USE OF THESES

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New Environmental Governance

by

Cameron Holley

Submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy
of the Australian National University
June 2008
Candidate's Declaration

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

Cameron Holley

Date: 25/4/09
Acknowledgements

Deep thanks to my beautiful partner Mercedes for her support, inspiration, love and patience; to my supervisory panel Neil, Clifford and Monique for their encouragement and enlightenment; to Wayne and Brendan for making time in Canberra enjoyable, and finally to Lois, Barbara, John and Bob for being supportive and loving parents.

Cameron Holley

New Environmental Governance
Abstract

This thesis empirically examines a bold and profoundly new way of governing environmental problems. This so-called “new environmental governance” (NEG) is palpable around the globe and aims to overcome the limitations of the interventionist state and its market alternative to offer more effective and legitimate solutions to today’s most pressing environmental problems. To counter the pathologies of these traditional approaches, NEG emphasises a host of novel characteristics including participation, collaboration, decentralisation, deliberation, flexibility, learning and adaptation and “new” forms of accountability.

While these unique features have generated significant praise and excitement from scholars, there has in fact been very few systematic evaluations of NEG programs in practice, and it is still unclear whether this unique approach will in fact “work”, and if so, when and how.

Responding to these issues, this study seeks to contribute to closing the gap between theory and practice by examining the conditions under which we can achieve “good” NEG. Focusing its inquiry around some of the most central, controversial and/or under researched characteristics of NEG, the thesis provides insights into the conditions under which we can best achieve successful collaboration, effective learning and adaptation, meaningful participatory and deliberative governance and effective forms of accountability.

To derive its insights the thesis examines three Australian experiments in NEG that cover point source pollution, diffuse urban pollution and natural resource management. Comparing across these diverse cases ensures the study goes beyond the limited existing research by capturing a wide diversity of conditions and offering unique comparative insights into the operation of NEG in different policy areas.

The findings that emerge suggest that NEG can work, but it may not be as straightforward or as effective as many may hope. This conclusion leads the thesis to identify seven key conditions or pillars of “good” NEG that are central to its success and can provide useful guidance for practitioners and scholars. The thesis also reveals four additional key insights for NEG theory. First, the findings suggested that NEG in practice supports claims by both critics and proponents of NEG’s novel approach to governance. This leads the thesis to counsel both sides to put the boxing gloves to one side and better respond to the world as it is rather than as they would like it to be. Second the thesis’ research confirms the hybridity hypothesis regarding the interaction between law and new governance. Thirdly, it provides some key insights into the role of the State, suggesting that it remains strong and active, but pointing to the need for normative theories to better address the thesis’ findings regarding the risks of State authority. Finally it draws on empirical insights to highlight the divergent types of non government actors.
involved in NEG, and details the different consequences each pose for NEG's participatory aspirations.
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**List of acronyms and abbreviations**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACNCG</td>
<td>Altona Complex Neighbourhood Consultative Group</td>
</tr>
<tr>
<td>CAC</td>
<td>Command and Control</td>
</tr>
<tr>
<td>CMA</td>
<td>Catchment Management Authorities</td>
</tr>
<tr>
<td>CALFED</td>
<td>CalFed Bay-Delta Program</td>
</tr>
<tr>
<td>CPR</td>
<td>Common Pool Resources</td>
</tr>
<tr>
<td>CBEP</td>
<td>Community Based Environmental Protection</td>
</tr>
<tr>
<td>EIP</td>
<td>Environment Improvement Plan</td>
</tr>
<tr>
<td>EPA</td>
<td>Environment Protection Authority</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>HCP</td>
<td>Habitat Conservation Plan</td>
</tr>
<tr>
<td>ICM</td>
<td>Integrated Catchment Management</td>
</tr>
<tr>
<td>JSC</td>
<td>Joint Steering Committee</td>
</tr>
<tr>
<td>MBI</td>
<td>Market Based Instruments</td>
</tr>
<tr>
<td>NAP</td>
<td>National Action Plan for Salinity and Water Quality</td>
</tr>
<tr>
<td>NEG</td>
<td>New Environmental Governance</td>
</tr>
<tr>
<td>NEIP</td>
<td>Neighbourhood Environment Improvement Plan</td>
</tr>
<tr>
<td>NHT</td>
<td>Natural Heritage Trust</td>
</tr>
<tr>
<td>NRM</td>
<td>Natural Resource Management</td>
</tr>
<tr>
<td>OMC</td>
<td>Open Method of Coordination</td>
</tr>
<tr>
<td>RCG</td>
<td>Regional Coordination Group</td>
</tr>
<tr>
<td>RGC</td>
<td>Regional Groups Collective</td>
</tr>
<tr>
<td>RIS</td>
<td>Regional Investment Strategy</td>
</tr>
<tr>
<td>RNRM</td>
<td>Regional Natural Resource Management</td>
</tr>
<tr>
<td>SMEs</td>
<td>Small and Medium Sized Enterprises</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>VEPA</td>
<td>Victorian Environment Protection Authority</td>
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Chapter 1: Introducing the New Environmental Governance

1.1 Background

Over the last decade a profoundly innovative and very different approach to environmental governance has emerged across the globe. This seismic reorientation in both environmental policymaking processes and the tools employed in their implementation has seen the functions of the State shifting “downwards” to regions, “outwards” to a host of non-state actors and, in some cases, “upwards” to transnational institutions and organisations.

In Australia, such trends are clearly evident in collaborative efforts between local residents, regulators and “big” industries to reduce pollution impacts in Victoria and Western Australia; in attempts to foster partnerships between communities, small and medium sized enterprises, state agencies, local governments and environmental groups to address diffuse and complex environmental problems in the neighbourhoods of Victoria; and in broader based regional initiatives nation wide, involving the establishment of 56 regional natural resource management bodies. This latter initiative has involved billions of dollars being invested into wide reaching “partnerships” between federal, state, and local governments, regional communities, farmers, and industry bodies to try and address natural resource problems.

Broadly similar endeavours can also be found in the European Union where there has been increasing multiparty collaboration and participation via environmental assessment and

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1 The research contained in this thesis was supported by an Australian Research Council Linkage Grant in partnership with the Victorian Environmental Protection Authority. Pursuant to the grant, some of this thesis’ research was developed and built upon in the following two joint articles: Holley C and Gunningham N, “Environmental Improvement Plans: Facilitative Regulation in Practice” (2006) 23(6) Environmental and Planning Law Journal 448; Gunningham N, Holley C and Shearing C, “Neighbourhood Environment Improvement Plans: Community Empowerment, Voluntary Collaboration and Legislative Design” (2007) 24(2) Environmental and Planning Law Journal 125. The referencing style in this project follows the style guidelines for the Environmental and Planning Law Journal established by Lawbook Company. For ease of reference it restarts the footnote referencing system in each chapter.


6 Head B, “Participation or Co-governance? Challenges for Regional Natural Resource Management” in Eversole R and Martin J (eds), Participation and Governance in Regional Development (Ashgate, 2005); Lawrence, n 4.

7 Taylor M, Public Policy in the Community (Palgrave, 2003).
framework directives, the Open Method of Coordination and forms of voluntary agreements with industries. The United States of America (USA) has also been at the forefront of such trends – most notably in the endeavours of multiple agencies and stakeholders addressing competing demands on water resources in the San Francisco Bay Delta and in habitat conservation planning by landowners, various tiers and agencies of government, conservationists, independent scientists, and other interested citizens.

These are just some of the novel and exciting experiments that constitute the new environmental governance (NEG), and that evidence a fundamental rethink in how we can and should cope with the pressing environmental problems of our time. Rather than the traditional one size fits all, top down, and prescriptive approach used for regulating environmental issues, NEG broadly seeks to achieve more responsive, effective and legitimate solutions to environmental problems by emphasising participation and collaboration, multi-level integration, diversity and decentralisation, deliberation, flexibility, learning and knowledge creation.

Somewhat surprisingly, although the emergence of NEG is evident around the globe, it is still unclear whether it will in fact “work”, and if so, when and how. While NEG has generated significant praise as a means to produce innovative and more democratic solutions to environmental problems, it has also faced a litany of criticisms, including claims that it leads to lowest common denominator solutions, rent seeking, dominance by self interested economic actors, and disenfranchised environmental interests. Much empirical research is accordingly still needed to resolve these normative disagreements about the impacts of NEG.

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17 Koontz and Thomas, n 15 at 113.
Questions also remain as to the principles and practical conditions (based on empirical investigation) that will allow these NEG experiments to be replicated and successfully applied in practice.\(^\text{18}\) Furthermore, the broader implications of NEG in practice for understanding the State (which is arguably "decentred" by such initiatives) and for relationships between traditional law and new governance remain uncertain.\(^\text{19}\)

Most NEG scholarship has only just begun to grapple with these concerns, having often remained focused on “first principle” debates regarding the merit of NEG.\(^\text{20}\) In short, there have been few systematic evaluations of NEG programs in practice.\(^\text{21}\)

Responding to these gaps and pressing research questions, this thesis takes a “hard look” at NEG in practice and seeks to provide insights into these issues.\(^\text{22}\) It immerses itself in the details of “experiments” in NEG in order to answer the question: **under what conditions can “good” NEG be achieved?** Conducting a comparative analysis of 80 interviews from 3 leading NEG programs in Australia, it tests theories, speaks to key debates and draws lessons for the literature and policy on an array of vital issues for environmental governance.

The purpose of this chapter is to lay out the initial groundwork for this analysis by outlining the context, focus and aims of the study. It does this in the following five sections. Section 1.2 introduces and defines the concept of NEG that informs this thesis. Section 1.3 then provides some necessary background on the thesis’ inquiry into NEG by outlining, in broad brush strokes, some of the trends and developments in environmental governance that lead to the emergence of this important new approach. Section 1.4 then turns to consider NEG scholarship and outlines in more detail some of the key debates and questions raised in the literature that are addressed in this thesis. This outline is followed by a discussion of the aims of this study and its guiding research questions. Section 1.5 concludes by outlining the structure of the thesis.

### 1.2 What is NEG?

It is important at the outset to be clear on exactly what is meant by NEG. As the term is used in this thesis it refers to innovative forms of so called “new governance” in the


\(^{20}\) Karkkainen, n 15 at 212.


\(^{22}\) Karkkainen, n 15 at 212.
environmental policy arena. But this begs the question of what "new governance" involves?23 Before defining this concept, it is perhaps useful to first make clear exactly what the term "governance" itself means, since this concept is notoriously vague24 and has been defined in a variety of ways in a variety of literatures.25

At a broad level,26 it can be understood to mean the "management of the course of events in a social system".27 This may involve various structures, processes and relationships for managing or influencing events, such as "top down" enforcement of rules by governmental authorities,28 as well as more "horizontal" relationships where public, private and non governmental actors29 employ economic incentives, moral suasion, shaming or other innovative forms of social control.30

The subsequent addition of the term "new" to the concept of "governance" is not intended to signify governance efforts that are recent in time,31 but rather something that is distinctive from what has gone before.32 That is, "new governance" is generally characterised as involving a shift in emphasis away from traditional approaches33 understood as involving representative democracy, singular authority, centralised and hierarchical commands, rigidity, and uniform regulatory rules. In its place, NEG involves forms of public governance34 that are "less rigid, less prescriptive, less committed to uniform outcomes, and less hierarchical in nature".35

Beyond this, new governance experiments are often depicted in terms of the key characteristics that they exhibit.36 These characteristics in turn are thought to counter the...
perceived pathologies of conventional forms of regulation. Although there is little agreement on a single set of characteristics that offer a definitive “new governance model” per se, some of the most common characteristics identified by researchers internationally include forms of governance that are open-textured, participatory, bottom-up, collaborative, consensus orientated, deliberative, flexible, integrative, pragmatic, adaptive, and (at least according to some NEG theories) involve “new” forms and mechanisms of accountability.

Consistent with evolving understandings of new governance, not all these characteristics need be present for a particular program to fall within this category – indeed there are very few single institutional forms that fully capture the idea of new governance in its entirety. However, the more characteristics that are present the stronger the claim that they fall within the category of new governance.

Of course, it is important not to overstate the novelty of these characteristics identified in NEG. Forms of multiparty collaboration and participation, for example, have had a long history. Like most allegations of “newness” the existence of NEG is largely about degree and emphasis. Nevertheless, when compared with dominant approaches that have historically characterised environmental governance, NEG stands as a distinct and identified trend towards a “post-regulatory” approach to governing environmental problems. Locating NEG in the context of previous ways of governing environmental problems is the focus of the next section.

37 Some common characteristics cited by Karkkainen (Karkkainen, n 3 at 473-474, 496) include “collaborative, multiparty, multi-level, adaptive, problem-solving” unpinned by aspirations to be more “open-textured, participatory, bottom-up, consensus-oriented, contextual, flexible, integrative, and pragmatic...and adaptive”. Others such as Lobel have argued that new governance is characterised by 8 clusters of approaches, namely Participation and Partnership, Collaboration, Diversity and Competition, Decentralization and Subsidiary, Integration of Policy Domains, Flexibility and Non-coerciveness (or Softness-in-Law), Fallibility, Adaptability, and Dynamic Learning, Law as Competence and Orchestration (Lobel O, “The Renew Deal: The Fall Of Regulation And The Rise Of Governance In Contemporary Legal Thought” (2004) 89 Minnesota Law Review 342 at 371-404); See also De Burca and Scott, n 19, p 2 – 3; Gunningham, n 19.

38 Some of these disagreements relate to specific common characteristics of new governance, for example discussions around terminologies such as “soft law”; De Burca and Scott, n 19, p 3; Lobel, n 23 at 506-508; Karkkainen, n 3 at 485-489.

39 Walker, n 14, p 22; Karkkainen, n 3 at 473-474; Lobel, n 37 at 371-404; Gunningham, n 19 at 5-6.

40 Notably, the last of these characteristics - “new” forms of accountability - has not specifically been raised in any meta-analysis of new governance of NEG thus far. Nevertheless, for the purposes of this thesis inquiry, this feature arguably warrants inclusion as a common characteristic of NEG, both because it is an explicit feature of some individual NEG theories and, as discussed below, accountability is widely seen as central to success of NEG’s unique approach to governing. See for example Freeman J, “Collaborative Governance in the Administrative State” 45 (1997) UCLA Law Review 1 at 30, Lawrence, n 4 at 17-18.

41 De Burca and Scott, n 19, p 3.

42 Gunningham, n 19 at 1; Scott and Trubek, n 8 at 5-6;

43 Head, n 6, p 137.


45 De Burca and Scott, n 19, p 1-2.
1.3 The Emergence of NEG

One doesn’t need to have seen Al Gore’s film “An Inconvenient Truth” to know that rapid environmental change is prevalent across the globe. The climate crisis, loss of biodiversity, degraded land, air pollution, serious degradation to coast and oceans and deteriorating water and soil quality are amongst the most serious threats to the natural environment. These and other environmental challenges, as the World Commission on Environment and Development pointed out 20 years ago, endanger not only nature, but also health and economic wellbeing.

Of course, governments, citizens and industry groups are alert to these issues and have attempted, with variable success, to resolve them using quite different approaches to environmental governance. This section sets the thesis’ research within the context of these developments by outlining in broad terms the two dominant approaches to environmental governance, namely command and control and markets before identifying the limitations of these approaches that have increasingly led governments, industry and citizens to turn toward NEG. This turn, as will be illustrated by some specific vignettes offered below, is evident across a range of environmental policy areas.

Initially, beginning almost 40 years ago, Western governments sought to address environmental problems by establishing environmental protection agencies. Their main aim was to improve air and water quality and the designated technique was so called “command and control” regulation (CAC) of large industries. Echoing the Hobessian ideal of a sovereign ruler exercising top down punitive control over its subjects, this approach involved the “command” of centralised legislatures who set blanket environmental targets (eg. emission standards, exposure levels or technology standards). Agencies then “controlled” by subsequently monitoring and policing industries’ compliance and imposing penalties where standards were breached.

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46 For further on the Inconvenient Truth see http://www.climatecrisis.net.
52 Holley and Cunningham, n 5.

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Certainly, at least in some circumstances, this CAC approach was relatively effective for regulating large industries, and achieved a number of gains in halting and slowing environmental degradation. However, CAC has also suffered from a number of significant limitations. For example, adversarial enforcement by stick waving agencies produced counterproductive resistance from regulated individuals and firms. Its centralized nature, reliance on scientific or technocratic knowledge and uniform rules have also been widely berated as costly, cumbersome, inefficient and insensitive to local contextualities.

This insensitivity, along with the tendency of governments to administer CAC through departments that are fragmented along ecologically arbitrary, human-defined boundaries, has also limited the use of CAC for managing more complex environmental problems. These problems typically involve multiple polluters and require a more holistic, integrated and localised ecosystem level approach that is beyond centralised and fragmented CAC mechanisms. Even if governments could coordinate agencies to implement CAC in a more integrated manner, it would arguably be difficult – if not impossible – to licence, inspect and levy fines on the vast number of dispersed sources of pollution that cause these problems. Finally, CAC has also met with increasing calls for superior forms of citizen inclusion, at least

59 See: Cutting R and Cahoon L, “Thinking Outside the Box: Property Rights as a Key to Environmental Protection” (2005) 22 Pace Environmental Law Review 55 at 62 (noting that the current administration has cut $492 million from the EPA budget and the Bush Administration has proposed a five per cent (5%) cut overall for 2005-2006); Gunningham, n 30 p 5-7.
other than through its complaints and appeal procedures,\textsuperscript{64} or indeed the "notice and comment" and consultation processes that often take place after plans are already far advanced.\textsuperscript{65}

As a direct result of these limits, new approaches to governing environmental problems have increasingly moved away from this purely State-centred, hierarchical style of environmental protection\textsuperscript{66} toward an array of more decentralised approaches.

