statement of Commitments (SOCs) to create frameworks for engagement that operationalise the KNYA strategy. Joint working parties created to enact SOCs.
- Co-management – working with all interested parties in the development of a KNYA approach to respectful co-management of Ngarrindjeri lands and waters and all living things.
- The KNYA Taskforce – the Establishment of a regional taskforce to bring parties together to ensure that the commitments of the KNYAs are brought into regional NRM, water management and sustainable development.
- Policy and Management Planning Renewal – re-writing policies and management plans to reflect the commitments made in the KNYA 2009 and an integrated approach based on Ngarrindjeri Ruwe/Ruwar.
- Ngarrindjeri Yannarumi (Speaking as Country) risk assessment framework – using Ngarrindjeri values to assess the reproduction of wellbeing in projects, plans, policies, engagements and activities (see Diagram 2).
- Indigenous research – Ngarrindjeri to develop and conduct research and to be partners in research related to Ngarrindjeri Ruwe/Ruwar.
- Native title claims development and negotiation and treaty negotiations.

Bow tie diagram for assessment of risk to Ngarrindjeri objectives and outcomes related to water resource management

Diagram summarises an assessment of risks to Ngarrindjeri goals and objectives related to water resource management. The assessment was undertaken by Ngarrindjeri and DEW in late 2019 as part of the Translating Ngarrindjeri Yannerumi into water resource risk assessment project, a Goyder Institute for Water Research project conducted by the Ngarrindjeri Aboriginal Corporation, University of Technology Sydney and the Department for Environment and Water. The diagram integrates Ngarrindjeri Cultural Knowledge, applied a Yannerumi assessment methodology and remains the property of the Ngarrindjeri Nation. The diagram is being shared to communicate and demonstrate the inclusion of a new category of risk in the DEW Risk Management Framework: Risks to First Nations peoples. Other First Nations may view risks to Country in different ways.¹

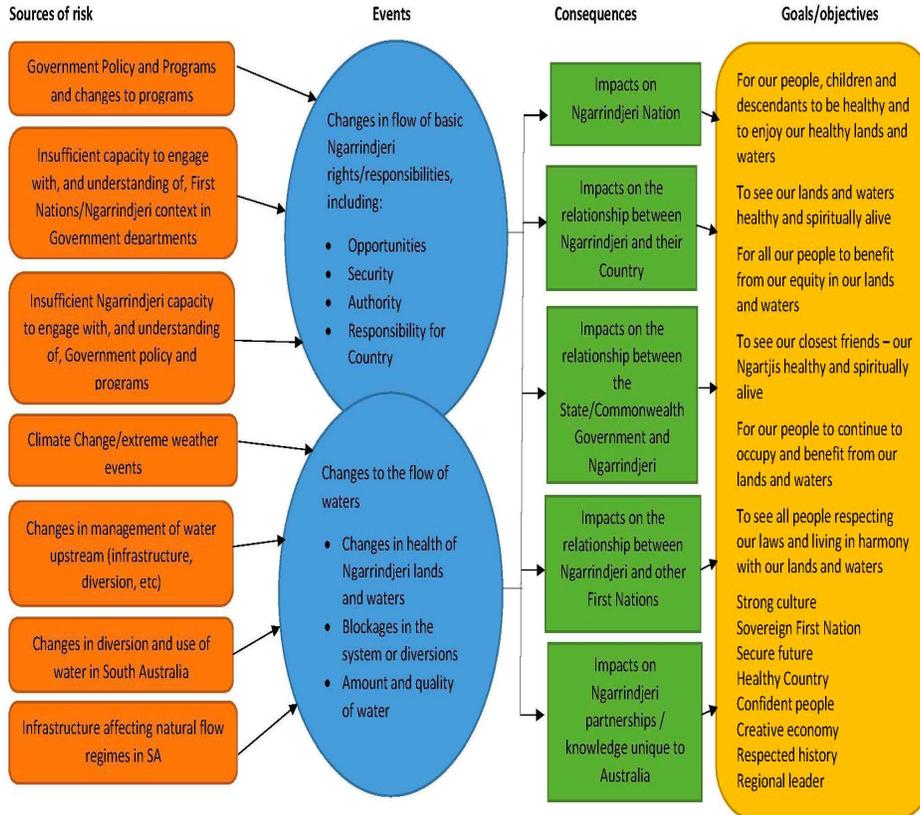


Diagram 2. Bow tie diagram for assessment of risk to Ngarrindjeri objectives and outcomes related to water resource management (Hemming et al. 2021)

