

# Understanding barriers to caring for Country

Literature review and policy analysis

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We acknowledge the traditional custodians across all the lands on which we live and work, and we pay our respects to Elders both past, present and emerging. We recognise that these lands and waters have always been places of teaching, research and learning.

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# Acknowledgements

## Country

Natural Hazards Research Australia and the researchers acknowledge the Country and the ongoing connection of the Traditional Custodians who, through Law, kinship and ceremonial practices care for the lands, seas and skies where we work and live. We pay our respects and gratitude to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

## Contributors

We would also like to acknowledge our gratitude for the contributors to this report who have dedicated themselves to truth telling and supporting Aboriginal-led research in a cultural respectful and effective way to understand the barriers to, and ways forward for Aboriginal caring for Country in NSW:

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## Executive summary

Caring for Country is core to Aboriginal culture, identity, Law and knowledge systems. Across New South Wales (NSW), Aboriginal people continue to care for land, water and sky through ceremony, language, fire, food, kinship and governance. However, the current systems shaping land and environmental management in NSW often create barriers to this vital work. This report was created by Aboriginal researchers and NSW communities in partnership with the NSW Department of Climate Change, Energy, the Environment and Water. Its purpose is to understand what stops or hinders Aboriginal people from practicing culture and Caring for Country, and what needs to change to support cultural revitalisation, healing and self-determination.

The report draws on three main sources of knowledge:

- The literature, what research, policies and Aboriginal-led reports say about systemic barriers
- The Yarns, lived experiences shared by Aboriginal people across NSW in culturally safe spaces
- The case study provides a deeper look into the barriers to cultural burning in NSW.

The research uses Aboriginal-led approaches, including yarning and relational intersectionality, grounded in Aboriginal Law, kinship and Country. It also shifts language away from technical terms like 'Aboriginal Land and Sea Management' to the more culturally accurate 'Caring for Country'. This report is for Aboriginal communities, government agencies, land and sea managers, and policy makers. It's designed to support Aboriginal-led decision-making and help embed Aboriginal governance, culture and rights at the centre of land and water management.

The key barriers identified include:

- clashing worldviews between Aboriginal and Western systems
- racism, unconscious bias and institutional silencing
- legal and policy complexity
- commodification and tokenism
- lack of recognition of Aboriginal governance, Law and women's authority.

But Aboriginal people continue to practice culture every day, often with little support. They hold the solutions in their knowledge systems, cultural governance and deep responsibilities to Country.

The report recommends culturally grounded, rights-based actions that include:

- embedding Aboriginal governance at all levels
- long-term flexible funding for Aboriginal organisations
- policy reform to recognise obligations, not just rights
- cultural safety training and accountability in institutions
- true partnerships and co-design.

These actions align with the United Nations *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, 2007), the *National Agreement on Closing the Gap* (Australian Government, 2020a) and the *NSW Plan for Nature* (NSW Government, 2024), but more importantly, they reflect what Aboriginal people have already said is needed.

# Part 1: Introduction and research foundations

## Introduction

Every day around New South Wales (NSW), Aboriginal people practice Aboriginal Land and Sea Management in a range of cultural ways. Interest is growing in implementing Aboriginal Land and Sea Management at a landscape scale.

There is significant support from the NSW public and government for Aboriginal people to (re)vitalise and implement customary practices related to caring for Country to address the many environmental issues we face today, such as fire, species loss and invasive pests. In this (re)vitalisation effort, Aboriginal people have been experiencing a range of barriers, frustrating efforts and slowing the realisation of Aboriginal people's aspirations and the benefits of maintaining Aboriginal culture through Caring for Country. The *NSW Plan for Nature* (NSW Government, 2024) a response to the review of the *NSW Biodiversity Conservation Act 2016* (Henry et al., 2023), has identified a need for greater support for Aboriginal people's aspirations in Caring for Country. This research offers insight into and opportunity to understand Aboriginal people's lived experience of these barriers to implementing Caring for Country as a landscape-wide approach in NSW.

This project seeks to understand how Aboriginal practitioners' think about Land and Sea Management, their aspirations and the barriers they face in realising them. The project aims to support the operationalisation of Aboriginal Land and Sea Management by sharing accessible and relevant information back to communities, land and sea managers and policy makers to empower them to facilitate greater opportunities for land and sea managers. Aboriginal Land and Sea Management is a complex relational process between humans and the environment across spatial and temporal planes. The ongoing impacts of colonisation have created barriers to Aboriginal people's ability to carry out the cultural practices, rituals and ceremonies required through Law to ensure Country is healthy.

The project seeks to understand the aspirations and barriers to achieving them through:

- undertaking a comprehensive literature review
- yarning with Aboriginal Land and Sea Management practitioners
- producing a range of communication materials such as fact sheets, videos and reports to communicate the Aboriginal Land and Sea Management project findings.

This project was funded by Natural Hazards Research Australia (NHRA) and researched by the Cultural Science Team within the NSW Department of Climate Change, Environment, Energy and Water working alongside NSW Aboriginal communities.

## Research approach

Caring for Country in NSW faces complex and multifaceted barriers. In this study, we scope the extent of these barriers from an Aboriginal perspective. Using a relational intersectionality framework, we identified key areas for investigation and employed a yarning methodology to explore the lived experiences of Aboriginal people engaged in Caring for Country. 'Intersectionality' is a way of thinking about identity and its relationship with power.

Our research employed a mixed-methods approach, combining a literature review, researcher workshops and yarns with Aboriginal people. Initial scoping of the project began with a workshop involving the Aboriginal researchers on the project to identify key areas relevant to Caring for Country in NSW. These areas informed a subsequent literature review which served to map the existing knowledge base and identify critical gaps in

understanding the lived experiences of Aboriginal people engaged in Caring for Country. A summary of the literature review forms part of the project outputs, *Operationalising Aboriginal Land and Sea Management Literature and Policy Review: Plain English Summary* (Hooper and Brown, 2025).

Informed by the literature review and the intersectionality framework, we identified several case studies representing diverse approaches to Caring for Country, including native title, land rights, joint management and private approaches. While these represent a substantial body of research, given this project's time and funding constraints, we focused on several key components that were gaps in the literature. During the seven yarns, which were held in different parts in the state including metropolitan and regional areas, we spoke to people who could fill some of these identified gaps in understanding. The participants' input has been deidentified and incorporated in the report to ensure they were able to speak freely and openly.

This report is about trying to understand the discrepancy between the often good intentions of government policy and legislation, and the lived experience of Aboriginal Caring for Country practitioners. The report provides a synthesis of the yarns with Caring for Country practitioners woven into an analysis of what the literature says about the barriers confronted by Aboriginal practitioners. This report identifies barriers to Caring for Country and proposes recommendations and future research directions to understand these barriers.

## What is Aboriginal Land and Sea Management?

Aboriginal Land and Sea Management is a term used across Australia to describe Aboriginal practices related to natural resource management. During the yarns, the terminology used to describe 'Aboriginal Land and Sea Management' was discussed. The yarns suggest moving away from the technical and managerial connotations of terminology such as 'Aboriginal land and sea management', and instead use 'caring for Country'. It was generally thought that this was essential for recognising the deep cultural and spiritual dimensions not necessarily evident in Aboriginal Land and Sea Management. This shift in terminology reflects a broader movement towards recognising and respecting Aboriginal knowledge systems and empowering Aboriginal people to Care for Country according to Aboriginal values, beliefs, priorities and governance.

The most common observation was that Aboriginal Land and Sea Management is a far too narrow and technical description of what we do, often perceived as simply natural resource management. It was thought that the term doesn't fully encompass the cultural aspects of looking after Country that the Aboriginal contributors' thought were important and what made it cultural and doesn't reflect the relational worldview Aboriginal people hold. It was pointed out in the yarns that Aboriginal cultural practice and Caring for Country often get conflated with natural resource management, and this misses the core aspect of the culture in cultural practice.

True caring for Country involves cultural and spiritual elements, not captured by a purely management-focused approach. The yarns expressed the importance of recognising Aboriginal perspectives because Aboriginal people do not see the same compartmentalisation between people and nature. This failing to recognise Aboriginal perspectives relating to the ongoing, relational, dynamic nature of Aboriginal culture, reduces it to a set of static practices to support Western priorities. The yarns called for greater recognition of culture as part of Aboriginal people's implementation and practise of Caring for Country, and recognition of the connection and inclusion Caring for Country has in the broader life ways of Aboriginal people.

Some terms used lack cultural sensitivity and fail to recognise the deep spiritual and emotional connections that Aboriginal people have to land and sea. One participant argued that Western policymakers shape the term and don't reflect an Aboriginal understanding of culture. The inclusion of the term 'management' can imply a separation between humans and nature, which is inherent in the Western understanding of management, and clashes with the relational worldview of Aboriginal cultures. The comment was made in the yarns that Aboriginal Land and Sea Management infers limited recognition of Aboriginal cultural practices and does not

adequately recognise the role of Aboriginal governance systems in Caring for Country. Australian mainstream governance structures, such as Land Councils, don't always align with Caring for Country perspectives, and this highlights the need for legislative change to support Aboriginal ways of governance.

The term Aboriginal Land and Sea Management focuses on Western science and management practices, it implies prioritising Western scientific knowledge and management approaches over Aboriginal knowledge systems. This was particularly brought into focus during the yarns, which discussed the dominance of Australian scientific understanding in training programs, even when cultural knowledge is included. The mixing of scientific ecological knowledge and Aboriginal knowledge must be done, prioritising cultural first, or otherwise can create a risk of further colonising Aboriginal knowledge and disadvantaging Aboriginal students. Refer to **Appendix A** for a deeper analysis of this issue and other terms.

## Aboriginal women in Caring for Country

The discussion surrounding equality and sovereignty holds significant implications for the rights of Aboriginal women in Australia, illuminating their ongoing struggle for recognition, empowerment and justice within the context of colonialism and systemic inequality. Addressing these issues requires prioritising Aboriginal voices, employing intersectional approaches and fostering collaborative action to enact positive and enduring change (Watson, 2007).

For Aboriginal women in Australia, the discourse on equality and sovereignty carries profound implications for their rights and wellbeing. Despite the presence of legal frameworks and rhetoric promoting equality, the persistent legacy of colonialism continues to marginalise and oppress Aboriginal people, particularly women. Aboriginal women contend with intersecting forms of discrimination stemming from both their Aboriginal identity and gender, perpetuating systemic disparities. This results in limited access to education, health care, employment opportunities, and enduring socioeconomic disadvantages compared to non-Aboriginal Australians (Watson, 2007).

The struggle for the rights of Aboriginal women intersects with broader initiatives aimed at reclaiming Aboriginal sovereignty and autonomy. Advocacy efforts focus on securing recognition for Aboriginal laws and customs, including the laws upheld by grandmothers, within the Australian legal framework. Such recognition is vital for addressing the distinct needs and perspectives of Aboriginal women and their people. Genuine progress in Aboriginal women's rights necessitates concerted decolonisation efforts aimed at challenging entrenched power structures and dismantling colonial narratives, amplifying Aboriginal women's voices, acknowledging historical injustices and actively working to dismantle systems of oppression. Empowering Aboriginal women as leaders, decision makers and guardians of culture is essential for achieving authentic equality and justice.

## Insufficient recognition of women's leadership and lack of representation in leadership roles

Insufficient recognition of women's leadership, expertise and contributions within Caring for Country initiatives perpetuates gender disparities, marginalises Aboriginal women's voices and experiences and restricts opportunities for meaningful involvement, representation and decision-making in planning, execution and assessment processes. The limited presence of women in leadership positions and decision-making roles within organisations, governance structures and land management agencies further marginalises women's voices, experiences and viewpoints, impeding efforts to address gender disparities and advance gender equality in Caring for Country.

Engaging and empowering Aboriginal women in caring for Country initiatives is crucial for the transmission of intergenerational knowledge, preservation of women's knowledge and cultural practices, and sustainability.

However, various barriers, such as detachment from cultural practices and limited avenues for skill development and leadership opportunities, may impede these efforts.

## The vital role of Aboriginal women in Caring for Country

The discourse surrounding equality and sovereignty deeply intersects with the pivotal roles of Aboriginal women in Caring for Country in NSW. Aboriginal women play an indispensable role in Aboriginal cultural practices, deeply rooted in cultural identity and spirituality. These roles encompass:

- nurturing and safeguarding the land and sea
- transmitting Aboriginal women's knowledge and science
- ensuring the enduring sustainability of Country for future generations
- serving as custodians of Aboriginal culture
- preserving and passing down ceremonial traditions, songs, dances and storytelling.

Aboriginal women's active participation in the transmission of cultural knowledge and practices across generations fortifies the resilience and vitality of Aboriginal cultures. Aboriginal women play central roles in orchestrating and leading these communal gatherings, providing avenues for knowledge sharing, identity celebration and reaffirming cultural connections across NSW.

Recognition of Aboriginal women's contributions to Caring for Country is paramount to broader endeavours aimed at reclaiming Aboriginal sovereignty and autonomy. By affirming and endorsing Aboriginal-led approaches to Caring for Country, particularly under the leadership of Aboriginal women, Australia can progress towards authentic reconciliation and decolonisation. Aboriginal women's multifaceted roles in Caring for Country are deeply ingrained in cultural, spiritual and ecological contexts and contribute significantly to fostering resilience, equilibrium and harmony in Aboriginal people and the environment through their nurturing responsibilities, cultural practices, Aboriginal knowledge and science, environmental advocacy and spiritual and cultural guidance. A separate report entitled *Understanding Women's Barriers to Caring for Country* (Brown, 2025) delves into Aboriginal women's perspectives of barriers to Caring for Country as part of this project.

## Part 2: What the literature tells us about barriers to Caring for Country

Before we yarned with Aboriginal practitioners, we looked at what's already been written about the barriers to Caring for Country in NSW. There is ample evidence in the literature, including government reviews, academic research, inquiries and Aboriginal-led reports, that points to big systemic issues. These include racism, bias, limited recognition of Aboriginal governance, the dominance of Western worldviews, policy complexity, and the commodification of culture. Although this part of the report is focused on the literature, it also includes information gathered during the yarns which supports or mirrors the literature.

### Bias and modern racism

To explain the basis of the lived experience of Aboriginal people trying to practice culture and implement Caring for Country, this section draws on existing literature about bias and racism in the Australian public service and connects it to the specific challenges faced by Aboriginal people working to protect and revitalise cultural practices and Caring for Country. It highlights the urgent need for systemic change within government to address these deeply ingrained issues and ensure meaningful partnerships with Aboriginal communities in Caring for Country. A major issue identified was the lack of inclusion and co-design of policy and legislation, with reasons given including that Aboriginal people don't agree, it's 'too hard' and costly to talk to all Aboriginal people, and differences in what constitutes representation in Aboriginal communities.

During the yarns we heard from Aboriginal people who are working at maintaining and (re)vitalising Aboriginal cultural practice and Caring for Country. They expressed the concern that bias and racism play a major role in creating barriers to Aboriginal people Caring for Country and that talking about it during engagements with the government is met with offence, rejection or withdrawal, creating a culturally unsafe space. Whether the bias and racism is intentional or unintentional remains unresolved. The yarns explored many stories and people told about their experiences, pointing out various examples of how bias and racism had affected them in trying to practice culture and implement caring for their Country. These stories showed how bias and racism manifest in both direct and very subtle ways for Aboriginal people in NSW, and it became clear that racism has become misunderstood, confusing modern ideas of racism with past racist understandings.

### Different types of racism and bias

The significant barriers that bias and racism, particularly what is called '**modern racism**', pose to Aboriginal people in NSW who are engaged in Caring for Country practices, range from overt discrimination to more subtle expressions, often with the proponent not knowing or realising the ramifications of their words, thoughts or actions. This contributes to a culturally unsafe environment and hinders open communication, and government responses often dismiss or downplay these concerns. There is confusion around modern racism and a misunderstanding of what constitutes racism today, with many failing to recognise the insidious nature of modern racism, which manifests as subtle biases, implicit negative attitudes and denial of systemic issues. This is often conflated with the idea of Aboriginal people receiving 'special treatment', further fuelling prejudice and creating systemic barriers within government. A lack of cultural competence limited Aboriginal representation in decision-making, ineffective consultation processes and resistance to co-design principles contribute to policies and programs that fail to address Aboriginal needs and priorities for Caring for Country adequately. The 'epistemology of ignorance', or a lack of experience with, knowledge of and understanding of Aboriginal cultures, values and lived experiences within government, perpetuates biases and hinders effective engagement. This ignorance is often masked by a 'colour-blind' ideology that denies the significance of race and reinforces existing inequalities, creating a racialised bureaucracy. The Australian public service operates

within a framework of white dominance, creating systemic disadvantages for Aboriginal people both within the service and in their interactions with it. Modern racism subtly undermines Aboriginal efforts in Caring for Country, including the devaluation of Aboriginal knowledge, tokenistic consultation, and the promotion of ‘universal’ solutions that disregard Aboriginal rights and needs and view Australia as everyone is equal when Aboriginal people have unique rights that get dismissed within this ideology.

Shirodkar in a 2019 research report, found that **implicit bias** against Aboriginal people is widespread in Australia (Shirodkar, 2019), identifying that

*‘Reported experiences of discrimination among Indigenous Australians may reflect an implicit bias inherent in Australian society. Such a bias may predispose vast swathes of the population towards considering Indigenous Australians through a negative lens, perhaps unconsciously’* (Shirodkar, 2019, p. 3).

The study revealed that around 75% of Australians harbour an implicit bias against Aboriginal people, this was comparable to US bias against African Americans. The report highlights that bias is present across demographics, including gender, age, ethnicity, education level, occupation, religion and political leaning; and there were regional differences in bias levels, with higher bias scores tending to be recorded in regional areas of Australia (Shirodkar, 2019).

**Implicit bias** is automatic, unconscious associations and evaluations we make about Aboriginal people, which can influence our actions and judgements even when we’re **unaware of them**. This highlights the pervasiveness and insidious nature of implicit bias against Aboriginal people (Shirodkar, 2019). Implicit bias refers to often hidden attitudes that people might have, Shirodkar explaining it as ‘actions or judgements that are under the control of automatically activated evaluation, without the performer’s awareness of that causation’ (Shirodkar, 2019). This emphasises the automatic and unconscious nature of these biases, which influence people’s judgements and actions. These potential impacts are not necessarily due to malicious intent or conscious discrimination, but rather stem from the unconscious associations that a large percentage of Australians hold. This makes addressing these issues both challenging and crucial, as it requires not only changing individual behaviour and people’s internal thinking and beliefs, but also addressing broader societal perceptions and structures (Shirodkar, 2019).

This prevalent bias towards Aboriginal people in NSW is conceived as part of **modern racism** which is characterised by subtle and indirect forms of prejudice, such as denial of discrimination and belief in ‘special treatment’ for Aboriginal people (Falls and Anderson, 2022). Due to its subtlety it can be challenging to identify and address, making it more insidious than overt racism and discrimination. Personal beliefs, particularly false beliefs about Aboriginal people, are strong predictors of prejudice, fuelling negative attitudes and potentially leading to discriminatory behaviour. However, it is important to note that attitudes don’t always translate into discriminatory behaviour, and understanding the prevalence and nature of negative attitudes is a crucial first step in addressing the root causes of bias and racism as discrimination (Falls and Anderson, 2022).

Modern racism manifests in subtle acts of discrimination, prejudice and microaggressions, shaping the lived experiences of Aboriginal engagement with government (Larkin, 2014). Modern racism is often overlooked or dismissed, as it doesn’t fit the understanding of racism as overt acts of hostility and finds its foundations in the concept of ‘social distance’, which is the lack of meaningful interaction between Aboriginal people and white Australians. This is a key factor contributing to this epistemology of ignorance and the perpetuation of everyday racism (Larkin, 2014).

### Bias and racism within government

Subtle biases and racism within government interactions with Aboriginal peoples often go unnoticed, obscured by a lack of clarity around what constitutes such biases and prejudices leading to misunderstanding and/or dismissal of Aboriginal concerns. Examples cited by Aboriginal people included:

- government mismanagement of community disputes
- ignoring the role of policy (e.g. native title vs. land rights) in creating these disputes
- avoidance of meaningful engagement and co-design
- failure to recognise Aboriginal rights and roles
- inconsistent application of legislation and policy between regions
- neglecting to consider Aboriginal perspectives and not seeking co-design based frameworks during policy development and implementation
- exclusion of Aboriginal aspirations and views from policy processes
- the expectation of unpaid Aboriginal labour
- disregard for the ongoing impacts of colonisation and the implications and trauma this causes in Aboriginal communities
- overlooking internal bias and systemic racism within government
- limiting Aboriginal engagement to issues deemed 'relevant' to them
- relying on inaccurate or outdated understandings of Aboriginal culture that effectively criminalise cultural practices
- generally failing to create space for Aboriginal voices and participation in government.

While the NSW Government is working to address these issues, biases and racism continue to permeate interactions, hindering Aboriginal people's ability to practice their culture and fulfil their responsibilities to Country.

The Closing the Gap Agreement commits all levels of government in Australia to systemic and structural transformation 'to ensure government mainstream institutions and agencies are free of institutionalised racism and promote cultural safety' (Australian Government, 2020). The agreement acknowledges that improvements are needed 'despite too many experiencing entrenched disadvantage, political exclusion, intergenerational trauma and ongoing institutional racism' (Australian Government, 2020, p. 2), acknowledging that bias and racism are recognised by federal and state governments as a significant factor in the disadvantage experienced by Aboriginal and Torres Strait Islander people.

The *National Agreement on Closing the Gap* (Australian Government, 2020a, p. 11, section 59(a)) highlights the need to:

*Identify and eliminate racism, Identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. Undertake system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism. The feedback from the engagements included that more Aboriginal and Torres Strait Islander people should be employed in mainstream institutions and agencies, including through more identified positions, more Aboriginal and Torres Strait Islander people in senior positions, and appointments to boards.*

### Issue of special treatment

Government support for Aboriginal cultural practices, including Caring for Country, is often seen as 'special treatment', which fuels bias and racism (Falls and Anderson, 2022). This support is not about preferential treatment but is essential to recognise rights and rectify historical injustices inflicted upon Aboriginal people through colonisation, detribalisation, dispossession, forced removals, and the suppression of Caring for Country approaches, and is supported by the United Nations *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, 2007). It acknowledges Aboriginal people's inherent rights in NSW, not simply individual preferences.

As a signatory to the UN Declaration and existing partial recognition of Aboriginal rights in common law and legislation, Australia must support Aboriginal self-determination and cultural preservation (Australian Government, 2024) and protect Aboriginal rights. These rights, based on Aboriginal people's status as First Nations people, are distinct and different from the rights of non-Indigenous Australians and even though there is an absence of precise legal definitions or recognition in Australian law of all potential rights, this does not diminish the validity of these rights. Ongoing legal and policy reform is necessary for their full protection and recognition of Aboriginal rights within Australian law. Framing these rights as 'special treatment' perpetuates bias and racism and undermines genuine and effective government support. Systemic change is required to dismantle discriminatory structures and create an equitable environment for Aboriginal people to exercise their rights and responsibilities to Country.

The big problem Aboriginal people face with embedded bias and racism is that it requires self-reflection and identification of personal biases and attitudes held and how these are brought into the workplace, affecting engagements with Aboriginal people. Aboriginal people see these biases and racist attitudes and do not feel that there is a culturally safe space to raise these issues in engagement with the government constructively. The simple act of asking or tabling issues of bias and racism in meetings would allow misunderstandings or negative experiences of Aboriginal people to be voiced and dealt with.

### **Systemic barriers within government and Aboriginal people's lived experience**

The extensive literature on bias in the Australian Government provides a basis for understanding the issues faced by Aboriginal people practicing culture and trying to implement Caring for Country and describes the challenge represented in the Closing the Gap Agreement objectives (Faulkner and Lahn, 2019; Hagan, 2016; Larkin, 2014; Leon, 2023, 2022; Quigley et al., 2021; Shirodkar and Hunter, 2021). While the literature focuses on bias and racism within the Australian Government, a review of that literature identifies that there is a significant gap in research that addresses Aboriginal people working in government areas related to implementing Caring for Country or externally trying to practice culture and implementing Caring for Country and the interactions with government. However, we can draw some connections by considering how the themes of bias and racism identified in the literature might create barriers for Aboriginal people trying to practice culture and Care for Country.

Research on unconscious bias in the Australian Government (Leon, 2023, 2022) highlighted the structural barriers and a lack of cultural competence and cultural safety within government. This can create barriers that hinder the implementation of policies and programs that support Caring for Country. It emerges in barriers such as limited Aboriginal representation in decision-making, lack of cultural understanding and ineffective consultation processes, underrepresentation of Aboriginal people in the government particularly at senior levels, means fewer Aboriginal voices are involved in shaping policy related to Caring for Country and cultural practices, leading to decisions that don't adequately reflect Aboriginal values, knowledge and priorities for Caring for Country. This, with a lack of cultural understanding and cultural competence, can result in a failure to understand the cultural significance of Caring for Country and its connection to Aboriginal rights, wellbeing and cultural survival, making it difficult to develop effective policies that support these rights and practices. Even when consultation occurs, existing power imbalances and a lack of understanding of Aboriginal perspectives, values, knowledge and priorities from Aboriginal voices can undermine the process, leading to outcomes that don't genuinely reflect community needs and aspirations for Caring for Country (Leon, 2023, 2022).