One of the earliest and most touted of these alternatives was economic or market based instruments.\textsuperscript{67} Prominent during the 1980s climate of economic rationalism,\textsuperscript{68} these market approaches arose from Adam Smith's vision of an "invisible hand" leading self-maximising individuals to promote the public interest.\textsuperscript{69} This approach was expressly concerned with improving governance outcomes by integrating widely dispersed knowledges of 'individuals' that exist away from the centre. As such, markets, at least in theory, can overcome the cost and limitations of the highly centralised knowledge base of CAC, as well as its sole dependency on government capacities.\textsuperscript{70}

In this paradigm, the standard advice from economists was that environment degradation was occurring because of a failure of markets to value environmental endowments.\textsuperscript{71} As no price was emerging in markets to reflect resource scarcity value, the markets were failing to fulfil fundamental function – rationing scarce assets efficiently.\textsuperscript{72} What was needed then was market signals that charged for the use of scarce resources appositely, or alternatively a process that determined the amount of pollution that the environment could assimilate and allocating rights to those emissions, letting the market determine the appropriate price.\textsuperscript{73}

Government-led and designed economic and market based instruments ("MBIs"),\textsuperscript{74} subsequently emerged, such as "cap and trade" schemes, subsidies and pollution taxes. Some prominent MBI approaches to address point source pollution include the acid rain trading

\textsuperscript{64}This includes its interventionist and adversarial nature that can prompt counterproductive resistance from regulated parties; Lazarus, n 56, p 90.
\textsuperscript{65}Meadowcroft J, "Deliberative Democracy" in Durant R, Fiorino D and O'Leary R (eds), \textit{Environmental Governance Reconsidered} (MIT, 2004) at 189.
\textsuperscript{66}Durant R, Fiorino D and O'Leary R (eds), \textit{Environmental Governance Reconsidered} (MIT, 2004) (and the contributions therein); Karkkainen, n 3 at 471, 474.
\textsuperscript{67}Freeman and Farber, n 11 at 814-819.
\textsuperscript{68}Cutting and Cahoon, n 59 at 62; Gunningham, n 30, p 5-7.
\textsuperscript{69}A Smith (1776) \textit{An inquiry into the nature and causes of the wealth of nations} Edinburgh, available in full text at http://www.adamsmith.org/smith/won-index.htm viewed 30 May 2008.
\textsuperscript{72}Gunningham and Sinclair, n 71, p 115.
\textsuperscript{73}Gunningham and Sinclair, n 71, p 115.
\textsuperscript{74}See generally: Stewart, n 60 at 94-128.
scheme in the USA; economic incentives have also been used to address more complex “second generation” issues such as local urban air pollution. Moreover, subsidies and different market approaches such as land acquisitions and payments have been employed for natural resources, particularly in Europe.

Yet, despite some success, many MBIs have failed, or proved to be less environmentally effective than CAC. Furthermore, MBIs tend to operate at the margins of environmental governance - used only to address environmental issues in a limited number of contexts. In part, this is because of the difficulty market approaches can face in identifying tradable units (i.e. fungible commodities) when dealing with complex problems. In addition, efficiency benefits are often undermined by a variety of practical and contextual difficulties faced by governments who seek to develop and rely on MBIs. Indeed, despite their claims to knowledge mobilisation, many MBIs share with CAC a requirement for centralised planning and knowledge such as setting the right level for a tax, charge or even capping levels, which can often be difficult for policy makers in the absence of an existing market reference. In summary, MBIs like CAC suffer from limitations and provide only partial answers to the range of environmental problems facing society, particularly those of a complex nature.

Recognising this fact, environmental policy-makers during the 1990s began to search for governance instruments that overcame some of the limitation of earlier approaches and were


77 Such as funding to encourage either the replacement or upgrading of domestic wood stoves. See, for example, Western Australia Department of Environment and Conservation, Halt The Haze 2006 Wood Heater Replacement Program (WA DEC, 2006).


80 See discussion of benefits and shortcomings in: Freeman and Farber, n 11 at 815-819; Cutting and Cahoon, n 59 at 62; Gunnigham and Grabosky, n 53, p 69-83.


82 Levels may also be subject to lobbying which can reduce effectiveness.; Gunnigham and Grabosky, n 53 p 69-83; Freeman and Farber, n 11 at 815-819; Sabel C, Fung A and Karkkainen B, “Beyond Backyard Environmentalism” (1999) October/November Boston Review 1 at 2-3.

better suited to today’s challenges. Some have tried business led voluntary approaches or education and informational strategies such as product labelling and corporate reporting. While the former has achieved limited success, general opinion is that it is unlikely to make a substantial contribution as a stand-alone approach to environmental governance. This is largely because voluntary approaches typically fail to achieve acceptable levels of industry wide compliance and, firms are widely seen as “untrustworthy” partners in governance systems, whose ostensible support for the environment may not necessarily translate into concrete business decisions.

Similarly, across the various forms of informational strategies some have been shown to operate quite successfully, such as the Toxic Release Inventory. However most forms of informational regulation have been relegated largely to complements of CAC, rather than a stand-alone approach themselves. This is largely because their success depends on accurate information and the willingness and ability of individuals to properly process the released information and to act on it. Misguided or ineffectual responses from the public may commonly arise if information is inappropriate (eg. too technical for people who are undereducated, elderly, or poor), difficult to access or irrelevant (eg. third parties may believe that there isn’t anything they need to know about environmental issues, or at the other end of the spectrum, it may give rise to “alarmist bias” regardless of what is true).

More recently, and particularly in the last decade, policy makers and theorists have increasingly focused on a very different form of governance involving collaboration between stakeholders to a extent that would have been unimaginable some years before. In short, the most profound shift in recent times has been towards NEG.

This shift is largely premised on explicit or implicit normative claims that NEG characteristics such as participatory aspirations, deliberation, collaboration and a variety of

87 Gunningham and Sinclair, n 71 p 155; Freeman and Farber, n 11 at 831-832.
88 Gunningham and Sinclair, n 71 p 145-148, 155; Freeman and Farber, n 11 at 831-832.
89 Freeman and Farber, n 11 at 832.
90 Fung A and O'Rourke D, "Reinventing Environmental Regulation from the Grassroots Up: Explaining and Expanding the Success of the Toxics Release Inventory" (2000) 25(2) Environmental Management 115; Karkkainen B, "Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?" (2001) 89 Geo. L.J. 257.
91 Stewart, n 60 at 141-143.
92 Fung and O’Rourke, n 90 at 118; Weil et al, n 86 at 161, 164; Sunstein C, "Informational Regulation and Informational Standing: Akins and Beyond" (1999) 147 University of Pennsylvania Law Review 613 at 626-629.
related characteristics can deliver effectiveness, legitimacy and democratic benefits beyond those provided by traditional approaches to governance. Many of these are spelled out in more detail in chapter 2, but a few illustrations are useful for present purposes.

For example, compared to an exclusive reliance on centralised knowledge to set suitable CAC standards or caps/taxes in some MBIs, characteristics such as collaboration, participation and deliberation are said to lead to problem solving which is inclusive of local circumstances and able to capitalise on the unique local and other knowledges and capacities of multiple public and private actors. Direct involvement of actors in deliberative styles of governance can also foster stakeholder ownership and ‘buy in’ and can give greater voice to marginalised interests (as opposed to an exclusive reliance on science in CAC or price, competition and the efforts of professionals in markets).

Similar processes such as policy learning and adaptation, meanwhile, are thought to ensure that NEG copes better with the dynamism and complexity of environmental problems than either CAC (which can be particularly ossified in nature) or many MBIs (where significant post-hoc program corrections to pollution levels and permits set from the centre become very difficult without undermining the security of ownership rights on which the market itself depends). Collaboration and “new”, as opposed to traditional, forms of accountability may also help to leverage government expenditure by mobilising the resources of others in implementation, monitoring and enforcement roles.

To illustrate these benefits and provide some real world examples of the nature and emergence of NEG, consider, for example, a few vignettes regarding the shift that has occurred toward NEG style approaches in point source pollution, urban diffuse pollution, and natural resource issues. These are contained below in Boxes 1.1, 1.2 and 1.3 respectively.

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94 Lobel, n 23 at 502.
97 Sabel et al, n 82 at 3.

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GOVERNING POINT SOURCE POLLUTION

Point source pollution problems relate to the billowing smoke stacks, wastewater outfalls and other so-called “end of pipe” pollution releases from power plants, plastic refineries and other “big industries” that dot the urban landscape.\(^{100}\) The conventional approach to governing industry pollution followed the tradition of the “liberal-welfare State”\(^ {101}\) and the “New Deal” era\(^ {102}\) in the United States of America that saw Western governments create centralised environmental agencies and enact a raft of legislation that prohibited, restricted and enforced narrowly defined environmentally harmful activities caused by industries’ operations.\(^ {103}\) As noted above, this approach to governance is commonly termed CAC.

After almost a decade of operation, the limits of the CAC approach to governing point source pollution from large industries were increasingly apparent and this, in conjunction with calls for greater participation led policy makers to seek out more effective and less costly alternatives that increasingly employed and aspired to the principles of NEG. Examples of these approaches include environmental contracting in Western Europe,\(^ {104}\) “regulatory flexibility”\(^ {105}\) initiatives in the United States and Environmental Improvement Plans across Australia.\(^ {106}\) While the specific form of these approaches varies, most aim to impart greater responsibility to industry and stakeholders at more “localised” industry site levels for controlling environmental harms.\(^ {107}\) They aim to reduce government costs by giving these parties greater decision making, monitoring and implementation roles, enhance innovation and foster greater flexibility (and in some variants, engender reflexive and adaptive learning)\(^ {108}\) by allowing stakeholders, industry and government to collaborate, deliberate, and participate, in the design and monitoring of management systems tailored to individual circumstances of each industry.\(^ {109}\)

Box 1.1: Governing Point Source Pollution – from CAC to NEG.

\(^{102}\) Lobel, n 37.
\(^{104}\) Stewart, n 60 at 80-86; See also Orts E and Deketelaeren K (eds), Environmental Contracts Comparative Approaches to Regulatory Innovation in the United States and Europe (Kluwer, 2001).
\(^{105}\) See for example: Freeman, n 40 at 31.
\(^{106}\) Gunningham and Sinclair, n 71, Ch 8.
\(^{107}\) Freeman and Farber, n 11 at 829.
\(^{108}\) See for example: Orts, n 96.
\(^{109}\) Gunningham, n 19 at 1.
GOVERNING DIFFUSE SOURCE POLLUTION

While controlling the behaviour of industries was the rational policy response for improving air and water quality in the 1970s, other pressing environmental problems quickly emerged that could not be pinned on single industries. These were environmental issues that arose from the cumulative impact of multiple and often “small” sources of pollution. For example, an urban local creek may be polluted by sediment run-off from construction sites, stormwater discharges containing dog faeces and street litter, pesticides from household lawns, petro-chemicals washed off roads and pollution from small and medium size enterprises (SME). These so-called “second generation” environmental challenges in urban areas tended to cross traditional government boundaries, falling under the jurisdiction of multiple local governments, and/or state and federal agencies.

Because of these unique features, the approach to governing these problems was largely a disjointed and adhoc affair, involving multiple agencies and governments exercising their separate CAC powers (or other relevant policy tools). For example, to address pollution of an urban steam, an education and enforcement campaign may have been mounted by a local government to dissuade littering, another local government may implement a storm water management plan, there may be increased controls imposed by a state agency regarding discharge to sewers, and a cleaner production program may be developed by an environmental regulator with certain SMEs. While these actions may be credible, such uncoordinated solutions have tended to amount to little more than “governing around the edges”.

These limitations have led policy makers and other stakeholders to experiment with NEG approaches such as community based environmental protection and so called “civic environmentalism” in USA, as well as Neighbourhood Environmental Improvement Plans in Australia, and comparable experiments in UK. Like NEG approaches for point source pollution, these experiments are typically collaborative, participatory and deliberative in nature. That is, they draw on the unique knowledge, capacities and resources of multiple public and private stakeholders to design, implement and monitor strategies to improve local environmental conditions. This approach is intended to be flexible and contextual, allowing institutional structures and solutions to be tailored to each specific problem. However, unlike end of pipe approaches, which focus on individual industry sites, these NEG approaches explicitly aim to respond to the wisdom of ecosystem and adaptive management by

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110 Gunningham and Sinclair, n 71; Kettle, n 84.
113 John and Mlay, n 63, p 361.
114 See for example: John, n 99.
115 Gunningham et al, n112.
117 Karkkainen, n 3; Karkkainen, n 4.
118 For further, see discussion in chapter 2.
119 Karkkainen, n 61, p 295.

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managing problems in a “place based” manner. This typically involves governance that is more integrated, holistic and adaptive in nature - ideally overcoming government fragmentation and “scale mismatches” between environmental problems and governmental jurisdictions.

Box 1.2: Second Generation Urban Problems – Nominal CAC To NEG.

GOVERNING NATURAL RESOURCES

Akin to second generation issues, the third and final problem of non-urban natural resource issues also arises from multiple sources of diffuse pollution that tend to cross traditional jurisdictional boundaries. These problems include degraded rivers, salinity, and/or loss of biological diversity. Typically the causes of these issues include fertilizer and pesticide run off from multiple farms, broad scale land clearing or other poor agricultural practices. Despite these similarities with urban second generation problems, natural resource issues have their own unique environmental governance history.

Indeed, CAC has rarely been used to govern natural resource problems, not least because it intrudes on “sacred” private property rights of farmers. Rather, government intervention has largely sought to assist producers to “do the right thing” rather than policing them. In the earliest days, regulation of agriculture in fact focused on the promotion and development of the industry. Even when environmental concerns were eventually raised, governance has typically taken a “win win” route (i.e. enhancing environmental management, while also delivering costs savings). Typically this has been characterised by “softer” approaches such as information provision, education support, self-regulation, voluntarism and persuasion.

However even in this policy area the governance of natural resources has seen a comparative shift away from its traditionally sole reliance on self regulation, information and voluntarism. This occurred for a number of reasons, including the fact that (i) self-regulation has tended to lack credibility with stakeholders; (ii) information and education generally failed to bring about substantial change in management attitudes because of the divergence between farmers’ short-term economic interests and environmental needs; and (iii) voluntarism was largely limited to situations where there were manifest

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121 For further on CAC limitations see: Farrier D, n 12 at 326, 352-389; Gunningham and Sinclair, n 81, p 7-9.

122 Gunningham, n 120 at 303.

123 Gunningham and Sinclair, n 81, p 7-9.

124 Gunningham and Sinclair, n 81, p 7-9.

125 Gunningham and Sinclair, n 81, p 7-9.
"win win" opportunities in environmental improvement and the economic dividends these provided were very short-term in nature.\textsuperscript{126}

Despite some recent dalliances with CAC,\textsuperscript{127} the predominant trend for governing natural resources has been a similar shift toward NEG. Indeed, natural resource management (NRM) experiments increasingly involve multi-stakeholder participation, deliberation and collaboration at decentralized biophysical catchment and regional scales to plan, implement, and monitor adaptive resource management strategies.\textsuperscript{128} This approach has been identified in programs such as integrated catchment management and regional natural resource management in Australia,\textsuperscript{129} the Chesapeake Bay program in the USA\textsuperscript{130} and similar decentralisation in NRM around the world.\textsuperscript{131} Vital here is not only the wisdom of ecosystem and adaptive management but also attempts by governments to respond to international,\textsuperscript{132} national\textsuperscript{133} and state\textsuperscript{134} discussions and policies on “sustainable development”,\textsuperscript{135} and their associated emphases on public participation\textsuperscript{136} and the precautionary principle.\textsuperscript{137}

**Box 1.3: Natural Resources – From Self Regulation, Information and Voluntarism to NEG.**

To sum up the above discussion, there have been some broad shifts that have occurred in environmental governance in recent history.\textsuperscript{138} As we saw, the limitations and failings of more traditional approaches to environmental governance, particularly command and control and markets, have seen governments, citizens and industry increasingly turn toward NEG. The three illustrations made clear that this shift is occurring across disparate environmental policy areas.

\textsuperscript{126} Gunningham and Sinclair, n 81, p 7-9; Farrier D, n 12 at 326.
\textsuperscript{127} McGrath C, “Editorial comment - End of Broadscale Clearing In Queensland” (2007) 24 EPLJ 5; Note there have also been innovative proposals to reform delivery in this context through strategic planning. See for example: Farrier and Whelan, n 81, p 30, 47; Farrier, n 62 at 105.
\textsuperscript{130} See Head, n 6, p 137; Karkkainen, n 18.
\textsuperscript{131} Ribot J, *Democratic Decentralization of Natural Resources: Institutionalising Popular Participation* (World Resources Institute, 2002).
\textsuperscript{132} Brumland, n 49.
\textsuperscript{134} Discussing Queensland: Head and Ryan, n 133 at 33.
\textsuperscript{135} Jean, n 6, p 140.
\textsuperscript{138} John, n 99, p 229.
and is leading to a degree of convergence across these areas toward a more collaborative, decentralised, multi party, participatory, adaptive approach to governance. As a number of scholars have argued, this convergence toward NEG suggests that something big is going in environmental governance.  

It may indeed be that we are standing at a moment of critical renewal, reinvention and reorientation which will ultimately lead to a new and better way of governing. The next section turns to flesh out scholars’ views on this question by introducing the current state of NEG scholarship, outlining some of the key gaps and questions in the literature that the thesis responds to, and detailing the specific research questions of this study.

1.4 NEG Scholarship and Empirical Questions

This section introduces the literature on NEG that will be explored in more detail in chapter 2. The discussion also introduces the links between the literature and the aims and research questions of this study. It commences by briefly defining NEG scholarship and clarifying this thesis’ understanding of this emerging body of work. It then outlines some of the key empirical questions and debates in the literature before turning to focus on this study’s research questions and how it responds to gaps and debates in the literature.

1.4.1 Introducing NEG Scholarship

This section introduces NEG scholarship and briefly explains why the study chose not to engage with each of the many fragmented and sometimes conflicting strands of NEG, but rather to maintain some theoretical coherence by embracing a more generalised understanding of NEG.