¹ The authors of this report live and work on Kurna Country. We pay respects to the Kurna Nation and Kurna Elders, leaders, and ancestors.

² This expert report contains the views, analysis and suggestion of the authors. It should not be viewed as a representation of the collective views of First Nations peoples or any specific First Nation. The report includes an appendix based on paper that focusses on a Ngarrindjeri nation case study of First Nation engagement in environmental management. The report includes the names of First Nations people who have passed.

³ A group of First Nations leaders, community members and organisations who supported Yes have published an open letter to the Australian Prime Minister, all MPs and Senators. This letter is a response to the No vote in the Australian 2023 Referendum on a First Nations Voice to Parliament.

⁴ The words of Ngarrindjeri elder Tom Trevorror (deceased) have been included in many environmental reports and policy documents. His words from 2002 are well known across the Murray-Darling Basin (see below) and he is quoted in the *Murray-Darling Basin Plan 2014*.

⁵ The broad literature reviews that we refer to here have been conducted for a range of research projects supported by the bodies such as the Australian Research Council, AIATSIS and the Goyder Institute for Water Research. This work has also been conducted for the Ngarrindjeri nation.

⁶ The Australian Government is an IUCN member and so too are specific government agencies such as the South Australian Department of Environment and Water (DEW). DEW has been a member since 1985.

⁷ Ngarrindjeri Regional Authority (NRA), Chair, Tom Trevorror (deceased) highlighted the success of Ngarrindjeri Kungun Ngarrindjeri Yunnan Agreements (KNYA) in the inaugural KNYA Taskforce Annual Report (DEWNR, Adelaide, 2012, p.6).

⁸ This image was published in a DEWNR Ngarrindjeri Partnerships factsheet. This can be accessed from the South Australian Government's online portal – Enviro Data SA, CLLMM_432_Ngarrindjeri Partnerships Project factsheet_213.pdf

⁹ This case study is based on a paper delivered at the International Conference for Sustainable Development 2022 (Shaun Berg was a co-author). We acknowledge the support and leadership of the Ngarrindjeri Regional Authority – the peak body of the Ngarrindjeri Nation. This research was supported by funds from the Australian Research Council (ARC), the Goyder Institute for Water Research and the Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS): ARC: DP1094869, DP190102060, DP2001102850, LE170100017, LP130100131, LP1040100376; Goyder Institute: E.1.7, E.1.17, & HE-17-03; and (AIATSIS) IRE_0R0004; We also thank all our colleagues for their support including: Larissa Behrendt, Simone Bignall, Stephen Cornell, Cressida Fforde, Robert Hattam, Sam Muller, Miriam Jorgensen, Grant Rigney, Amy Della-Sale, Laurie Rankine Jnr., Darrell Sumner, Lachlan Sutherland, Ellen Trevorrow, Luke Trevorrow, and Alison Vivian.

¹⁰ We borrow the term 'intra-action' from Karen Barad's concept of 'agential realism' (see Barad 2007). Barad thinking about the relationship between 'things' is comparable to Ngarrindjeri concepts of relationality.

¹¹ It was not until the 1967 Australian Referendum that Australians voted to change the Australia Constitution to finally include Aboriginal and Torres Strait Islander peoples in census counts and for the Commonwealth Government to have the power to make relevant laws. It was still illegal in many Australian States for Indigenous and non-Indigenous people to even associate with each other.

¹² The term 'estoppel' refers to a legal principle that prevents someone from arguing something or asserting a right that contradicts what they previously stated.