Unconscious bias can influence the development of programs related to Aboriginal issues resulting in prioritising projects that align with Western priorities over those that are genuinely community-led and culturally relevant. This connects to the frustrations expressed in the yarns about the lack of funding for cultural practices, the inadequacy of existing programs to address Aboriginal issues and priorities, and the

challenges of navigating complex funding processes based in Western frameworks which can form the basis of eroding trust and creating cultural safety issues.

The Closing the Gap Agreement is attempting to address these deficiencies, emphasising the importance of Aboriginal culture in NSW, stressing embedding culturally safe practices within government to acknowledge their history with Aboriginal peoples, facilitate truth-telling, understanding and reflecting local cultures, and acknowledging the impact of historical injustices and the importance of cultural survival of Aboriginal people. The NSW Closing the Gap Agreement highlights transformation elements (Australian Government, 2020a, p. section 59) that need to be addressed, emphasising respecting, understanding and incorporating Aboriginal cultures into mainstream institutions and service delivery, moving beyond mere awareness to genuine engagement, co-design and partnership. Key commitments relate to eliminating institutional racism and bias, embedding cultural safety practices, partnering with Aboriginal organisations and communities, ensuring transparent funding allocations with accountability measures, supporting Aboriginal cultures through truth-telling and reconciliation, and improving engagement with Aboriginal people in policy and program changes, ensuring they have leadership roles and transparency throughout the process (Australian Government, 2020a).

Research carried out by Larkin (Larkin, 2014) on the role of race in the Australian Government argues that race is a significant factor, often overlooked, that shapes outcomes for Aboriginal people. Larkin concludes that race is not felt important in the Australian Government at all levels and calls for a radical shift in how government operates to address the issue of bias and systemic racism and create a more just and equitable space for Aboriginal people. He advocates for greater Aboriginal leadership within the Australian Government, stronger mechanisms for addressing everyday racism, and a move away from 'colour-blindness' towards a more race-conscious approach that acknowledges and values Aboriginal rights, values, priorities, knowledge and experience (Larkin, 2014). Larkin puts forward that Australia is a racial state predicated on white race dominance. This dominance permeates government institutions in Australia, leading to systemic disadvantage for Aboriginal people. He connects this to the concept of 'white race privilege', which reinforces asymmetrical racial relations and maintains an 'epistemology of ignorance' about Indigenous peoples, their cultures, and their needs (Larkin, 2014). Larkin points out that the Australian Government, despite claiming to value diversity, operates within a framework of white dominance, where whiteness is seen as the norm and sets the standards for professional behaviour and capability (Larkin, 2014). This racialised structure leads to unequal power relations, privileging white employees and creating barriers for Aboriginal people both working within and engaging with government.

**Epistemology of ignorance** (Larkin, 2014) is where a lack of knowledge about Aboriginal people, cultures, issues and the Aboriginal lived experience is actively maintained within government and is often masked by a colour-blind ideology, which claims not to see race but, in reality, serves to reinforce existing racial inequalities. White executives within the government often lack meaningful interaction with Aboriginal people and cultures and the lived experience of being Aboriginal, leading to this 'epistemological ignorance,' but then rationalise this ignorance by claiming they treat everyone equally and don't see race (Larkin, 2014). Understanding the basis of these attitudes towards Aboriginal people is important as a kind of 'calling out' of behaviour that may not necessarily be understood or seen as biased or racist.

The literature on modern racism (Falls and Anderson, 2022; Faulkner and Lahn, 2019; Larkin, 2014; Leon, 2022; Quigley et al., 2021) suggests that modern racism, characterised by subtle biases, implicit negative attitudes and a denial of structural factors, poses a significant challenge for Aboriginal people in various contexts and that addressing this form of racism requires going beyond simply focusing on individual prejudice, tackling the deeper systemic issues that maintain it in government. Modern racism is more common than old-fashioned racism and reflects a significant shift in how prejudice manifests (Falls and Anderson, 2022). The review by Falls and Anderson (2022) highlights that there has been a shift in how bias and racist attitudes manifest, describing this shift using the distinction between 'modern racism' and 'old-fashioned racism' (Falls and Anderson, 2022, p. 9). Old-fashioned racism is characterised by:

- **overt expressions of prejudice**, including openly expressing beliefs about the biological inferiority of certain racial groups, endorsing segregation and engaging in blatant discrimination
- **explicitly discriminatory behaviour** such as actions taken against individuals based solely on their race, such as denying employment, housing or other opportunities
- **acceptance of racial stereotypes** by openly believing and perpetuating negative stereotypes about racial groups.

Modern racism, in contrast, is:

- **subtle and indirect**, these prejudiced attitudes are expressed in more subtle ways, often masked by seemingly neutral language or rationalisations
- **often unintentional**, individuals may not be consciously aware of their biases and may genuinely believe they are not prejudiced
- **characterised by ambivalence**, individuals may hold conflicting beliefs about racial equality while simultaneously harbouring negative feelings or anxieties about certain racial groups
- **focused on a denial of discrimination**, where modern racism often involves denying the continued existence of systemic racism and attributing racial inequalities to factors other than discrimination. There is a tendency to oppose policies aimed at addressing racial inequality, often framing them as ‘reverse discrimination’ or ‘special treatment’
- **antagonistic towards ‘political correctness’**, some individuals may express resentment or frustration with efforts to promote racial equality, viewing them as excessive or unnecessary.

This suggests that while overt expressions of racial prejudice are becoming less socially acceptable, negative attitudes towards Aboriginal people persist, but in more subtle and indirect forms. This shift presents challenges for addressing racism as it becomes more difficult to identify and confront biases that are not explicitly stated. It is argued (Pedersen et al., 2000 ; Seet and Paradies, 2018), that using the ‘modern/old-fashioned’ distinction might diminish the actual impact of very real day-to-day racial discrimination in the lived experience of Aboriginal people. This distinction between modern and old-fashioned racism has a basis in the changing social and political context surrounding race relations. As overt racism became less acceptable, individuals may have adopted more subtle ways of expressing their views and prejudices to avoid social disapproval. The emphasis on individualism and meritocracy in Australian society can create a framework where individuals attribute racial inequalities to individual failings rather than systemic discrimination, inadvertently perpetuating modern racist views.

Modern racism, unlike its overt and explicitly discriminatory racism of the past, operates in subtle and often unintentional ways and is characterised by prejudiced attitudes masked by seemingly neutral language and rationalisations, with individuals often unaware of their own biases. This ambivalence leads to conflicting beliefs where support for racial equality coexists with negative feelings or anxieties about Aboriginal people. In a conflicting view in modern racism is the denial of systemic racism and resistance to policies designed to address racial inequality. Such policies are often framed as ‘reverse discrimination’ or ‘special treatment’, suggesting that minorities are receiving unfair advantages (Pedersen et al., 2000). This denial is usually coupled with antagonism towards ‘political correctness’, where efforts to promote racial equality are viewed with resentment and perceived as excessive or unnecessary impositions (Pedersen et al., 2000).

Falls and Anderson (2022) discuss the subtle nature of modern racism, where prejudice is masked by seemingly neutral actions. In land management, this can appear as tokenistic consultation with Indigenous communities. While fulfilling legal requirements to consult, decision-makers might not genuinely consider Aboriginal perspectives or incorporate them into final decisions. Meetings might be held with limited time for meaningful dialogue, or Aboriginal voices might be excluded from key decision-making forums. This mirrors the ‘ambivalence’ described by Pedersen et al. (2000), where superficial support for inclusion coexists with underlying negative feelings or anxieties. This lack of engagement may translate into policy and program implementation that fails to achieve its objective because there is a lack of trust between policymakers and

Aboriginal communities as non-Indigenous policymakers may fail to appreciate that engagement with Aboriginal peoples and communities is different to that of non-Indigenous peoples and communities.

### **Bias and racism and Caring for Country**

Modern racism can subtly infiltrate environmental and land management contexts, often cloaked in seemingly neutral language or arguments about process and procedure. While explicit exclusion of Aboriginal people is less common, the underlying biases can still hinder genuine inclusion and perpetuate systemic inequalities (Falls and Anderson, 2022). Modern racism can manifest in Caring for Country as downplaying Aboriginal knowledge and values as non-scientific and the dismissal or devaluation of Aboriginal knowledge and land management practices. For Aboriginal people in NSW practising culture and Caring for Country, modern racism might manifest in several ways, for example, someone might express seemingly neutral concerns about ‘special treatment’ afforded to Aboriginal people through initiatives like designated scholarships or Aboriginal Ranger employment programs while ignoring the historical and ongoing systemic disadvantages faced by Aboriginal communities in accessing education and employment. They might attribute high rates of Aboriginal incarceration to individual failings rather than acknowledging the role of systemic racism within the criminal justice system. Another example would be opposing land rights claims or cultural heritage protections by framing them as impediments to economic development or property rights, thus prioritising economic interests over the cultural rights of Aboriginal people. Modern racism could involve expressing frustration or annoyance with cultural awareness training or Welcome to Country, dismissing them as ‘political correctness gone mad’ or unnecessary burdens on Australian people or ignoring or rejecting the existence of Aboriginal rights. These seemingly innocuous statements and actions reflect deeper biases and perpetuate inequality, highlighting the insidious nature of modern racism. This is further supported by Faulkner and Lahn (2019), who found that Aboriginal employees’ experience of racism in the Australian Government is often expressed through subtle behaviours like dismissing Aboriginal cultural values, tokenism or lip service.

Another experience is the separation of attempted data extraction from Aboriginal knowledge and ignoring the cultural aspects and connections. This has a major impact on Aboriginal people. Aboriginal knowledge is not simply a collection of facts but a complex, relational understanding of the interconnectedness of all things, encompassing values, priorities, beliefs, and is the perspective that shapes Aboriginal people’s relationship with the land, each other and the spiritual realm. Separating informational elements from this underlying worldview is impossible, as knowledge about the natural world, like plant uses, is intrinsically linked to beliefs about responsibility, caring for and spiritual significance of the interconnection of everything. This living system of knowledge, embedded within Aboriginal culture and the practice of Caring for Country, cannot be extracted and applied like scientific data, it’s a way of life, a deep spiritual and cultural obligation based on kinship, reciprocity and the responsibility to maintain balance for future generations. True understanding requires recognising its inherent connection to the people, culture and the relationship with Country.

While outwardly acknowledging the existence of Aboriginal knowledge, individuals might subtly prioritise scientific methods, framing them as more ‘objective’ or ‘reliable’. This can lead to decisions that disregard or minimise Aboriginal input in environmental assessments, conservation planning and resource management. For example, proposals for development projects might acknowledge Aboriginal cultural heritage but prioritise economic considerations, leading to the destruction of sacred sites or disruption of traditional land uses. This reflects the ‘focus on denial of discrimination’ and opposition to policies addressing racial inequality (Pedersen et al. 2000).

Modern racism can lead to the promotion of ‘universal’ environmental solutions that disregard the specific needs and rights of Indigenous peoples. For instance, conservation initiatives that restrict access to traditional lands, even for sustainable practices, can disproportionately impact Indigenous communities who rely on those lands for their livelihoods and cultural survival. This reflects the ‘antagonism towards political correctness’ discussed by Pedersen et al. (2000), where efforts to accommodate cultural differences are seen as excessive

or unnecessary deviations from established norms. An example is where cultural protocols observed by Indigenous peoples and communities require considerations of cultural practices like restricted access to gender-specific places or participation in ceremonial activities etc.

By understanding these subtle manifestations of modern racism, we can better identify and address the systemic biases that hinder genuine inclusion and impede progress towards equitable and sustainable environmental and land management practices. It is important to note that these are just a few examples, and the expression of modern racism can vary depending on the specific context and actors involved. Furthermore, modern racism within environmental contexts is not always enacted by individuals, but may also be built into the structures, policies and practices of environmental organisations and agencies.

## Caring for Country legislation and policy landscape in NSW

A review of NSW legislation and policy highlights various provisions and initiatives aimed at increasing involvement of Aboriginal peoples in land management and biodiversity conservation in NSW. Many NSW Government policies and programs recognise and support Caring for Country, recognising the need for greater Aboriginal involvement in land and natural resource management. There is increasing recognition and support for Caring for Country in government actions, such as the *NSW Plan for Nature*, support for Aboriginal Ranger programs, joint management of national parks, and developing a Treaty framework (NSW NPWS, 2022; NSW Government, 2024; NSW LLS, 2023; Minister for Aboriginal Affairs and Treaty, 2024).

Aboriginal Land Councils have a significant potential role in successfully implementing Caring for Country across NSW, holding approximately 2.7% of the state, with around 15% of NSW subject to unresolved land claims. The NSW Government has introduced Aboriginal land agreements which seek to address the unresolved land rights claims through negotiated outcomes (NSW Crown Lands, n.d.). These are voluntary agreements between the NSW Government and Aboriginal Land Councils to address land return, exchange, management or use. These agreements aim to deliver positive social, economic, cultural and environmental outcomes for Aboriginal communities by providing a flexible mechanism for resolving long-standing land claims and returning land to Aboriginal ownership (NSW Auditor-General, 2022). While Aboriginal Land Councils currently hold 2.7% of state land, addressing land claims ('Aboriginal Land Agreements', n.d.) will significantly increase Aboriginal-owned land in the state. The NSW Government expansion of the joint management program (NSW NPWS, 2022) will also increase the level of Aboriginal involvement in land management in NSW. This increase in control of land should also be recognised as requiring an increase in Aboriginal people's involvement in setting land and natural resource policy and legislation in NSW.

To support growing engagement in land controlled by Aboriginal communities and increased aspirations in Caring for Country, the NSW Government launched an Aboriginal Ranger Program in 2022 to develop skills and increase the inclusion of Caring for Country practices in on-ground projects and programs across NSW (NSW LLS, 2023). The Aboriginal Ranger Program (NSW LLS, 2023) is intended to provide culturally safe training and on-the-job experience, aligning with the Local Land Services' Aboriginal Engagement Strategy to acknowledge and embed Aboriginal cultural knowledge, fostering economic independence through increased employment and enterprise development, nurturing meaningful relationships with Aboriginal people and Country, offering culturally appropriate mentoring and coaching support for skill development, and championing opportunities for Aboriginal people to contribute to contemporary land management practices while fostering connections to culture and identity (NSW LLS, 2023).

These examples of practical policies and programs are also supported in the cross-jurisdictional arenas such as the *National Bushfire Management Policy Statement for Forests and Rangelands* (Forest Fire Management Group, 2014); federal and state inquiries into the Black Summer fires of 2019–20 (Australian Government, 2020b; NSW Government, 2020); and numerous NSW Government policies. For example, one of the national

goals in the *National Bushfire Management Policy Statement for Forests and Rangelands* (Forest Fire Management Group, 2014, p. 12) is to Promote Indigenous Australians' use of fire, in particular:

*Where relevant to Aboriginal people, and appropriate, further integrate traditional burning practices and fire regimes with current practices and technologies to enhance bushfire mitigation and management in Australian landscapes.*

This part of the report outlines a number of government discussion papers, policies and legislation that relate to Caring for Country:

- NSW Government's 2008 discussion paper on Aboriginal land management
- Review of the NSW *Biodiversity Conservation Act 2016*
- *NSW Plan for Nature*, the NSW Government's response to the review of the NSW *Biodiversity Conservation Act 2016*
- NSW National Parks and Wildlife Service's joint management review
- National Agreement on Closing the Gap
- Aboriginal rights in legislation and policy
- NSW Legislative Council's inquiry into commencement of the Fisheries Management Amendment Act.

## NSW Government's 2008 discussion paper on Aboriginal land management

In 2008 a discussion paper, *Towards an Aboriginal Land Management Framework for NSW*, was released by the NSW Government. The document represented a significant step towards recognising and integrating Aboriginal perspectives and practices in land management across the state. It laid the groundwork for a collaborative framework aimed at enhancing social justice, economic empowerment and cultural preservation for Aboriginal people, and invited dialogue and feedback on key issues surrounding Aboriginal engagement with Country.

The 2008 discussion paper served as a valuable foundation for developing a truly collaborative and culturally sensitive approach to land management in NSW. By seeking Aboriginal voices and recognising Aboriginal people's deep connection to Country, the framework proposed in this document **had the potential to** create a more just and sustainable future for Aboriginal people. The primary objective of the discussion paper was to initiate a conversation with Aboriginal people about developing a comprehensive Aboriginal Land Management Framework in NSW. The framework was grounded in the recognition of Aboriginal people's inherent rights, including the right to maintain their culture and self-determination. This aligns with the **then** current NSW Aboriginal Affairs Plan 2003-12, 'Two Ways Together,' acknowledging the deep spiritual, cultural and economic significance of Country.

The proposed framework's scope encompassed access, use and management of publicly owned land by Aboriginal people, along with government support for Aboriginal landowners. The framework was designed to clarify existing policies, identify gaps in current programs, and foster a shared understanding between the government and Aboriginal people. Importantly, it sought to improve the coordination of existing government programs and identify new opportunities for Aboriginal participation in land management.

The discussion paper highlighted the importance of acknowledging the Aboriginal connection to Country and the spiritual connection Aboriginal people have with Country and its integral role in their wellbeing. The paper emphasised the need to improve Aboriginal access to public lands and the complexities of balancing Aboriginal access needs with existing land management objectives on publicly owned lands, recognising the importance of access for cultural practices, knowledge transmission and overall wellbeing. This was seen as empowering Aboriginal communities to actively participate in land management decisions through various mechanisms including co-management of national parks and return of culturally significant lands under the *National Parks and Wildlife Act 1974* and Indigenous land use agreements. This was seen to support developing economic opportunities from sustainable land use, recognising the potential for economic development arising from Aboriginal practices on both public and Aboriginal-owned lands and opportunities in areas such as forestry,

aquaculture and cultural tourism. The paper acknowledged the need for Learning and Working for Country, addressing the need for capacity building, training and skill development within Aboriginal communities to facilitate effective collaboration.

## Review of the NSW Biodiversity Conservation Act 2016

A recent review of the NSW *Biodiversity Conservation Act 2016* (Henry et al., 2023) has underscored the inadequacy of existing legislation in addressing biodiversity protection concerns. It highlighted the current lack of meaningful involvement of Aboriginal people and the inadequate recognition of Aboriginal rights and culture; mirroring the feedback from the yarns.

The review identified that the NSW Biodiversity Conservation Act fails to achieve its goals. The key shortcomings the review identified were that the Act's objectives are undermined by other legislation, its effectiveness in conserving biodiversity is limited, and there's a lack of data to evaluate its success. Key programs are underfunded and not well monitored, and Aboriginal people are not adequately involved. The report argues that this lack of success is contributing to ongoing environmental damage, which hurts everyone, especially Aboriginal people. It emphasised the need for a 'nature positive' approach that prioritises repairing past damage and halting biodiversity loss. This would require a significant shift in policy and increased resources (Henry et al., 2023).

The Review Panel found that the principal operative provisions of the Act, and their delivery, are deficient for a number of key reasons, including (Henry et al., 2023, p. 3):

*The involvement of Aboriginal people in program design and on-ground implementation is not well developed.*

*There is a need to recognise the intrinsic relationship between biodiversity and Aboriginal culture, and embed Aboriginal participation at all levels, advisory, decision-making, implementation and delivery.*

*The Act does not adequately recognise the rights, culture and economic aspirations of Aboriginal people and communities.*

One of the key recommendations was (Henry et al., 2023, p 6):

*Recommendation 3: Tailored engagement with Aboriginal people and organisations should be a priority for government when responding to this review report.*

The review recommended 'tailored engagement' with Aboriginal people and organisations, understanding the contrast between merely integrating traditional ecological knowledge into management practices, as is generally seen as the major way to engage with Aboriginal people, but rather co-designing with Aboriginal people legislation and policy responses that fully recognise and integrate Caring for Country and Aboriginal worldviews in conservation legislation and policy. This is essential to both meet the review recommendations and other agreements such as the United Nations *Declaration on the Rights of Indigenous Peoples*. While both approaches involve the incorporation of Aboriginal knowledge, the disparity lies in the breadth and depth of Aboriginal people's integration within the conservation framework. As potentially one of the largest landholders in NSW, there is a need to bring Aboriginal people to the table, not to consult or as stakeholders, but as full partners in the co-design process. This is identified as a priority in Recommendation 3. The concept of tailored engagement with Aboriginal people and organisations requires consideration of a range of issues.

Developing legislation and policy responses that recognise and integrate Aboriginal worldviews, Aboriginal knowledge and customary practice in conservation legislation and policy involves a more comprehensive approach, a tailored engagement, that requires a deeper understanding of these areas and the implications for conservation and land management. This understanding is pivotal for crafting legislative frameworks and policy

measures that acknowledge the importance of Aboriginal knowledge and respect Aboriginal rights, sovereignty and self-determination. This truly acknowledges the significance of Aboriginal worldviews and customary systems in shaping conservation practices and seeks to ensure that Aboriginal people are active participants in the co-design of legislation and policy and decision-making processes that affect their lands and culture.

*The failure of the Act to achieve its principal purpose is contributing to the continuing deterioration of the environment. This impacts the wellbeing of all citizens of NSW, particularly Aboriginal people and communities, for whom the loss of biodiversity presents as a loss of cultural integrity.* (Henry et al., 2023, p. 3)

The Review Panel identified significant deficiencies in the existing framework, particularly its failure to adequately acknowledge the rights, culture and economic aspirations of Aboriginal people in conservation decisions and policies. Stressing the urgency of restoring nature for the future wellbeing of NSW residents, the Panel advocates for substantial reforms, including full Aboriginal participation in developing legislative objectives, policy design and execution across all levels. They emphasise embedding Aboriginal involvement in all conservation efforts, recognising the intrinsic relationship between biodiversity and Aboriginal culture. Submissions to the review also highlighted the need to better operationalise the Act's objectives and supported integrating Aboriginal people's views. As a response, the review proposes a comprehensive Nature Positive Strategy for NSW, grounded in six interconnected pillars. Notably, one key recommendation is establishing processes within the Act for incorporating Aboriginal people into co-designing and maintaining the Nature Positive Strategy, acknowledging the crucial role of Aboriginal cultural perspectives in shaping conservation efforts (Henry et al., 2023).

*Aboriginal people should be fully involved in the design and implementation of policy and programs designed to conserve and restore biodiversity.* (Henry et al., 2023, p. 4)

The Review Panel underscores the importance of integrating Aboriginal culture and knowledge into a nature positive approach, emphasising the need for substantial improvements in supporting cultural practices, biodiversity recovery and the utilisation of Aboriginal knowledge and values. This entails better acknowledgement of the intrinsic relationship between biodiversity and Aboriginal culture, and advocating for Aboriginal participation at all stages of conservation initiatives. However, challenges such as financial barriers and a lack of recognition of Aboriginal rights in relation to biodiversity and conservation within current legislation persist. To address these issues, the Panel recommends tailored engagement with Aboriginal stakeholders as a government priority, stressing the importance of ongoing collaboration beyond the review's timeframe (Henry et al., 2023).

Biodiversity relates to Aboriginal concepts of land and 'Country' and 'Aboriginal heritage' and highlights the need to move towards an integration of natural and cultural heritage in legislation and policy. This would encapsulate the profound interconnectedness between biodiversity conservation efforts and Aboriginal cultural perspectives on Caring for Country.

## NSW Plan for Nature, the NSW Government's response to the review of the NSW Biodiversity Conservation Act 2016

The *NSW Plan for Nature* (NSW Government, 2024), released as a response to the review of the *NSW Biodiversity Conservation Act 2016* (Henry et al., 2023) prioritises genuine partnership with Aboriginal communities, recognising their deep connection to Country and their role as the first land managers. This involves acknowledging Aboriginal cultural values, respecting intellectual property rights, and seeking free, prior and informed consent in all related initiatives. The plan commits to incorporating Aboriginal traditional ecological knowledge into biodiversity considerations, including species assessments, regional planning and developing natural and cultural capital programs. It also aims to co-design future regulatory changes with Aboriginal stakeholders, ultimately supporting their ongoing connection to and Care for Country.