New governance scholarship is recognised as being broad in scope, but is now considered “a major field within socio-legal studies world-wide”. NEG itself can generally be defined as scholarship that is focused on innovative forms of public governance in the environmental arena.
that meet some or all of the abovementioned new governance characteristics. It thus can encompass a wide range of theories and literatures that are diverse and separate in institutional and political approaches, as well as in the concrete environmental problems that they discuss.

This broad field is most commonly identified with scholarship in the USA and Europe, but also increasingly in Australia. As we will see in chapter 2, these three groupings of NEG scholarship evidence a broad and diverse field encompassing many different schools of thought, that often utilise different terminologies to explain their conception of NEG. Some of this scholarship, such as strands of “democratic experimentalism” or “collaborative governance”, tends to be idealised or normative in approach. Others such as the “new regional paradigm for NRM” and “collaborative ecosystem governance” offer a more explanatory understanding of NEG. There is an even greater diversity in the theoretical underpinnings that have influenced NEG theory ranging from pragmatism, to Giddens’ “Third Way” to governmentality.

Yet, despite this diversity, what binds these theories and this scholarship together is their engagement with forms of environmental policy that favour less rigid, less uniform, less prescriptive, and less hierarchical approaches to governing and which promise a new, innovative and arguably more effective means of addressing complex environmental challenges.

In deciding to group such diverse theories together under the rubric of NEG scholarship, there is of course a risk of over generalisation and of obscuring important differences, debates, and divergent tendencies within the literature. However the thesis endeavours to remain alert to such differences in both its understanding of NEG and its analysis of case studies. The approach taken by the thesis is that, conscious of the risks of generalisation, there are nevertheless significant benefits to be gained from broadly grouping different theories and scholarship under an NEG framework.

Indeed, consistent with emerging understandings within the NEG literature itself, by adopting a generalised rubric of NEG (with appropriate attention to differences) this thesis can

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143 Karkkainen, n 3, p 472; Walker, n 14, p 21.
144 De Burca and Scott, n 19, p 2.
145 Karkkainen, n 1 at 472, 496; Lobel, n 23 at 499-501.
147 Freeman, n 40 at 31.
148 Karkkainen, n 3 at 472, 496.
149 See his discussion in: Head, n 128 p 19.
150 Karkkainen, n 3 at 472, 496.
153 Karkkainen, n 3 at 472, 496; Lobel, n 23 at 499-501.
154 De Burca and Scott, n 19, p 2.
155 Karkkainen, n 3 at 472.
follow a structured approach that can reach across and learn from the unique but yet broadly similar theoretical voices. More specifically, by linking and comparing theories in this broad way, it may be possible to test, build on and reformulate theory to help achieve collectively and separately a better understanding of what is occurring, and/or a better approach for normatively influencing the direction of this new approach to environmental governance.

In focusing the study around NEG scholarship and the generalized concept of NEG, it is also important to point out that there are already many other windows of scholarship and theory that have identified and discussed similar trends in governance. For example a host of governance theories emphasise “nodes”, “networks” and “webs”, or focus on shifts in the regulatory state and what Osborne and Gaebler refer to as steering and rowing. However, very few of these theories and frameworks have focused on the unique trends in the environmental policy field. In contrast, new governance scholarship has been squarely rooted in such “third way” approaches to governing in this arena, making it a more suitable and apt framework for this thesis.

What then is the state of this NEG scholarship? What are some of its key debates and unanswered questions that this thesis seeks to tackle? These issues are examined in the next section.

1.4.2 Empirical Questions

Although the appearance of NEG has generated a flurry of scholarship heralding its potential to provide an alternative to traditional modes of governance, there has been surprisingly little investigation of whether, how or to what extent NEG institutions actually deliver their purported benefits in practice. Despite some emerging empirical research, a substantial gap in NEG scholarship remains because most studies have been confined to a few institutional examples, or have lacked a grounding in NEG scholarship or related theories. As a result, there has been little corresponding evidence that NEG actually delivers on its normative
promises, or in particular that it demonstrably improves environmental outcomes (leading some to suggest they may be guilty of “all talk and no action”). These deficits in empirical research have also given rise to many disagreements about the impacts and effectiveness of NEG and left some theories that broadly advocate the benefits of NEG vulnerable to criticism.

While it is not possible to canvas the full range of empirical and theoretical disagreements here, some of the most heated debates and most fundamental questions have been raised in relation to 5 key characteristics of NEG, namely collaboration, participation, deliberation, learning and adaptation and “new” forms and mechanism of accountability. It is these characteristics that are the principal focus of this thesis. Some of the main debates and gaps relating to these characteristics are discussed below in broad terms to provide the reader with a flavour of main debates and gaps in the literature, as a precursor to their fuller examination in subsequent chapters.

One fundamental question that haunts the NEG literature concerns whether when, and how effective collaboration can be achieved without succumbing to collective action problems, excessive transaction costs and/or the likelihood of lowest common denominator solutions arising from consensus decision making processes. Others have also pointed to a “knowledge gap” in the NEG literature on the challenges associated with sustaining successful collaborative organizations, including what happens to collaborative efforts when they have substantially achieved their goals.

Regarding participation, a noted lack of empirical evidence on representation and participation patterns in different and varied NEG institutions has left NEG vulnerable to critics.

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166 Koontz and Thomas, n 15 at 113.
168 See overview in: Koontz and Thomas, n 15 at 113.
173 Fung and Wright, n 171, p 34; Steinzor R, “The Corruption of Civic Environmentalism” (2000) 30 Environmental Law Reporter 10909 fn 20 and 21, page 8 of “pdf” (I note that I have referred to a “pdf” copy here and throughout the thesis for transparency reasons as there was no page numbers on the electronic original to allow for citation. The “pdf” copy referred to is with the author).

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who remain unconvinced that NEG can necessarily ensure "real participation". Many questions accordingly remain about what kinds and levels of participation, by what group of non-governmental actors are actually occurring in practice. Another concern for many scholars is the participation of environmental interest groups and their potential to "countervail" against background forms of power.

Another important issue in the literature is when, how and to what extent NEG can meet the **demands of deliberation** in practice. Two controversial issues for NEG relate to the danger that decision-making will be dominated either by (i) better resourced, knowledgeable or skilful non-governmental parties such as industry; and/or (ii) those typically accustomed to influencing decisions such as bureaucrats and government agencies.

Regarding **learning and adaptation**, there has been little theorising, or research into the existence and operation of practical mechanisms for learning and adaptation, including approaches such as reflexive law, adaptive management and more systemic styles of pragmatist/systemic learning. Questions accordingly remain as to when, how and to what extent actors can gather, analyse and act on information about shortcomings in their practice.

One final area of concern is the issue of "new" **forms of accountability**. As with most approaches to governance in the western world accountability is vital to preventing the abuse of public authority, ensure that public resources are used appropriately, and secure performance expectations of governance endeavours. However, many critics of NEG suggest its unique features, particularly collaboration, and the provisionality and flexibility associated with learning and adaptation actually mean NEG is at substantial risk of being "captured" or perverted into a rent-seeking vehicle. Others claim NEG in fact offers opportunities for accountability to be secured and even enhanced through replacing or supplementing traditional accountability controls with a range of "new" forms and mechanisms of accountability, some of which expressly seek to capitalise on the involvement of third parties in NEG such as "mutual"

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178 Head, n 6, p 146; Karkkainen, n 18 at 243.
179 See discussions in: S Sturm, n 176, p 327, 328.
181 Fung and Wright, n 171, p 37.
accountability between collaborators and "professional" accountability of industries. However, the efficacy of these and other new forms and mechanisms of accountability efforts have been under explored in practice.

The sum of the above debates and concerns is that there is a widely recognised need for research into NEG in practice. Such research is needed not only to resolve the above disagreements and provide insights into many unanswered questions, but also to determine exactly what does and does not work at the levels of policy implementation.

1.4.3 This Study

1.4.3.1 Research Questions

Recognising that many of the above questions can only be answered empirically, this study examines various dimensions of NEG, as they play out in practice. In doing so, it seeks to identify lessons and insights through a comparative evaluation involving three distinct NEG programs, its analysis being guided by a primary research question: under what conditions can "good" NEG be achieved?

"Good" is used here as a general descriptor that in its ideal form would denote a model of NEG that successfully meets all abovementioned characteristics of NEG according to widely accepted standards and criteria laid out in the literature. Given time and space constraints this thesis obviously cannot address all aspects of NEG so it confines its understanding of "good" NEG to a sub set of specific characteristics, namely collaboration, participation, deliberation, learning and adaptation and new forms of accountability. It chose these characteristics not only because they are central to NEG's approach but also because, as explained above, they are some of the most controversial and/or under explored.

"Good" NEG for the purposes of this thesis thus denotes a model of NEG that successfully meets accepted standards of collaboration, participation, deliberation, learning and adaptation and new forms of accountability.

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184 Fung and Wright, n 171, p 37.
185 Karkkainen, n 18 at 233; Trubek and Trubek, n 15 at 1-2; Gunningham, n 19 at 1; Koontz and Thomas, n 15 at 113.
186 Karkkainen, n 18 at 233; Lobel, n 23 at 499-509; Head, n 6.
187 There has been a great deal of normative and prescriptive discussions of the concept of "good" as it relates to governance. Notions of what constitutes good governance accordingly tend to vary a great deal: UNDP (United Nations Development Programme), Management Development and Governance Division, Reconceptualising Governance, Discussion paper 2, (UNDP, 1997) at 1; Rhodes, n 24 at 49-50; Head, n 25 at 54-55.

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For many of these characteristics there is often a broad consensus across NEG scholarship as to accepted criteria of “success”. For example, most theories accept similar standards of inclusiveness and representation relating to participatory aspirations, or emphasise similar conditions for deliberative decision-making (see further chapter 2). However, given the diverse and emerging nature of NEG scholarship, exactly what constitutes success in terms of meeting other characteristics of NEG can often depend on the theoretical commitment and focus. For example precisely what consists effective learning and adaptation will depend on what type of learning approach one is committed to (e.g. process based learning versus adaptive management). Given this, this thesis endeavors in chapter 2, as well as in the analysis chapters, to define and make clear the standards of “success” used when drawing conclusions regarding a specific defining feature of “good” NEG so as to facilitate transparency in its research and any subsequent efforts to learn from its insights into NEG.

For present purposes, we can denote that some widely accepted normative standard is being employed in the thesis’ exploration of key characteristics of “good” NEG, by utilising a descriptive for each characteristic – for example successful collaboration. This approach leads the thesis to break the overachieving research question down into 5 sub research questions each relating to key component of “good” NEG that will be answered in separate analysis chapters:

• what conditions foster the emergence of successful collaboration?
• what conditions contribute to sustaining successful collaboration?
• what conditions foster meaningful participation and deliberation?
• what conditions foster effective learning and adaptation?
• what conditions foster effective “new” forms of accountability?

It may well be asked, what is meant by the term “conditions”? The answer is that this concept is used as shorthand throughout this thesis to refer to institutional design and mechanisms, as well as background and contextual situations. For example, the conditions of interest to collaboration may relate to whether it provides funding to reduce transactions costs or whether it is implemented in a setting involving a small or large affected population.

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189 Conley and Moote, n 188 at 376, 382.
190 Except for learning and accountability, which are considered together.
191 I use the term institution here to refer to the legal and policy structures of regulatory and governance programs.
192 For example, this could include issues such as whether a program is designed to employ a penalty default rule, or whether a program imposes procedural mandates for representation and decision making in collaborative groups.
193 This could include matters such as the presence of countervailing powers, levels of trust between collaborators, or differences in power among stakeholders.
1.4.3.2 Case Studies

Leaving definitional issues to one side, the above sub research questions are answered by a comparative analysis of 12 case studies drawn from three leading NEG programs in Australia, each relating to either natural resource issues, “second generation” urban problems or point source pollution control.

The first program is a far-reaching new approach to Regional Natural Resource Management (RNRM). The federal government pioneered RNRM in 2000/2001, but did so in collaboration with the states, including Queensland, which is the “on ground” focus of RNRM for this thesis’ research. Through almost $3 billion dollars of government funding provided under the National Heritage Trust (NHT) and the National Action Plan on Salinity and Water (NAP), NRM decision-making power is being devolved to 56 NRM regions across Australia. Multistakeholder regional bodies have been given decision making and implementation powers within each region for undertaking NRM consultation, planning and priority-setting. They must each develop a regional plan and regional investment strategy and implement these under a collaborative decision-making process. However, these bodies are nevertheless subject to performance indicators and other controls imposed by collaborative government oversight bodies and committees, which continue to hold the purse strings.

The second program examined by this thesis relates primarily to urban second generation environmental problems and is known as the Neighbourhood Environment Improvement Plan (NEIP). The NEIP was developed in 2001 by one of the most innovative state environmental protection agencies in Australia, namely the Environment Protection Authority Victoria (VEPA). Abandoning all manner of command and control, the NEIP has been designed to be explicitly participatory, deliberative and collaborative, involving multiple non government and public stakeholders managing complex environmental problems at a “neighbourhood”/catchment scale.

The NEIP and RNRM reforms are largely at the vanguard of experimentation in NEG. However, broadly similar NEG reforms were occurring at an early stage, both in Australia, and elsewhere. One of the first and arguably most important examples in Australia was the Environment Improvement Plan (EIP). This instrument was pioneered by the VEPA during 1990s as an instrument to address point source pollution problems. Departing from a traditional bipartite approach, it relies on a tripartite, deliberative approach, involving the participation of

196 Head, n 128.
198 Gunningham et al, n 112.
199 Holley and Gunningham, n 5 at 448.
local communities in the regulatory process to generate co-operative and innovative processes for addressing the environmental challenges confronting large industrial enterprises.200

The thesis' examination of these three programs is intended to ensure a comparative analysis along a range of dimensions. Indeed, the three programs and their respective 12 case studies were selected to ensure they (i) involved different environmental problems; (ii) occurred at different scales of action; (iii) incorporated different types, ratios and roles for government and non-government stakeholders, (iv) were different in maturity and development, (v) involved different policy contexts; and (vi) different degrees of complexity.

The reasons and basis for selection are discussed further in the research methodology in Chapter 3, where details are also given on the thesis' qualitative analysis approach and its use of both an “adaptive theory”201 and a collective case study strategy of inquiry.202

Notably, the qualitative focus of this thesis means it does not attempt to directly measure environmental outcomes achieved by NEG or the case studies. Like some NEG research, it does draw on respondents' perceptions of environmental change to reflect on some of the environmental achievements made in the cases. However beyond this, it is also difficult to analyse whether environmental outcomes have been achieved because like many NEG experiments, most of the case studies203 were yet to progress sufficiently into implementation and/or often lacked sufficient monitoring data to allow firm conclusions to be drawn on this issue.

1.4.3.3 Contribution

Following the above methodological approach, the study centres on the interaction between existing NEG theory and ideas derived from an empirical examination of the cases.204 This methodological orientation ensures the thesis is able to make a number of valuable contributions to both NEG scholarship and policy in practice.

First, the thesis goes beyond the majority of previous limited empirical work that consisted of anecdotally reporting on single case studies,205 or partial institutional examples,206 to compare and contrast multiple and different NEG institutions in different environmental policy areas.207

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203 The EIP case is the exception as will be discussed further in the thesis.
204 Layder, n 201, p 1, 5.
205 Lubell et al, n 172 p 294.
207 Trubek and Trubek, n 15 at 1-2.
to enable present understandings of NEG in practice to be illuminated.\textsuperscript{208} In this light, the thesis may be seen as a step in the evolution of research into NEG that contributes to closing the gap between theory and practice.\textsuperscript{209}

Second, although its comparative analysis precludes an investigation of a number of specific empirical questions raised for programs like RNRM,\textsuperscript{210} the thesis makes a significant contribution to policy making by conducting a novel empirical analysis of the successes and failures of three unique NEG configurations that have received either little\textsuperscript{211} or no\textsuperscript{212} analytical attention.

Thirdly, and most importantly, the thesis tests various explanatory claims in NEG scholarship, allowing it to confirm, reformulate, add to or qualify the explanatory scope and domain of the original theoretical materials,\textsuperscript{213} as well as develop a number of new insights from analysis of empirical research that may have been overlooked by the still developing and nascent NEG theory. Doing so, the thesis seeks to close the gap between theory and empirical research and advance theory by at least partially resolving normative disagreements, by better clarifying points of divergence that currently still characterise much of NEG's defining features,\textsuperscript{214} and (most importantly) by contributing to the development of a more coherent theory about the conditions under which NEG can be successfully implemented in practice.

Beyond the above empirical contributions, the thesis also provides insights into some broader theoretical themes in the NEG literature. For example, how does the “new” governance interact with law and “older” conventional forms of governing? This question raises both descriptive and normative issues regarding the relationship between the two approaches.\textsuperscript{215} One recent study suggests there are at least three competing theses on the nature and role of traditional law in new governance, namely that old forms of governing either remain impervious to, form hybrids with, or are being “reshaped” by these new ways of governing.\textsuperscript{216}

\begin{thebibliography}{99}
\bibitem{208} Trubek and Trubek, \textit{n 15 at 1-2}.
\bibitem{210} Head, \textit{n 6}.
\bibitem{211} There is some limited emerging research on RNRM (e.g. Farrelly M, “Regionalisation of Environmental Management: a Case Study of the Natural Heritage Trust, South Australia” (2005) \textit{43}(4) Geographical Research 393; Whelan J and Oliver P, “Regional Community-Based Planning: The Challenge of Participatory Environmental Governance” (2005) \textit{12} Australasian Journal of Environmental Management 126); Individual aspects of the Victorian EIP have also received previous academic attention (Wills I and Fritschy S, “Industry-community-regulator, Consultation in Improving Environmental Performance in Victoria” (2001) \textit{8} Australian Journal of Environmental Management 158; Gunningham and Sinclair, \textit{n 71, Ch 8}). As explained in chapter 2, this thesis connects the EIP to NEG theory, unlike earlier research.
\bibitem{212} To the best of the researcher’s knowledge the NEIP has never received any specific academic scrutiny.
\bibitem{213} Layder, \textit{n 201, p 167-168}.
\bibitem{214} Karkkainen, \textit{n 18 at 233}; Lobel, \textit{n 23 at 499-509}.
\bibitem{215} De Burca and Scott, \textit{n 19, p 3-10}; Trubek and Trubek, \textit{n 15 at 1-2}.
\bibitem{216} De Burca and Scott, \textit{n 19, p 4-9}.
\end{thebibliography}
Another area of concern in the NEG literature relates to theories of the State, and the relation between State and civil society. New governance’s collaborative, participatory and deliberative nature appears to blur the familiar sharp boundaries that separate "the State" from the institutions of civil society. This raises a range of questions about the role of State, and role of non-government actors and how governance ought to work. Some scholars suggest that the key feature of new governance is an “active” state. To what extent does this occur and what are its impacts? To what extent can some of the State’s “functions” be taken over by other actors? Does the State play certain unique roles and if so what are they? The thesis returns in chapter 9 to consider some of these broader themes.