The government's response recognises the 'intrinsic relationship between biodiversity and Aboriginal culture, and ... the social, economic and environmental benefits that flow from caring for Country' (NSW Government, 2024, p. 3), and the importance of co-designing biodiversity and land management with Aboriginal people. In its response, the government links this policy with reform of the NSW Government's cultural heritage legislation, the Treaty with Aboriginal people, and the objectives of the National Agreement on Closing the Gap. It states that (NSW Government, 2024):

*The reviews of the [Biodiversity Conservation Act] and native vegetation provisions of the [Local Land Services Act] both emphasised the importance of co-designing biodiversity and land management legislation, policies and programs with Aboriginal people.*

The plan outlines its commitment to engaging with Aboriginal people as follows (NSW Government, 2024, p. 6):

*We will undertake tailored engagement with Aboriginal organisations, communities and people to ensure their views, knowledge, values and interests underpin the development and implementation of our actions and initiatives under this response.*

Specific actions mentioned to facilitate this partnership include:

- Building 'genuine partnerships' to benefit both biodiversity and Aboriginal people
- Recognising the 'commitment of time and resources' by Aboriginal groups
- Seeking 'free, prior and informed consent'
- Respecting 'Indigenous Cultural and Intellectual Property rights'
- Exploring ways to address biodiversity constraints and opportunities related to land returned under the *NSW Aboriginal Land Rights Act 1983*
- Including Aboriginal cultural values and traditional ecological knowledge considerations in the scope and application of ecologically sustainable development
- Including Aboriginal cultural values and traditional ecological knowledge
- Prioritising Aboriginal cultural values, connecting to Country, cultural practices and opportunities for Aboriginal economic development
- Front-loading nature and biodiversity considerations in regional planning, including cultural value to Aboriginal people and traditional ecological knowledge, to better inform strategic land-use planning
- Working with Aboriginal organisations and the Threatened Species Scientific Committee to incorporate traditional ecological knowledge in species assessments
- Broadening private land conservation agreements to recognise and protect Aboriginal cultural values and traditional ecological knowledge
- Engaging Aboriginal communities to design natural and cultural capital support products that reflect their needs and aspirations
- Working with Aboriginal communities to implement the statutory review recommendations and additional actions proposed in the plan
- Exploring, in partnership with Aboriginal stakeholders, ways to support Aboriginal people to connect with and Care for Country
- Inviting Aboriginal stakeholders to co-design further regulatory changes related to cultural practices

The plan aims for a collaborative approach, recognising the vital role of Aboriginal communities in achieving nature positive outcomes. It acknowledges the need for ongoing dialogue and emphasises that this response is the first step in the reform process. These legislative provisions and policy responses aim to empower Aboriginal people to actively participate in land management, conservation efforts and decision-making processes, recognising their cultural connection to the land and the valuable knowledge they hold for Caring for Country. However, the plan remains silent on the expression of Aboriginal rights, as those enshrined in *UN Declaration on the Rights of Indigenous Peoples* and other legislative and policy frameworks.

## National Parks and Wildlife Service joint management review

The NSW National Parks and Wildlife Service (NPWS) undertook consultation with Joint Management Custodian Groups around the structure of their joint management program (NPWS, 2022). The key barriers (see Table 1) were identified through the feedback collected during the Stage 1 Custodian workshops and summarised in the report *Custodian Aspirations for a New Model for Aboriginal Joint Management of NSW Parks* (NSW NPWS, 2023). This feedback highlights the critical need for a new model that addresses these barriers and empowers Aboriginal people to effectively manage Country. It is important to note that the new model aims to address these concerns. Refer to the *Developing a new model for Aboriginal joint management of national parks* webpage (Environment and Heritage, 2024) for further details on how these barriers are being addressed.

### Key barriers

The *Custodian Aspirations for a New Model for Aboriginal Joint Management of NSW Parks* (NSW NPWS, 2023) document outlines aspirations for a new model of joint management, not barriers under the current model. However, it highlights concerns that suggest potential barriers if not addressed in the new model.

TABLE 1 KEY BARRIERS IDENTIFIED IN NPWS REVIEW OF ABORIGINAL JOINT MANAGEMENT (FROM NSW NPWS 2023)

Barrier	Description
Limited influence and opportunities	Custodians felt their influence and opportunities on the park are limited, particularly in non-legally-binding memoranda of understanding (MOUs) compared to groups under Part 4A of the National Parks and Wildlife Act or Indigenous land use agreement arrangements. This is a general sentiment expressed throughout the report, especially in the ‘Strengths and weaknesses by agreement types’ section (p. 14).
Complex and inefficient governance structures	Custodians under Part 4A agreements mentioned complex governance structures and processes (board member appointments, elections, etc.) as a weakness that needed addressing (p. 15). This complexity can create a barrier to effective management and destabilise Aboriginal governance processes. Current governance structures and processes are viewed as complex and a barrier to effective decision-making. Custodians advocated for simpler, more culturally appropriate structures with greater flexibility to adapt to regional and cultural differences (pp. 15, 21).
Lack of cultural understanding and respect within government	While some groups (particularly MOU groups) reported good working relationships, others felt their cultural practices, protocols and governance were not recognised within NPWS processes (p. 17). This lack of understanding can create a barrier to effective collaboration and culturally appropriate management.
Limited resourcing and support	Limited resourcing (particularly MOU groups) for implementing and progressing initiatives is a weakness (p. 17). Limited funding and support hindered the realisation of economic opportunities related to land management. Custodians prioritised increased Aboriginal employment at all levels within NPWS, along with opportunities for career progression (p. 20). They also highlighted the need to support Aboriginal-owned businesses in cultural tourism and land management areas (p. 20).
Restricted access to Country	While access for cultural purposes is generally available, the need for greater access to resources for traditional use and customary practices was expressed (p. 19). Restrictions on access can limit the ability to implement traditional management practices. Custodians emphasised the importance of access to resources for traditional use and customary practices (p. 19). Increased access to Country is intrinsically linked to both the health of the land and the wellbeing of Aboriginal people (p. 19).
Uncertainty around ownership and title	The concept of ‘ownership’ itself is complex and contested, and different views exist among custodians about its relevance, the appropriate model for holding title (e.g. LALCs vs. other bodies), and how it interacts with traditional

Barrier	Description
	custodianship (p. 22). This uncertainty creates a barrier to establishing a model that empowers custodians.
Lack of recognition and integration of traditional knowledge	Traditional cultural practices and knowledge are not always highly valued or implemented in current management practices. Custodians expressed a desire to integrate traditional methods, such as cultural burning, pest and weed management, which were informed by Indigenous knowledge (p. 19).
Lack of infrastructure to support cultural practices	Custodians called for the provision of infrastructure in the parks to support cultural practices and healing, including cultural centres, accommodation and healing places (p. 19).
Lack of recognition of traditional skills	Custodians sought formal and informal recognition of traditional skills and knowledge systems for land management (p. 18).
Inequitable power dynamics in governance and decision-making	Custodians across all agreement types, especially MOU groups, expressed concerns about limited influence over decision-making on park matters (pp. 14, 17). They called for greater autonomy and leadership in Caring for Country and Aboriginal cultural heritage (p. 6).
Lack of cultural safety within NPWS	Custodians highlighted the need for increased cultural safety within NPWS, including respect for cultural protocols and systems (p. 18).
Concerns about Local Aboriginal Land Councils holding title	Many custodians expressed reservations about Local Aboriginal Land Councils holding title deeds, preferring a body of traditional owners to hold title (p. 22). This creates complexities in determining appropriate ownership models.

## National Agreement on Closing the Gap

The *National Agreement on Closing the Gap* (Australian Government, 2020a) is a partnership between the Commonwealth, state and territory governments, the Australian Local Government Association, and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and aims at initiating structural reforms to enhance outcomes for Aboriginal people. The Closing the Gap Agreement, signed by the NSW Premier on behalf of NSW in July 2020, represents a landmark shift in the approach to addressing Aboriginal disadvantage in NSW. Its core intent is to forge a genuine partnership between the NSW Government and Aboriginal peoples, moving away from top-down policymaking to a model of shared decision-making and Aboriginal-led solutions. The agreement outlines a new way of working together to achieve equality for Aboriginal and Torres Strait Islander peoples and close the gap in life outcomes.

An important aspect of this agreement is that it is not solely between governments, as was the previous Closing the Gap framework, it includes the Coalition of Aboriginal and Torres Strait Islander Peak Organisations as a formal party. This represents a fundamental shift towards shared decision-making and recognises Aboriginal and Torres Strait Islander people as the ‘essential agents of change’ (p. 5). The agreement emphasises listening to Aboriginal and Torres Strait Islander people’s voices and aspirations and changing how governments work in response, recognising the need for Aboriginal and Torres Strait Islander communities to have greater control over how programs and services are delivered, the effectiveness of community-controlled organisations, the need to address systemic racism in government institutions, and the importance of access to data. The agreement commits to ongoing engagement with Aboriginal and Torres Strait Islander communities to build awareness and ownership and ensure responsiveness to changing needs. The *National Agreement on Closing the Gap* aims to create a future where Aboriginal people have a genuine say in the policies and programs that affect their lives, leading to real and lasting improvements in outcomes and a tangible closing of the gap.

The overarching objective is to overcome entrenched inequality and achieve equality in life outcomes between Aboriginal and Torres Strait Islander peoples and all other Australians. Shared decision-making aimed at empowering Indigenous communities to share decision-making authority with governments, building the community-controlled sector, strengthening Indigenous community-controlled organisations to deliver services, improving mainstream institutions by transforming government organisations to be more accountable, and culturally safe and Aboriginal and Torres Strait Islander-led data enables Aboriginal and Torres Strait Islander communities to access and use data to drive their development were highlighted.

## Closing the Gap and Aboriginal and Torres Strait Islander cultural practice

The *National Agreement on Closing the Gap* emphasises the importance of Aboriginal and Torres Strait Islander cultures throughout the agreement, emphasising that cultural considerations should be integrated into all Australian and NSW Government initiatives, not just isolated to specific outcomes, acknowledging the strength and importance of sustaining the world's oldest living cultures (p. 2). The agreement is intended to achieve this through the need for structural change and shared decision-making, prioritising Aboriginal and Torres Strait Islander cultural survival. It asserts that strong cultures are fundamental to improved life outcomes and commits to implementing activities in a way that fully accounts for, promotes, and does not diminish Aboriginal and Torres Strait Islander cultures, and the need of maintaining the distinctive cultural, spiritual, physical and economic relationship with land and waters (Outcome 15 related to Land and Waters, p. 40).

The Closing the Gap Agreement aims to recognise and strengthen Aboriginal and Torres Strait Islander cultures through truth-telling and reconciliation within government, building relationships with Aboriginal community-controlled organisations, and supporting the vital connection to land, waters and languages of Aboriginal and Torres Strait Islander communities. The agreement addresses the support of Aboriginal and Torres Strait Islander cultures within government organisations, requiring government to identify their history with Aboriginal and Torres Strait Islander peoples and facilitating truth-telling for reconciliation and healing (p. 12). Building relationships with local Aboriginal community-controlled organisations is also mentioned to better understand and reflect local cultures (p. 12) (section 3 on transforming government organisations and outcomes 15 and 16).

Outcome 15 of the *National Agreement on Closing the Gap* (titled 'Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters') is a crucial element of the agreement in recognising the deep connection Aboriginal people in NSW have with Country. This includes the cultural, spiritual, physical and economic aspects, highlighting the interconnectedness of these elements in Aboriginal life, aiming to empower Aboriginal and Torres Strait Islander communities to exercise their rights and responsibilities in relation to their land and waters. The agreement acknowledges that this connection is not simply about ownership or resource management, it's fundamental to Aboriginal cultural identity, spiritual beliefs and overall wellbeing, recognising that maintaining this relationship is essential for achieving broader Closing the Gap objectives. It is recognised in the agreement that this is more than just increasing the amount of land and sea Country under Aboriginal control in NSW, it's about supporting self-determination, empowering communities to Care for Country, and recognising the link between connection to Country and overall wellbeing in Aboriginal cultural continuity in NSW and the transmission of intergenerational knowledge. The agreement recognises that this is best achieved through acknowledging that this connection is already present and needs to be strengthened, not created.

While the agreement acknowledges the multifaceted nature of Closing the Gap, its ultimate success hinges on the continued commitment to self-determination and the recognition of Aboriginal and Torres Strait Islander peoples as the primary drivers of change. The agreement offers a pathway towards a future where Aboriginal and Torres Strait Islander peoples enjoy the same life outcomes as Australians. The agreement represents a significant paradigm shift in addressing Aboriginal disadvantage in NSW by centering Aboriginal and Torres Strait Islander voices and leadership, prioritising cultural preservation and connection to land and waters and

promoting shared decision-making, transforming government organisations, empowering community-controlled sectors and utilising Aboriginal-led data collection to ensure accountability and responsiveness to the unique needs of these communities.

## Implications of Closing the Gap for Caring for Country

The *National Agreement on Closing the Gap* has significant implications for Caring for Country in NSW, particularly in the agreement's emphasis on Aboriginal-led solutions, self-determination, and shared decision-making, creating a more supportive environment for Caring for Country initiatives.

The reforms to shared decision-making (Priority Reform One, p. 5) supports formal partnerships between governments and Aboriginal and Torres Strait Islander people, supporting Caring for Country by ensuring Aboriginal voices are central to decision-making processes related to land and water management. The agreement emphasises shared decision-making authority, which is crucial for enabling Aboriginal people in NSW to lead Caring for Country initiatives. An important element is the agreement's way of creating strong partnership elements, particularly ensuring that 'Aboriginal and Torres Strait Islander people [are] appointed by Aboriginal and Torres Strait Islander people in a transparent way, based on their own structures' (32.a.i, p. 6). This offers the potential to develop a greater role and support for Aboriginal governance structures in NSW.

A stronger community-controlled sector (Priority Reform Two), essential for effective Caring for Country, would allow for sustained capacity building and investment in Aboriginal organisations, which was identified in the yarns as a barrier to Aboriginal organisations being supported to be actively involved in Caring for Country activities. Funding prioritisation policies should favour Aboriginal community-controlled organisations (55.a, p. 10) for relevant service delivery, including Caring for Country activities. This would support Aboriginal organisations to lead in Aboriginal Ranger programs, providing resources for cultural burning practices and enabling greater community-based Caring for Country.

As discussed previously, Outcome 15 (Land and Waters) directly relates to Caring for Country by focusing on maintaining the cultural, spiritual, physical and economic relationship with land and waters. The target of increasing landmass and sea areas subject to Aboriginal rights or interests facilitates greater control over Country and enables communities to implement Caring for Country practices more effectively. While the agreement doesn't specifically fund Caring for Country activities in NSW, it sets a framework that empowers Aboriginal people to take a leading role in land and water management. The emphasis on partnership, community control and cultural responsiveness creates a more enabling environment for Caring for Country.

## Aboriginal rights in legislation and policy

### Rights versus obligations

It was made clear in the yarns that there was a disjuncture between how Aboriginal people and Australian legal and political systems frame rights versus obligations. Australian legal and political systems tend to frame Aboriginal sovereignty in terms of 'Aboriginal rights', focusing on entitlements granted by the state or the court system. Aboriginal perspectives in the yarns supported the view that these are not rights bestowed by legislation or common law, but rather **inherent responsibilities and obligations** derived from Aboriginal unceded sovereignty, law, culture and kinship ties to Country. The concept of 'rights' versus 'obligations' in relation to Aboriginal worldview highlights a fundamental clash between western and Aboriginal worldviews.

This difference reflects contrasting worldviews. Western thought often emphasises individualism, human dominance over nature, and a linear conception of time. In this context, 'rights' become a tool to protect individual autonomy and property. Conversely, Aboriginal worldviews are relational, emphasising interconnectedness, reciprocity and the inseparability of humans from the natural world. Responsibilities and

obligations then flow from these relationships, demanding responsible Care of Country. By way of example, the ‘right’ to hunt and fish from an Australian legal perspective is seen as a privilege granted by the government. But from an Aboriginal perspective it is an obligation and responsibility to provide for one’s family and kin network to respect relationships, intertwined with responsibilities and obligations to maintain the health of species and Country. Similarly, land is not seen as property to be owned but as a relation to whom one has obligations and responsibilities of care and respect. This fundamental difference in how the relationship between humans and the natural world is understood profoundly impacts the way ‘rights’ and ‘obligations’ are perceived. It highlights the importance of recognising and respecting Aboriginal Law and philosophies when engaging with Aboriginal issues, moving beyond the limitations of Australian legal frameworks. This was made clear in the yarns.

Aboriginal land rights and native title legally recognise some Aboriginal peoples’ land and sea Country rights. However, implementing rights-based approaches is often complicated by government policies, legal frameworks and bureaucratic processes that prioritise settler interests or impose limitations on Aboriginal rights. In contrast, rights-based approaches can offer essential avenues for recognising and protecting Aboriginal land and sea rights. Their practical implementation requires addressing systemic barriers, power imbalances and injustices embedded within government policies and legal frameworks. True Aboriginal self-determination entails dismantling colonial legacies and fostering genuine partnerships between governments and Aboriginal people based on principles of respect, reciprocity and equity.

The *Two Ways Together, New South Wales Aboriginal Affairs Plan (2003–2012)* (NSW Aboriginal Affairs 2009) states:

*Through Two Ways Together, the NSW Government recognises that Aboriginal people have inherent rights as the first peoples of Australia.*

*These inherent rights include the rights of Aboriginal people to determine their social, economic and political futures and the right to maintain their culture, language and identity.*

## Limitations of Aboriginal land rights and native title in NSW

In NSW, Aboriginal land rights and native title legislation have made advances towards recognising the rights of Aboriginal peoples. However, these frameworks are not without their limitations, which can restrict the full realisation of Aboriginal land rights originating from unceded sovereignty, a point made very clear in the yarns. One key barrier lies in the complexity and ambiguity of the legal processes and the high cost involved in asserting native title. Legal frameworks often require extensive evidence and documentation to prove a continuous connection to the land. The legal proceedings can be lengthy and costly, placing a burden on Aboriginal people with limited resources. These barriers can be challenging for Aboriginal people in NSW, especially considering the historical and continuing colonisation and dispossession. This forces Aboriginal people to take a rights-based stance to achieve recognition of rights, requiring a shift from a relational and culturally informed worldview to an ownership and rights-based worldview of the West, destabilising and causing conflict within Aboriginal communities.

Even when native title claims are recognised, the extent of rights granted may be limited, with certain activities or claims subject to government regulations or restrictions, diminishing the autonomy and sovereignty of Aboriginal people. The enforcement and protection of Aboriginal rights can be inadequate, leaving Country vulnerable to disconnection from Aboriginal people. While Aboriginal land rights and native title legislation in NSW represent important steps towards justice and reconciliation, there remain significant limitations that impede the full realisation of Aboriginal rights. Addressing these limitations requires ongoing dialogue, collaboration and legal reforms to ensure that Aboriginal people can assert their sovereignty, protect and maintain culture and Care for Country.

## Negation of Aboriginal customary law and Caring for Country

The yarns clearly expressed that the legacy of colonisation, dispossession, displacement and cultural assimilation has disrupted Caring for Country and weakened Aboriginal connections to the Country. This has made it even more challenging for Aboriginal people to demonstrate their ongoing relationship with Country and assert their rights under native title. The historical negation of Aboriginal customary law has had far-reaching consequences for recognising Aboriginal rights in Australia. Overcoming this legacy of colonisation requires a concerted effort to acknowledge and respect Aboriginal systems of law and culture, address the barriers to recognition of rights, and ensure that Aboriginal voices and perspectives are central to Aboriginal rights discussions and decision-making processes (El-Naji, 2020).

Aboriginal customary law and Caring for Country are intrinsically linked, representing Aboriginal people's spiritual and cultural connection to Country, encompassing a complex system of cultural norms, practices and governance structures. Central to Aboriginal customary law is the principle of reciprocity, which emphasises the reciprocal relationship between people, land and sea and the interconnectedness of all living beings. Within this framework of Aboriginal customary law, land and sea are not separate to people and all other beings and not seen as simply resources to be exploited, but are viewed as sacred entities with spiritual, cultural and ecological significance.

## Managing Aboriginal rights through legislative exemptions

Managing Aboriginal rights through legislative exemptions rather than formal recognition presents a complex issue within the Australian legal and political landscape. Exemptions, such as those found in the NSW Biodiversity Conservation Act for some Aboriginal cultural practices, create specific allowances within existing laws but fail to acknowledge inherent Aboriginal rights, framing these practices as privileges granted by the state. This reinforces the idea that Aboriginal rights are subordinate to Australian law and differs significantly from formal recognition, which affirms rights as pre-existing and derived from Aboriginal sovereignty. This highlights the need to recognise Aboriginal rights in a single and specific piece of legislation which would hold greater legal weight and would be less susceptible to political manipulation than exemptions, which can be revoked or altered.

The implications of this exemption-based approach are substantial, sidestepping the fundamental issue of Aboriginal sovereignty and the inherent right to self-determination. By granting exemptions, governments avoid engaging with the Aboriginal rights recognition debate. The temporary and conditional nature of exemptions creates insecurity and lacks the permanence and strength of constitutionally, legislative-based recognition or Treaty-recognised rights. This approach often forces Aboriginal people into costly litigation and seeking common law remedies and recognition to define and defend Aboriginal rights, with the risk of actual loss of those rights through fighting for those rights. This process is costly, time-consuming and risky and can result in a complete loss of rights or narrowly defined rights determined within the confines of specific legal findings, rather than through Treaty negotiations or standalone legislation recognising rights. This effectively limits the scope of Aboriginal rights and places the burden of proof on Aboriginal communities, even when recognised (see discussion on Aboriginal fishing rights later in the document).

This reliance on exemptions strategically avoids genuine engagement with Aboriginal people and Aboriginal rights and allows governments to delay broader action on Aboriginal rights until Aboriginal people seek common law recognition. It perpetuates a system where Aboriginal practices are subject to state control, failing to acknowledge the inherent rights outlined in international frameworks like the United Nations *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, 2007), native title and common law. This piecemeal approach to recognition creates inconsistency and undermines relational Aboriginal governance systems, which intricately connect Caring for Country with culture, spirituality and law.

## NSW Legislative Council’s inquiry into commencement of the Fisheries Management Amendment Act (NSW)

The NSW Legislative Council’s report (No. 55 - PC 4) examined the non-commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009* by the NSW Government, which aimed to create special provisions and exemptions for Aboriginal cultural fishing. The report identifies several key issues, including the failure of the government to commence Schedule 1 (Findings 1 & 2, pp. 28–29; Recommendation 4, p. 50), forcing Aboriginal people to rely on complex and costly native title–based defences (p. 21) while being subjected to increased compliance actions and prosecutions (Finding 4, p. 29; Chapter 2, starting p. 13) for rights already recognised, albeit as provisions and exemptions, in the Act.

The inquiry recognised an important issue related to Caring for Country was that the government struggles to differentiate cultural trade and barter from unlicensed commercial fishing. This issue of differentiation of commercial and non-commercial activities is prominent in other legislation, limiting the scope of recognition of Aboriginal rights and economic development opportunities and causing confusion around what commercial activity is compared to maintaining relationships and obligations to Country and close and distant kin networks according to Aboriginal law and culture (Finding 3, p. 29). Cultural fishing is integral to Aboriginal identity, connection to Country, knowledge transfer, social obligations, and physical and mental health (pp. 7–11). Restrictions on this practice negatively impact these areas, undermining Closing the Gap targets related to health, employment and incarceration (pp. 23–24).

The report details the conflict between NSW state legislation and Aboriginal rights in relation to fishing which translates into barriers to Aboriginal people and Caring for Country as part of Aboriginal cultural practice (refer Table 2).

TABLE 2 BARRIERS IDENTIFIED IN FISHERIES MANAGEMENT AMENDMENT ACT INQUIRY

Barrier	Description
Criminalisation of cultural practice	Aboriginal people are prosecuted for fishing practices integral to their culture, and protected in existing legislation, creating a clash between Aboriginal and state law.
Burden of proof	Aboriginal people bear the burden of proving native title rights to enforce their recognised rights, facing complexity and limited resources, for rights that already exist.
Undermining native title	The state’s requirement to demonstrate ongoing cultural practices for native title claims while criminalising and penalising the same practices creates a contradiction.
Ignoring traditional management	Traditional Aboriginal fishing practices are disregarded.
Restricting access and cultural practice	Fishing restrictions limit access to traditional lands and waters and cultural practice.

### Implications for Caring for Country

The issues and barriers identified by the government inquiry extend beyond fishing to other cultural practices. The state’s requirement to demonstrate continuing cultural practices and connection to Country for native title claims is challenged by the government, in effect criminalising and penalising the same practices. This is directly applicable to Caring for Country as the lack of provision for Caring for Country, for example cultural burning, creates a position of confusion for Aboriginal people trying to practice Caring for Country, which is part of Aboriginal cultural expression of connections to Country and maintaining continuing cultural practice.

The inquiry's critique of prioritising restrictive regulations over empowering Aboriginal communities has wider implications for land and sea management. Restrictions on cultural fishing negatively impact health and wellbeing by reducing access to traditional foods, increasing stress and mental health issues, causing loss of social connection, diminishing physical activity and creating economic hardship; all of which are applicable to other cultural practices.

## Economic development models and Caring for Country

NSW Government policy and the private contracting market are heavily influenced by economic development models. While these models aim to improve overall Aboriginal community wellbeing, there is a need for co-design with the Aboriginal people to ensure issues are addressed and that contracting and policy considers Aboriginal views of what economic development is for them in a cultural context. The frequent clash between economic development models, usually embedded in grant programs and other programs, with the priority and embeddedness of Aboriginal cultural practices and Caring for Country responsibilities of Aboriginal people, creates significant barriers to Caring for Country and cultural survival. There is tension between how current policies tend to prioritise economic growth over Aboriginal cultural values and argue for the development of greater capacity within Aboriginal communities, and the adoption of alternative economic models that recognise and respect Aboriginal approaches and culture.