Before embarking on detailed analysis it is pertinent to provide an overview of the thesis.

1.5 Outline

The remainder of the study is divided into 8 chapters and is organised as follows. Akin to this introduction, Chapters 2-4 provide a background to the study, the relevant literature and its methodological orientation. Chapter 2 draws on new governance scholarship to consider key NEG theories, pointing out how they are linked and how they differ, before fleshing out in more detail the defining properties of NEG. It also identifies more clearly the links between the research questions that guide this thesis and NEG scholarship.

Chapter 3 focuses on methodology and orientates the study within a qualitative approach to research that utilises adaptive theory and collective case study methodology. It also points out the study’s associated methods of case selection, data collection and analysis.

Chapter 4 then fleshes out details of the three programs, outlining their background and investigating how and to what extent each case embraces the properties of NEG. This provides the necessary background to evaluate and compare each program relevant to the characteristics of “good” NEG.

Chapters 5-7 provide comparative analysis of the cases with respect to the 5 sub research questions. Consistent with the focus of the thesis on the conditions of “good” NEG, and acknowledging there is often a difference between aspirations and mechanisms designed to achieve them, each chapter initially investigates the institutional design of each case to identify the relevant conditions that may impact on the achievement of these goals in practice.

217 Karkkainen, n 18 at fn111.
218 Karkkainen, n 18 at 238.
219 Karkkainen, n 18 at 238.
220 Karkkainen, n 18 at 238.
221 Lobel, n 23 at 502.
222 Mol A, "Bringing the Environmental State Back In: Partnerships in Perspective" in Glasbergen P, Biermann F and Mol A (eds), Partnerships, Governance and Sustainable Development, (Edward Elgar, 2007); Head, n 25, p 56-57; Karkkainen, n 18 at 239.
chapters then turn to consider the findings of each program of NEG, before outlining the implications for policy and scholarship regarding each feature of NEG.

Chapter 5 commences this analysis with an examination of the emergence of collaboration to reveal a number of lessons as to the conditions that appear to increase the likelihood of successful collaboration emerging in practice. Chapter 6 examines “meaningful” participation and deliberation across the cases, pointing to the very real difficulties NEG experiments face in meeting these aspirations, and suggesting some modifications for designing experiments to achieve these goals.

Chapter 7 explores approaches to effective accountability and learning, reflecting on, inter alia, monitoring processes, “professional” and “mutual” accountability, adaptive management and systemic information sharing. Chapter 8 then rounds out the analysis chapters by reflecting on the mechanisms and design of NEG to contribute to sustaining successful collaboration overtime.

Finally, Chapter 9 steps back to draw together the findings and reflect on the broader insights for NEG literature. It explores the likelihood of NEG achieving effective environmental outcomes, and argues that there are a number of key “pillars” vital to achieving “good” NEG. The chapter also revisits broad theoretical themes and debates in the literature. This involves reflecting on normative debates regarding NEG. The unsurprising finding is that NEG is neither as perfect as proponents may suggest nor is it abysmal, as critics have argued. It then revisits the interaction between new governance and law. Here the thesis findings argue the case that hybridity descriptively captures this relationship. The chapter also argues that the State remains strong and active, but points out the need for normative theories to better address the thesis’ findings regarding the risks of State authority. The chapter also reflects on the role of non governmental actors, suggesting significant variations among different groupings of players. To finish, the chapter provides suggestions for further research in NEG scholarship.

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New Environmental Governance
Chapter 2: New Environmental Governance Theory -

Distinctive visions, common features, and the conditions for creating “good” governance

2.1 Introduction

For this thesis to examine the conditions under which “good” New Environmental Governance (NEG) can be achieved a number of important questions need to be asked: What are the key theories of NEG scholarship and how do they differ? What features and characteristics identified in NEG scholarship actually define NEG as an approach to governing environmental problems? What normative claims are made in NEG scholarship for why NEG is a “good” way of governing environmental problems? What conditions have been identified or proposed by NEG theories and research as vital to successfully executing NEG’s approach to governing in practice? These questions are answered in the remainder of this chapter.

Mindful that the emerging and evolving scholarship on NEG encompasses many different schools of thought, section 2.2 of the chapter sets the context by outlining some of the key theories and their theoretical underpinnings. It does so by focusing on three leading areas of NEG, namely the United States of America (USA), Australia and Europe.

This largely descriptive section provides a background for section 2.3, which identifies some of the defining features of an “NEG approach” and examines associated normative claims as to why this approach is a better way of governing than traditional methods of regulation.

Section 2.4 then turns to examine some of the key conditions that scholars identify as vital to the success of NEG. In particular, this section extricates some of the debates and specific unanswered questions in the literature regarding these conditions and links them to the focus of investigation throughout the remainder of the thesis. The chapter then concludes in section 2.5.

2.2 Key Theories in NEG Scholarship

This section sets the background for the remainder of the chapter by outlining NEG scholarship in the USA, Australia and Europe, and highlighting key theories and their theoretical underpinnings.

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3 Karkkainen, n 1; Lobel, n 2 at 506, 508.

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2.2.1 NEG Experiments and Scholarship in the USA

Over the last 15 years, the United States has been host to a range of NEG “experiments”. Examples of these are summarised in Table 2.1 below.

<table>
<thead>
<tr>
<th>General Focus</th>
<th>Examples</th>
</tr>
</thead>
</table>
| Environmental standard setting and pollution control initiatives. | • Regulatory Negotiation.5  
• Project XL.6  
• Toxic Relief Inventory.7  
• Brownfields.8 |
| Natural resource and ecosystem management initiatives.9 | • Watershed Management.10  
• “CALFED” Bay Delta Program.11  
• Chesapeake Bay Program.12  
• Habitat Conservation Plans.13 |

Table 2.1: Illustrations of NEG Experiments in USA.

There is great variation across these experiments. Some arise from the “grass roots”, while others are driven by state and federal government policy.14 Some are more mature than others.

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Many address large ecosystem scale problems while others focus on improving the environmental performance of a single firm. Given this variation, it is unsurprising that a diverse and multidisciplinary scholarship on these NEG phenomena has emerged. Some scholars focus exclusively on USA experiments, while others engage in international comparisons. Some have limited their investigations to developments in environmental or natural resource management (NRM) areas, while others have conceptualised common trends across both areas.

The result of this assortment of methodological and conceptual approaches has been a diversity of nomenclatures and theoretical proposals on NEG that range from “contract” derived theories, to “grass roots ecosystem management”. Space precluded a detailed discussion of the entire range of NEG theories in USA. Rather, to enable the empirical component of this thesis to be effectively located within the broad field of NEG scholarship, six of the more prominent lines of NEG theory and research will be further explored below.

The first and arguably the most influential NEG vision is “democratic experimentalism”. Originally advanced in the late 1990s, later contributors such as Karkkainen, Fung and their collaborators have built on and extended this vision in a range of more nuanced strands of “democratic experimentalist” thinking. Notwithstanding that these writers examine a number of

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18 See for example Freeman, n 5.
19 See for example contributions in Sabatier et al, n 10; Wondolleck and Yaffee, n 16.
20 Perhaps the best example of this mix is democratic experimentalist theory, which touches on a range of environmental and natural resource issues, evidenced most particularly in the various empirical cases they suggest offer glimpses, albeit imperfect ones, of elements of their wider ideal. See for example: Dorf M and Sabel C, “A Constitution of Democratic Experimentalism”(1998) 98 Columbia Law Review 267 at 357, 371-388; Sabel et al, n 4 at 4-10.
26 Karkkainen et al, n 24.
concrete examples of NEG, their respective theories are ultimately “idealised” constructs, whose intellectual roots are quite diverse.28 Of these, perhaps the most influential29 has been the philosophical tradition of pragmatism.30

At its core pragmatism emphasises that knowledge does not rest on any certain foundation. Rather knowledge claims are vindicated by the norms of rational inquiry, which are themselves subject to rational criticism.31 Democratic experimentalist authors have drawn particularly on pragmatist thinker John Dewey and his ideas on the “experimental method” of inquiry, which emphasises the importance of embracing change and continually learning from experience.32 Dewey’s view of democracy is also an important inspiration, particularly its emphasis upon local knowledge,33 communities,34 and social communication.35

Following these pragmatist ideas, key strands of democratic experimentalist thinking reject the possibility of immutable principles.36 For that reason, they view traditional regulation’s preference for centralised knowledge and largely fixed rules/caps/taxes as incapable of dealing with the change and uncertainty that characterise modern social and environmental problems.37

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29 See for example: Dorf and Sabel, n 20 at 284; Karkkainen et al, n 24 at 693-694, 696; Fung and Wright, n 27, p 21, 28, 32; Sabel et al, n 4.

30 Like most philosophical traditions, it is not without varying interpretations, promoters and critics. For a general introduction see Festenstein M, Pragmatism and Political Theory (Chicago UP, 1997) p 2-3; Bernstein R, “The Resurgence of Pragmatism” (1992) 59(4) Social Research 813.

31 Festenstein, n 30, p 5.

32 While space prevents a discussion of Dewey’s ideas in full, the following quote provides an illustration of his thinking regarding the importance of learning from experience and the experimental method: a person “does not expect any amount of aloof scrutiny to reveal to him any secrets...He proceeds to do something, to bring some energy to bear upon the substance to see how it reacts...[he] no longer tries to find some fixed form or essence behind each process of change...the thing to paid heed to is not what is originally given but that which emerges after the thing has been set under a great variety of circumstances in order to see how it behaves...Since changes are going on anyway, the great thing is to learn enough about them so that we be able to lay hold of them and turn them in the direction of our desires”; Dewey J, Reconstruction in Philosophy (Beacon Press, 1920, 1948) p 113-114, 116.

33 As Dewey puts it: “the man who wears the shoe knows best that it pinches and where it pinches, even if the expert shoemaker is the best judge of how the trouble is to be remedied”; Dewey J, The Public and its Problems (Gateway Books, 1946) p 207.

34 As Dewey explains: “Democracy must begin at home, and its home is the neighbourly community...Unless local communal life can be restored, the public cannot adequately resolve its most urgent problem, to find and identify itself...While local, it will not be isolated.”; Dewey, n 33, p 213, 216-217; Festenstein, n 30, p 94.

35 As Dewey emphasises: “the essential need...is the improvement of the methods and conditions of debate, discussion and persuasion...this improvement depends essentially upon freeing and perfecting the processes of inquiry and of dissemination of their conclusions”; Dewey, n 33, p 208; Dewey J, “Democracy and Educational Administration” (1937) in Dewey J, The Later Works 1925-1953 vol. II Boydston J (ed) (Southern Illinois UP, 1981-1990) p 219.

36 Karkkainen et al, n 24, at 693-694.

37 Cohen and Sabel, n 25 at 323, 331; Karkkainen et al, n 24 at 693-694.

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Instead, their experimentalist vision seeks to better deal with inevitable uncertainty and change by fostering the continual flow of information and learning through a network of local participatory and deliberative problem solving groups that are explicitly experimental in nature. These groups are minimally directed by a “new” central body whose role is primarily to monitor and coordinate local experiments to facilitate horizontal diffusion of best practices and continual improvements in management techniques and the design of institutions (see Table 2.2 below for more detail).

<table>
<thead>
<tr>
<th>Core Institution</th>
<th>Overview</th>
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| Local institutions | • Whilst the precise form of these decentralised participatory institutions varies, they often involve a collaborative effort of government, citizens and businesses that deliberate together to solve local problems.  
• These locales are to be given autonomy as problem-solving institutions to self assess and self adjust their problem solving. Such adjustments/adaptation are based on their own assessment and on a benchmarking process using the information periodically received from central agencies about similarly located institutions. |
| Central government body | • The chief purposes of these bodies include assisting the state and local institutions in experimentalism by reducing the costs of information flow and fostering local benchmarking processes by assisting different governing locales to determine which locales are similarly situated, what projects those bodies are pursuing and what modifications of the project might be needed under local conditions.  
• In consultation with local actors, the central agency uses the locally reported data to periodically reformulate and progressively refine minimum performance standards, desirable targets, and preferred means to achieve them. |

Table 2.2: Overview of Some of the Core Institutions in Democratic Experimentalism.

38 Karkkainen et al, n 24 at 693-694; Karkkainen, n 1 at 494.  
39 This is what Karkkainen et al refer to as a “rolling rule regime” that they explain as follows: “regulators use reports on proposals and outcomes to periodically reformulate minimum performance standards, desirable targets, and paths for moving from the former to the latter. In pursuing these targets as they see best, local actors provide the information necessary for regulators to revise their standards and goals, and receive information on the performance of others that guides further experimentation. Thus the new framework forces continuous improvements in both regulatory rules and environmental performance while heightening the accountability of the actors to each other and the larger public”; Sabel et al, n 4; Karkkainen et al, n 24 at 691; Karkkainen, n 1 at 494; Dorf and Sabel, n 20 at 396.  
40 They can include locally based governance councils, bodies of collaborating service providers and citizens, firms, local governments, local representatives of federal agencies, or collaborative ecosystem governance institutions; Dorf and Sabel, n 20 at 319-20; Karkkainen et al, n 24 at 691.  
41 Karkkainen, n 1 at 494; Karkkainen et al, n 24 at 691, 704.  
A second closely related, but more explanatory, NEG theory has been advanced by Karkkainen under the banner of “collaborative ecosystem governance”. This theory points to the emergence of hybrid public-private governance structures, that stress information-sharing, systematic performance monitoring, and collaborative problem-solving among parties representing diverse interests at multiple, nested spatial scales. These structures seek to respond to the increasing acceptance of the following two ideas in environmental governance:

- ecosystems are dynamic, complex, systems that must be managed in a holistic and integrated way (“ecosystem management”); and
- management interventions in ecosystems should be treated as experiments from which managers and science can learn and adapt (“adaptive management”).

As Karkkainen points out, adaptive management is roughly akin to Dewey’s experimental method.

A third prominent line of NEG theory in the USA has been developed by Freeman who has advanced a normative theory of “collaborative governance” that she claims can produce more effective problem solving than traditional regulatory approaches and also has particular democratic value. Predominantly focused on environmental standards and pollution control, Freeman’s theory comprises a number of principles, including collaborative problem solving, participation, a civic republicanism style preference for face-to-face negotiation, “new”

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43 This theory has been based, in part, on Karkkainen revisiting in greater depth some of the original NEG examples used to support elements of his democratic experimentalist work. Karkkainen has also widened his focus to new NEG experiments. See for instance: Karkkainen, n 13; Karkkainen B, “Adaptive Ecosystem Management And Regulatory Penalty Defaults: Toward A Bounded Pragmatism” (2003) 87 Minnesota Law Review 943 (both articles discussing HCPs); Karkkainen, n 7 (focusing on toxic release inventory); Karkkainen, n 12 (discussing Chesapeake Bay and Great Lakes); Karkkainen, n 17 at 224 (discussing HCPs, Florida’s everglades, Chesapeake Bay and Great Lakes, watershed approaches in Western USA, Baltic sea and other international collaborative efforts); Karkkainen, n 9 (comparing Great Lakes with other leading ecosystem governance experiments).

44 Karkkainen, n 17 at 193-194; Karkkainen, n 13 at 219-221.

45 The ecosystem concept itself was originally popularised by Eugene P Odum (Odum E, Fundamentals of Ecology (Saunder, 1953) p 9) and has since been extended by others; Karkkainen, n 17 at 194; Karkkainen, n 43; Ruhl J, “A Manifesto for the Radical Middle” (2002) 38 Idaho Law Review 385 at 395; Karkkainen, n 13 at 219.

46 Originally developed by Holling (Holling C, Adaptive Environmental Assessment and Management (John Wiley, 1978)), he has since extended the concept in later works (Gunderson L and Holling C (eds), Panarchy: Understanding Transformations in Human and Natural Systems (Island Press, 2001)). See also: Lee K, Compass and Gyroscope (Island Press, 1993); Walters C, Adaptive Management of Renewable Resources (McMillan, 1986); Dovers S, “Processes and Institutions for Resource and Environmental Management: Why and How to Analyse?” in Dovers S and Wild River S (eds), Managing Australia’s Environment (Federation Press, 2003) p 4; Karkkainen, n 43.

47 See Karkkainen, n 43 at 956-960.


49 More recently Freeman has extended the features of her collaborative model writing with Dan Farber, another author who has developed his own pragmatism inspired theories (Farber D, Eco-Pragmatism: Making Sensible Environmental Decisions in an Uncertain World (Chicago UP, 1999)). See Freeman and Farber, n 11.

50 Note that Freeman criticises the broader approach of civic republicanism; Freeman, n 5 at 19-21.

forms of accountability and a pragmatist/adaptive management inspired approach that accepts provisional solutions.  

A fourth line of theory is "civic environmentalism". Coined in the early 1990s by Dewitt John, the concept of civic environmentalism has since been developed by a range of authors including William Shutkin, Marc Landy and John himself. Although their theories are different, and draw on distinct empirical observations and theoretical inspirations, they all share an intellectual tradition rooted in (i) Thomas Jefferson’s philosophical preferences for limited government and the egalitarian culture of agricultural communities; and (ii) a preference for local, associational activity as promoted by Alexis de Tocqueville and more modern civic engagement literature.

Following both Jefferson and Tocqueville, most civic environmentalists share a general preference for restricting the role of governmental top down rules. Rather, greater

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52 Freeman, n 5 at 28-29, 31-32 fn 72, 77.
55 John, n 62; John D, *Civic Environmentalism Alternatives to Regulation in States and Communities* (Congressional Quarterly Press, 1994); John, n 9.
57 For discussions and comparisons of this work see: John, n 9, p 242-249; Karkkainen, n 1, 489 to 496.
59 Jefferson, among things, promoted limited government (it is “by placing under every one what his own eye may superintend, that all will be done for the best”) and saw morality and humanity as being bound with land use (“cultivators of the earth are the most valuable citizens...the most vigorous, the most independent, the most virtuous, and they are tied to their country and wedded to its liberty and interests, by the most lasting bonds”). See Thomas Jefferson *Writings to Joseph C. Cabell*, 1816 in Coates E, "Favorite Jefferson Quotes" (1996) http://etext.virginia.edu/echoblin/ot2www-jeffquot?specifiles/web/data/jefferson/quotations/www/jeffquot02w&act=text&offset=1340385&textree=0&query=f arm viewed 10 May 2008; Browsers, n 58 at 49; Shutkin, n 8 at 696.
60 Tocqueville’s pioneering study of American society and politics saw him conclude that the “key to American politics and society” was the “American’s readiness to organise themselves spontaneously and informally to tackle local problems”. Such local, associational activity was valued by Tocqueville as a means to transform self interested individuals into community-minded citizens; Tocqueville A de, *Democracy in America vol 2* (Random House, 1990) p 103-4 cited in Ehrenberg J, “Equality, Democracy, and Community from Tocqueville to Putnam” in McLean S, Schultz D and Steger M, *Social Capital Critical Perspectives on Community and “Bowling Alone”* (New York UP, 2002) p 56; see generally, Tocqueville, n 28.
61 For discussions of Jefferson: Landy and Rubin, n 54 p 8; Shutkin, n 8 at 696; Shutkin, n 53, Chapter 1; John, n 9, p 226; John and Milay, n 9, p 355. For discussion of Tocqueville: John: n 9, p 226; Landy and Rubin, n 54, p 9-10; Shutkin, n 53, Chapter 1.
responsibility for environmental governance is to be devolved to “localised” levels and the engagement of citizens in decision-making and action is to be fostered.  

The fifth key line of theory falls under the concept of “reflexive law”. Influential here is the German theorist Teubner’s concept of autopoietic systems. Teubner’s basic contention is that any regulatory intervention that directly seeks to change a so-called self-organising and regulating system will produce a “regulatory trilemma” and essentially fail. Rooted in these ideas, reflexive law theories in the environmental context in the United States, such as that developed by Eric Orts, suggest law should instead be used to set up processes (e.g. environmental management systems) which encourage institutional self regulation and self-reflective thinking and learning about environmental effects.

A sixth line of inquiry involves mostly empirical research on watershed management and NRM in the USA. This “collaborative NRM” literature seeks to understand the increasing trend of diverse public and private stakeholders working together to resolve shared NRM dilemmas through a holistic, catchment or ecosystem focused approach. This literature explores trends in USA water, pollution and land management policy and the emergence of the concept of “sustainability” in seeking to understand this “collaborative turn”. With few exceptions, this literature is dominated by studies of individual cases of collaborative NRM that are not well grounded in a coherent body of theory.

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66 Black, n 65 at 7; Parker et al, n 65, p 10.
71 See for example: Wondolleck and Yaffee, n 16; Sabatier et al, n 10; Conley and Moote, n 14.
2.2.2 NEG Experiments and Scholarship in Australia

Like NEG experiments in USA, Australian examples of NEG vary in maturity and problem focus (see Table 2.3 below for some illustrations).

<table>
<thead>
<tr>
<th>General Focus</th>
<th>Examples</th>
</tr>
</thead>
</table>
| Environmental standard setting and pollution control initiatives. | • Environment Improvement Plans.  
  • “Share the noise” solution, Sydney airport.\(^{73}\)  
  • Neighbourhood Environment Improvement Plan (can also be used in rural natural resource management contexts). |
| Natural resource and ecosystem management initiatives.\(^{74}\) | • Murray Darling Basin initiative.\(^{75}\)  
  • Natural Heritage Trust program.\(^{76}\)  
  • Regional forestry agreement.\(^{77}\)  
  • Regional Natural Resource Management.  
  • Integrated Catchment Management.  
  • National Landcare Program. |

Table 2.3: Illustrations of NEG Experiments in Australia.

Experiments of particular relevance to the thesis include the Environment Improvement Plan; Neighbourhood Environment Improvement Plan; and Regional Natural Resource Management and its antecedents, integrated catchment initiatives, and the National Landcare Program.

While the recent Neighbourhood Environment Improvement Plan initiative remains unstudied, the other experiments have been the focus of a diverse scholarship that is primarily empirically focused, yet typically grounded in a broader body of regulation or governance theory.

For example, the Environment Improvement Plan (EIP) experiment has attracted significant academic attention in the form of policy focused empirical studies.\(^{78}\) However, these


\(^{77}\) Stewart and Jones, n 73, p 4.
studies were undertaken some considerable time ago soon after EIPs were introduced, and indeed at a time when NEG scholarship was barely on the intellectual horizon.79 Unsurprisingly therefore, they were not tied to NEG debates per se, but rather loosely conceptualised EIP’s tripartite nature80 (non-government stakeholders, industry and a regulator agreeing to and monitoring environmental standards) as an example of “regulatory flexibility” 81 and “community participation”.82 Some authors went further, suggesting that the EIP agreement between the parties should be seen as a form of “process based regulation” - an approach much like reflexive law that seeks to influence management practices and encourage greater self regulation and reflective management.83 Even these however did not locate the EIP initiative within the then embryonic NEG literature.

Turning to NRM based NEG experiments, Australian scholarship typically characterised these experiments as a response to discussions and policies84 on “sustainable development”.85 Against this backdrop, two important natural resource management experiments emerged in Australia during the 1980s and 1990s, namely Integrated Catchment Management (ICM) and Landcare. An overview of each initiative is provided respectively in Boxes 2.1 and 2.2 below.

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79 That is, these discussions were not generally tied to broader NEG theory theoretical debates and questions. More recently, in the light of comparatively more mature NEG scholarship, the EIP has drawn comparisons with contractarian NEG theories. See: Karkkainen B, “Information-Forcing Regulation and Environmental Governance” in De Burca G and Scott J (eds), Law and New Governance in the EU and the US (Hart 2006) p 293-294.
80 Resonating with responsive regulation’s concept of “tripartism” and “the enforcement pyramid”; Ayres I and Braithwaite J, Responsive Regulation Transcending the Deregulation Debate (Oxford UP, 1992).
81 Gunningham and Sinclair, n 78, p 158-159, 179-187.
82 See Wills and Fritschy, n 78 at 158, 165-166.
83 Gunningham and Sinclair, n 78, p 158.
INTEGRATED CATCHMENT MANAGEMENT

Amid growing concerns about the lack of holistic and coordinated approaches to managing natural resources, a key experiment at the state level was the “formal” Integrated Catchment Management approach. Institutional arrangements for ICM varied between states but all involved a more participatory, collaborative, integrated and holistic approach to managing natural resources than had previously been contemplated in Australia. Mirroring similar developments around the world, ICM typically involved public and community partnerships, enhanced geographical integration (e.g. focusing on a catchment or ecosystem as a management unit) and the development and implementation of catchment plans. Much of the literature on ICM is ensconced within legal, socio-legal or resource management fields, rather than NEG. However this research has delivered useful insights into both the strengths of ICM (e.g. more holistic management) and common shortcomings in practice (e.g. inadequate funding and mandates), notwithstanding that many state based ICM initiatives are now subsumed or at least partially transformed by the more recent RNRM program discussed below.

Box 2.1: Overview of Integrated Catchment Management in Australia.

86 In some cases, catchment management has arisen through informal cooperative initiatives where local people have established catchment groups and committees independent of governments, but subsequently invited government representation as technical advisors. Carr A, Grass Roots and Green Tape (Federation Press, 2002) p 109; Stewart and Jones, n 73, p 145.


89 Ewing, n 87, p 394; Bellamy et al, n 87, p 5-6.


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Around the same time as ICM was becoming popular, the federal government rolled out the National Landcare Program. This long running initiative originated in Victoria from the innovations of conservationists, farmers and government agents enlivened by rural development ideas such as public participation, self-help supported by change agents, and local community cooperation. The national program that subsequently emerged in 1989, was designed to be catalytic in nature and involve limited government funding ($360 million) for education and demonstration activities. The intention was to engage a significant proportion of the rural population to create more sustainable practices, instil stewardship ethics and produce more informed and skilled land managers.

In 1996-1997 the National Landcare Program expanded its focus to on ground work on private land where there were conservation benefits. It did so through increased program funding obtained under a new five year federal government program known as Natural Heritage Trust. This program was based around a $1.25 billion reserve from the partial sale of a national communications carrier and focused primarily on funding on-ground conservation works in addressing water, seas, coasts, sustainable agriculture, and natural resources management (for further see chapter 4).

Under the Natural Heritage Trust, the Landcare program involved landholders working together in volunteer “Landcare groups” utilising government funding obtained through a competitive grants scheme for activities mostly on privately owned or leased land (but sometimes public land). This “landcare experience” has been reviewed extensively in resource management scholarship, rural development and sociology and there are well defined lessons relating to both its successes (such as engaging a large cross section of the rural population in on ground work where there were conservation benefits).
Box 2.2: Overview of Landcare in Australia.

Since the introduction of ICM and Landcare, non-government partners in both programs have remained active in the delivery of the more recent dual federal programs that comprise Regional Natural Resource Management (RNRM). These programs are an extended, but adjusted, Natural Heritage Trust program and a new federal program known as the National Action Plan for Salinity and Water Quality, both of which are examined in some detail in chapter 4. Together they involve the federal and state governments committing billions of dollars of public funding to the regional delivery of NRM through multi-stakeholder regional groups who have responsibilities for planning and administering programs to achieve improvements in natural resource conditions.

Brian Head, one of the leading scholars to focus on this RNRM program, has offered a largely explanatory theory of an emerging “new regional paradigm for NRM”. Drawing broad links between the emergence of RNRM and NEG developments in the USA, Head’s ideas are primarily underpinned by an early empirical analysis of RNRM, his own extensive work on shifts in Australian governance, and a wider literature on collaborative partnerships. The “new regional paradigm” is said to be characterised by at least six dimensions: multi-stakeholder participation of NGOs, engagement of land-managers, ‘regions’ as biophysical catchments, mobilisation of biophysical and social sciences, monitoring and evaluation, and the formalisation of regional NRM planning bodies.

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102 Curtis, n 93, p 446-447.
103 Moore, n 98, p 121.
105 See Head, n 85, p 139.
108 Head, n 85, p 137; Head, n 105.
109 Head, n 107, p 19.
Head and other RNRM commentators\textsuperscript{112} such as Lawrence and his collaborators,\textsuperscript{113} see the potential for the regional paradigm to be an effective approach to NRM governance while also recognising the significant challenges it faces, not least the tendency of centralised rule to undermine effective collaboration.\textsuperscript{114}

Lawrence et al\textsuperscript{115} develop their own ideas on regional environmental governance, and identify parallels between their work and that of Karkkainen.\textsuperscript{116} However the former’s ideas are rooted more in work on “regionalism” (which emphasises organisation to secure sustainable livelihoods at the regional level)\textsuperscript{117} and in the governmentality literature (which emphasises the emergence of a “neo-liberal”\textsuperscript{118} state that rules indirectly by using and shaping individuals and communities).\textsuperscript{119} Drawing on these inspirations, Lawrence et al suggest that Australia is currently in a period of regional governance characterised by, \textit{inter alia}, a bioregion focus for decision-making, state/community partnerships, and strategic state investment in RNRM.\textsuperscript{120}

Beyond these and other more theoretical treatments of RNRM,\textsuperscript{121} there has been a growing but as yet still limited body of academic empirical research into RNRM.\textsuperscript{122} This research has been conducted from many different angles and focused primarily on early planning efforts and representative structures in the unique state contexts of Victoria, Western Australia and South Australia,\textsuperscript{123} with some focus on a limited number of regions in Queensland.\textsuperscript{124}


\textsuperscript{113} Lawrence’s work is discussed below. See also other RNRM theories such as: Bellamy J, “Adaptive Governance: The Challenge for Regional Natural Resource Management” in Brown A and Bellamy J (eds), \textit{Federalism and Regionalism in Australia New Approaches, New Institutions?} (ANU EPress, 2007) at 95, 108-109.

\textsuperscript{114} Head, n 85, p 137.

\textsuperscript{115} Lawrence G and Cheshire L, “Managing Nature: The Promises and Problems of Regional Environmental Governance in Australia” Plenary Address at the Ecopolitics XV Conference Environmental Governance: Transforming Regions and Localities, Macquarie University, Sydney 12-14, November 2004 at 13.


\textsuperscript{121} See for example Lane discussing what he terms “civic regionalism”; Lane, n 112.


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To summarise, while the Australian literature contains few identifiably cohesive lines of theory (compared to the USA literature), this collection of work is an emerging and promising field where empirical insights and diverse explanatory theories usefully provide a “different vantage point” from which to view some of the more spatially and institutional unique NEG experiments occurring around the world.

2.2.3 NEG Experiments and Scholarship in Europe

The final category of relevant NEG scholarship developed in Europe, with a particular focus at the level of the European Union (EU). Considerable attention has been paid to the so-called “soft law” approach (eg. open-ended guidelines and no formal sanctions) of the Open Method of Coordination (OMC) which is proving increasingly popular across a variety of areas of public policy as a means of accommodating the diverse governance approaches of member countries. In general terms, the OMC operates in pursuit of broad EU objectives using a decentralised system that respects the diversity and context of member countries by allowing them to set and pursue their own national/regional targets, but seeks to coordinate, discipline and take advantage of this diversity by requiring countries to conduct regular reporting, multilateral surveillance and exchanging and comparing best practice and performance.125 NEG at the EU level follows a similar approach which is generally characterised by increased flexibility in the setting of EU Community norms, and a “proceduralisation” of Community law that constrains the design of implementation processes by Member states, but does so in respect of increasingly open-ended environmental standards (as well as an increased role for multiple stakeholders in decision-making processes).126 Such characteristics are evident in environmental policy integration strategies,127 environmental assessment and framework directives (eg. water framework) and the collaborative “common implementation strategy”.128

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127 These seek to ensure the horizontal integration of environmental policy objectives into definitions and implementation of other areas of community policy in efforts to foster sustainable development; Lenschow A, “New Regulatory Approaches in ‘Greening’ EU Policies” (2002) 8(1) European law journal 19 at 19; Scott and Trubek, n 126 at 5.
The emergence of NEG experiments within particular member states has also been discussed, including environmental agreements and environmental covenants between government and industrial groups/firms,\textsuperscript{129} and pollution control initiatives in the United Kingdom (UK).\textsuperscript{130}

While many of these NEG experiments typically have their own unique, country specific history and influences (see, for example, the discussion below on the UK),\textsuperscript{131} much of the NEG scholarship characterises Europe’s NEG experiments as emerging from at least the following 3 factors:\textsuperscript{132}

• an increasing distrust of ‘distant’ and faceless governmental institutions;\textsuperscript{133}
• subsidiarity doctrines as an environmental policy principle and as a general principle of action within the Single European Act and the Maastricht Treaty;\textsuperscript{134} and
• increasingly complex and uncertain problems (e.g. transboundary environmental problems) on the Union’s agenda that do not allow for uniform solutions.\textsuperscript{135}

Scholarship on the resulting NEG experiments has been led by authors such as Scott\textsuperscript{136} and Trubek who have focused on a range of new governance mechanisms and point to a number of dimensions that characterize these experiments, including greater participation by non-government actors, power-sharing through collaborative style mutual problem solving, diversity and decentralisation, deliberation among stakeholders and experimentation.\textsuperscript{137}

Other authors have drawn on a range of theories to conceptualise various NEG and wider new governance in EU. These theories include democratic experimentalism\textsuperscript{138} and reflexive law.\textsuperscript{139} As with some NEG experiments in the USA, contractual ideas have also informed a
discussion of EU environmental agreements and covenants.140 Others, drawing on economic analysis of private contract, suggest that status quo environmental regulation can be viewed as a “default rule” that regulated entities can elect to avoid by entering into contracts with regulators and/or beneficiaries.141 On an economic analysis of law, these contracts are seen to offer a number of potential efficiency benefits for regulation. For example, negotiations between a regulator and industry may provide a poorly informed agency with vital information about risks involved and techniques available to reduce them, which can be used to tailor the resulting regulation to the specific situation of the industry and thus “mimic” a market solution.142

In the UK context, some NEG scholarship has focused on the notion of “community” in governance. While international sustainability discourses and other trends have meant the resurgence of “community” is not entirely limited to governance in the UK,143 it took on a particular prominence here as a result of Anthony Giddens’ writings on “Third Way” politics.144 Embraced by former British Prime Minister Tony Blair, Giddens’ “Third Way” is post socialist in nature, emphasising less national and central government, and greater local governance over local processes.145 The subsequent range of community empowerment initiatives in environmental as well as wider social and welfare governance in UK have been the subject of extensive analysis by scholars such as Marilyn Taylor who has focused on, inter alia, the contribution of community governance, and conditions for achieving greater participation, representation, and sustainable collaboration.146

2.2.4 Summary

To sum-up the above discussion, the three groupings of NEG scholarship evidence a broad and diverse field containing many different terminologies and theoretical vantage points on

140 Holzinger et al, n 132; Orts and Deketelaere, n 129, p 8-10.
141 This discussion is based on contracts in USA but the principles are often similar. The status quo environmental regulation is conceptualised as a default rule, which regulated entities contract around with regulators and beneficiaries; Orts and Deketelaere, n 129, p 21; Johnston J, “The law and Economics of Environmental Contracts” in Orts E and Deketelaere K (eds), Environmental Contracts Comparative Approaches to Regulatory Innovation in the United States and Europe (Kluwer Law 2001) p 286; Karkkainen, n 79, p 294.
142 Faure M, “ Environmental Contracts: a Flemish Law and Economics Perspective” in E Orts and K Deketelaere (eds), Environmental Contracts Comparative Approaches to Regulatory Innovation in United States and Europe (Kluwer Law International, London) p 168; Orts and Deketelaere, n 129, p 8-9; c.f. Farrer, n 13 at 342 (discussing weaknesses in “contractual agreements” in the context of voluntary government programs in the USA for the conservation of biodiversity, suggesting these have the disadvantages associated with command and control, including landholder hostility and enforcement problems).
145 Basically seeking to avoid the excess of individualism of the market and the excessive collectivism of the state by combining social solidarity with a dynamic economy. It also seeks to open out to the international community; Giddens, n 144, p 5; Taylor M, Public Policy in the Community (Palgrave, 2003) p 2.
NEG developments. Some NEG scholarship is more idealised or normative, such as democratic experimentalism or collaborative governance respectively. Others are more explanatory, such as the “new regional paradigm” or “collaborative ecosystem governance”. While there are some predominantly empirical focused lines of research (eg. collaborative NRM, ICM), there is also a great diversity of theoretical roots that animate NEG thinking, ranging from pragmatism to governmentality. There also appears to be the beginning of an integration of NEG scholarship, with some versions of US theories such as Karkkainen’s and his colleagues’ work being drawn on in both Australian and European NEG scholarship.