The dominant economic development paradigm in NSW is rooted in neoclassical economics, which emphasises market forces, individual rationality and continuous growth, and often translates into policies focused on economic development above all else. This emphasis on economic growth often creates systemic barriers that impact Aboriginal people's ability to fulfil their responsibilities to Care for Country and maintain cultural practices. Funding for Caring for Country is often dwarfed by the resources allocated to mainstream economic development projects, and this disparity undermines the capacity of Aboriginal communities to effectively Care for Country (Altman, 2004). This is due to Western economic models often failing to recognise the intrinsic and economic values of Aboriginal culture, leading to policy decisions prioritising short-term economic gains over long-term cultural sustainability. Despite legislative requirements for consultation, Aboriginal communities often feel marginalised in decision-making processes related to economic development projects and this lack of genuine partnership undermines self-determination and perpetuates a cycle of disadvantage.

The yarns highlighted a critical issue with the economic development models applied to Caring for Country, including the contracting model often used by government and land managers to engage Aboriginal rangers in natural resource management (NRM). These models have created tension between economic development and Aboriginal cultural practices in NSW. While providing positive employment opportunities, economic models often restrict the scope of work to narrow NRM tasks, excluding cultural practices and limiting the expression of Aboriginal approaches to Caring for Country. This economic development framework, while positive for Aboriginal communities, also creates a conflict and disrupts the importance of Aboriginal cultural aspects of Caring for Country. This conundrum was expressed in the yarns and was identified as requiring alternative co-designed and culturally informed economic models that recognise this conundrum for Aboriginal people in implementing Caring for Country as an Aboriginal cultural practice aimed at maintaining and (re)vitalising cultural practice.

To address these challenges, NSW needs to move beyond the limitations of conventional economic development models and embrace approaches that prioritise Aboriginal self-determination, cultural wellbeing and environmental sustainability. Investing in Aboriginal-led initiatives, supporting Aboriginal-controlled organisations and empowering communities is crucial. Above and beyond any specific projects, the issue of how Aboriginal organisations support themselves between grant and funding cycles is a major barrier in Aboriginal communities.

Promoting Aboriginal-led economic development and supporting the development of Aboriginal enterprises that are grounded in cultural values and approaches using Aboriginal governance structures will enhance and contribute to both economic and social wellbeing. This includes exploring alternative economic models, such as social enterprise and the cultural economy models, which align with Aboriginal values of reciprocity and sustainability. While economic development is essential for Aboriginal communities, current policies in NSW too often prioritise short-term economic gains over the long-term wellbeing of Aboriginal communities and the environment. By investing in Aboriginal capacity and embracing Aboriginal-informed alternative economic development models, Caring for Country can be supported fully.

### Aboriginal procurement policy

The NSW *Aboriginal Procurement Policy* (NSW Treasury, 2021), while aiming to increase Aboriginal participation in government procurement, does not explicitly acknowledge the broader issues of cultural continuity, self-determination and the ongoing impacts of colonisation raised in the yarns and highlighted in this literature. While the policy creates economic opportunities, it operates within a Western framework that can inadvertently perpetuate some of the very challenges it seeks to address. The *Aboriginal Procurement Policy* does support some issues raised in the yarns, for example, the explicit aim to support Aboriginal businesses and employment (Targets on p. 3). This aligns with the aspirations expressed in the yarns for greater economic self-sufficiency and participation in the broader economy. The policy includes provisions for accountability and transparency in procurement processes, which echoes the calls in the yarns for greater transparency and accountability from government agencies. The policy sets targets for procurement from Aboriginal businesses and provides guidance on identifying and engaging with these businesses and this aligns with the calls in the yarns for supporting Aboriginal-led solutions and prioritising Aboriginal businesses in government contracting.

It was clear from the yarns that there were inconsistencies in the policy creating barriers for Aboriginal people in Caring for Country and maintaining and (re)vitalising cultural practice. The policy primarily focuses on economic outcomes, with limited recognition of the cultural dimensions of Caring for Country and the importance of cultural revitalisation. The policy focuses primarily on procurement, neglecting broader issues related to land access, cultural heritage protection and self-determination. It does not address the systemic barriers and power imbalances that hinder Aboriginal people's ability to practice their culture and Care for Country, as highlighted in the yarns. It doesn't address the complex relationship between Aboriginal culture and land management raised in the yarns.

The *Aboriginal Procurement Policy* operates within a Western procurement framework, with its emphasis on contracts, targets and quantifiable outcomes and can inadvertently perpetuate some of the issues raised in the yarns, such as the 'fee for service' model and the 'boxing in' of culture. The policy doesn't explicitly recognise or value Aboriginal knowledge systems in Caring for Country and overlooks a crucial aspect of Caring for Country emphasised in the yarns. While the policy encourages consultation with Aboriginal communities, it doesn't provide mechanisms for Aboriginal people to lead the design and implementation of procurement policies, limiting self-determination and reinforcing the government's control over the process.

The NSW *Aboriginal Procurement Policy* offers some positive steps towards increasing Aboriginal economic participation, though it fails to address the deeper systemic issues and cultural considerations raised in the yarns. By neglecting the holistic nature of Caring for Country and the importance of Aboriginal self-determination, the policy risks perpetuating some of the very challenges it seeks to address. A more comprehensive and culturally informed approach is needed that recognises the interconnectedness of culture, land and economic development. This requires a shift in focus from simply procuring goods and services to supporting Aboriginal communities in their efforts to revitalise their cultures and Care for Country on their own terms.

## UN Declaration on the Rights of Indigenous Peoples

The United Nations *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, 2007), adopted in 2007, was a major step in recognising Indigenous peoples' collective rights to self-determination, land, culture and governance. It builds upon international human rights frameworks but uniquely affirms Indigenous peoples' rights to maintain their cultural identities, spiritual practices, languages, education systems and legal traditions. The Declaration also emphasises the protection of ancestral territories and free, prior and informed consent for decisions affecting Indigenous lands and communities. Although non-binding, the Declaration functions as 'soft law', shaping global expectations and moral standards for governments, courts and institutions. It affirms the rights of Indigenous peoples not merely as individuals, but as sovereign groups with distinct identities and responsibilities (Mazel, 2018).

Australia initially opposed the Declaration, citing concerns about sovereignty and land rights, but formally endorsed it in 2009. However, this endorsement has not been backed by legislative incorporation. Australia treats the Declaration as a framework rather than a binding commitment, prioritising the preservation of its political and legal systems. Government documents and inquiries, including a 1997 Cabinet submission and the 2023 Joint Standing Committee report, show a consistent pattern of cautious engagement. The Australian Government prefers a limited, internal interpretation of self-determination that avoids disrupting state sovereignty. Although Australia acknowledges Indigenous rights through instruments like the Closing the Gap Agreement, progress remains hampered by limited political will, legal inconsistencies, and ongoing confusion between human rights and Aboriginal rights, which are collective and tied to land, Law and cultural survival. Please see **Appendix B** for an in-depth analysis.

### UN Declaration and Aboriginal peoples Caring for Country in NSW

The relationship between the United Nations *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, 2007) and Caring for Country in NSW is in two key areas: the right to self-determination and the protection of cultural rights. These rights are crucial for Aboriginal people in NSW to maintain Aboriginal cultural practice, and govern internal affairs autonomously using Aboriginal governance structures. The obligations for implementation of the Declaration by states underscore the responsibility of governments, including the NSW Government, to support and promote Aboriginal rights. This includes providing financial and technical assistance, protecting cultural and ethnic identities, repatriating cultural property, combating discrimination, promoting tolerance, consulting with Aboriginal people and facilitating cross-border cooperation.

Aboriginal people's rights in NSW include practising their customary obligations to Care for Country. The Declaration provides a framework for recognising and protecting these rights, emphasizing the importance of self-determination, cultural preservation and meaningful consultation with Aboriginal people in decision-making processes related to land management, resource utilisation and environmental protection. By upholding the principles outlined in the Declaration, including the right to self-determination and the protection of cultural rights, governments can support Aboriginal people in NSW in maintaining their cultural heritage and fulfilling their customary obligations to Care for Country.

## Native title

Native title in Australia is the legal recognition that Aboriginal and Torres Strait Islander peoples hold inherent rights to land and waters according to their traditional laws and customs. This recognition, formally codified in the *Native Title Act 1993*, was a turning point in Australian law following the landmark *Mabo v Queensland* (No. 2) decision in 1992, which overturned the long-standing doctrine of *terra nullius* (land belonging to no one). Native title is not a right granted by the Crown but a **pre-existing right acknowledged by common law**. It affirms that Aboriginal peoples maintained a continuous connection to land long before colonisation, and this legal

space, sometimes called the ‘recognition space’, sits between Aboriginal Law and the Australian legal system. The development of native title law has been shaped by numerous court decisions, such as *Milirrpum v Nabalco*, *Wik Peoples v Queensland*, and *Yorta Yorta v Victoria*, each revealing complexities around extinguishment, co-existing land interests, and evidentiary burdens required to prove ongoing cultural connection to Country.

In NSW, native title has significant implications for cultural practice and the continuation of Aboriginal Law. While native title can provide a legal basis for land access and cultural revitalisation, it is constrained by the challenges of legal proof, the doctrine of extinguishment, and conflicts with other land tenures such as leases or freehold titles. These barriers are especially difficult for communities where colonial impacts have disrupted traditional knowledge systems or led to forced disconnection from land. The Native Title Act itself does not create new rights but serves as a procedural framework for recognising rights that exist under common law. As such, its effectiveness in supporting Aboriginal governance, ceremony and obligations to Care for Country depends on broader systemic reform, including clearer recognition of customary law and reduced legal barriers. Despite its limitations, native title remains a vital but contested tool for restoring Aboriginal peoples’ legal and cultural authority over land in NSW. See **Appendix C** for further detail.

## Treaty in New South Wales

A Treaty with Aboriginal peoples in NSW will be a pivotal moment in the state’s history. Unlike other British-colonised nations, Australia’s foundation lacks treaties with its First Nations peoples. This absence has perpetuated systemic inequalities and failed to recognise Aboriginal sovereignty and self-determination. A Treaty transcends a simple agreement or contract, it represents a fundamental shift in the relationship between Aboriginal people in NSW and the NSW Government. It’s not solely focused on land management or resources but seeks to reset the relationship between Aboriginal peoples and the NSW state by acknowledging historical injustices like dispossession and denial of sovereignty. As defined by the ANTA factsheet (Wright, 2024), a Treaty comprises some core elements, acknowledging Aboriginal inherent rights to self-government and their unique status as the original inhabitants and addressing historical grievances; and providing mechanisms for Aboriginal self-determination and self-governance, potentially including land return, financial compensation or dedicated Aboriginal decision-making institutions. The United Nations *Declaration on the Rights of Indigenous Peoples* provides a crucial framework for both the process and content of Treaty negotiations, emphasising self-determination and free, prior and informed consent (NSW Labor, n.d., pp. 5, 10). This distinction between a Treaty and other agreements is critical, setting it apart from land rights agreements or native title settlements (ANTAR, 2022, p. 3).

The treaty process in NSW remains in its early stages, with details subject to ongoing community consultation. The current process is based around engagement with Aboriginal people across NSW as crucial to ascertain support and shape the Treaty’s form (Aboriginal Affairs, 2024). This process is to ensure First Nations people control the process and outcomes, acknowledging and understanding shared history is vital for reconciliation and a just settlement (NSW Labor, n.d., ). The NSW Government’s consultation webpage (n.d.) emphasises that the process is Aboriginal-led and focused solely on Aboriginal views.

The Treaty process in NSW is a complex journey, fraught with challenges. It faces ongoing challenges including shifts in political will between parties, shifting government stances and potential delays raise concerns about sustained commitment . The Treaty process must adapt to NSW’s unique context, considering existing structures and institutions impacting Aboriginal communities (Wright, 2024), The commitment to an Aboriginal-led process, guided by the Declaration and recognising First Nations sovereignty, is essential along with continued advocacy and engagement to navigate future challenges and realising the transformative potential of a Treaty, rebuilding the relationship between NSW Aboriginal peoples and the NSW state government.

## Aboriginal rights-based approach

An Aboriginal rights-based approach centres on recognising and respecting the inherent rights of Aboriginal and Torres Strait Islander peoples, ensuring these rights are integral to the planning, implementation and evaluation of policies and initiatives. This methodology acknowledges the unique cultural, social and historical contexts of Indigenous communities, promoting their self-determination and active participation in decision-making processes. By embedding these principles, such approaches aim to empower Indigenous peoples, fostering ownership and control over matters affecting their lives (Barletti Larson 2023).

### Barriers to taking an Aboriginal rights-based approach in NSW

The issue of Aboriginal rights in Australia isn't just about having those rights, it's also about being able to put them into action. While there are legal recognitions of Aboriginal rights like native title laws and acknowledgment of some Aboriginal customary laws, implementing these rights can be difficult due to government policies and bureaucratic processes often creating obstacles that stop Aboriginal people from entirely applying and benefiting from their rights. The debate around Aboriginal rights shows how these issues are tied to power dynamics and intersect with cultural norms and Australian politics. Balancing the recognition of Aboriginal rights with broader societal interests means dealing with complex tensions between cultural diversity, governance and the law. Recognising this difference between norms and rights is crucial for understanding and tackling the challenges faced by Aboriginal people in NSW (Iverson, 2022). While norms guide behaviour, rights provide formal protections and enforceable claims, highlighting the complexities of Aboriginal rights and the need for careful consideration in legal and political realms. While rights-based approaches offer important avenues for recognising and protecting Aboriginal rights and obligation to care for Country their effective implementation requires addressing systemic barriers, power imbalances and injustices embedded within government policies and legal frameworks. True reconciliation and Aboriginal self-determination entail dismantling colonial legacies and fostering genuine partnerships between governments and Aboriginal people based on principles of respect, reciprocity and equity as agreed in the National Agreement on Closing the Gap.

In NSW, there is generally limited scope of recognition of rights, particularly in the absence of a state-based Treaty. Government policies and legal frameworks impose limitations on the scope of Aboriginal land rights, restricting Aboriginal peoples' control over Country and cultural practice. By way of example, native title rights may be subject to extinguishment or modification through legislation or administrative decisions, undermining Aboriginal sovereignty and autonomy. Also, there are significant procedural requirements and legal hurdles for Aboriginal people expressing their rights where they exist. For example, the process of establishing and maintaining native title rights often involves complex legal procedures, including proof of continuous connection to Country, negotiation of Aboriginal land use agreements, and resolution of competing land claims. These procedural requirements can create barriers for Aboriginal people in implementing Caring for Country, particularly those with limited resources or legal expertise.

## Aboriginal governance

Aboriginal governance in Australia represents a complex and dynamic system rooted in thousands of years of continuous cultural practice and adaptation. It is fundamentally different to Western governance models, posing significant challenges for Aboriginal communities navigating a dominant Western framework. Central to Aboriginal governance is the interconnectedness of culture, kinship, and connection to Country (Bauman et al., 2015). It operates through 'relational nodal networks' (Bauman et al., 2015), prioritising collective wellbeing and using consensus-based decision-making processes incorporating Aboriginal values, laws and traditions (Bauman et al., 2015). This differs from the Western emphasis on individual rights, formalised procedures and hierarchical structures. Lee and Tran (2016) highlight the clash between the Aboriginal emphasis on collectively, reciprocity and respect for Elders and knowledge holders, and the Western focus on individual

interests and competition. This difference in fundamental cultural values contributes to cultural erosion and misinterpretations of Aboriginal practices, for example, prioritising kin can be seen as nepotism or a conflict of interest.

The imposition of Western legal and policy demands onto Aboriginal cultural priorities and governance creates a significant challenge to Aboriginal people in NSW (Bauman et al., 2015). This ‘intercultural governance’ requires Aboriginal communities in NSW to navigate two worlds, balancing internal Aboriginal cultural-based governance practices with external requirements. A prevailing ‘deficit discourse’ that frames Aboriginal people as lacking capacity further undermines self-determination and reinforces negative stereotypes (Bauman et al., 2015). This narrative necessitates a shift towards a rights-based approach that recognises Aboriginal people’s rights. Western funding models, often short-term and compliance-driven, also present obstacles to effective Aboriginal people’s governance (Bauman et al., 2015). Similarly, Western evaluation methodologies, focused on economic indicators, often fail to capture the nuances of Aboriginal people’s values and priorities (Bauman et al., 2015). Lee and Tran (2016) further emphasise the spiritual dimension of Aboriginal governance, highlighting this connection between the human and nature and the Western separation of the sacred from science.

The consensus-building process in Aboriginal governance (Lee and Tran (2016) prioritises extensive consultation, respect for diverse perspectives and the wisdom of Elders and Knowledge Holders. This contrasts sharply with Western majority rule systems that rely on formal procedures and voting. Achieving effective and sustainable Aboriginal-based governance requires moving beyond the deficit discourse, embracing Aboriginal people’s values and governance systems.

Western legal frameworks emphasise individual rights and ownership, which can clash with Aboriginal collective understandings of land and kinship, creating internal conflicts and undermining traditional governance systems based on **shared responsibility and collective decision-making**. By defining and regulating Aboriginal culture through legislation, the state effectively controls what is considered ‘legitimate’ cultural practice, restricting cultural expression and limiting the ability of Aboriginal communities to adapt and innovate culture in response to changing circumstances. The unintended consequences of legislation designed to recognise Aboriginal rights has created a complex and often challenging landscape for Aboriginal communities. Addressing these issues requires moving beyond legal categories and recognising the diversity of ways in which Aboriginal people connect to and Care for Country. It requires a shift in power dynamics, empowering Aboriginal communities to exercise self-determination and Care for Country according to Aboriginal Law, values, beliefs and priorities. Only through such a shift can the destructive legacy of colonisation be overcome.

Aboriginal governance systems clash with Western structures of governance on a regular basis in Caring for Country in NSW and across Australia, leading to misunderstandings and ineffective outcomes. This was pointed out in almost all the yarns, though in different contexts depending on how the Aboriginal contributor was positioned in the many pathways to Caring for Country. Many Aboriginal people and groups view governance through the lenses of nation-building and self-determination, aspiring to self-determination in government-to-government relationships (Bauman et al., 2015). There are unique demands placed on Aboriginal governance within a contested intercultural environment. Aboriginal people must navigate both Western legislative and policy demands and balance with Aboriginal kinship (family), cultural and social priorities. Bauman et al. (2015) use the metaphor of ‘walking in two worlds’ to describe this challenge for Aboriginal people (Bauman et al., 2015).

### Aboriginal community complexities

Tensions within Aboriginal communities are generated by the different groups of Aboriginal people generated by legislation in Australia (historical, traditional, native title, Land Council, Aboriginal owners etc.). The different pieces of legislation and policy and the various/differing interpretation of these creates, maintains and disrupts Aboriginal culture and people in NSW. Australian and NSW state legislation, while intended to address

historical injustices and restrictively recognise Aboriginal rights, has inadvertently created complex legal categories and distinctions among Aboriginal people. These distinctions, often based on differing forms of legal recognition (native title, land rights, etc.), generate internal tensions and conflicts that disrupt cultural practices and hinder Caring for Country initiatives.

The yarns highlighted that different legal categories of Aboriginal people create divisions within Aboriginal communities, separating people into distinct groups with varying levels of power and access to resources. This leads to competition for recognition, funding and control over land, diverting energy away from collaborative Caring for Country initiatives. By imposing Western legal frameworks and governance structures, the legislation inadvertently maintains colonial power dynamics, forcing Aboriginal people to navigate complex bureaucratic processes and negotiate with government agencies to exercise their cultural rights, reinforcing the state's ultimate authority. This emphasis on Western legal categories can disrupt Aboriginal cultural practices, governance systems and knowledge transmission. For example, focusing solely on native title may overshadow the rights and responsibilities of Aboriginal Custodians who do not hold native title, leading to the conflict.

### **The consensus-based, kinship-driven approach to Aboriginal governance**

The phrase 'consensus-based, kinship-driven approach' from Lee and Tran's (2016) paper describes a core element of many Aboriginal governance systems, particularly in the context of Caring for Country. This was conceptualised in the yarns in slightly different ways, but is recognised as the path needed to support Aboriginal governance. But it contrasts sharply with Western democratic models and has implications for how Aboriginal communities interact with imposed governance structures.

Aboriginal kinship systems are not solely about biological relationships, they are complex social and political structures that shape governance. Kinship ties define responsibilities, obligations and authority within the community. They influence decisions about Caring for Country which are made within the context of these kinship structures, considering the needs and interests of the entire kin group, present and future generations (see Sutton 2004 for the concept of 'families of polity'). It's important to remember that kinship structures and their influence vary across different Aboriginal Nations. Decision-making within this kinship framework is often characterised by a consensus-based approach, though this does not necessarily mean that everyone agrees completely on every issue. Instead, it involves a deliberative process aimed at finding a solution that is acceptable to the majority of the group, with an emphasis on maintaining relationships and social harmony.

### **Implications for Caring for Country**

Lee and Tran argue that the consensus-based, kinship-driven approach has important implications for how Aboriginal communities engage in Caring for Country, suggesting that Western governance structures, with their emphasis on formal procedures, majority rule and individual representation, can clash with Aboriginal decision-making processes. By way of example, the requirement for elected representatives to make decisions on behalf of a larger constituency can be problematic if those representatives are expected to follow a consensus-based approach within their own kin groups (Lee and Tran 2016). Imposing Western models of governance can undermine Aboriginal leadership structures and erode Aboriginal governance systems (Lee and Tran 2016). Greater recognition and accommodation of Aboriginal governance systems is needed.

## Part 3: From reports to real life, listening through yarning

While the literature helps us understand systems and policy, the yarns took us deeper, into people's lived experience. These stories, shared with care, respect and cultural safety, are more than just quotes or opinions. They are cultural knowledge. They carry truth, emotion, obligation and insight. Yarning allowed people to speak in their own way, in their own time, about what it really feels like to practise culture and Care for Country in NSW today. These yarns confirmed many of the issues found in the literature, but they also uncovered barriers that often go unnoticed, like trauma, internal conflict, cultural load and silencing, and spiritual disconnection. This section shares those stories and themes, woven together to reveal barriers as well as opportunities.

Caring for Country is crucial for Aboriginal people's cultural continuity and NSW' environmental sustainability. However, implementing Caring for Country at a landscape-wide scale faces significant hurdles. These internal challenges are interconnected and often exacerbated by the external pressures of colonisation and systemic discrimination. Addressing these internal barriers requires not only increased resources and support but also a focus on healing, cultural revitalisation and community building from within. Creating spaces for dialogue, fostering intergenerational understanding, and addressing the causes of conflict and destabilisation are crucial for empowering Aboriginal communities to practice their culture and care for Country effectively and sustainably.

### Yarning approach

Yarning, as a culturally appropriate research method, allows participants to lead discussions about their lived experiences of practising Caring for the Country. We provided context about the project's intent and allowed the conversations to unfold organically. This allowed the barriers of the specific case study to come out in the discussion lead by Aboriginal people. The case studies reflected the diverse pathways that Aboriginal people engage with Caring for Country, including native title, land rights, joint management and private ownership. Detailed notes from the yarns were subsequently analysed to understand the unique barriers presented by each case study's specific context and how intersecting factors shaped those experiences.

During the study the need to protect the identity of Aboriginal Caring for Country practitioners who participated became evident and their contributions were deidentified. While the original intent of the study was to celebrate and acknowledge the Aboriginal people who are effectively co-authors of this report, it became clear that their voices in this study may bring negative implications for them. The Aboriginal Caring for Country practitioners who contributed to this document come from many varied backgrounds across NSW, as government staff from NSW and federal government departments, members of NSW Government Aboriginal related committees, Aboriginal Knowledge Holders and Lawmen, joint management custodians and Local Aboriginal Land Council representatives. To ensure that the essence of their yarning talked about in this report represented their views, they have been given the opportunity, as agreed, to be part of the review process and agree to the final version of the report. The researchers have done their best to ensure that the integrity of the lived experiences shared are represented in the report and that the variety of views expressed are respected where needed.

### Outcomes of the yarns

The yarn analysis revealed a range of interconnected barriers impacting Caring for Country implementation, including ongoing impacts of colonisation, conflicting governance structures, limited resources and a lack of culturally appropriate policy frameworks among other barriers. This scoping study demonstrates the

complexity and interconnectedness of barriers facing Aboriginal people in practising Caring for Country in NSW. By applying a relational intersectionality framework and employing a yarning methodology, we have identified key barriers that can contribute to a deeper understanding of these challenges and inform the development of more effective and culturally appropriate strategies for supporting Aboriginal-led Caring for Country.