Such nascent integration is arguably attributable to the fact that despite extensive variation, at a broad level there are some characteristics that are common across many NEG experiments and theories. These commonalities form the focus of the next section.

2.3 The Defining Elements of NEG

Having introduced a number of the key NEG theories, this section builds on emerging meta-analysis in new governance scholarship. It identifies some of the characteristics common to NEG that define it as a unique approach to governing environmental problems when compared with more conventional governance mechanisms. Focusing on each characteristic, the discussion builds on the above overview to point to some key points of theoretical divergence and convergence under each of these broad characteristics. Concise attention is also given to general normative claims attached to each defining characteristic as to why it offers advantages over traditional approaches and fosters a “good” way of governing environmental problems.

2.3.1 Defining Characteristics of NEG

The concept and features of new governance are still at early stage of analysis. However, in general, new governance is identified as encompassing a cluster of criteria that researchers internationally regard as necessary to counter the perceived pathologies of conventional forms of environmental regulation. For the purposes of this thesis, some of the most crucial
characteristics of new governance include (i) collaboration; (ii) participatory and deliberative aspirations; (iii) adaptability and learning; and (iv) “new” forms of accountability.153

2.3.1.1 Collaboration

Most NEG experiments and theories share a commitment to some form of “collaborative” processes between multiple stakeholders.154 The precise nature of these collaborative processes can vary across experiments and theories. For example, some collaborative processes are largely “once-off” events, where agencies formally negotiate with representatives from clearly defined public interest groups over terms of a proposed regulation.155 However the term collaboration is also used to refer to ongoing cooperative relationships that involve mixes of higher-level agencies and local level actors actively negotiating rules, implementing activities and monitoring natural resources over the longer term.156

Despite this variation, it is common in the NEG literature to associate collaborative arrangements with "consensus" processes that seek to move towards some agreement among parties.157 Closely related notions of partnerships158 and cooperation159 sometimes also describe collaboration. Other NEG theories offer more specific definitions of “collaboration”. For example, many authors in collaborative NRM and RNRM literature160 have drawn on organisational theorist Barbara Gray’s definition of collaboration to define it as a process where...
two or more stakeholders pool appreciations, and/or tangible resources, (e.g. information, money, labour etc), to solve a set of problems which neither can solve individually.\textsuperscript{162}

However one defines the process, at a broad level collaboration is seen to offer a range of benefits over traditional regulatory approaches, particularly when facing intractable, volatile, diverse and complex problems (e.g. "second-generation" environmental issues).\textsuperscript{163} These benefits are outlined in Box 2.3 below.

\begin{center}
\textbf{BENEFITS OF COLLABORATION}
\end{center}

As discussed in chapter 1, both command and control (CAC) and market based instruments (MBIs) are perceived to be largely unsuited to dealing with complex issues. For example, the CAC approach can allow many complex problems to "fall through the cracks" between different tiers of government or different government agencies which allocate jurisdictional responsibility along ecologically uninformed, human-defined boundaries.\textsuperscript{164} MBIs face their own application limits due to difficulty in identifying tradable units when dealing with complex problems like habitat loss or biodiversity. Both also place a heavy and arguably unattainable demand on centralised knowledge to set suitable standards or caps/taxes. In contrast, NEG’s collaborative arrangements are seen to avoid or overcome many of these issues, as well as offer additional benefits, including:

- contributing to a rich understanding of and capacity to solve complex problems by harnessing the unique information, resources and capacities of diverse public and private actors;\textsuperscript{165}
- fostering more integrative and adaptive approaches to planning and implementation by bringing together agencies and stakeholders who are close to the problem;\textsuperscript{166}
- reducing existing conflict, enhancing ownership and thus increasing cooperation in implementation by contributing to the formation of some form of consensus among parties regarding the problem being faced and the solutions;\textsuperscript{167} and
- enhancing democracy by allowing citizens and other non-government actors to interact and work together cooperatively, build social capital and/or promote civic behaviour.\textsuperscript{168}

Box 2.3: The Benefits of Collaborative Governance.


\textsuperscript{163} These types of problems have sometimes been characterised as problems of failed collaboration, in which mutual gains are available, but different parties are unable to come to terms in a way that captures those gains. Collaborative processes are accordingly seen to provide one way to address these problems by offering a more effective arrangement for collective choice. Cohen and Sabel, n 25 at 323-324; Head, n 85, p 138.


\textsuperscript{165} Karkkainen, n 9 at 228-229; Coglianese, n 155, p 102-105; Wondolleck and Yaffee, n 16 for why collaboration in NRM can produce better decisions.


\textsuperscript{167} See for example Coglianese, n 155, p 98-102; Karkkainen, n 9 at 228-229.

\textsuperscript{168} See Fung and Wright, n 27, p 15; Lubell et al, n 166, p 286-287.
2.3.1.2 Participatory and Deliberative Aspirations

The participatory and deliberative aspirations that characterise many new governance experiments and theories are intertwined with ideas of enhancing “democracy”.\(^{169}\) Certainly, some NEG reforms are more radical in their democratic visions,\(^{170}\) and are more “participatory”\(^{171}\) and “deliberative” than others.\(^{172}\) Variations are also evident in where participation of non-government actors actually occurs, some focusing on local citizens and others on international NGOs.\(^{173}\) Styles of deliberative decision-making also vary,\(^{174}\) often following either deliberative democracy ideals\(^{175}\) or negotiation (as favoured by civic republicanism\(^{176}\) or dispute resolution theory).\(^{177}\)

One of the most common vehicles for realising these various participatory and deliberative aspirations in NEG is the multistakeholder collaborative group, which aspires to provide a framework for participation by non-government actors, and an opportunity for them to engage in decision-making.\(^{178}\) Fulfilling the ideal of a more participatory and deliberative approach to governance typically sees groups applying and following some form of procedural criteria, such as participation that is inclusive and/or representative of affected interests,\(^{179}\) and decision making that adheres to conditions laid out by deliberative ideals (discussed further below).

As Box 2.4 illustrates below, there are a number of normative arguments for why the participatory and deliberative aspirations of NEG may better contribute to the central ideals of

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\(^{169}\) Karkkainen, n 1 at 473, 474; Mansbridge, n 28, p 299.

\(^{170}\) Fung and Wright, n 27; Cohen and Rogers, n 28.


\(^{172}\) For example, some reflexive law variants arguably overlook “wider” participation (beyond regulated entities), and pay little attention to ideals of democracy and discourse (See Gaines, n 67 at 23-24 c.f. Orts, n 68 at 1336). In distinct contrast, democratic experimentalist theory extends Dewyian ideas on publics as a model for wide ranging participation and expansive systems of deliberation (see for example Fung and Wright n 27).

\(^{173}\) See for example Lobel, n 67 at 371-376.

\(^{174}\) Some strands of democratic experimentalist theory appear to emphasise deliberative concepts that draw on pragmatist theory; Dorf and Sabel, n 20 at 284; Karkkainen et al, n 24 at 693-694, 696.

\(^{175}\) See for example Fung and Wright, n 27, p 15, 17-20, fn 16; Scott and Holder, n 125, p 218; Moore, n 98, p 130.

\(^{176}\) See for example Freeman, n 5 at 82; Shutkin, n 53, p 28.

\(^{177}\) See for example John, n 9, p 235-236.


\(^{179}\) Note also that consultation or other forms of soliciting views of affected interests may also act as way to ensure fair consideration of stakeholders concerns; Trachtenberg and Focht, n 178, p 60-61.

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democratic politics (eg. involvement of citizenry and political consensus) than traditional methods of regulation.¹⁸⁰

**BENEFITS OF PARTICIPATION AND DELIBERATION**

Rather than rely on representative democracy, technocratic bureaucracies and participation through “notice and comment” or consultation, participatory and deliberative features of NEG seek to ensure citizens and non-governmental interests obtain greater control and power over issues that are important to them and the public.¹⁸¹

As such, NEG may offer a path that (i) better fosters the political development of individuals through their engagement in governance;¹⁸² (ii) enhances autonomy by focusing on participation in determining the structure of law;¹⁸³ and (ii) improves equity by allowing marginalised citizens or groups to participate more directly in decisions that affect their lives.¹⁸⁴

NEG’s participatory and deliberative aspirations are also seen to have effectiveness benefits over traditional approaches. For example, participation of citizens and other non-government stakeholders can readily secure the use of local and contextualised knowledge in seeking to understand a problem and develop a solution. Such knowledge is often missing from centralised decision-making associated with CAC and MBI approaches, but is vital to handling environmental issues¹⁸⁵ and to providing better feedback on decisions.¹⁸⁶

Deliberation can also arguably foster better use and disclosure of unique information through the use of “voice” in face to face deliberative discussion, producing innovative ideas and allowing alternative solutions to be considered more deeply (as opposed to science in CAC or price, competition and the efforts of professionals in markets).¹⁸⁷ Participation and deliberation may also have instrumental value when compared to more coercive approaches such as CAC because they can contribute to ideals of fairness in decision-making process, increase the acceptability of decision outcomes and thus reduce the costs of enforcing compliance.¹⁸⁸

**Box 2.4: The Benefits of Participation and Deliberation.**

¹⁸⁰ Fung and Wright, n 27, p 3.
¹⁸¹ See generally Amstein S, “A Ladder of Citizen Participation” (1969) 35 American Institute of Planners 216 at 217; For a recent discussion, advancements and critiques see Ross et al, n 171 at 205; Fung and Wright, n 27, p 3.
¹⁸² See for example: Dorf and Sabel, n 20 at 288-289; Fung and Wright, n 27, p 29; Landy and Rubin, n 54 p 1; John, n 9, p 247.
¹⁸³ Trachtenberg and Focht, n 179, p 55.
¹⁸⁶ Lane, n 74 at 284; Ribot, n 185, p 4-5; Fung and Wright, n 27, p 25-26; Karkkainen et al, n 24 at 691; Freeman, n 5 at 27.

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2.3.1.3 Learning and Adaptation

The third characteristic common to many NEG theories is learning and adaptation. These features seek to ensure that NEG can grapple with the well-recognised uncertainties and dynamic nature that characterise many environmental problems.189

The terms learning and adaptation have been variously defined, and the degree to which they have been emphasised in NEG theory does vary.190 However three of the more prominent forms of NEG learning and adaptation emerge from the distinct rationales of “adaptive management”191 “pragmatism”192 and “reflexive law”.193

The adaptive management concept194 is evident across a range of NEG theories, particularly those focused on NRM problems.195 However, while the original idea of adaptation proposed by its founder CS Holling was focused on specific ecosystem situations and “active” scientific hypothesis testing in the field, the concept has since been applied more broadly to policy processes.196 It can also take a more “passive” form, involving less focus on active testing and more on heightened monitoring of key indicators and subsequent adjustments in policies in light of what may be learned.197

As noted above, adaptive management shares similarities with pragmatist thinker John Dewey’s “experimental method”.198 As applied by NEG theories199 such as democratic experimentalism, pragmatism necessitates an approach to governing that involves adaptation

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189 As Ruhl has generally pointed out “it is almost universally the case that advocates of regulatory innovations also advance the method of implementation known generally as adaptive management (Ruhl J, “Regulation by Adaptive Management—Is It Possible?” (2005) 7 Minn. J.L. Sci. & Tech 21 at 28); Karkkainen, n 43 at 959-960; Freeman, n 5 at 28-29.

190 Learning for example can range across social, technical and policy perspectives. See: Freeman and Farber, n 11 at 883-888; Lobel, n 67, 395, 399. Fiorino, n 21 at fn 80, 81.

191 Holling, n 46; Lee, n 46; Walters, n 46.

192 Dewey, n 32, p 113-114; Karkkainen, n 43 at 957-960.

193 Orts, n 68 at 1254.


196 Dovers, n 46, p 4; Karkkainen, n 194 at 73-77.

197 Karkkainen, n 194 at 70-72.

198 Dewey, n 32, p 113-114; Karkkainen, n 43 at 956-960.

199 See also Shapiro, n 51 at 742-748; Farber D, “Building Bridges over Troubled Waters: Eco-pragmatism and the Environmental Prospect” (2003) 87 Minnesota Law Review 851.

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and learning by "local" problem solving groups, as well as a style of "systemic learning".\textsuperscript{200} That is, the sharing of information and innovations between local collaborations that follow "experimental"/"adaptive management" methods\textsuperscript{201} and the continual adaptation of explicitly provisional government policy determinations (see Table 2.2 above for further details on this form of learning).\textsuperscript{202}

The third and final line of learning and adaptation in NEG arises from ideas of reflexive law.\textsuperscript{203} As Eric Ort’s theory of reflexive environmental law illustrates, reflexive approaches seek to use law to set up processes that encourage institutional self-reflective thinking and learning about environmental effects.\textsuperscript{204}

This approach hinges around encouraging regulated actors, such as industry, to take greater internal responsibility by requiring it to follow a systematic approach of identifying significant environmental aspects of its activities, setting objects and targets, establishing a management program, developing procedures for achieving the targets, and arranging monitoring techniques to ensure that they are reached.\textsuperscript{205} By systematically examining its environmental impact and means of reducing it, the learning and adaptability intent is that these processes will stimulate a routine and methodical search within the organization for environmental impacts that fall outside of current regulation.\textsuperscript{206} Motivated by benefits that resolving such impacts may deliver (eg. cost savings), industry will ideally adapt its operations and management systems and pursue continuous improvement.

While these three approaches are all clearly different,\textsuperscript{208} normatively, they all claim to offer an alternative and potentially better approach than conventional regulation for recognising and dealing with the inevitability of change and the dynamism that characterise environmental problems. These benefits are briefly outlined in Box 2.5 below.

\textsuperscript{200} Karkkainen, n 17 at 243.
\textsuperscript{201} Such "systemic" learning has also been recognised outside of the pragmatist paradigm. See for example: Paton et al, n 123 at 262.
\textsuperscript{202} This is facilitated at the macro-institutional scale where information is to flow from local to centre and back again via a central monitoring and information pooling and linkages among local collaboration and that allow local groups to learn from one another, and foster periodic revision of minimum standards, targets and measures; Karkkainen, n 17 at 243; Karkkainen et al, n 24 at 691; Karkkainen, n 1 at 484.
\textsuperscript{203} Orts, n 68 at 1254; See also Gaines, n 67 at 23.
\textsuperscript{204} Orts, n 68 at 1253-1254.
\textsuperscript{205} Gunningham and Sinclair, n 78 at 180; Fiorino D, "Flexibility" in Durant R, Fiorino D and O’Leary R (eds), Environmental Governance Reconsidered (MIT Press, 2004) p 415.
\textsuperscript{206} Gunningham and Sinclair, n 78 at 180, Fiorino, n 205, p 415.
\textsuperscript{207} Gunningham and Sinclair, n 78 at 180, Fiorino, n 205, p 415.
\textsuperscript{208} For a discussion of differences between reflexive law and pragmatism see Karkkainen, n 1 at 484.
BENEFITS OF LEARNING AND ADAPTATION

All three approaches to learning and adaptation share a number of key characteristics that arguably assist NEG to deal with dynamic environmental issues in a more effective manner than traditional approaches. Not least, all three learning approaches reduce, to different extents, the over-reliance on panoptic knowledge characteristic of CAC and MBIs, by developing alternative infrastructures to "learn" more easily from changing circumstances "on the ground." 209

For example, reflexive law attempts to employ regulation to engender learning and problem solving primarily at the level of the regulated entities (unlike most markets or command and control approaches that rely on scientific learning about the environment). 210

The provisionality, continuous monitoring and adaptation common to adaptive management and pragmatism is similarly claimed to be better suited to dealing with the complex, multifaceted, and dynamic nature of environmental and ecosystem problems than either CAC (which is particularly ossified in nature) 211 or MBIs (where significant post-hoc program corrections to pollution levels and permits set from the centre becomes very difficult without undermining the security of ownership rights on which the market itself depends). 212

Further, the systemic learning central to the pragmatist inspired experimentalist vision is claimed to have greater capacity than MBIs or CAC to continually enhance the performance of regulatory regimes by diffusing innovation and developing the capacities of individuals, groups and the system to solve problems. 213

Box 2.5: The Benefits of Learning and Adaptation in Governance.