The yarns were analysed to identify the key barriers discussed and grouped into several categories. The yarns demonstrated the complex relational intersectionality of colonial legacies and contemporary challenges Aboriginal people face in their efforts to Care for Country. These are listed in Table 3 in the 'Summary of yarn outcomes' section below. The yarns showed the enduring impacts of dispossession, cultural suppression and systemic discrimination while highlighting the resilience, resistance and deep spiritual connection that fuels ongoing cultural maintenance and (re)vitalisation. Drawing upon the yarns, the key issues raised are further investigated (refer to Part 2) to understand how they form barriers to Aboriginal people trying to practice culture and Caring for Country. The key issues are:

- Bias and racism
- the Caring for Country legislation and policy landscape in NSW
- Aboriginal rights in legislation and policy
- Economic development models and Caring for Country
- Aboriginal women in Caring for Country
- United Nations Declaration on the Rights of Indigenous Peoples
- Native title
- Treaty in New South Wales
- Aboriginal community complexities and relationships
- Aboriginal governance
- Case study of barriers to Aboriginal cultural burning in NSW.

A central theme woven throughout the yarns is the profound impact of historical dispossession and continuing colonisation. The struggle to access and connect with the Country emphasises the emotional need for reconnection and reveals the deep spiritual and emotional consequences of this loss. This dispossession and continuing colonisation is not merely a historical event but a continuing lived reality, impacting relationships with Country which are crucial for cultural practices and hindering intergenerational knowledge transfer. The suppression of Aboriginal languages and cultures has left deep intergenerational wounds. The yarns explored the challenges of reviving ceremonies and rituals, acknowledging the emotional toll of historical (and in some instances continuing) cultural suppression and the ongoing trauma it inflicts. This trauma manifests in various ways, impacting mental health, wellbeing and the very ability to engage in Caring for Country work. The lack of recognition of this trauma and the lack of access to culturally appropriate mental health services and responses in Caring for Country projects further compounds this issue.

The yarns revealed that beyond historical injustices, Aboriginal people in NSW face ongoing systemic barriers. The colonial and bureaucratic burden placed on Aboriginal people diverts time and resources from actual Caring for Country. A pervasive lack of trust in government agencies, stemming from broken promises and a lack of cultural understanding, hinders the formation of genuine partnerships. While some government initiatives exist, concerns about tokenism and a lack of meaningful engagement persist. Navigating conflicting values and expectations between older and younger generations adds another layer of complexity to the already arduous task of cultural maintenance and (re)vitalisation and intergenerational knowledge transfer in a quickly changing society.

The yarns exposed a fundamental clash of worldviews between Aboriginal ways of knowing and being and the dominant Western frameworks governing land management. There is a propensity of Western legal and legislative frameworks to link Aboriginal culture and Caring for Country to Western property law. These categories and definitions are seen as limiting Aboriginal cultural expression, while a 'gatekeeper' mentality within land management agencies prioritises Western scientific knowledge and marginalises Aboriginal voices.

The pressure to commodify Aboriginal culture for economic gain further threatens the integrity of Caring for Country. This clash extends to the compartmentalised approach of Western institutions, which contrasts sharply with the interconnected worldview that underpins Aboriginal culture. The yarns implicitly critique Western economic models that prioritise profit over cultural and ecological wellbeing, calling for alternative models aligned with Aboriginal values, priorities, beliefs and knowledge.

The yarns unequivocally emphasise the inseparability of culture and Caring for Country. Culture is not merely an adjunct to land management, it **is** Caring for Country. Traditional ecological knowledge is not seen as a separate body of knowledge but an integral part of Aboriginal culture, embedded in spiritual beliefs, kinship and everyday practices. Attempts to isolate traditional ecological knowledge strip it of its cultural meaning and power, further silencing Aboriginal voices, values and beliefs.

Despite these formidable challenges, the yarns reveal the enduring resilience of Aboriginal people and their ongoing resistance to colonial control and continued colonisation. Reclaiming land, maintaining and (re)vitalising cultural practices, and asserting cultural authority are all acts of resistance. The yarns highlight the importance of self-determination and cultural continuity, advocating for legislative and policy changes that recognise Aboriginal rights and prioritise culturally sensitive approaches. There is a clear call for genuine partnerships built on respect, reciprocity and shared decision-making. Addressing internal complexities and promoting healing within communities are crucial steps towards a more hopeful future.

Historical and ongoing colonisation and dispossession form the foundation for many other barriers identified in the yarns. Limited access to Country, whether due to ongoing legal battles over native title, inadequate resourcing under the NSW Land Rights Act, or the complexities of joint management agreements, restricts the ability to practise culture. Culture is not something that can just be practised anywhere, the connections to Country that Aboriginal people talk about are to specific places, landscapes and sacred sites. These places are scattered across Country, but the obligation to Care for Country is seen as to ALL Country due to the relational nature of Aboriginal worldviews. Limitations on access can also exacerbate internal community conflicts, as seen in the yarns discussing competition for funding and land. We heard so many examples of where restrictions on access or complex approvals were required just to gain access, even within government-controlled lands. The approval process, depending on the local management, varied across NSW. While there are provisions in policy and legislation, the complexity of implementing these seems from our yarning discussions to vary from easy and facilitating to complex, requiring complex processes or being ignored by local land managers.

The yarns emphasise the social, cultural and emotional need for reconnection, reinforcing the loss of access to Country has deep spiritual and emotional consequences. The yarns explored the challenges posed by the ongoing threats to Aboriginal cultural maintenance of language and the difficulties of reviving ceremonies and rituals, underscoring the emotional toll of long-term cultural suppression, creating a vicious cycle.

In several instances it was expressed in the yarns that disagreements in the local community were used as excuses not to engage by land managers, leaving it to Aboriginal people to unravel the complexities of the roles given to different parts of the community in policy and legislation. These roles include native title as traditional owners, Aboriginal owners and joint management board members, Local Aboriginal Land Council staff, members and board members, traditional owners, Aboriginal people with historical connection, government committee and board members in various processes, local Aboriginal corporations, and Aboriginal Ranger teams and groups funded under federal government funding programs. The bewildering array of ways Aboriginal people are forced to engage in Caring for the Country due to legislation and policy at both a state and federal level only creates division and conflict around who can speak for the Country.

The inconsistency in policy and legislation application was evident in the discussions, with experiences varying across the state. It is not necessarily clear why there is this discrepancy in the way legislation and policy is implemented in different parts of NSW. Still, yarns pointed to the lack of clear implementation guidelines for legislation and policy for both local land managers and Aboriginal people to follow, the confusing nature of

Aboriginal rights in legislation and policy, the disregard and disruption of Aboriginal governance approaches, and the lack of recognition of the trauma, lateral violence and conflict which policy and legislation brings into Aboriginal communities. It was discussed that at times the inherent bias towards Aboriginal people that exists in government plays a role (Leon, 2023, 2023; Shirodkar, 2019).

The systemic discrimination within government agencies together with a lack of cultural understanding fuel distrust and suspicion. This distrust can make Aboriginal communities hesitant to engage in partnerships or government-led initiatives, even when those initiatives are ostensibly designed to support Caring for Country. The internalisation of colonial attitudes and lateral violence within communities, both products of historical trauma, further complicate these dynamics. The focus on employment and economic outcomes puts pressure on the practice of culture and the neoliberal push that this puts on the need for commodification of culture creates a tension between cultural integrity and economic survival. The need to secure funding through grants or other means, such as fee-for-service work, can lead to compromises that undermine Aboriginal values and practices. This pressure is particularly acute for communities relying on private land purchases, where economic sustainability is a constant concern.

### Caring for Country in a complex landscape

Aboriginal people engage with Caring for Country through diverse pathways, including native title, land rights, joint management, government-funded programs and private land purchases/ownership. These different legal frameworks interact with historical trauma, ongoing colonisation and systemic racism to create unique challenges for each community. Each pathway navigates a distinct legal and bureaucratic landscape, interacting with existing social and cultural biases to create specific barriers. The choice of pathway, or lack thereof due to limited resources or systemic constraints, significantly shapes the experience of Caring for Country. Relational intersectionality helps us understand how these factors intersect and compound to create disproportionate impacts.

It is hard to identify barriers to Aboriginal Caring for Country because of the way different issues, legal, legislative, policy, social, bias, racism, cultural misunderstandings, all act together in a relational intersectional way. It is hard to produce a simple list of specific barriers because of the way all these interact contextually to create unique barriers that emerge depending on the pathway Aboriginal people choose through legal, legislative and policy frameworks. It depends on the pathway an Aboriginal person chooses or is forced to undertake Aboriginal cultural practice and Caring for Country as to what barriers emerge.

Historical and ongoing colonisation, dispossession and cultural disruption have created systemic inequalities that disproportionately impact Aboriginal communities. Negative stereotypes, prejudice and cultural misunderstandings contribute to marginalisation and limit opportunities for Aboriginal peoples. These biases can influence interactions with government agencies, access to resources and participation in decision-making processes. These represent a disruption to connection to Country and have profound spiritual and cultural consequences. This legacy of trauma, coupled with ongoing racism and discrimination, manifests in various forms, laws and policies which often fail to recognise or accommodate Aboriginal rights, governance systems, knowledge system, Aboriginal community priorities and cultural practices, undermining Aboriginal self-determination and Caring for Country.

Caring for Country embodies a deep spiritual and reciprocal relationship with the land, encompassing responsibilities for its wellbeing and sustainability. The historical and ongoing impacts of colonisation have created complex challenges for Aboriginal peoples in fulfilling these responsibilities. Policies that disregard or undermine Aboriginal rights disrupt the connection between Aboriginal people and their Country. These policies often reflect colonial power dynamics and fail to recognise Aboriginal governance structures, leading to conflicts over decision-making authority. Socioeconomic disparities, such as poverty, lack of access to education and employment, and inadequate infrastructure, create significant barriers to effective Caring for

Country. These socioeconomic factors intersect with other forms of discrimination, compounding the challenges faced by Aboriginal communities.

### The relational intersectionality and the nature of barriers

The barriers Aboriginal people face in their efforts to Care for Country intersect and exacerbate each other, creating a complex web of challenges that hinder the practice of cultural obligations and responsibilities. The barriers to Caring for Country are complex and interconnected, reflecting the enduring legacy of colonialism. By understanding how these barriers relate to and reinforce each other, more effective strategies can be developed to support Aboriginal people in their vital work of Caring for Country. This requires a fundamental shift in power dynamics, a commitment to genuine partnership, and a deep respect for Aboriginal knowledge, culture and self-determination.

Aboriginal worldviews prioritise relationality, recognising the interconnectedness of all living beings and the land itself. Caring for Country is not merely a practice but a fundamental responsibility stemming from this deep kinship. This relational worldview contrasts sharply with Western notions of land ownership and management, creating a fundamental tension that underpins many of the barriers discussed.

The concept of intersectionality further complicates the picture. Aboriginal people experience multiple forms of marginalisation based on intersecting identities beyond sex, gender and beliefs, such as native title, land rights, Aboriginal owners and so forth. These intersecting identities create unique experiences of oppression and resilience, influencing the specific barriers faced in Caring for Country. For example, Aboriginal women face unique challenges related to gendered roles and responsibilities, cultural knowledge transmission and access to decision-making power.

The core challenge lies in the intersectionality of these factors. Legal frameworks, while seemingly neutral, are often implemented within a context of historical and ongoing systemic bias, racism and cultural misunderstandings. This creates a situation where seemingly objective rules and regulations disproportionately impact Aboriginal people and their ability to exercise their inherent rights and responsibilities to Country. This can be seen in how legislation designed around Western concepts of land ownership and management may clash with Aboriginal understandings of care and interconnectedness with the land, creating a fundamental barrier to effective Caring for Country.

The various pathways available to Aboriginal people for engaging in Caring for Country each present their own unique set of challenges. Each pathway is embedded within its own bureaucratic structure, legal requirements and power dynamics. The interaction of these frameworks with pre-existing social biases and cultural misunderstandings creates a dynamic and unpredictable landscape of potential barriers. As an illustration, native title can be an expensive and protracted process. It often requires extensive legal, genealogical research and legal battles which creates barriers related to access to resources such as legal expertise. Engaging with government-funded programs might require conforming to specific project guidelines and reporting requirements that may not align with cultural practices or priorities, potentially compromising cultural integrity and self-determination. Even private land purchase, seemingly the most straightforward pathway, can be hindered by financial constraints and discriminatory lending practices, effectively excluding many Aboriginal people from this option.

The contextual nature of these barriers also plays a significant role. What might be a manageable hurdle in one context could become an insurmountable obstacle in another. Geographic isolation, the specific cultural practices involved, the history of interactions with government agencies, and the internal dynamics of specific Aboriginal communities all influence the nature and impact of the barriers encountered. By way of example, access to funding for Caring for Country initiatives might be readily available in one region but completely absent in another, creating vastly different experiences for Aboriginal people in Caring for Country. This can

also be seen in the bias in the geographical spread of working on Country programs and Indigenous protected areas in Australia.

Understanding the barriers to Aboriginal Caring for Country requires moving beyond a simplistic checklist approach and embracing a nuanced and dynamic perspective. Recognising the intricate web of interconnected factors at play and acknowledging the contextual nature of the challenges faced is required, instead of seeking a universal list of barriers. Efforts should focus on understanding the specific ways in which legal, legislative, policy, social and cultural factors interact to create unique barriers along each pathway. Only then can effective strategies be developed to dismantle these barriers and support Aboriginal people in their obligations to Caring for Country.

### **The struggle for cultural continuity in the face of ongoing colonisation**

The impact of long-term discrimination and colonisation and its continuation through Western systems should not be framed as the loss of culture, but rather the battle for Aboriginal communities to maintain and (re)vitalise their culture, drawing on the old ways and making it relevant to today's challenges and ways of life. Government control and legislative frameworks disrupt maintenance and (re)vitalisation of culture and add an extra layer to the normal cultural process of change. The tension created by Western views of Aboriginal cultural practice and how the use of policy and legislation indirectly influence how Aboriginal people do this is, in effect, having a colonising influence on what is and isn't Aboriginal culture.

The yarns show that cultural maintenance and (re)vitalisation efforts are under way, but the historical suppression of Aboriginal languages and cultures has resulted in a significant impact on intergenerational transmission of Aboriginal culture and knowledge. This impact can make it challenging in these (re)vitalisation and maintenance efforts, particularly, as expressed in some yarns, in highly urbanised areas or regions impacted by farming and agriculture. This is implicit in the emphasis on the importance of language and cultural revival and the concerns about the impacts of species loss on cultural knowledge. The yarns discuss the breakdown of traditional clan structures and Aboriginal governance systems and how this impacts the passing on of knowledge through generations and creates conflict around 'who can speak for Country'. This dynamic can hinder efforts to build inclusive and collaborative Caring for Country initiatives. Rather than framing this challenge as 'loss' of traditional knowledge and language, the yarns reveal the need for recognition of the ongoing struggle by Aboriginal communities to maintain and (re)vitalise their cultures in the face of historical suppression and ongoing colonial influence. This struggle involves drawing on the 'old ways' and adapting them to contemporary challenges. However, government control and legislative frameworks are creating significant barriers and disrupting this process of cultural change and reconfiguring culture to meet new and emerging challenges from continued environmental impacts and species loss.

The yarns depict Aboriginal cultural (re)vitalisation not as a simple recovery of lost traditions, but as a dynamic and ongoing negotiation between the past, present and future. This involves Aboriginal people reclaiming and reinterpreting tradition. Aboriginal communities are actively reclaiming traditional knowledge and practices, but are not simply replicating them in their original form, but are reinterpreting and adapting these traditions to contemporary contexts, creating new forms of cultural expression that are relevant to today's challenges and ways of life. This dynamic process is an essential and normal part of culture, essential for cultural survival and allows traditions to evolve and thrive in a changing world. This challenges Western interpretations of Aboriginal culture as 'lost' or 'static'.

The struggle for cultural continuity is also a resistance against the homogenising forces of colonisation, which seek to impose Western values and erase cultural diversity. By asserting their distinct cultural identities and practices, Aboriginal communities are challenging the dominant narrative and reclaiming their place in Caring for Country. This resistance is evident in the push for Aboriginal-led solutions; the emphasis on cultural values, beliefs, priorities and knowledge in land management; and the rejection of Western-centric creations and visions of what Aboriginal culture is and should be through legislation, policy, bias, naive interpretations of

what it should be and racist constructions of Aboriginal people and their culture. The process of cultural (re)vitalisation involves navigating complex intergenerational dynamics.

The combined effect of these internal and external pressures creates a challenging environment for Aboriginal communities striving to maintain and revitalise their cultures. The struggle for cultural continuity is not simply a matter of preserving the past but of navigating complex power dynamics, negotiating with dominant systems and adapting to a rapidly changing world. This is something Aboriginal culture has been doing for thousands of generations in NSW, colonisation being only another thing Aboriginal communities in NSW have to survive. Addressing these challenges requires not only dismantling discriminatory policies and practices but also supporting Aboriginal self-determination, recognising the diversity of Aboriginal cultures, and empowering communities to control their own destinies.

### **Positives in the relationship between the government and Aboriginal people**

While the yarns primarily focus on challenges and barriers, they also reveal some positive aspects of the relationship between government and Aboriginal people, as well as hope for the future. While recognition of Aboriginal knowledge and Aboriginal expertise is often marginalised, there's growing recognition of the value that Aboriginal values, priorities, worldviews, philosophies and knowledge can bring to land management.

Opportunities and examples of collaboration and partnership exist, despite existing tensions. The yarns point to opportunities for collaboration and partnership between government agencies and Aboriginal communities. While acknowledging the limitations of joint management in its current form (NSW NPWS, 2023), the very existence of these arrangements suggests a willingness to work together, suggesting the potential for government to play a positive role by providing access to land for cultural practices. It emphasises the importance of building trust between government and Aboriginal communities and working on projects that empower Aboriginal people through supporting cultural practice.

The yarns acknowledge the existence of government funding programs aimed at supporting Caring for Country and cultural initiatives. While the yarns criticise the complexities and inequities of funding distribution, the availability of funding itself represents a potential avenue for positive change. The yarns suggest a gradual shift in attitudes within government agencies and a growing awareness of the importance of cultural sensitivity and Aboriginal rights.

Aboriginal people working within government is seen as a positive step, and even though they may face challenges and pressures to conform it offers opportunities to advocate for change from within the system. Aboriginal people see the important role of Aboriginal staff in government, acknowledging the complexities of their position but also recognising their potential to influence policy and practice, while recognising the need for work to address the power imbalances Aboriginal staff in government experience.

While these positive aspects are overshadowed by the significant challenges and barriers described in this study, they offer glimmers of hope and suggest potential pathways towards a more constructive and equitable relationship between government and Aboriginal communities. Building on these positive developments, addressing the systemic issues identified in this and other studies, and fostering genuine partnerships based on respect, reciprocity and self-determination are crucial for creating a future where Aboriginal people can fully exercise their cultural rights and responsibilities to Country.

### **The United Nations Declaration on the Rights of Indigenous Peoples and the yarns**

The United Nations *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, 2007) provides a powerful framework for understanding many of the issues raised in the yarns. The UN Declaration affirms the inherent rights of Aboriginal peoples to self-determination, cultural expression and control over their lands, territories and resources. Several articles in the UN Declaration directly relate to the challenges and aspirations

articulated in the yarns. The UN Declaration recognises the right of Indigenous peoples to self-determination, including the right to freely determine their political status, pursue their economic, social and cultural development and revitalise their cultures and traditions. This resonates with the calls in the yarns for Aboriginal-led solutions, control over land and resources, and the recognition of Aboriginal knowledge systems. For example, Article 3 affirms the right to self-determination, including the right to freely determine their political status and freely pursue their economic, social and cultural development; while Article 11 protects the right to practise and revitalise cultural traditions and customs. This directly addresses the frustration expressed in the yarns about the limitations imposed by Australian legal and legislative frameworks and the need for greater Aboriginal control over cultural practices and land management.

The UN Declaration emphasises the importance of free, prior and informed consent in all matters affecting Indigenous peoples. This principle requires governments to obtain the consent of Indigenous communities before implementing policies or projects that impact their lands, territories or resources. The lack of genuine consultation and consent is a recurring theme in the yarns, with Aboriginal people often feeling excluded from decision-making processes.

Article 10 states that Indigenous peoples shall not be forcibly removed from their lands or territories. This resonates with the concerns expressed in the yarns about government control over land access and the need for greater Aboriginal involvement in land management decisions. Article 32 speaks to the right to determine and develop priorities and strategies for developing or using their lands or territories and other resources.

The UN Declaration protects the rights of Indigenous peoples to practise and revitalise their cultural traditions and customs, including language, spirituality and traditional knowledge systems. This directly addresses the concerns expressed in the yarns about the erosion of cultural practices due to government policies and the lack of recognition of Indigenous knowledge systems. Article 12 affirms the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites. This relates directly to the issues raised in the yarns about restrictions on cultural practices and the need for greater access to culturally significant sacred sites.

The UN Declaration recognises the inherent rights of Indigenous peoples to their lands, territories and resources. This includes the right to own, use, develop and control their lands and resources and the right to redress for past dispossession. This resonates with the calls in the yarns for greater Aboriginal control over land and resources and the need for redress for historical injustices. Article 26 affirms the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. This directly addresses the ongoing struggle for land rights and the limitations imposed by current land management frameworks described in the yarns.

The UN Declaration recognises the right of Indigenous peoples to redress for past injustices, including the return of ancestral lands and resources. This resonates with the calls in the yarns for addressing historical trauma and returning control over Country to Aboriginal people.

By implementing the principles of the UN Declaration, governments can create a more just and equitable environment for Aboriginal people to practice their culture, Care for Country and exercise their right to self-determination. Implementing the Declaration requires legislative and policy changes and a fundamental shift in attitudes and relationships between government and Aboriginal communities, moving away from control and assimilation towards partnership and respect. The yarns provide powerful examples of the real-world implications and the lived experiences of failing to uphold the rights enshrined in the UN Declaration and underscore the urgency of implementing its principles in NSW.