2.3.1.4 “New” Forms of Accountability

From the perspective of this thesis, a final defining feature of “good” NEG is “new” forms of accountability. The term “new” is used to distinguish accountability in NEG from conventional concepts and means of accountability as used in public law literature and traditional regulatory scholarship. Accountability was narrowly drawn and chiefly focused on elected officials and their appointees being accountable to citizens for governmental performance. 214 Central to this discussion was the concept of “principal/agent accountability”. 215

209 Orts, n 68 at 1238.
210 Orts, n 68 at 1253-1254.
211 Orts, n 68 at 1238.
212 Sabel et al, n 4 at 3.
This understanding emphasises a formal, largely hierarchical relationship within which a person, body or forum (eg. law making sovereign) confers on another actor (eg. agency) responsibility for the performance of particular tasks, with a duty to explain and justify their actions.\(^{216}\) If an actor shirks or abuses such responsibilities, they may accordingly face consequences via legal or administrative mechanism (eg. judicial review).\(^{217}\)

In NEG scholarship, as well as in other areas of regulation, administration and governance,\(^{218}\) these traditional concepts have increasingly been supplemented and/or altered by “new” understandings, formations and mechanisms of accountability that seek to make NEG institutions responsive to their various publics and associated expectations of performance.\(^{219}\)

One of the primary reasons for these developments has been the need to address and account for the increased involvement and collaboration of multiple public, private and non-government actors in NEG's approach to environmental governance.\(^{220}\)

Indeed, a narrow assumption of a single principal with well-defined preferences is arguably too simplistic to capture the dynamic of multiple principals and preferences in a multiagency, multistakeholder NEG collaboration.\(^{221}\) Further, rather than a solely hierarchical relationship, accountability in a collaborative group may take on various horizontal forms (such as mutual accountability between collaborators who check each others behaviour) as well as downward relationships (such as stakeholders being accountable to their respective sectors or groups).\(^{222}\)

Relying purely on traditional mechanisms of accountability in NEG processes is also claimed to be largely incapable of capitalising upon, and may even be detrimental to, the contributions of non government actors and multiagency collaborations that are central to NEG.\(^{223}\) Further, traditional accountability approaches that typically constrain the discretion of

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Regulation & Governance 8 at 11; Freeman, n 5 at fn 5; Scott C, “Accountability in the Regulatory State” (2000) 27(1) Journal of Law and Society 38 at 40-41.


\(^{217}\) Bovens, n 216 at 450.


\(^{219}\) Freeman, n 5 at 96; Posner, n 214, p 524; May, n 214 at 11; Stewart and Jones, n 73, at 123.

\(^{220}\) Of course private actors have long played a role in governance. See: Freeman, n 48 at 547.

\(^{221}\) Freeman and Farber, n 11 at 904.

\(^{222}\) See also discussions of alternative “separation of power” doctrine that seeks to account for the role of private actors in governance: see Braithwaite, n 218 at 91; Karkkainen et al, n 24.


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actors may lack the necessarily flexibility for incremental and provisional decision making central to NEG’s approach of adaptation and learning.\textsuperscript{224}

Accordingly, some authors have proposed extensive reforms to traditional political, administrative and legal forms of accountability, such as replacing principal agent relationships with mutual accountability and so called “peer review” process.\textsuperscript{225} Others suggest that traditional mechanisms should be supplemented with a variety of “new” approaches to accountability in which there is greater deference to agency and stakeholder decision making.\textsuperscript{226} For instance, statutes that announce general goals without dictating the means of achieving them are often recommended as a means to afford agencies and stakeholders the latitude and discretion to devise more locally tailored and innovative solutions.\textsuperscript{227} Beyond a focus on discretion, authors have proposed that accountability can be ensured through a range of “new” mechanisms of accountability in which private actors and institutions play more active roles. For example, the use of contractual agreements;\textsuperscript{228} horizontal “mutual” accountability between collaborators;\textsuperscript{229} “professional” accountability of firms;\textsuperscript{230} third-party certification or internal procedural rules for industry.\textsuperscript{231}

One important distinction in how these “new” approaches and forms of accountability are applied in NEG relates to experiments that focus on accountability through process based approaches and those that emphasise accountability based on performance. While these two approaches are not mutually exclusive, for heuristic purposes, it is helpful to treat them separately.

For process based approaches, such as aspired to by some reflexive schools of thought, accountability tends to be focused exclusively on ensuring regulated entities are accountable for developing and following processes (e.g. management systems) rather than achieving particular performance goals.\textsuperscript{232} Important here is industry’s professional accountability (derived from “internalised” sources based on professional norms), third-party certification of systems and independent audit.\textsuperscript{233}

\textsuperscript{224} Freeman, n 48 at 575; Fisher, n 223 at 497.
\textsuperscript{225} See Sabel and Simon, n 215, p 400; Freeman, n 5 at 2, 96; Dorf and Sabel, n 20 at 288, 389-390.
\textsuperscript{226} Freeman, n 5 at 2, 96; Posner, n 214, p 524; May, n 214 at 11.
\textsuperscript{227} Freeman, n 5 at 92-94; Wondolleck and Yaffee, n 16, p 241; Karkkainen, n 43 at 963.
\textsuperscript{228} Freeman, n 22 at 198-201, 207.
\textsuperscript{229} Weber, n 70 at 453; Wondolleck and Yaffee, n 16, p 238; Lobel, n 67 at 378, 432; Freeman and Farber, n 11 at 905-906, 908.
\textsuperscript{230} May, n 214 at 12.
\textsuperscript{231} Freeman, n 48 at 665; Freeman, n 22 at 198-201; Weber, n 70 at 455; Freeman, n 5 at 22, 96.
\textsuperscript{232} Fiorino, n 205 at 413-416; May, n 214 at 11.
\textsuperscript{233} Freeman, n 5 at 30, 96; May, n 214 at 11,13.
For many other NEG theories, accountability is sought through the setting of performance standards or through outcome orientated statutes (as discussed above) which give collaborators and regulated actors flexibility in deciding how to achieve those outcomes. Here a variety of “new” forms of accountability may be employed. These typically rest on self monitoring and reporting of the collaborative group regarding adherence to goals, and may include accountability to an oversight agency, horizontal mutual accountability between the collaborators, different forms of government or third party/public oversight of the collaborative group, as well as accountability of public and private collaborators back to their own groups or agencies.

Regardless of whether “new” forms of accountability are applied in a process or performance based approach, they are seen by a number of NEG authors to have key normative benefits over traditional mechanism and approaches to account giving (See Box 2.6).

**BENEFITS OF “NEW” FORMS OF ACCOUNTABILITY**

At one level, the benefits of “new” forms of accountability are partially inherent. That is, seeking to ensure accountability in any governance approach is seen to be vital to “good” governance per se, not least because it can control the abuse of public authority, ensure that public resources are used appropriately, and secure performance expectations of governance endeavours. However, the specific advantage of these “new”, as opposed to traditional, forms of accountability is that cooperative frameworks and new horizontal networks may enhance and expand accountability, while reducing government expenditure by mobilising others in monitoring and enforcement roles. Further, they potentially permit NEG to benefit from the unique contributions made by citizens and stakeholders through collaboration, participation, adaptation and learning, while still ensuring public and non government actors meet performance expectations and do not collude to undermine wider societal and environmental standards.

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236 Perhaps the broadest and boldest vision of accountability in a performance based regime arises from one strand of democratic experimentalist theory. See Karkkainen, n 79, p 296, 298. 
237 See for example Wondolleck and Yaffee, n 16, p 238-244; Freeman and Farber, n 11 at 905, 906; Freeman, n 5 at 22. 
238 Posner, n 214, p 524; May, n 214 at 11; Bovens, n 216 at 462. 
240 Weber, n 70 at 458. 
241 Freeman, n 5 at 31, 83-87; Freeman and Farber, n 11 at 893-894; Hornstein D, “Complexity Theory, Adaptation and Administrative Law” (2005) 54 Duke Law Journal 913 at 949, fn 197; Doremus, n 234 at 52, 88; Wondolleck and Yaffee, n 16 p 252; Karkkainen, n 43 at 963.
Box 2.6: The Benefits of “New” Forms of Accountability.

2.3.2 Summary

The above discussion has focused on the characteristics of NEG that are common to all or most such experiments and theories. It does not however, purport to provide a definitive picture of what NEG ‘is’ or can be. New governance is still an emerging and evolving field and its key tenets will no doubt be subject to further refinement. 242 Even so, from the perspective of this study, the four groupings of approaches discussed above are arguably the most central and defining features of NEG as an approach to governing the environment.

Rather than top down, centralised, government exclusive approaches backed by representative democracy common to CAC, or MBI’s decentralised system involving competition, price mechanisms, and fungible commodities, NEG’s unique approach to governing the environment relies on broad processes of collaboration, participation, deliberation, learning, adaptation and “new” forms of accountability.

As I have pointed out, there are some specific variations and/or debates within NEG scholarship regarding all these broad features. However each stands as a key pillar in NEG’s response to the recognised shortcomings of the orthodoxies of CAC and MBIs. 243 Indeed, the collective normative claims made about each of NEG’s four approaches broadly suggest that NEG offers a “new” vision for “good” environmental governance that can deliver effectiveness, legitimacy and democratic benefits largely beyond the reach of either MBIs or CAC.

Yet, despite generating much hype as to its potential as an effective alternative to traditional approaches to regulation, there has been surprisingly little investigation of whether or to what extent NEG institutions actually provide these benefits in practice. 244 This has given rise to many disagreements about the impacts and effectiveness of NEG, 245 left some key theories vulnerable to criticism 246 and left far more questions than answers regarding the real world conditions needed for successfully designing and implementing NEG as an approach to governing environmental problems. 247 Some of these key debates and questions are discussed in the following section regarding each of NEG’s broad defining approaches to governing. 248

242 Lobel, n 2 at 501.
243 Lobel, n 2 at 502.
244 Karkkainen, n 17 at 233; Lobel, n 2 at 499-509.
246 See for example questions raised regarding strands of democratic experimentalism, civic experimentalism and collaborative governance theories in Steinzor, n 235 at p 21-22 of “pdf”; See also contributions in “Beyond Backyard Environmentalism” (1999) October/November Boston Review 1.
247 Lobel, n 2 at 499-503.
248 Karkkainen, n 17, at 233; Lobel, n 2 at 499-509.

Cameron Holley New Environmental Governance
2.4 NEG Questions and Debates

This section focuses on each of the four groupings of approaches characteristic of NEG and extricates some of the associated debates and specific unanswered questions in the NEG literature regarding the conditions under which each may be successfully realized in practice. These questions and debates form the framework and focus for the remainder of this study.

2.4.1 When and how can NEG achieve successful collaboration?

Questions and debates regarding NEG’s collaborative approach to governing arise from many different angles. Some relate to issues of power relations and differences in capacities between collaborative parties. These are important concerns, but for present purposes they are seen to be more relevant to the “participatory and deliberation” characteristics of NEG and are accordingly addressed under that heading below.

More relevant here are the questions and debates raised regarding two other issues. The first issue relates to the conditions that enable the emergence of successful collaboration in initial planning and implementation efforts. The second issue relates to matters of “persistence,” specifically the conditions that affect the longer-term survival of collaboration, as they progress through implementation, monitoring, and adaptive management. These two issues are addressed in turn below.

2.4.1.1 Issues regarding the emergence of successful collaboration

Challenges of collaboration

A variety of commentators have questioned the faith placed in “collaboration” by NEG, suggesting collaborative efforts will come up against extensive, if not insuperable, difficulties in practice. Such difficulties they suggest will mean that many of the purported benefits of collaboration are unlikely to be achieved in many “real world” situations.
The root of such problems, some of these theorists argue, is the fact (or so they would assert) that people are self-interested beings whose interests make it more rational to behave in a competitive rather than a cooperate manner.254 This rational, self-interested actor rears its head in at least three well worn “cooperation dilemma” constructs - the tragedy of the commons, the prisoner’s dilemma255 and Mancur Olson’s256 collective action problem. As the logic underlying these three constructs is similar, exploring the tragedy of the commons will be sufficient for present purposes.

The tragedy of the commons, as expounded by Garrett Hardin, and others,257 was one of the first works to theorise the problems potential collaborators are likely to face in coming together to voluntarily cooperate. Hardin explains the tragedy using the example of cattle herders and their use of pasturelands left open to many herds of cattle.258 As Hardin sees it: “the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another...But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited”.259

Common to this tragedy and the other two “cooperation dilemma” constructs is the issue of free riders. That is, whenever one person cannot be excluded from the benefits that others provide, each person is motivated not to contribute to the collaboration but to “free ride” on the labours of others.260 Accordingly, if some or all participants choose to free ride, the decision making process will result in either a less than optimal level of provision or no collective benefit being created at all.261

254 Steinzor, n 235 at page 1 of “pdf”; Gaines, n 67 at 15; Wondolleck and Yaffee, n 16, p 48-49.
255 The prisoner’s dilemma game has been described by a number of authors using various social examples that build on the original form described by Albert Tucker: The dilemma is as follows: two men are held separately by the police but charged with jointly violating the law. If both confess each will be fined 1 penalty unit (eg. $1000), if only one confesses and the other does not, the former will be rewarded $1000 and the latter will be fined $2000, while if neither confess there is good reason to believe both prisoners will be let go or receive only a minor penalty. According to this model, even though the “optimal” choice is for neither to confess, both prisoners will confess because as rational beings who are unable to communicate, neither will want to take the risk of not confessing in case the other prisoner comes clean. The game itself is credited to the work by Dresher and formalised by Albert Tucker in 1950 during a lecture at Stanford University; See Dresher M, The Mathematics of Games of Strategy: Theory and Applications (Prentice-Hall, 1961); Tucker A, “The Mathematics of Tucker: A Sampler” (1983) 14(3) The Two-Year College Mathematics Journal 228; Ostrom, n 159, p 3-5; Karkkainen, n 17 at 226-227.
256 Mancur Olson’s collective action problem argues that “unless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, rational self-interest individuals will not act to achieve their common or group interests...”; See Olson M, The Logic of Collective Action Public Goods and the Theory of Groups (Harvard UP, 1965 and 1971), p 2, 9, 44, 49-50; Nickelsburg, n 253 at 1378.
259 He continues: “Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all” Hardin, n 258 at 1244.
260 Ostrom, n 159, p 6.
261 Ostrom, n 159, p 6.
In short, what these three models all suggest is that individually rational strategies may bring about collectively irrational outcomes. The common solution proposed for these dilemmas—flat or market based mechanisms—are the very understandings and structures of environmental governance which NEG suggests are often inapposite.

It is unsurprising then that the cooperation dilemma is seen as a "theoretical thorn in the side" of NEG’s unique collaborative approach to governing. However, a growing number of NEG scholars have sought to counter such claims by drawing on a range of literatures that suggest more sanguine possibilities for co-operation under certain conditions. For example, Elinor Ostrom’s research on the effective and sustainable co-management of common pool resources (CPR) has identified a range of conditions associated with an increased likelihood of collaboration in CPR contexts.

Furthermore, some NEG authors point to the fact that many purportedly “unconventional and counterintuitive” collaborative NEG institutions exist in practice (see above in section 2.2 for examples of NEG experiments in USA, Australia and Europe), and suggest that this in itself means that collaboration is not a wholly impossible ideal.

In the face of such evidence and arguments, some sceptics still charge that Ostrom’s conditions, and those under which many existing NEG institutions have arisen, are either unique or limited to such specific circumstances that wider replicability is highly unlikely. For some of these sceptics, NEG may have value in only the most narrowly constrained circumstances. Others also suggest that even if collaboration is possible, the considerable cooperative effort involved is likely to be both messy and uncompromising, introducing new sources of conflict.

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262 Ostrom, n 159, p 5.
263 Ostrom, n 159, p 182.
264 Hornstein, n 241 at 952.
268 CPRs are natural or human made resource systems that are sufficiently large as to make it costly (but not impossible) to exclude potential beneficiaries from obtaining benefits from their use. Typical examples are forests, or irrigation and fishery systems; Ostrom, n 159, p 30-31; Schlagere, “Common Pool Resource Theory” in Durant R, Fiorino D, and O’Leary R (eds), Environmental Governance Reconsidered (MIT Press, 2004) p 147.
269 Some of these conditions are discussed in later chapters. For a full list see: Ostrom E, “The Danger of Self Evident Truths” (2000) 33(1) Political Science and Politics 33 at 39-40.
270 For a relatively recent overview of this literature see Schlagere, n 268; Sabatier et al, n 265, p 175.
271 Karkkainen, n 17 at 226.
272 Gaines, n 67 at 17; See discussion in Karkkainen, n 1 at 476-477.
and creating additional problems in the policy process, including increased time and resources.274

As Karkkainen has argued, such dismissals of NEG on what are largely theoretical grounds (including assumptions about human nature) discount the possibility that it is the critics’ theory, and not reality, that is flawed.275 Yet the limited empirical evidence on collaborative governance is far from conclusive and what is needed first and foremost, Karkkainen contends, is a rigorous and comparative analysis of emerging institutions to better discern the deep structure of these arrangements and their relative effectiveness.276

To date, NEG empirical research into conditions that enable the emergence of successful collaboration has been dominated by a handful of institutional structures in the USA context,277 with some of the most extensive analysis being conducted on localised collaborative NRM initiatives.278 However even here, a tidy theoretical consistency is yet to be achieved.279 Accordingly many important questions and issues remain to be resolved including conditions for overcoming transaction costs, the role and importance of trust in achieving successful collaboration, and the nature and impact of consensus decision-making on fostering successful collaborative processes.