## Summary of yarn outcomes

TABLE 3 SUMMARY OF YARN OUTCOMES

Theme / Barrier	Description
<b>Colonial legacy and ongoing impacts</b>	
Dispossession and impacts on Aboriginal people's connection to Country and ability to practise culture	<p>The yarns highlighted the ongoing struggle to access and connect with Country, the essential element to maintaining Aboriginal culture, due to historical and ongoing dispossession.</p> <p>The yarns emphasised the social, cultural and emotional need for reconnection.</p> <p>The yarns explored the challenges posed by the ongoing threats to Aboriginal cultural maintenance of language and the difficulties of reviving ceremonies and rituals, underscoring the emotional toll of cultural suppression.</p>
Intergenerational trauma	<p>The enduring impact of historical trauma on individuals and communities is a recurring theme, affecting mental health, wellbeing and the ability to engage in Caring for Country. (Yarns 4 and 6)</p>
Deeper understanding and respect	<p>Beyond policy changes and practical solutions, the yarns expressed a need for a deeper understanding and respect for Aboriginal cultures and values within the wider Australian community. This includes acknowledging the validity of Aboriginal knowledge systems, challenging racist and paternalistic attitudes, and recognising the inherent rights of Aboriginal people to self-determination and cultural continuity.</p>
Colonial and bureaucratic load on Aboriginal people and organisations as barriers to Aboriginal cultural maintenance and (re)vitalisation	<p>The colonial and administrative load placed on Aboriginal people and organisations was identified as a major barrier to Aboriginal people practising and maintaining Aboriginal culture, such as Caring for Country. Applying for and managing grants, navigating complex regulations and constantly having to justify connections to Country, access and constantly justify worldview and cultural practices to government agencies diverts time and resources from actual Caring for Country and can lead to burnout and frustration. (Yarns 1, 2, 4 and 6)</p> <p>The yarns talked about the emotional toll of maintaining cultural practices in a hostile or indifferent environment. This emotional toll from the colonial load is often invisible and unacknowledged, but it is a significant burden borne by those working to preserve and transmit their cultural practice (e.g. difficulties were expressed in Yarns 2 and 6 about reviving cultural practices such as ceremony and ritual).</p> <p>The issue of the lack of recognition of the cost in money, time and wellbeing to Aboriginal people in participating in government committees and engagements was highlighted (particularly Yarn 4) and the need for better recognition of these costs.</p>
Lack of trust in government agencies	<p>The yarns expressed a general lack of trust in government agencies stemming from ongoing experiences of miscommunication, broken promises and lack of meaningful engagement and cultural understanding. This lack of trust makes it difficult to build genuine partnerships and can lead to scepticism and resistance towards government initiatives.</p> <p>While some government programs and policies might appear to support Aboriginal culture, the yarns expressed concern about tokenistic gestures that lack substance. The yarns highlighted that true engagement requires more than just including Aboriginal people in consultations, it requires a genuine commitment to sharing power and decision-making authority.</p>
Environmental changes and their cultural impacts	<p>The yarns highlighted the importance of considering the cultural impacts (not just sites) of environmental changes, including those caused by species loss, climate change, unrestrained development and resource extraction, and other human activities. These changes can have profound effects on Aboriginal people's connections to Country, cultural practices, and spiritual wellbeing. Fears were expressed for future generations' ability to maintain their culture under these threats. The yarns mention the loss of totemic species (particularly in Yarns 1, 2, 3, 4 and 6).</p> <p>More broadly, the ongoing loss of biodiversity due to climate change, habitat</p>

Theme / Barrier	Description
	destruction and other factors has had significant cultural impacts, eroding the intricate web of relationships between Aboriginal people and the natural world.
<b>The clash of worldviews</b>	
Contesting Western frameworks and the 'boxing in' of Aboriginal culture	A central tension emerged in the yarns between Aboriginal ways of knowing and being and the dominant Western frameworks governing land management. Western categories and definitions were seen as limiting Aboriginal cultural expression and the scope of Caring for Country initiatives. This was expressed as 'boxing in' Aboriginal culture (Yarn 2) which exemplified the discussion in other yarns.
Gatekeeping and control	The yarns exposed the 'gatekeeper' (Yarn 6) mentality prevalent within land management agencies, where Western scientific knowledge and understanding of Aboriginal culture are prioritised, and Aboriginal voices and understanding are marginalised.
Commodification of culture	<p>The pressure to commodify Aboriginal culture for economic development, for example, cultural burning, is seen as a threat to the integrity of Caring for Country. The yarns critiqued Western economic models prioritising profit over cultural and ecological wellbeing. The pressure to commodify culture and the focus on fee-for-service models are seen as threats to the integrity of Caring for Country.</p> <p>The yarns expressed a need for alternative economic models that align with Aboriginal values and prioritise cultural and environmental sustainability and cultural wellbeing (particularly Yarn 6).</p>
Limitations on the access to Country for cultural practice	Beyond access to land, the yarns highlighted the issue of limited access to specific places necessary for cultural practices. Restrictions on cultural practice along with, for example, the clash with threatened species and communities legislation and how these are interpreted locally can have both practical and cultural consequences, making it difficult to maintain cultural practice, transmit knowledge and connect with Country in meaningful ways. This, for example, was expressed in Yarns 1 and 2 about issues accessing trees in conservation reserves to undertake the practice of cultural scaring and the barriers experienced trying to do cultural burning on conservation lands (Yarn 6).
<b>Aboriginal cultural practices and Caring for Country</b>	
Culture as the foundation of Caring for Country	The yarns emphasised the inseparability of culture and Caring for Country, highlighting that it's not just about natural resource and land management but about maintaining and practising Aboriginal culture in all its aspects. Ceremonies, storytelling and cultural practices are cultural expressions and acts of Caring for Country, strengthening connections to the land and maintaining its health.
Traditional ecological knowledge is not separate but integral to culture and should not be treated as separate from culture	The yarns stressed that traditional ecological knowledge, the focus in some legislation, is not a separate body of knowledge but an integral part of Aboriginal culture and the practice of Caring for Country, embedded in spiritual beliefs, kinship and everyday practices. Isolating traditional ecological knowledge strips it of its cultural meaning and power (Yarns 2, 4 and 6). Just recording the species name and usage is not enough; understanding the implications on culture, values and worldview is essential.
Spiritual and emotional significance of land	While often discussed in the context of cultural practice, the yarns conveyed Aboriginal people's profound spiritual and emotional connection to Country. This connection is not merely about resource management, hunting and fishing, but about identity, belonging and wellbeing. The need to purchase land for cultural practice (Yarn 1) underscores the deep emotional distress caused by dispossession and the yearning for a spiritual reconnection with ancestral lands.
Compartmentalisation by government	It was felt in the yarns that the way governments separate issues across

Theme / Barrier	Description
departments	departments, particularly separating land and sea and water, for example, created barriers to Aboriginal people implementing Caring for Country and caused an extreme colonial load having to engage across all these departments, committees and processes and the load of trying to maintain the connections of all these.
Importance of intergenerational knowledge transfer	Challenges to intergenerational knowledge transfer were discussed in all yarns, particularly in the context of access to Country for cultural practice. Concerns about for what is left for future generations and their ability to practice culture and maintain cultural continuity were constantly raised. It was highlighted (Yarn 4) that the potential for conflict between younger generations seeking autonomy and Elders upholding cultural ways isn't simply a difference of opinion but can represent a significant emotional burden and colonial load for those trying to bridge the gap and maintain cultural continuity while adapting to a changing world. This was seen as requiring greater support in intergenerational knowledge transfer and seeking culturally meaningful ways of employment.
Need for healing	<p>While trauma was consistently mentioned, the yarns expressed a broader need for healing, both individually and collectively within Aboriginal communities and with broader Australians. Reconnecting to Country, revitalising culture and reclaiming control and self-determination are all seen as pathways to healing from the wounds of colonisation and creating a more positive and hopeful future. This healing addresses past trauma and builds stronger, more resilient communities.</p> <p>The yarns highlighted the impact on mental health, expressing the emotional toll of cultural suppression and ongoing trauma. Related to this is the potential for increased rates of mental health issues, including depression, anxiety and other mental health issues, within Aboriginal communities struggling to maintain their cultural identity and connection to Country. Culturally appropriate mental health services and support systems are essential, particularly on the ground, while implementing Caring for Country (Yarn 6). While the yarns discuss the mental health impacts of colonisation and the 'colonial load', they also implicitly point to the lack of accessible and culturally appropriate mental health services for Aboriginal communities.</p> <p>Yarns emphasised the need to address trauma and that existing services may not be accessible, adequate or culturally sensitive enough to meet the specific needs of Aboriginal people.</p>
Diversity within Aboriginal communities	The yarns expressed the diversity of perspectives and experiences within Aboriginal communities. Disagreements over who can speak for Country, over land management practices, varying cultural knowledge and generational differences exist. This internal diversity, while sometimes seen as conflict, is also a testament to the richness and complexity of Aboriginal cultures. Policy and practice must be flexible and adaptable enough to accommodate this internal diversity and avoid imposing a monolithic view of Aboriginal culture, and develop processes that strive to reduce conflict and not create more.
Traditional food security	The yarns expressed that access to traditional foods is not just a matter of physical sustenance but has cultural significance. Restrictions on cultural practices associated with traditional food practices, beyond just hunting, fishing, gathering, is impacting traditional food security and undermining cultural practices associated with traditional food systems. The yarns expressed that food sovereignty is essential for both physical and cultural wellbeing.
The digital divide and unequal access to technology and information	The yarns identified the challenges posed by the digital divide. The reliance on crowdfunding and social media in some communities, while others seek government funding suggests that some communities have access to these tools, while others may not. This unequal access to technology and information can further marginalise already disadvantaged communities and limit their ability to access funding opportunities and connect with other Aboriginal groups.
Self-determination and cultural authority	

Theme / Barrier	Description
Reclaiming self-determination	The yarns reveal a firm assertion of cultural authority and self-determination, with communities seeking control over land, cultural practices and decision-making processes (Yarns 1, 3, 4 and 6).
Maintenance and (re)vitalising cultural practices, resistance and resilience	Numerous examples were given in the yarns of cultural maintenance and (re)vitalisation, from language and ceremony revival (Yarns 1, 2, 3, 4 and 6), to advocating for cultural burning (all yarns), and expressing a commitment to cultural continuity. Though facing numerous obstacles, the yarns revealed the enduring resilience of Aboriginal communities and their ongoing resistance to colonial control. Reclaiming land (Yarns 1 and 2 regarding direct purchase), revitalising cultural practices (Yarns 1, 2, 5 and 6 specifically), and the ongoing asserting cultural authority (Yarn 4 particularly) are all acts of resistance that demonstrate a refusal to be assimilated or silenced.
<b>Internal complexities and relationships</b>	
Internal conflicts within Aboriginal communities and lateral violence	The yarns acknowledged internal conflicts and disputes within Aboriginal communities, including disputes over land ownership, who can talk for Country, varying interpretations of culture and generational differences. Lateral violence within Aboriginal communities (specifically mentioned in Yarns 1, 2, 4 and 6 but talked about in all yarns) was seen as stemming from historical trauma and the conflict generated by native title, land rights and other legislative constructs, and disrupting Aboriginal-based governance processes. This was recognised as a significant challenge, hindering collaboration and healing within and between Aboriginal communities and people. It was discussed how the scarcity of resources, including funding, employment opportunities and access to land, can create competition and conflict within communities, diverting energy away from collaborative efforts to Care for Country. The unequal distribution of funding can exacerbate tensions and create conflict between different groups.
Intersections with other social issues	All yarns expressed the challenges faced by Aboriginal people in how practising culture and Caring for the Country intersect with broader social issues like poverty, inadequate housing, limited access to health care and education, and high rates of incarceration. It was pointed out that these interconnected challenges create complex barriers to wellbeing and self-determination.
<b>Need for systemic change</b>	
Legislative reform and policy change	The yarns advocated for legislative and policy changes that recognise Aboriginal rights, prioritise self-determination, and support cultural maintenance and (re)vitalisation. Legislation in NSW was seen as not fit for purpose, and a government inquiry was called for.
Culturally sensitive approaches	There is a strong call for culturally sensitive approaches to land management, consultation and training, legislation and policy development and implementation, which allow for self-determination as well as recognising and respecting Aboriginal knowledge systems.
Genuine partnerships	The yarns emphasised the need for genuine partnerships between government agencies, land managers and Aboriginal people built on respect, reciprocity and shared decision-making. Past experiences were expressed of betrayal, exploitation and government interference and how it can create distrust and suspicion within Aboriginal communities, making it challenging to build consensus and work together on Caring for Country initiatives. Descriptions in the yarns of how internal disputes within communities were used to avoid taking action created a level of distrust and a perception of manipulation by external forces. It was discussed how these form 'roadblocks' created by internal arguments and the manipulation of 'whose Country'.
Limited understanding and awareness by Aboriginal people about their rights	It was pointed out by several yarns that Aboriginal people themselves may not always be fully aware of their rights related to land and cultural practice. This lack of awareness can limit Aboriginal people's ability to advocate effectively and access available resources. It suggests a need for targeted education and outreach within Aboriginal communities to ensure everyone knows their rights (Yarn 3).

Theme / Barrier	Description
<p>Disruption of cultural maintenance and (re)vitalisation</p>	<p>It was highlighted across the yarns that the constant struggle to address immediate needs, such as living, social issues, securing funding, navigating bureaucratic processes and dealing with crises and community conflict and issues, can divert time and energy away from long-term cultural maintenance and (re)vitalisation. Focusing on immediate survival can make investing in long-term planning and capacity building for cultural continuity difficult. Many of the yarns describe the constant firefighting mode that many Aboriginal organisations and individuals find themselves in.</p> <p>The historical suppression of Aboriginal languages and cultures was identified as a significant issue with many ramifications, including the historical restrictions on access and cultural practices and the impact this had on intergenerational knowledge transfer. This was identified as making it challenging to revive and maintain cultural practices, requiring space for Aboriginal people to reconnect with these practices, especially those related to Caring for Country.</p> <p>Yarns expressed various issues including the importance of language and cultural revival and the concerns about the impacts of species loss on cultural knowledge. The breakdown of traditional clan structures which impacts the passing on of knowledge through generations was also discussed (Yarns 4 and 6 specifically).</p>
<p>Internalised colonialism and its impacts on identity</p>	<p>It was identified in the yarns that the internalisation of negative stereotypes and colonial attitudes can lead to feelings of shame, self-doubt and a diminished sense of cultural pride. This can make it difficult for individuals to embrace their Aboriginal identity and participate fully in cultural practices. This was highlighted as an issue of the pressure on Aboriginal staff working in government can cause Aboriginal people to become 'gatekeepers', suggesting that the internalisation of colonial power structures and the potential for this to undermine cultural maintenance and (re)vitalisation efforts from within.</p>

## Part 4: Cultural burning case study

Throughout all the yarns, one theme stood out across the board: cultural fire. Aboriginal people talked about fire not just as a tool for land management, but as ceremony, kinship, science, obligation and healing. It sits at the heart of many people's identity and responsibility to Country. But it's also one of the most heavily regulated and misunderstood practices in NSW. The barriers to cultural burning bring together many of the issues explored across this report, law, policy, distrust, worldview clash and cultural suppression. For that reason, we've included a focused case study on Aboriginal cultural burning to show how these barriers play out on the ground and how people are pushing back.

### Barriers to Aboriginal cultural burning in NSW

Cultural burning, the Aboriginal cultural practice of using fire to Care for Country, offers significant ecological and cultural benefits, but its widespread implementation in NSW faces substantial barriers. This case study concentrates on the legislative and policy barriers to Aboriginal cultural burning (McCormack et al., 2024) as the yarns have provided a rich lived experience of barriers. The study involved consultation with Aboriginal people across NSW to develop a deeper understanding of the barriers and views of Aboriginal people demonstrating the need for systematic change.

### Identifying and overcoming legal barriers to cultural burning

McCormack identifies several key barriers to cultural burning (McCormack et al., 2024) and the (re)vival and widespread adoption of cultural burning is hampered by a complex of barriers based in historical injustices, systemic racism and ongoing cultural misunderstandings. The paper analyses these barriers through a comprehensive literature review, interviews with Aboriginal experts and a thorough review of relevant legal frameworks.

One of the central themes explored is the enduring impact of the legal concept of *terra nullius*, the false premise that Australia was uninhabited at the time of colonisation. This historical injustice continues to shape current legal and policy approaches to fire management, prioritising state control and often sidelining Aboriginal knowledge systems and Caring for Country. How this legacy manifests in bureaucratic hurdles, funding inadequacies and a lack of recognition for Caring for Country highlights the mismatch with Western scientific approaches, which dominate fire management decisions. The report examines the practical challenges Aboriginal communities face when seeking to engage in cultural burning, including navigating complex permitting processes, securing adequate funding and overcoming resistance from government agencies and non-Indigenous practitioners. The report highlights the nuanced interpersonal dynamics at play, including the distrust stemming from past negative interactions with fire authorities, the compromised position of Aboriginal staff within government agencies, and the cultural misunderstandings that can arise during collaborative projects.

The analysis emphasises that cultural burning is not simply a hazard reduction tool, but a holistic practice deeply intertwined with Aboriginal culture, spirituality and connection to the Country. By exposing the systemic and practical barriers to cultural burning in NSW, the report supports calls for transformative change in policies, practices and attitudes to create a more supportive and culturally respectful approach to fire management in NSW. The paper argues that these barriers (refer to Table 4) stemming from historical injustices and ongoing systemic issues, collectively disadvantage Aboriginal people in Caring for Country and practising their culture, and calls for systemic change to empower Aboriginal communities and incorporate Aboriginal knowledge and practices into fire management.

Two of the key recommendations in the report are to provide dedicated funding streams specifically for cultural burning initiatives, controlled by Indigenous communities; and to develop culturally appropriate policies and regulations that recognise Aboriginal knowledge and prioritise self-determination in land management.

TABLE 4 BARRIERS TO CULTURAL BURNING (SOURCE: MCCORMACK ET AL., 2024)

Barrier	Description
<i>Terra nullius</i> and its legacy	The historical denial of Aboriginal land ownership and governance continues to influence laws and policies, prioritising state control over fire and marginalising Aboriginal knowledge systems.
Lack of policy and funding	Limited concrete policy and funding commitments hinder widespread implementation. Funding models often don't meet the specific needs of Aboriginal communities.
Unfamiliarity with and resistance to Indigenous knowledge	Lack of understanding and active resistance within government agencies and non-Indigenous practitioners regarding Indigenous knowledge systems.
Erasure of cultural values and spiritual significance	Current frameworks prioritise practical and ecological aspects of fire, often overlooking its cultural and spiritual dimensions for Indigenous people.
Erasure of Indigenous knowledge in research	Research often excludes or marginalises Indigenous knowledge and perspectives.
Bureaucratic barriers and exclusionary practices	Complex permitting processes, risk assessments and culturally inappropriate regulations create hurdles for Indigenous practitioners.
Lack of Indigenous representation in decision-making	Limited Indigenous representation in key agencies perpetuates systemic inequalities.
Interpersonal dynamics and cultural misunderstandings	Cultural misunderstandings and differing communication styles can create tension and conflict, hindering effective collaboration.
Suspicion and distrust	Historical and ongoing negative interactions with government agencies breed suspicion and distrust within Aboriginal communities.
Systemic racism	Undervaluing of Aboriginal knowledges and practices excludes Aboriginal peoples from being able to care for Country. There is a need to acknowledge and actively dismantle institutional racism within government agencies and the broader fire management sector.
Compromised role of Aboriginal staff	Aboriginal staff within government agencies face conflicting expectations from their employers and communities.
Perceptions of delay and obstruction	Cultural differences in decision-making processes can lead to misinterpretations and hinder effective collaboration.
Lack of recognition of cultural knowledge and values	Laws and policies fail to recognise and incorporate Indigenous knowledge and cultural values related to fire. 'Practising culture' isn't a legally recognised reason to burn.
Complexity and burden of legal processes	The complexity and administrative burden of fire management laws disproportionately affect Indigenous communities.

## Systemic change required

Enabling cultural burning in NSW requires multifaceted systemic change within the NSW Government and its agencies regarding how they approach Caring for Country and cultural burning. Key areas for change require a fundamental shift in the relationship between Aboriginal people and the NSW Government. In particular, there

needs to be a move away from colonial power and governance-based structures towards a future where Aboriginal communities have self-determination and agency in Caring for Country. Table 5 summarises the key changes required to enable cultural burning in NSW.

TABLE 5 CHANGES NEEDED TO ENABLE CULTURAL BURNING IN NSW

Change	Description
Shifting power dynamics and control	Need to transfer decision-making power and control over land management from government agencies to Aboriginal communities. A community-led approach where Aboriginal knowledge and practices are central is needed. This includes ensuring Aboriginal communities have the authority to conduct cultural burning when Country is ready, not just when government policies allow.
Redefining 'expertise' and qualifications	The dominance of Western scientific knowledge in land management is a barrier. Need to recognise and value Aboriginal knowledge systems and expertise developed over generations of living on and Caring for Country.
Long-term funding and resourcing	Need long-term, secure funding and resourcing for Aboriginal-led land management initiatives. This includes moving away from short-term, politically motivated grants and towards sustainable funding models that empower communities to implement their own visions for Caring for Country.
Trauma-informed support and healing	Need to recognise the deep trauma caused by colonisation, dispossession and environmental degradation; and provide culturally safe, trauma-informed mental health and healing services for Aboriginal communities.
Genuine collaboration and partnership	Need genuine collaboration and partnership between government agencies and Aboriginal communities. This requires a fundamental shift in attitudes and approaches, moving away from top-down management towards respectful, two-way partnerships built on trust and shared decision-making.
Cross-government coordination and policy change	Effective cultural land management requires coordinated action across all levels of government and across different departments. Policy and legislative changes that remove barriers to Aboriginal participation and ensure alignment with cultural values and practices are needed. This includes review and amendment of legislation such as the <i>Native Vegetation Act 2003</i> , <i>Rural Fires Act 1997</i> and <i>National Parks and Wildlife Act 1974</i> .
Investing in Aboriginal leadership and capacity building	Investment in Aboriginal leadership and capacity building, particularly in governance and organisational development, is required. This is essential to support communities in establishing strong, sustainable structures for managing their lands and resources.

## Summary of barriers to Aboriginal cultural burning

An analysis investigating the barriers to Aboriginal cultural burning reveals barriers supported by the yarns undertaken by this current research and understanding of barriers in the literature. The McCormack paper provides a broader legal and policy analysis in NSW (refer to summary of barriers in Table 6). Combined with the current research and yarning, the barriers represent a strong statement of the lived experience of barriers experienced by Aboriginal people in NSW.

TABLE 6 SUMMARY OF BARRIERS TO CULTURAL BURNING (SOURCE: MCCORMACK ET AL., 2024)

Barrier	Description
Historical injustice	The legacy of <i>terra nullius</i> continues to influence land and fire management, prioritising state control and marginalising Aboriginal knowledge and agency.
Policy and funding	Inadequate funding models fail to address the specific needs of Aboriginal communities, often tying cultural burning to broader programs rather than supporting it as a distinct practice. Lack of dedicated resources restricts implementation and reinforces superficial support.

Barrier	Description
Epistemological disconnect	Western scientific methods are prioritised over Aboriginal knowledge, even when evidence supports Aboriginal approaches. Cultural knowledge is not recognised as valid evidence in fire management decisions, which contributes to the dismissal of Aboriginal expertise.
Bureaucracy	Complex permitting processes, risk assessments and culturally inappropriate regulations create time-consuming hurdles, disproportionately affecting Aboriginal communities. The lack of legal recognition for 'practising culture' as a legitimate reason for burning complicates matters.
Distrust	Historical injustices and ongoing systemic issues have fostered deep distrust between Aboriginal communities and government agencies, restricting open communication and collaboration.
Lack of Aboriginal representation	Limited Indigenous representation in key agencies perpetuates systemic inequalities and prevents the incorporation of Aboriginal perspectives in decision-making.
Interpersonal dynamics and cultural misunderstandings	Cultural misunderstandings and differing communication styles can create tension and effective collaboration between Aboriginal communities and government agencies/non-Aboriginal practitioners.
Lack of recognition of cultural knowledge and values	Laws and policies fail to recognise and incorporate Aboriginal knowledge and cultural values related to fire. 'Practising culture' isn't legally recognised as a reason for burning.
Complexity and burden of legal processes	The complexity and administrative burden of fire management laws disproportionately affect Indigenous communities who may lack resources to navigate them.

## Part 5: Bringing all the barriers together

Now that we've heard from both the literature and the yarns, and taken a closer look through the cultural burning case study, we can see the full picture more clearly. The barriers Aboriginal people face aren't just legal or financial. They are emotional, cultural, historical, relational and ongoing. They come from outside systems, but also from the internal pressure and cultural load Aboriginal people carry every day. This part of the report brings all of these barriers together in one place. We've summarised them in a way that shows how they are connected, how policy impacts governance, how trauma affects land access, how racism undermines knowledge systems. This is not a checklist rather it's a web (refer Figure 1).

Relational Web of Barriers to Caring for Country (Readable Format)

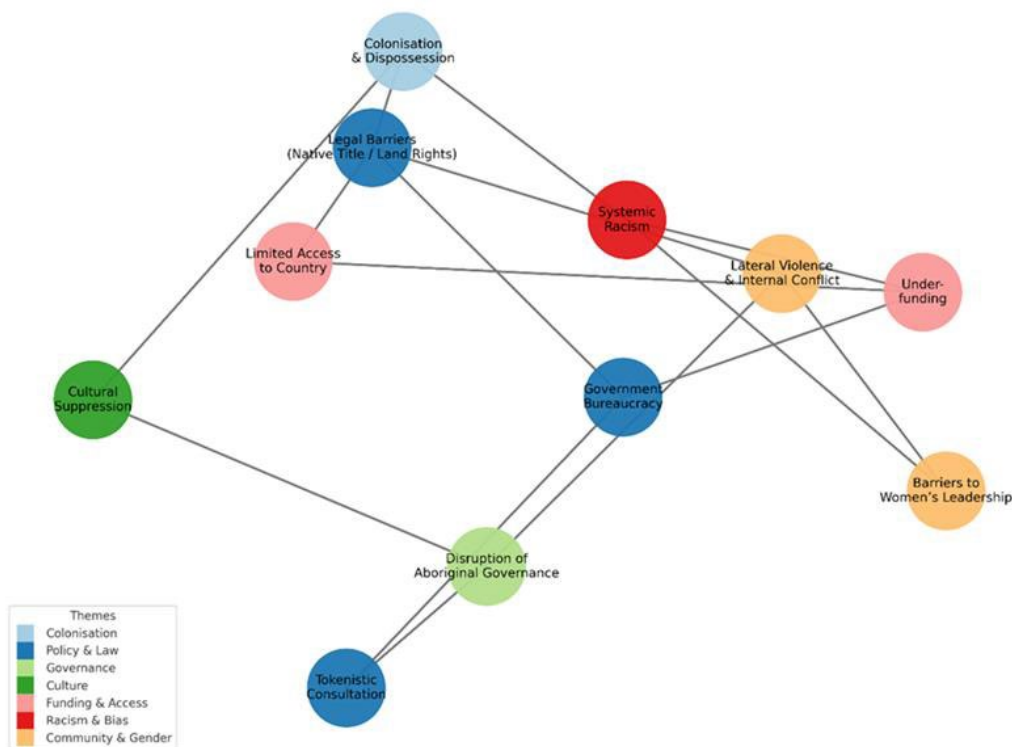


FIGURE 1 – RELATIONAL WEB OF BARRIERS TO CARING FOR COUNTRY

Identifying barriers to Aboriginal Caring for Country is not a simple task of listing discrete obstacles. Instead, it requires navigating a complex and interconnected web of legal, legislative, policy, social and cultural factors that operate in a relational and intersectional way. These elements intertwine and interact contextually, creating unique and often unforeseen barriers that vary depending on the specific pathways Aboriginal people choose or are forced to take when engaging in cultural practice and Caring for Country. Simply put, producing a straightforward checklist of impediments is impossible, as the barriers themselves are emergent properties of the system. Moving forward requires a shift in perspective and practice. Non-Indigenous people need to recognise their positionality within systems of privilege and actively support Aboriginal self-determination. This includes acknowledging historical injustices, amplifying Aboriginal voices, and advocating for policies that centre Aboriginal rights, values, beliefs, priorities and knowledge systems, as supported by the National Agreement on Closing the Gap.

The yarns and research in this study highlight several interconnected barriers experienced by Aboriginal people in NSW in practising culture and implementing Caring for Country. These barriers are not isolated issues but emerge from the complex interplay of historical injustices, ongoing systemic discrimination, cultural misunderstandings and power imbalances, highlighting the multifaceted and interconnected nature of the barriers to Caring for Country. Addressing these challenges requires not only legal and policy reforms but also broader social and cultural changes that challenge dominant narratives, empower Aboriginal communities and

address discrimination and the need for systemic change. It requires a shift in power dynamics, and a genuine commitment to recognising and respecting Aboriginal rights, knowledge and self-determination.

TABLE 7 BARRIERS TO CARING FOR COUNTRY IDENTIFIED IN THIS RESEARCH STUDY

Barrier	Description
<b>Clash of worldviews</b>	
Clash of worldviews	A fundamental conflict exists between Western frameworks, which emphasise scientific principles, bureaucratic processes and economic imperatives, while Aboriginal worldviews prioritise relational interconnectedness, spiritual relationships and Caring for Country.
Marginalisation of knowledge systems and Aboriginal science	Western science is prioritised, while Aboriginal knowledge systems and Aboriginal science is often dismissed as anecdotal or unscientific.
Misinterpretation and misrepresentation of cultural practices	Government and land managers often misinterpret or misunderstand Aboriginal cultural practices and traditional ecological knowledge, viewing them as irrelevant or even harmful.
Spiritual disconnection	Government funding and policies often fail to acknowledge the spiritual dimensions of Caring for Country and the emotional connections underpinning Aboriginal relationships with Country.
Commodification of culture	The pressure to commodify Aboriginal culture and Caring for Country for economic gain, particularly through contractual and 'fee-for-service' arrangements, can threaten the integrity of Caring for Country practices. This can lead to a focus on economic outcomes over cultural and spiritual values, and a disconnect between cultural practice and Caring for Country.
<b>Self-determination and cultural authority</b>	
Systemic barriers to Aboriginal self-determination	Australian governance structures and bureaucratic processes create systemic barriers that hinder Aboriginal self-determination in Caring for Country.
Limited control and decision-making power	Despite some progress in co-management and native title recognition, Aboriginal people often lack genuine control over decisions affecting Caring for Country.
Bureaucratic processes	Complex bureaucratic procedures, permit requirements and funding restrictions make it difficult for Aboriginal communities to access resources and implement Caring for Country initiatives.
Lack of recognition of customary law	The ongoing failure to fully recognise and integrate Aboriginal customary law into Australian legal frameworks creates significant barriers to Aboriginal self-determination and destabilises Aboriginal governance systems. This can lead to conflicts over land management, resource use and decision-making authority.
<b>Aboriginal practice and Caring for Country</b>	
Lack of adequate resources and support	Chronic underfunding and inconsistent support limit the capacity of Aboriginal organisations to implement effective Caring for Country programs.

Barrier	Description
Limited access to Country	Restrictions on access to Country, due to legal battles, inadequate resourcing or complex management agreements, severely restrict cultural practice and Caring for Country.
Policy and legislative barriers	Policies often prioritise economic development over cultural practices and Caring for Country.
Funding limitations	Inadequate and restrictive funding, particularly short-term project-based funding cycles, severely restricts the ability of Aboriginal organisations to effectively implement Caring for Country initiatives.
Impact of environmental changes	Environmental changes, including climate change, species loss and invasive species, pose significant threats to Aboriginal cultural heritage, intergenerational knowledge transfer, cultural practices and Caring for Country. These changes can disrupt Caring for Country, impact access to Country and resources, and have profound spiritual and emotional consequences for Aboriginal communities.
Limited legal and policy frameworks	Existing legal and policy frameworks, while containing some provisions related to Aboriginal culture and Caring for Country, often fail to provide comprehensive protection for Aboriginal rights and cultural practices. This fragmented and piecemeal approach can create confusion and inconsistencies and limit the scope of Aboriginal involvement in Caring for Country.
<b>Internal complexities and relationships</b>	
Internal complexities and relationships	Internal challenges within Aboriginal communities due to legislative and policy issues contribute to conflict in Caring for Country.
Lateral violence and historical trauma	The legacy of colonisation continues to manifest as lateral violence, distrust and other social issues that impact on Caring for Country.
<b>Colonial legacy and ongoing impacts</b>	
Devaluation of Aboriginal values and knowledge	Aboriginal values, priorities and knowledge are often dismissed or undervalued, perpetuating marginalisation.
Erosion of traditional knowledge and language	The historical suppression of Aboriginal languages and cultures has resulted in a significant impact on intergenerational knowledge transfer essential for Caring for Country. This loss is compounded by ongoing challenges in transmitting knowledge to younger generations. Limited access to Country and restrictions on cultural practices further contribute to the erosion of Aboriginal knowledge systems.
Unequal access to technology and information	Unequal access to technology restricts Aboriginal communities' ability to Care for Country. Some communities lack the resources, information and infrastructure to participate fully.
Disruption of Aboriginal governance	Imposing Western governance structures onto Aboriginal communities often leads to misunderstandings, dysfunction and a lack of genuine community control. This can disrupt Aboriginal governance systems based on kinship, customary law and community-based decision-making.

Barrier	Description
Mental health and wellbeing	The ongoing impacts of colonisation, including historical trauma, dispossession and cultural suppression, have significant impacts on the mental health and wellbeing of Aboriginal communities. This trauma can manifest as lateral violence, distrust and other social issues that make it challenging to work together towards shared goals in Caring for Country. The lack of accessible and culturally appropriate mental health services further exacerbates these issues.
<b>Need for systemic change</b>	
Bias and racism	Unconscious bias and modern racism within government agencies and broader society create a hostile environment for Aboriginal people and hinder meaningful engagement.
Tokenistic consultation	Consultations with Aboriginal communities are often tokenistic, failing to genuinely consider or incorporate Aboriginal values, priorities, knowledge and perspectives.
Cultural insensitivity	Lack of understanding of Aboriginal cultural protocols and governance structures creates barriers to communication and respectful relationships and destabilises Aboriginal governance systems.
Lack of cultural safety	Aboriginal people often feel unsafe and unwelcome in government spaces due to cultural insensitivity, racism and a lack of understanding of Aboriginal cultural protocols and governance structures. This can manifest as microaggressions, stereotyping and a sense of not being valued or respected. This lack of safety makes it challenging for Aboriginal people to effectively participate in decision-making processes and advocate for their rights.
Lack of truth-telling and historical denial	The ongoing failure to fully acknowledge and address the historical injustices of colonisation, including dispossession, forced removals and cultural suppression, creates a barrier to healing and reconciliation.
Lack of access to essential services	Limited access to essential services, such as culturally appropriate training and education, health care, housing and infrastructure in many Aboriginal communities creates significant barriers to participation in and leadership of Caring for Country initiatives. This lack of access reinforces socioeconomic disadvantage and restricts Aboriginal community participation in Caring for Country.
Negative stereotypes and prejudice	Negative stereotypes and prejudice about Aboriginal people, their culture and their knowledge systems can influence interactions with government agencies, access to resources and participation in decision-making processes. This can create a hostile environment and undermine Aboriginal people's ability to practise their culture and Care for Country.

## Part 6: Culturally grounded recommendations for moving forward

Despite all these challenges, the yarns were also full of strength, resistance, creativity and care. Aboriginal people across NSW are already doing the work of Caring for Country, often with limited support, and sometimes in direct opposition to the systems around them. The recommendations in this part of the report are grounded in what people shared with us. They aren't just technical fixes, they are cultural, relational and political. They speak to the need for structural change, healing, long-term investment, and the recognition of Aboriginal rights, governance and knowledge. These actions align with national and international commitments like Closing the Gap and the United Nations *Declaration on the Rights of Indigenous Peoples*; but most importantly, they reflect what Aboriginal people have already said is needed.

This report identifies numerous interconnected barriers hindering Aboriginal people's ability to practice culture and implement Caring for Country in NSW. Key recommendations to address these barriers are as follows.

### **Recognise inherent rights**

Acknowledge Aboriginal rights as inherent and stemming from their unique status as First Peoples, not merely as privileges granted by the state. This requires moving beyond rights-based frameworks towards recognising responsibilities and obligations derived from Aboriginal Law, culture and kinship.

### **Address ongoing impacts of colonisation**

Confront the ongoing impacts of colonisation, including dispossession, cultural suppression and systemic discrimination and their effects on Aboriginal communities.

### **Support cultural continuity**

Prioritise cultural maintenance and (re)vitalisation by providing resources, access to Country and opportunities for intergenerational knowledge transfer.

### **Recognise Aboriginal governance**

Respect and accommodate Aboriginal governance systems, co-design frameworks, knowledge, values and priorities in decision-making processes related to land management and ensure meaningful Aboriginal representation in leadership positions.

### **Promote cultural safety**

Create a culturally safe and inclusive environment within government agencies and the broader Australian society by addressing bias, racism and cultural misunderstandings.

### **Address funding inequities**

Provide equitable, sustainable, non-project-based funding for Aboriginal-led Caring for Country initiatives, moving away from project-based models that often prioritise Western priorities.

### **Address land access**

Improve Aboriginal access to Country for cultural practices by resolving land disputes, simplifying bureaucratic processes and recognising the importance of connection to Country for cultural survival.

### **Incorporate United Nations *Declaration on the Rights of Indigenous Peoples* principles**

Implement the principles of the United Nations *Declaration on the Rights of Indigenous Peoples* in NSW, ensuring free, prior and informed consent in all matters affecting Aboriginal peoples, and promoting self-determination.

### **Develop a Treaty**

Expedite a Treaty with Aboriginal peoples in NSW that recognises Aboriginal rights and governance systems, transcends land management issues, addresses historical injustices and establishes genuine self-determination.

## Appendix A: Terminology

‘Caring for Country’ is seen as the preferred way to express Aboriginal Land and Sea Management. It was widely preferred as it better encompasses the relational and culturally grounded approach to caring for land and sea through Aboriginal cultural approaches, emphasising the relationship between people and Country and the responsibility and obligations to Care for Country. Some of the yarns expressed the importance of the variation of how Aboriginal people relate to Caring for Country and Aboriginal cultural practice and how they may wish to express this.

Within this report, we will shift from using ‘Aboriginal Land and Sea Management’ to ‘Caring for Country’ based on the outcomes of the yarns.

Considering the discussions in the yarns and what has been said in the literature, we can identify the key aspects of Caring for Country. This directly integrates the perspectives shared in the yarns and highlights why Caring for Country is the preferred terminology by demonstrating how other terms fail to capture the depth and nuance of Aboriginal perspectives.

Caring for Country is not just land management or natural resource management but an expression of deep spiritual and cultural understandings of the world by not just Aboriginal knowledge, but the underlying philosophies, Aboriginal science, and Aboriginal people’s values and beliefs. It involves a deep connection to ancestral lands and sacred sites. Country is not just land; it’s ‘Mother’, ‘Ancestor’, a living entity with deep spiritual and emotional connections. A lack of cultural sensitivity was felt in alternate terms, failing to recognise these connections (Yarns; Weir et al., 2011).

Caring for Country represents generations of knowledge and relationship with everything. The use of terminology that includes ‘management’ is seen as too technical and narrow, failing to capture the deep cultural and spiritual significance. Caring for Country involves cultural and spiritual elements not captured by a purely management-focused approach which does not recognise the true status of relationships seen by Aboriginal people. Caring for Country rejects the resource-based economic model as the basis of these relationships as recognised in Western understandings. ‘Land management’ is not a separate activity but integral to everyday life (Yarns; Hooper, 2021; Weir et al., 2011).

Caring for Country **practitioners** is used to represent all Aboriginal people Caring or Country and includes but is not limited to Aboriginal land managers, rangers and volunteers, cultural practitioners and healers and Aboriginal cultural food producers.

The term ‘**(re)vitalisation**’ is used as a way to recognise that Aboriginal culture is being both vitalised and some cultural practices re-vitalised, recognising that Aboriginal culture is not lost. Some customary practices have been able to be practised while others have been restricted by colonisation, legal and legislative issues, and access to land, but now are being able to be practised again due to greater access to land, or rights to practise being recognised.

## Appendix B: United Nations Declaration on the Rights of Indigenous Peoples

In September 2007, the United Nations General Assembly adopted the *Declaration on the Rights of Indigenous Peoples* (the Declaration) (UN General Assembly, 2007), marking a significant step towards recognising and safeguarding the rights of Indigenous peoples worldwide. However, Australia, along with other countries like New Zealand, Canada and the United States of America, initially opposed the adoption of the Declaration, mainly due to concerns about protecting Indigenous peoples' right to self-determination. Despite initial resistance, Australia eventually lent its support to the declaration in April 2009, signalling a shift in its approach towards Indigenous rights (Maguire, 2014).

The UN Declaration outlines a comprehensive set of principles and rights designed to safeguard and advance the rights of Indigenous peoples globally. It is an integral component of the broader UN human rights framework, offering specific acknowledgment and protection for the rights of Indigenous peoples within the broader scope of international human rights law (UN General Assembly, 2007). While the Declaration lacks enforceability and is considered a 'soft law', such instruments play a crucial role in shaping international norms, particularly human rights. Although they do not create binding obligations, they establish expectations for future action and contribute to the development of international law over time. Despite their non-binding nature, international and national courts often cite soft law instruments in their judgements, reflecting their influence and relevance in legal discourse (Maguire, 2014).

Based in established international human rights standards and principles, such as the *Universal Declaration of Human Rights* (UN General Assembly 1948) and other core human rights treaties, the *Declaration on the Rights of Indigenous Peoples* underscores the commitment of the global community to uphold the fundamental rights of Indigenous peoples around the world. While existing human rights instruments are applicable to everyone, the *Declaration on the Rights of Indigenous Peoples* specifically addresses the unique rights, experiences and collective rights of Indigenous peoples. It bridges gaps in the existing human rights framework by tackling issues such as land rights, self-determination, cultural preservation and combating discrimination (Australian Government, 2024; UN General Assembly, 2007).

Emphasising the urgency of rights for Indigenous peoples, the Declaration provides essential guidance to nations regarding their responsibilities in respecting, safeguarding and fulfilling the rights of Indigenous peoples. It urges nations to implement established international human rights norms and to formulate policies and enact legislation that actively promote the rights of Indigenous peoples. The Declaration tries to advance the protection and advocacy of the rights and freedoms of Indigenous peoples on a global scale. It calls for concerted action to rectify historical injustices, elevate the recognition of Indigenous rights, and facilitate constructive engagement between states and Indigenous peoples (UN General Assembly, 2007).

The *Declaration on the Rights of Indigenous Peoples* not only affirms the entitlement of Indigenous individuals to all universally recognised human rights, but also underscores the collective rights crucial for their wellbeing and development. By acknowledging the diversity of Indigenous experiences across regions and countries, the Declaration seeks to foster a more inclusive and equitable global society that respects and upholds the rights of all its members, regardless of cultural or ethnic background (UN General Assembly, 2007).

By affirming the right to self-determination and providing a platform for Indigenous voices, the Declaration represents a shift from viewing Indigenous peoples as victims to recognising them as active agents in international law. As nations strive to uphold their commitments under the Declaration, the realisation of Indigenous rights, including self-determination, becomes not only a legal imperative but also a moral imperative towards achieving justice and equality for all (Maguire, 2014).

## Right to self-determination

These articles (see Table 8) in the UN Declaration collectively affirm Indigenous peoples' right to self-determination, which is fundamental to their identity and sovereignty, and collectively establish the framework for Indigenous self-governance, autonomy and cultural preservation. They recognise the inherent right of Indigenous peoples to shape their destinies, govern their internal affairs, and maintain their distinct identities within the broader societal context.

TABLE 8 UN DECLARATION RIGHTS TO SELF-DETERMINATION

UN article	Description
Article 3 Right to self-determination	This article emphasises the right of Indigenous peoples to freely determine their political status and pursue economic, social and cultural development without external interference.
Article 4 Right to autonomy and self-government	This article highlights the right of Indigenous peoples to govern their internal and local affairs, including the autonomy to finance their functions.
Article 5 Right to maintain distinct institutions	This article underscores the right of Indigenous peoples to maintain and strengthen their political, legal, economic, social and cultural institutions while retaining the option to participate in the broader political and social life of the state.
Article 6 Individual right to nationality	This article recognises the individual right of Indigenous peoples to a nationality, affirming their belonging to a particular community or nation.
Article 33 Determination of identity and membership	This article reinforces Indigenous peoples' right to determine their identity and membership according to their customs and traditions, safeguarding their autonomy in defining collective identity.

## Protection of cultural rights

This group of articles focuses on safeguarding Indigenous peoples' cultural heritage, traditions and practices. These articles (see Table 9) collectively aim to preserve and promote Indigenous peoples' cultural identity, traditions and practices. They recognise the intrinsic value of Indigenous cultures and seek to protect them from assimilation, discrimination and cultural erasure.

TABLE 9 UN DECLARATION PROTECTION OF CULTURAL RIGHTS

UN article	Description
Article 7 Right to life, liberty and security	This article affirms the collective right of Indigenous peoples to live in freedom, peace and security as distinct peoples, protecting them from acts of violence and forced assimilation.
Article 8 Right to avoid forced assimilation	This article emphasises the right of Indigenous peoples not to be subjected to forced assimilation or the destruction of their culture.
Article 9 Right to belong to Indigenous community	This article recognises the right of individuals to belong to an Indigenous community or nation according to their traditions and customs, preventing discrimination based on Indigenous identity.
Article 10 Right to land and territory	This article asserts the right of Indigenous peoples not to be forcibly removed from their lands or territories, safeguarding their ancestral connections and cultural practices.

UN article	Description
Article 11 Right to cultural traditions	This article acknowledges the right of Indigenous peoples to practice, revitalise and transmit their cultural traditions and customs, ensuring the preservation of cultural heritage.
Article 12 Right to spiritual and religious practices	This article protects the right of Indigenous peoples to manifest, practice and teach their spiritual and religious traditions, as well as to access and control of their religious and cultural sites.
Article 13 Right to preserve cultural heritage	This article emphasises the right of Indigenous peoples to revitalise, use, develop and transmit their histories, languages and oral traditions to future generations.
Article 14 Right to Indigenous education	This article recognises the right of Indigenous peoples to establish and control their educational systems, providing education in their own languages and cultural methods of teaching and learning.
Article 15 Right to cultural diversity	This article affirms the right of Indigenous peoples to the dignity and diversity of their cultures, traditions and aspirations, promoting respect for cultural identity.
Article 16 Right to Indigenous media	This article recognises the right of Indigenous peoples to establish their own media in their own languages and access non-Indigenous media without discrimination.
Article 31 Preservation of cultural heritage	This article protects the right of Indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and expressions.
Article 34 Promotion of cultural customs	This article acknowledges the right of Indigenous peoples to promote, develop and maintain their institutional structures, customs, spirituality and traditions.

## Obligations for implementation by states under the UN Declaration

The implementation of the UN *Declaration on the Rights of Indigenous Peoples* by states, such as the Australian Government and NSW Government, plays a crucial role in safeguarding these rights and ensuring the wellbeing and dignity of Indigenous peoples. Various provisions within the Declaration emphasise the responsibilities of states in implementing and upholding these rights. Implementation of the Declaration by states is essential for upholding the rights and dignity of Indigenous peoples worldwide. Through support, protection of cultural identity, consultation and cooperation, states can fully realise Indigenous rights as enshrined in the Declaration. By fostering tolerance, combating discrimination and promoting cross-border cooperation, states contribute to a more inclusive and equitable society where the rights of Indigenous peoples are respected and upheld.

## Support and promotion by states

States are mandated to support fully realising Indigenous rights outlined in the UN Declaration. This includes mobilising financial cooperation, offering technical assistance and establishing mechanisms to ensure Indigenous participation in decision-making processes. Moreover, states are tasked with promoting and fully applying the Declaration's provisions within their territories and internationally. Monitoring and evaluating the effectiveness of implementation are also highlighted, ensuring accountability and progress (Articles 41, 42 and 43).

Article 8 of the Declaration underscores the obligation of states to prevent actions aimed at depriving Indigenous peoples of their cultural values, ethnic identities and lands. States are required to establish effective mechanisms for preventing and redressing such actions, including forced assimilation, dispossession of lands and forced population transfers. This provision is fundamental in preserving the distinct cultural heritage and identities of Indigenous peoples.

States are called upon to facilitate the repatriation of ceremonial objects and human remains, ensuring fair and transparent mechanisms in collaboration with Indigenous peoples. Additionally, effective measures must be taken to protect Indigenous cultural, intellectual, religious and spiritual property, including restitution for any violations without free, prior and informed consent. States must enable access to education in Indigenous languages and cultures, promoting the transmission of traditions to future generations (Articles 11, 12 and 13). States are required to combat prejudice, eliminate discrimination, and promote tolerance and understanding among Indigenous peoples and broader society (Articles 15, 16 and 17).

Consultation and cooperation with Indigenous peoples are central to the implementation of the Declaration. States must obtain free, prior and informed consent from Indigenous representative institutions before adopting measures that affect their lands, territories and resources. This includes projects related to development, utilisation of resources and military activities. Effective mechanisms for redress and mitigation of adverse impacts must also be provided, ensuring just outcomes and respect for Indigenous rights (Articles 19, 30 and 32).

## UN Declaration in Australia

The Australian Government became a signatory to the Declaration in 2009, however, it views the Declaration as non-binding and a framework establishing minimum standards necessary for the survival, dignity and wellbeing of Aboriginal and Torres Strait people in Australia (Australian Government, 2024). As outlined in the Declaration, the rights represent the culmination of extensive advocacy efforts by Indigenous groups globally within the United Nations system over many decades (Australian Government, 2024). Australia has committed to upholding Aboriginal and Torres Strait peoples' inherent human rights and integrating them into its political and institutional frameworks. But this is being done in ways that attempt to ensure Australian Government sovereignty and national unity (Australian Government, 2024). Australia has not intended to enact the Declaration's provisions into domestic law (Maguire, 2014). Australia lacks a federal Bill of Rights, and the NSW Government has not enacted specific human rights legislation. Consequently, the rights enjoyed by Aboriginal people of NSW are derived primarily from three sources: the Constitution, legislation, and the common law (Law Society NSW, 2022).

## Australian Government's 1997 Cabinet submission on the draft UN declaration

An Australian Government 1997 *Cabinet Submission JH97/0360 - UN draft Declaration on the Rights of Indigenous Peoples - Decision* (Australian Government, 1997), made during the decision of the Australian Government at the time of signing the UN Declaration, highlights the issues conceived by the Australian Government at the time, and which continue to influence the implementation of Aboriginal rights. The Cabinet submission's purpose was to inform and gain approval for Australia's continued participation in the Draft Declaration Working Group and to establish a policy approach to the negotiations.

Australia agreed to continue participating in the working group but clarified that it didn't endorse the draft declaration's current positions on four key issues: self-determination, land and resource rights, customary law and restitution/compensation. Australia's approach is to align the declaration with existing Australian law and practice, especially concerning land rights, customary law and restitution/compensation, while maintaining

flexibility regarding ongoing domestic legal developments. The submission notes continued involvement by the Australian Government to influence the document's development to better align with domestic policy and legislation. Australia's participation was seen as important for influencing the drafting process, especially within the CANZUS group (Canada, Australia, New Zealand, United States). Withdrawal was thought to weaken the CANZUS group's influence while continued involvement might have been perceived as endorsement of the current text, requiring clear communication that this is not the case.

The Australian Government 1997 Cabinet submission stresses the importance of ensuring the Declaration aligns with existing Australian law and policy, reflecting a cautious approach to international instruments potentially impacting domestic sovereignty. The Australian Government had adopted a lower profile on this issue, ceding the lead sponsor role to Canada and the submission noted that most Australian states found many articles unacceptable in their current form. The submission addresses the four key issues as outlined in Table 10.

TABLE 10 KEY CONCERNS RAISED IN THE AUSTRALIAN GOVERNMENT'S CABINET SUBMISSION ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Issue	Description
Self-determination	The Australian delegation is instructed to support only text consistent with Australian law and practice on key issues, including self-determination. (p. 2)
	The delegation should not support an unqualified right to self-determination, but rather a qualified 'internal' self-determination that respects the political, constitutional and territorial integrity of democratic states. The Canadian statement from the 1996 Working Group meeting is cited as a useful basis for discussion. (pp. 3 and 5)
	The document explains the concept of self-determination and its evolution in international law, noting the shift from an external (secession) to an internal focus (autonomy within existing states). It highlights Canada's position supporting a qualified 'internal' right to self-determination, which Australia views favourably. (pp. 9 and 10)
	Coordination comments reiterate support for Canada's position on a qualified right to self-determination. (pp. 15 and 16)
Land and resource rights	The Australian delegation should support text consistent with Australian law and practice and maintain flexibility for ongoing domestic developments regarding native title and other Indigenous land rights legislation. (pp. 2, 3 and 5).
	The document notes that many articles on land and resource rights are unacceptable to Australia and will need to change substantially. (p. 7)
	Australia's approach will be guided by government policy on Wik and amendments to the Native Title Act, as well as other related developments. The document emphasises supporting only text consistent with domestic legislation and policy. (p. 11)
	Several departmental comments emphasise concerns about the draft declaration's provisions on land and resource rights, calling for them to be aligned with Australian law. (pp. 16 and 17)
Customary law	The Australian delegation is instructed to support text on customary law consistent with Australian law and practice. (pp. 2, 3 and 5)
	The document acknowledges the complex issues raised by the draft declaration's articles on customary law and the ongoing consideration of the Australian Law Reform Commission's report on the topic. It emphasises the need for consistency with domestic law and practice. (p. 11)
	The document reiterates the need for any recognition of customary law not to infringe upon universally recognised human rights. (p. 12)
Restitution and compensation	The delegation's approach should be consistent with the government's position on Wik and any policy response to litigation on the removal of Indigenous children from their families. (p. 2, 3 and 5)
	The document notes that the draft articles on restitution and compensation will be difficult for many governments to accept. (p. 7)
	The document links restitution and compensation to land issues and the removal of Indigenous children, highlighting the need for language consistent with

	government policy, particularly concerning the Kruger and Bray case <sup>1</sup> . (p. 12)
	Government departments expressed concern and opposition to the articles on restitution and compensation. (p. 17)

The 1997 Cabinet submission emphasises the need for alignment with Australian law and policy across all four key issues, and advocates for a cautious and strategic approach to negotiations, prioritising domestic considerations and interests. The submission explains how Australia had historically used the term ‘self-determination’ differently than the interpretation within the UN draft declaration. The 1997 Cabinet submission contrasts Australian Government’s definition with the draft declaration’s broader definition, which was thought to imply a right to separate political status or territorial autonomy. Australia’s usage focused on self-determination within the existing state framework (termed self-management at the time), emphasising cultural preservation and political participation rather than separate political existence.

The Cabinet submission argued that Land Councils and ATSIC (Aboriginal and Torres Strait Islander Commission which existed at the time) were examples of the ‘internal’ exercise of self-determination within the Australian system. It was thought that these bodies provide Indigenous Australians with a degree of control and autonomy over decisions affecting their lives and communities, without implying a right to separate statehood or secession. Land Councils, the submission notes specifically, give Indigenous communities a Western-informed formal structure and legal mechanism to participate in land and resource management decisions within their traditional territories. This is presented as an example of how self-determination can be exercised within the existing legal and political framework of the Australian nation, rather than requiring the creation of separate Indigenous political entities. It is clear from this discussion and the eventual closure of ATSIC how policy and legislative approaches are susceptible to changing political views. A central concern revolved around the concept of **self-determination**. While acknowledging the universal right to self-determination enshrined in international covenants, the submission emphasises the need for a qualified interpretation. It explicitly rejects ‘an unqualified right of self-determination for Indigenous peoples’ (p. 5), expressing concern that the draft declaration, particularly in its reference to ‘autonomy and self-government’ (p. 7), could be interpreted as advocating for separate Indigenous political entities within Australia. The document prefers a definition aligned with the Canadian position, which explicitly accepts ‘a right of self-determination for Indigenous peoples, which respects the political, constitutional and territorial integrity of democratic states’ (p. 7). This highlights Australia’s desire to maintain its existing constitutional framework and sovereignty while accommodating Indigenous self-determination within it.

The draft declaration’s articles on **land and resource rights** generated significant apprehension. The submission states that these articles ‘advocate rights and remedies that go well beyond those provided for in Australia’s existing land and resources regimes’ (p. 11). This reflects a concern that the declaration could necessitate radical changes to Australian law, potentially undermining existing property rights and resource management practices. The government’s anxieties are heightened by ongoing domestic debates surrounding native title, particularly in the wake of the Wik decision. The Wik decision meant that there was a new category of native title, one that created shared rights to an area between the person holding the lease and the traditional Indigenous owners. Both could exercise rights to the area as long as the exercise of one did not conflict with the rights of the other. The submission emphasised that Australia’s approach will be guided by ‘Government policy on Wik and the passage of proposed amendments to the *Native Title Act 1993*’ (p. 11), demonstrating a prioritisation of domestic legislative processes over international intervention.

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<sup>1</sup>Kruger and Bray v. The Commonwealth of Australia was a 1997 High Court of Australia case that challenged the constitutionality of the Northern Territory’s Aboriginals Ordinance of 1918. The case, also known as the Stolen Generation Case, was the first of its kind in Australia and involved several plaintiffs who were taken from their families as children.

The recognition of Indigenous **customary law** presented another area of concern. The submission acknowledges the complex legal and social ramifications, noting that the 'Draft declaration articles advocating recognition of Indigenous customary law raise a number of complex legal and social issues for Australia' (p. 11). The government emphasised the need for consistency with existing Australian law and practice, as well as with 'universally-recognised individual human rights' (p. 9), indicating a desire to avoid any conflict between customary law and established Australian laws. The then current review of the Australian Law Reform Commission's report on customary law further underscores the government's cautious approach.

The submission addresses concerns about **restitution and compensation**. The government was wary of provisions that might exceed existing Australian policy and legal frameworks, particularly concerning the removal of Indigenous children from their families. The delegation was instructed to align its approach with 'the Government's position on Wik, and any government policy response to the outcomes of litigation in relation to the removal of Indigenous children from their families' (p. 2). This reflects a prioritisation of domestic political and legal considerations regarding compensation and a reluctance to be bound by broader international pronouncements.

The 1997 Cabinet submission reveals a strong emphasis on maintaining consistency with Australian domestic law and policy. The concerns raised about self-determination, land rights, customary law and restitution/compensation reflect a cautious approach to international instruments and a prioritisation of national sovereignty in managing Indigenous affairs within existing frameworks. The Australian Government, while engaging with the drafting process, sought to ensure that the final declaration would not necessitate significant changes to its existing legal framework or political landscape. The submission provides valuable insight into the Australian Government's position at the time and its ongoing efforts to balance its international obligations with domestic priorities.

The document advocated for a 'qualified "internal" self-determination that respects the political, constitutional and territorial integrity of democratic states' (p. 7). This qualification is crucial, signifying that Indigenous self-determination should be exercised within the existing framework of Australia, rather than challenging its sovereignty or territorial boundaries. The submission clarifies this further, stating that Australia accepts self-determination as 'an on-going right which a people can exercise within the framework of existing territorial boundaries and established national political systems in democratic states' (p. 9).

The document emphasises the shift in the international understanding of self-determination, moving from a post-colonial focus on external self-determination (that is, the right to form a new state) to an internal focus. 'The right of self-determination has, however, outlived the post-colonial era and today it is generally recognised that the right is no longer confined to acts of self-determination such as secession' (p. 9). This evolving understanding allows for Indigenous peoples to exercise self-determination through autonomy and self-governance within existing states, pursuing their political, economic, social and cultural development while respecting the territorial integrity of the nation.

Canada's statement at the 1996 Working Group meeting was held up as a model for this qualified approach. The document highlights Canada's explicit acceptance of 'a right of self-determination for indigenous peoples, which respects the political, constitutional and territorial integrity of democratic states' (pp. 7 and 10). This statement is seen as crucial because it demonstrates that Indigenous self-determination and the sovereignty of existing states are not mutually exclusive. The Australia Government viewed this position favourably, seeing it as a way to acknowledge Indigenous rights while preserving the nation's existing structure. The Canadian statement, therefore, provides 'a useful basis for further consideration of the issue' (p. 5) and a potential model for language in the final declaration acceptable to Australia.

The Australian Government's cautious approach to the draft declaration, as outlined in the 1997 Cabinet submission, reflects a complex and potentially limiting view of Aboriginal rights within the context of self-determination, land rights, customary law and restitution/compensation. The Australian Government's response to the draft declaration on the rights of Indigenous peoples reveals a preference for 'internal' self-

determination, effectively limiting Indigenous rights within the existing Australian state framework. This approach prioritises sovereignty, national unity and territorial integrity over potentially stronger forms of Indigenous sovereignty. While acknowledging existing Aboriginal and Torres Straits Islander bodies like Land Councils, the government frames them as operating within the Australian system, rather than as expressions of genuine autonomy, thus constraining the potential for true self-governance.

The government's approach to land, resources and customary law demonstrated a reluctance to grant rights beyond those already recognised under Australian law. Their concern over the draft declaration's expansive language on these issues reveals a desire to maintain existing property interests and legal frameworks. By emphasising consistency with domestic legislation, particularly regarding the Wik decision and native title, the government limited the potential for future advancements in Aboriginal and Torres Straits Islander land rights and the practical application of customary law. The government's cautious approach to restitution and compensation, linking them to existing domestic policies and litigation outcomes, restricted the potential scope of redress for past injustices. This approach avoids a broader reckoning with historical wrongs and systemic discrimination against Aboriginal and Torres Straits Islander peoples.

The Cabinet submission suggests that while the Australian Government acknowledged certain Aboriginal rights, its primary focus was on maintaining the existing national framework and legal system. This approach significantly limited the potential for the draft declaration to bring about substantial improvements in the recognition and implementation of Aboriginal rights in Australia, framing those rights within the confines of existing power structures and legal frameworks potentially restricting the scope of self-determination, land rights, customary law recognition and redress for past injustices.

## Self-determination and the coloniser's violent anxiety

Self-determination sits at the heart of Aboriginal and Torres Straits Islander rights discourse, representing not merely a political aspiration but a fundamental right enshrined in international law. It is the principle that allows for Aboriginal and Torres Straits Islander peoples to freely determine their political status, pursue their economic, social and cultural development and control their own destinies. However, this inherent right frequently clashes with the 'anxieties of the coloniser' (Kallinosis 2024) who perceives self-determination as a threat to their established power and control. Kallinosis (2024) emphasises the interconnectedness of self-determination with other rights, describing it as 'the river in which all other rights swim', quoting Mick Dodson's powerful analogy. This signifies that self-determination is not just one right among many, but the foundational principle upon which other rights can be meaningfully exercised. Without the ability of Aboriginal and Torres Straits Islander peoples to control their own affairs and development, Aboriginal and Torres Straits Islander peoples' ability to enjoy other rights, such as those related to culture, language, education and health, is severely compromised.

This anxiety stems from the very nature of colonialism, which is predicated on the dispossession and subjugation of Indigenous peoples and the denial of their inherent sovereignty. Granting Indigenous peoples the right to self-determination would necessitate a fundamental restructuring of the colonial power dynamic, a prospect that is often met with resistance and fear. This resistance manifests in various ways, from outright opposition to self-determination initiatives to more subtle forms of undermining Indigenous agency and control.

The right to self-determination is not simply a desirable aspiration but a fundamental right that is essential for the realisation of other Aboriginal and Torres Straits Islander rights. Its absence of recognition is a direct reflection of the coloniser's anxiety about relinquishing control and a clear denial of Indigenous sovereignty. Addressing this omission is crucial for achieving genuine reconciliation and justice for First Nations peoples.

## Australian Government 2022 inquiry into the United Nations Declaration on the Rights of Indigenous Peoples

The Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs of the Australian Government was asked to inquire into the United Nation's *Declaration on the Rights of Indigenous Peoples* on 2 August 2022. The inquiry's terms of reference include examining the application of the Declaration in Australia, with a focus on international experiences in implementing the Declaration, strategies to enhance adherence to its principles within Australia, and how the implementation of the *Uluru Statement from the Heart* can bolster application of the Declaration. Additionally, the inquiry addressed any other pertinent matters related to the Declaration and its implementation in Australia. Although the terms of reference were restrictive, the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs published its finding in November 2023 (Australian Government, 2024).

The inquiry found that the Australian Government faces the challenge of effectively integrating the principles and rights delineated in the Declaration into its political and legal structures while upholding the integrity and unity of the nation (Australian Government, 2024). Preserving the integrity and unity of the nation-state within the Australian context entails ensuring the entire country's cohesion, stability and sovereignty while simultaneously acknowledging and honouring the diverse cultural, linguistic and historical identities of Aboriginal and Torres Strait Islander peoples. The inquiry identified the issue of recognising the rights of Aboriginal and Torres Straits Islander peoples in Australia while also upholding the authority of the Australian Government and its institutions to govern the nation within the parameters of its legal and constitutional frameworks, which establish Australia as a sovereign entity (Australian Government, 2024). The inquiry noted that the Declaration does not create new or 'special' rights but consolidates existing rights from international human rights instruments and tailors them to the specific circumstances of Indigenous peoples (Australian Government, 2024).

The inquiry took the stance that the Declaration lacks legal enforceability among member nations, yet it serves as a consensus-driven framework for nations to confront historical injustices faced by Aboriginal and Torres Straits Islander peoples (Australian Government, 2024). The Declaration doesn't introduce new rights but consolidates pre-existing ones into a unified document, thereby emphasising the universal nature of human rights. The inquiry noted that the Declaration shifts the focus from individual rights to collective rights for Aboriginal and Torres Straits Islander peoples in Australia, acknowledging their rights as belonging to people collectively, a departure from conventional human rights discourse (Australian Government, 2024).

The inquiry identified that in the implementation of the Declaration in Australia needs to ensure the territorial integrity and integrity of the nation-state's legal systems are not compromised, striking a balance between Aboriginal and Torres Straits Islander rights and Australia's sovereignty. Implementing the Declaration in Australia involves navigating these challenges to ensure that its principles are relevant and effectively realised for Aboriginal and Torres Straits Islander peoples within Australia. The inquiry specifically focused on the challenge of maintaining this 'status quo' while implementing the Declaration in Australia (Australian Government, 2024).

The Declaration challenges this 'status quo' by advocating for the recognition, protection and promotion of Aboriginal peoples' rights, calling for a shift towards acknowledging and respecting Aboriginal and Torres Straits Islander rights, cultures and self-determination within the legal, political and social frameworks of the Australia and its states to address historical injustices and achieve equitable outcomes. The Declaration asserts Aboriginal and Torres Straits Islander peoples' rights to self-determination, lands, territories and resources, countering historical denial rooted in the *terra nullius* doctrine and subsequent policies. It emphasises obtaining free, prior and informed consent from Aboriginal and Torres Straits Islander peoples, challenging past decision-making processes. The Declaration prohibits discrimination and calls for the elimination of prejudice, advocating for the recognition and protection of Aboriginal and Torres Straits Islander customary laws,

traditions and institutions within national legal systems, thereby challenging existing disparities and conflicts between Aboriginal and Torres Straits Islander people and state laws in Australia.

## Law Council of Australia submitted a response to the Senate Committee inquiry

The Law Council of Australia submitted a response to the Senate Committee inquiry into the implementation of the Declaration in Australia (Law Council of Australia, 2022). The Council strongly advocated for enhancing the domestic application of the Declaration and is committed, as outlined in its 2010 Policy Statement on Aboriginal Australians and the Legal Profession, to collaborating with First Nations peoples to promote awareness of the Declaration's provisions within the Australian legal community.

The Law Council identified that the fundamental principle of self-determination is embedded within the Declaration, but despite its importance, there is a notable lack of understanding or recognition of self-determination across Australian governments and that there remains a significant gap in understanding and recognition of this principle among Australian governments. The submission believed that many policies and practices implemented by Australian governments fail to adequately incorporate Aboriginal perspectives or prioritise Aboriginal voices in decision-making processes. This lack of recognition perpetuates inequalities and undermines efforts to address the underlying causes of Aboriginal disadvantage.

The Law Council of Australia noted that despite the Declaration not being a legally binding Treaty itself, it represents a significant international consensus on the rights of Aboriginal peoples. Therefore, Australia is considered bound by the principles articulated within the Declaration as part of its broader commitment to international human rights standards. Australia, as a member of the international community, is obligated to adhere to and uphold the principles outlined in the Declaration, and Australia has agreed to abide by certain norms, standards and agreements established through international cooperation.

This means that Australia is expected to respect, protect and fulfil the rights of Aboriginal peoples as outlined in the Declaration. While the Declaration does not impose direct legal obligations on Australia, its principles carry moral and political weight, shaping expectations for the country's behaviour and policies regarding Aboriginal rights at both the domestic and international levels. Thus, Australia is held accountable by the international community for its adherence to the principles of the Declaration. Though, political will plays a significant role in the implementation of the Declaration in Australia. The extent to which its principles are translated into concrete actions and policies depends largely on the commitment and determination of political leaders and government institutions.

## Aboriginal rights and human rights

There's a notable conceptual confusion between Aboriginal rights and human rights, and Aboriginal rights should not be confused with more general and universal human rights. The general rejection of Aboriginal rights in Australia has muddled the issue, generating a lack of comprehension about the unique nature of Aboriginal rights, and this confusion has hampered support for Aboriginal causes and underscores the need for a clear distinction between the two types of rights, Aboriginal rights and human rights (Kulchyski, 2013). Human rights, based on a universalist framework and emphasising individual freedoms from a European perspective, inadequately capture Aboriginal rights which are collective and tied to Aboriginal struggles for land and culture. This misunderstanding weakens Aboriginal rights advocacy, especially against threats to land-based rights (Kulchyski, 2013).

## Appendix C: Native title

Native title in Australia represents the recognition by Australian law that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional laws and customs. This recognition, which overturned the long-held legal fiction of *terra nullius* (land belonging to no one), has profound implications for Aboriginal people practising their culture, particularly in NSW.

### What is native title?

The Commonwealth *Native Title Act 1993* (section 223(1)) defines native title as:

*the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:*

*(a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and*

*(b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and*

*(c) the rights and interests are recognised by the common law of Australia.*

The *Native Title Act 1993* codifies the recognition of native title, defining it as the communal, group or individual rights and interests of Aboriginal and Torres Strait Islander people according to their traditional laws and customs and connection to land and waters, subject to common law recognition (NTA s 223(1); Strelein, 2005). This ‘recognition space, resides between Aboriginal and Torres Straits Islander law and common law, where each system acknowledges the other’s legitimacy. However, this space is complex and contested, with the common law’s framework significantly shaping how native title is understood and applied.

It is important to recognise that native title is not a grant from the Crown but derives from pre-existing Aboriginal and Torres Straits Islander laws and customs. As Brennan stated in the *Mabo v Queensland* ((No. 2) (1992) 175 CLR 1 at 58), native title’s origin and content are found in those traditional laws and customs, with the **common law simply recognising and protecting those pre-existing rights**. This recognition fundamentally altered the legal landscape in Australia by acknowledging that Aboriginal and Torres Strait Islander peoples had a pre-existing legal relationship with their land.

### Development of native title law in Australia

The development of native title law in Australia is a story of protracted struggle, legal innovation and ongoing negotiation, culminating in recognising Aboriginal and Torres Strait Islander peoples’ rights and interests in land that were previously denied under the fiction of *terra nullius*. The early colonial period was marked by the denial of Aboriginal and Torres Strait Islander peoples’ sovereignty and the imposition of British law, justified by the doctrine of *terra nullius*, which deemed Australia to be unoccupied land at the time of European arrival (Falk and Martin, 2020,; Strelein, 2005). This legal fiction allowed for the assertion of absolute Crown ownership, effectively dispossessing Aboriginal and Torres Strait Islander peoples. While some early legal figures like Justice Willis recognised the injustice of applying British law to Aboriginal and Torres Strait Islander people (Strelein, 2005), the dominant legal view disregarded Aboriginal and Torres Strait Islander peoples’ laws and customs.

The mid-20th century saw the beginning of a shift in perspective with the 1967 referendum. While primarily about amending the Constitution to include Aboriginal and Torres Strait Islander people in the census and

allow the federal government to legislate for them, the referendum signified a growing awareness of Aboriginal and Torres Strait Islander peoples' rights (Christiansen, 2020). This period also witnessed increasing activism and advocacy by Aboriginal and Torres Strait Islander peoples for land rights, often expressed through petitions that used both Australian legal language and Aboriginal and Torres Strait Islander peoples' cultural forms (Christiansen, 2010).

*Milirrpum v Nabalco* ((1971) 17 FLR 141) marked a crucial step, being the first case where Aboriginal and Torres Strait Islander peoples presented evidence of their continuing ownership of traditional lands to an Australian court. Though the claim was ultimately rejected based on a narrow definition of property (Strelein, 2005; Christiansen, 2010), Justice Blackburn's acknowledgement of the existence of a sophisticated Aboriginal and Torres Strait Islander legal system was a significant development. The landmark Mabo decision saw the High Court overturn *terra nullius* and recognise native title, acknowledging the continued existence of Aboriginal and Torres Strait Islander peoples' rights and interests in land stemming from traditional laws and customs (Strelein, 2005, ; Christiansen, 2010). This recognition, based on the common law principle of recognising pre-existing Aboriginal and Torres Strait Islander peoples' rights, fundamentally changed the legal landscape. However, the Mabo decision also enshrined the doctrine of extinguishment, meaning native title could be extinguished by inconsistent government acts (Strelein, 2005).

The *Native Title Act 1993* legislated the recognition of native title, providing a framework for claiming and determining native title (Strelein, 2005, p. 250). Subsequent cases grappled with defining the nature and scope of native title, with debates arising around the 'bundle of rights' model, which some argued fragmented and weakened native title (Christiansen, 2010; Glaskin, 2003). The *Wik Peoples v Queensland* ((1996) 187 CLR 1 decision), allowing for the co-existence of native title with pastoral leases subject to an 'inconsistency of incidents' test, sparked controversy and legislative amendments, further highlighting the tensions between Aboriginal and Torres Strait Islander rights and other land interests (Strelein, 2005, 1; Glaskin, 2003, p. 69). *Western Australia v Ward* ((2002) 213 CLR 1) further reinforced the 'bundle of rights' approach and emphasised the vulnerability of native title to extinguishment (Glaskin, 2003). The *Members of the Yorta Yorta Aboriginal Community v Victoria* ((2002) 194 ALR 538 decision) focused on the evidentiary requirements for proving native title, particularly the need to demonstrate a continuous normative system since sovereignty (Strelein, 2005). This emphasis on proving uninterrupted connection to Country raised significant challenges for Aboriginal and Torres Strait Islander claimants, particularly in areas with histories of dispossession and cultural disruption.

The development of native title law continues, with ongoing cases exploring the relationship between native title and other land uses, the application of customary law, and the complexities of compensation for extinguished native title (Bartlett, 2020; Stride, 2022). There are calls for reform, including clearer recognition of commercial native title rights and greater protection against extinguishment (Stride, 2022). The 'recognition space' continues to be negotiated, highlighting the need for a more just and equitable framework that truly reflects Aboriginal and Torres Strait Islander peoples' connection to land.

## Relationship between the Native Title Act and common law

The *Native Title Act 1993* and common law are in a constant dialogue concerning Aboriginal rights, with common law underpinning the Native Title Act's recognition of native title, while it modifies and expands upon common law principles, creating a distinct statutory framework. This relationship has significantly impacted the recognition and exercise of native title rights in Australia, and ongoing judicial interpretations continue to shape its development.

It should be understood that the Native Title Act doesn't create native title, it recognises and protects native title that exists under common law. This principal stems from *Mabo v Queensland* ((No 2) (1992) 175 CLR 1), where the High Court recognised native title as a pre-existing right stemming from Indigenous laws and

customs, not a grant from the Crown (Strelein, 2005; Christiansen, 2010). Common law serves as the foundation, with the Native Title Act providing the procedural and administrative mechanisms for its operation.

## Native title and cultural practice in NSW

Native title in Australia signified a fundamental shift in legal recognition of Aboriginal and Torres Strait Islander peoples' rights and interests in land and waters, moving away from the dispossessing doctrine of *terra nullius*. This recognition, stemming from the *Mabo v Queensland (No 2)* (1992) 175 CLR 1, is profoundly intertwined with the ability of Aboriginal people to practise their culture, especially in NSW. It provides a foundation for the practise of Aboriginal culture in NSW by enabling access to land, protecting culture and heritage and creating a space for the exercise of customary law. However, the limitations of native title, particularly the doctrine of extinguishment and present challenges in proving native title, means that ongoing efforts are needed to ensure its full potential for supporting Aboriginal culture and Caring for Country is realised in NSW. The ongoing dialogue between Aboriginal communities, governments and the courts will be crucial in shaping the future of native title and its role in supporting Aboriginal culture in NSW.

While native title offers significant potential for cultural (re)vitalisation and practise, there are also challenges and complexities. Native title can be extinguished by acts of the government that are inconsistent with the continued enjoyment of native title rights. This includes the granting of freehold title, some leases and certain other interests. Extinguishment is a significant limitation on the potential of native title to support cultural practise and Caring for Country in NSW. Burdens of proof of native title require Aboriginal people to prove continuing connection to Country under traditional laws and customs. This can be difficult, particularly in areas where Aboriginal communities have been dispossessed or their cultural practices disrupted (French, 2000) and is further complicated by native title often coexisting with other interests in land, such as pastoral leases or mining tenements. Negotiating and managing these overlapping interests can be complex and time-consuming.

Native title, while imperfect and limited, represents a vital step towards recognising Aboriginal rights and interests in land and waters and supporting the practise of Aboriginal culture in NSW. This occurs in a space with inherent limitations, particularly extinguishment and the burden of proof, necessitating ongoing efforts to expand and strengthen native title.

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