### Conditions for overcoming transaction costs

Transaction costs (e.g. time, resources and travel expenses associated with building trust, negotiating, sharing information and reaching “consensus”) are seen to be a major barrier or limiting factor to collaboration.280

Some authors argue that the large size and heterogeneity of affected stakeholders and the scale of the environment problem will cause unbearably high transaction costs.281 However

274 Lane, n 112 at 4-5; Coglianese, n 155, p 113; See discussion in Karkkainen, n 12 at 91; Karkkainen, n 17 at 225.
275 Karkkainen, n 17 at 225-226.
276 Karkkainen, n 17 at 226.
277 Studies have tended to focus on Habitat Conversation Plans, the Chesapeake Bay Program and the CALFED Bay-Delta Program. See for example: Raymond L, “Cooperation without Trust: Overcoming Collective Action Barriers to Endangered Species Protection” (2006) 34(1) The Policy Studies Journal 37; Heikkila and Gerlak, n 69 at 584. However, there have been more extensive studies into forestry and natural resource management approaches in the USA (e.g. Wondolleck and Yaffee, n 16) as well as research on collaboration internationally (e.g. Whelan and Oliver, n 122).
279 Sabatier et al, n 265, p 183; Heikkila and Gerlak, n 69 at 584; Raymond, n 277 at 39.
280 See for example: John D, “Good Cops, Bad Cops” (1999) October/November Boston Review 19 at 19; Dana, n 22 at 54; Margaret R, “Overcoming Locally Based Collaboration Constraints” (2007) 20 Society and Natural Resources 135 at 135, 137; Coglianese, n 155, p 106, 110; Gaines, n 67 at 17; Karkkainen, n 12 at 91.
281 See for example Gaines, n 67 at 17. See also discussions by John where it is argued that successful collaboration is more likely to emerge when the extent of the environmental issue is small enough (100 sq miles) for key leaders to drive to evening meetings (John, n 9, p 231).

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much of the NEG literature asserts that collaboration can be effective regardless of such barriers, and that institution design or governmental action can aid in sufficiently reducing transaction costs.

For example, some NEG theorists suggest that transaction costs may be reduced or overcome by conditions such as:

- "leaders"\(^{282}\) such as government officers who are willing to use their own resources to try and persuade other stakeholders that they collectively have more to gain through collaborating.\(^{283}\)

- government funding and/or agency assistance for relevant capacity building and information provision; and/or\(^{284}\)

- the existence of harsh "default" rules\(^{285}\) (or indeed other forms of social or economic pressure from third parties)\(^{286}\) that can alter incentives of actors to make transaction costs of collaboration potentially more attractive than bearing the costs imposed by the default rule.\(^{287}\)

For others, nested institutional structures (i.e. developing different institutions such as government, stakeholder, citizens and/or mixed varieties at different levels such as local, regional and state) may be used to overcome transaction costs.\(^{288}\) This is claimed to be effective both where geographic scale is larger (by allowing collaborative groups to divide a region into smaller areas and groups to reduce the costs and time associated with collaborating across the whole region),\(^{289}\) and at more local levels (allowing local groups to also operate at regional scales to share information and interact with agencies in a more structured single forum rather than in an ad hoc, once off manner).\(^{290}\)

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\(^{283}\) See for example Freeman, n 5 at 31-32; Raymond, n 277 at 42; Stewart and Jones, n 73, p 134-138.

\(^{284}\) John and Mlay, n 9 p 362-363; Nickelsburg, n 253 at 1380-1381; John, n 9, p 230-242; Freeman, n 5 at 31; Freeman and Farber, n 11 at 890; Cohen and Sabel, n 25 at 334.


\(^{286}\) See generally Gunningham N, Kagan R and Thornton D, Shades of Green: Business, Regulation, and Environment (Stanford UP, 2003); Gunningham and Sinclair, n 78 at 149.

\(^{287}\) Karkkainen, n 17 at 241; Gunningham and Sinclair, n 78 at 149; Farrier, n 13 at 350, 390-391; Koontz et al, n 21, p 166-167; Wondolleck and Yaffee, n 16, p 240-241.

\(^{288}\) Margerum, n 280 at 144-146; Karkkainen, n 17 at 209; Karkkainen n 13, p 221(identifying that nested scales of management are evident in some of the most successful ecosystem governance arrangements); John, n 9, p 236-237.


\(^{290}\) For further see: Margerum, n 280 at 144-146.
While this nested approach is thought to have the potential to reduce transaction costs greatly, some authors hypothesise that various parts of this structure may impose additional challenges, such as achieving power sharing between agencies/governments at higher regional or state scales. How much conflict and cooperation is actually evident between different agencies and levels of government in NEG accordingly remains an important focus for NEG research.

Trust

A second issue where empirical insights and clarification is much needed in NEG’s theory of collaboration relates to the issue of trust. Trust and reciprocity have been widely claimed as important to successful collaboration - potentially reducing transactions costs, making collective action easier and increasing the likelihood of parties reaching and implementing agreements. In a manner reminiscent of Robert Axelrod’s famous use of game theory, repeat play (rather than static) approaches and communicating mechanisms such as ongoing face to face negotiation and/or deliberation is seen by many NEG scholars to be particularly important to building necessary trust and reciprocity to ensure successful collaboration.

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However, in contrast to such claims, a handful of emerging empirical research in NEG has challenged the view that trust and reciprocity are essential or even favourable to successful cooperation. Some research has made what one scholar has termed the provocative and "somewhat controversial" claim that trust is largely irrelevant to successful collective action in many settings. For example, recent research suggests agreements in "must do something soon" situations such as a flooding crisis have been made in the face of significant distrust.

Further insight is accordingly needed into this debate on the importance of trust as a condition for the emergence of successful collaboration.

Consensus rule

The final issue relating to the emergence of successful collaboration relates to consensus decision rules. It has been suggested that the formation of a successful collaboration depends in part on a consensus decision rule, often one that grants a veto power to all parties. By doing so, the hope is that parties will be more satisfied with the agreement reached and accordingly refrain from undermining the collaboration (eg. legal action) in the future. Commentators such as Coglianese, however have taken issue with this strict form of consensus. These authors suggest that strict consensus rules result in substantial transaction costs, lowest common denominator and/or the most tractable solutions and strategic self-interested bargaining.

Coglianese's analysis has stimulated a number of NEG scholars to question whether broadly consensus based approaches to environmental decision-making will suffer from the same problems.

In part, this concern arises because collaboration in NEG literature is often described as involving "consensus" processes. However there is little agreement or in some cases a noted

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301 Lubell et al, n 166, p 275.


303 Sabatier et al, n 265, p 196.


305 Coglianese, n 155, p 96, 106, 110; Karkkainen, n 12 at 91.

306 O’Malley and Janetos, n 157 at 11-12 (commentating on Coglianese and his colleagues, note that “we are concerned that the authors have, by condemning consensus-based approaches in all circumstances, overgeneralized their results”); Karkkainen, n 12 at 91; Karkkainen, n 17 at fn 116; Leach, n 178 at 104; Karkkainen, n 17 at fn 116.

307 Karkkainen, n 17 at 240.
imprecision when describing the meaning of a consensus decision rule—some seemingly implying that strict consensus rules are essential, others offering no specific definition of the term, while some authors provide vaguer notions such as "substantial consensus" or "broad consensus support".

This ambiguity and disparity of views has led to a need to clarify what decision rules are actually employed in various collaborative new governance processes and to explore which decision rules are most likely to avoid pathologies in the collaborative process. In the NEG literature Karkkainen has begun this work. He has suggested a threefold classification of consensus rules—"hard" (unanimity/veto based), "soft" (no absolute veto but agreement substantially beyond a majority vote is necessary) or "mixed" (power is distributed somewhat unequally, with some senior parties (e.g. major government agencies) holding something close to a veto, while other junior parties hold a weaker hand (e.g. cajole, persuade, public uproar).

Chapter 5 will return to examine the nature and impact of decision rules, as well as issues of trust, transaction costs and preconditions of collaboration as they played out in the three case studies of this thesis. In doing so, it provides a range of insights for NEG theory as regards the above questions and debates, and contributes to developing a better understanding of the conditions under which NEG can achieve the emergence of successful collaboration.

### 2.4.1.2 Issues regarding the survival of collaboration

Related to the emergence of successful collaboration is the equally challenging issue of its ongoing maintenance and survival. These issues are interrelated because the conditions that contributed to the emergence of collaboration can also contribute to its maintenance and survival. For example some may argue that a strict consensus rule that gives participating parties a veto can ensure ongoing collaboration and implementation because the parties are more likely to be satisfied with the negotiated agreement, and avoid pursuing venues of appeal to undermine the collaboration. Even so, the conditions that affect the survival of collaboration are also broader than those relating to its formation. A simple example is the
availability of long-term resources and capacities to support the maintenance of the collaborative group over time.

Of course, sustaining a collaborative effort may not be a central issue to all NEG collaborations (eg. once off, short term collaborative efforts focused on specific tasks).\(^{315}\) However, many NEG collaborative institutions are designed to involve significant long-term commitments including implementation, monitoring and adaptive management roles necessary to tackle intractable or complex issues.\(^{316}\) In these situations an effective and sustainable collaborative group is vital.

As with the NEG literature on the emergence of successful collaboration, there has been some emerging NEG research and attempts to draw on wider literatures regarding sustaining collaboration.\(^{317}\) Again, Ostrom’s work in CPR context is a relevant touchstone, where eight design principles have been identified under which collaborative institutions are more likely to succeed over the long term (see Table 2.4 below).\(^{318}\)

<table>
<thead>
<tr>
<th>Design Principle</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Clearly defined boundaries</td>
<td>There must be clear definitions of the boundaries of the CPR resource, and those individuals or groups who have a distinct right to withdraw units from that CPR.</td>
</tr>
<tr>
<td>2 Congruence between appropriation and provisions of rules (i.e. effectively assign costs of managing resource proportionate to benefits received from the collaborative process)</td>
<td>Rules governing appropriation (eg. the time, place, technology and or quantity of resource units appropriated) relate to local conditions and to the rules governing the building, restoring or maintaining the resource system via labour, material and or money.</td>
</tr>
<tr>
<td>3 Collective Choice arrangements</td>
<td>Nearly everyone affected by the operational rules can participate in modifying the operational rules.</td>
</tr>
<tr>
<td>4 Monitoring</td>
<td>Monitors actively audit CPR conditions and appropriator behaviour and are accountable to the appropriators or are the appropriators.</td>
</tr>
<tr>
<td>5 Graduated sanctions</td>
<td>Violation of operational rules by an appropriator is likely to result in graduated sanctions (depending on the seriousness and context of the offence) being imposed by other appropriators, officials accountable to appropriators or both.</td>
</tr>
<tr>
<td>6 Conflict resolution mechanisms</td>
<td>Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials.</td>
</tr>
<tr>
<td>7 Minimal recognition of rights to organise</td>
<td>The rights of appropriators to formulate their own institutions are not challenged by external governmental authorities.</td>
</tr>
</tbody>
</table>

\(^{315}\) Head, n 239, p 57.

\(^{316}\) Head, n 239, p 57; Margerum, n 280.

\(^{317}\) Bonnell and Koontz, n 289 at 154; Lubell et al, n 166, p 294-295; Freeman and Farber, n 11 at 870, 903; Fung and Wright, n 27 (and related contributions in the same volume); John, n 9, p 233, 241; Dovers S, "Reflecting on Three Decades: a Synthesis" in Dovers S and Wild River S (eds), Managing Australia’s Environment (Federation Press, 2003) p 518-519; Ewing, n 87, p 405-406. See also Karkkainen, n 9 at 227-228 (identifying features of the most successful institutions of collaborative ecosystem governance).

For CPRs that are part of larger systems, nested enterprises Appropriation, maintenance of stock, conflict resolution, monitoring and other governance activities are organised in multiple layers of nested enterprises. Institutions for managing very large systems need to ensure considerable authority devolved to small components to give them flexibility and some control over their fate.

Table 2.4: Design Principles for Long-Term Cooperation.319

Despite these insights, in general far more questions than answers have been raised in the NEG literature regarding conditions and issues pertinent to the survival of successful collaboration. Some authors in fact suggest there is a "knowledge gap" in the NEG literature on the challenges and conditions associated with sustaining successful collaborative organizations.320 Some of the important questions that remain to be answered relate to matters of volunteerism,321 government support, as well as what happens to collaborative efforts when they have substantially achieved their goals.322

Volunteerism

Echoing Ostrom’s design principle number 2 (see above), some authors hope that volunteer collaborators will bear the ongoing costs of collaborating and sustain their involvement because of the benefits they receive from (i) having a voice over issues which they may care about; and (ii) the opportunity to potentially work with or influence governmental decisions.323 Reciprocally, government agencies or other typically powerful groups may continue to participate as they come to rely on the knowledge and assistance of non-governmental stakeholders.324

Others stress that collaborative institutions are likely to survive where they demonstrate success in addressing environmental problems.325 Minimal or poor environmental improvements are likely to be worth less than the transaction costs required to obtain them and collaborators would accordingly begin to withdraw from the collaboration.326

319 Ostrom, n 159, p 90; Schlager, n 268, p 154-162; Sabatier et al, n 265, p 184.
320 See also Bonnell and Koontz, n 289 at 154; Lubell et al, n 166, p 294-295; Koontz et al, n 21, p 183; Margerum, n 280 at 141; Fung and Wright, n 27, p 38; Head, n 239, p 145-146; Homstein, n 241 at 946, 959-960.
321 While the issue of maintaining the involvement of non-government collaborators overlaps with the participation characteristic of NEG, for present purposes it is treated as a factor of sustaining collaboration. Indeed, as most collaborations involve a mix of public and private actors, sustaining non-governmental involvement is vital to their very existence.
322 Koontz et al, n 21, p 183; Lubell et al, n 166, p 294-295; Fung and Wright, n 27, p 27.
323 Fung and Wright, n 27, p 27.
324 See for example Lobel, n 67 at 463-464.
326 Lubell et al, n 166, p 288.
However over the longer term a number of problems can arise. In particular non-governmental collaborators' enthusiasm may be quelled by the practical demands of collaborative institutions, resulting in burnout or high turnover. These are experiences aptly demonstrated in the Landcare Program and in Integrated Catchment Management in Australia, as well as with neighborhood renewal in UK.

In response to these challenges, authors have speculated that collaborations may be more likely to be sustained where the following conditions are exercised:

• encouraging and fostering broader associational participation, such as local environmental organisations;
• governments providing small amounts of money with no strings attached to allow collaborative groups to reach and “renew” non government collaborators through initiatives such as community events;
• providing direct rewards to collaborative participants (e.g. new knowledge, social and professional networks and grant money).

An important area for further research is accordingly whether, and to what extent, these or other conditions are able to successfully support the continuing engagement of volunteer collaborators.

**Government support**

The provision of governmental funding or support, both as suggested in the latter conditions above and more generally for the purpose of supporting basic administration and organisation tasks of a collaborative group, is seen to be particularly vital to the survival of successful collaboration. Given trends of agency load shedding, and the limits of scare governmental resources, this is a challenging condition to satisfy. However emerging empirical research has demonstrated that without adequate financial support, small collaborative

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327 Margerum, n 280 at 141 Fung and Wright, n 27, p 38; Freeman and Farber, n 11 at 870; Steinzor, n 235 at page 20 of “pdf”; John, n 280 at 19; Lawrence, n 116 at 13-14.
328 Curtis, n 93, p 447; Lawrence and Cheshire, n 115 at 1-6, 9.
329 Ewing, n 87, p 393, 405-406; Bellamy et al, n 87, p 3-5.
330 Taylor et al, n 146, p 76.
332 Taylor et al, n 146, p 76.
333 Sabatier et al, n 265, p 184; Fung and Wright, n 27, p 32, 37-38.
334 Fung and Wright, n 27, p 38.
335 Margerum p 141; John, n 9, p 239; Dovers, n 317, p 519.
336 See generally Beeson and Firth, n 118.
groups can easily be overwhelmed, spending more time and resources trying to sustain their group than in addressing environmental issues.\textsuperscript{337}

Part of the problem is the fact that sufficient funding can be especially difficult to obtain.\textsuperscript{338} Indeed, funding is often reported as being too short term in nature to allow collaborative groups to effectively sustain their activities,\textsuperscript{339} or too difficult for small community based organisations to obtain and manage effectively.\textsuperscript{340}

A range of authors have nevertheless begun to propose solutions to these issues. Design conditions such as nested arrangements (akin to Ostrom’s design principle number 8) have been suggested as one avenue to obtain more apposite funding for local collaborations. Here, higher regional levels can attract additional grant funding for the lower local level collaborations and allow pooling of resources.\textsuperscript{341} Of course this requires the nested model to overcome the inherent challenges mentioned above,\textsuperscript{342} such as achieving power sharing between agencies/governments at higher regional or state scales.\textsuperscript{343}

A similar role to assist groups to obtain funding has been identified by John who suggests an outside “sponsor” in the form of a top agency manager or elected official can act to facilitate funding and information to support the collaborative process.\textsuperscript{344}

Outside of NEG literature, work on collaborative governance in security by Shearing and his collaborators has demonstrated that the use of block grant funding to local community-based institutions can, among other things, be an effective means of resourcing and sustaining such initiatives.\textsuperscript{345} Such an arrangement can involve government (or some other source) granting collaborative groups a “lump” sum of money. A small percentage of the grant can be earmarked for the work and administration of the partners, and the remainder could be made available to support activities of the group as a whole.\textsuperscript{346}

Overall, the success of these proposals in sustaining different NEG groups remains an under examined issue, and there is an acknowledged need for further investigation of

\textsuperscript{337} Bonnell and Koontz, n 289 at 163.
\textsuperscript{338} Freeman and Farber, n 11 at 870, 903; John, n 280 at 19; John, n 9, p 239, 241; Steinzor, n 235 at p 20-22 of “pdf”.
\textsuperscript{339} Margerum, n 280 at 149-150; Bonnell and Koontz, n 289 at 159; Taylor et al, n 146, p 79.
\textsuperscript{340} Taylor et al, n 146, p 79.
\textsuperscript{341} Margerum, n 280 at 141.
\textsuperscript{342} Bonnell and Koontz, n 289 at 161, 163.
\textsuperscript{343} Margerum, n 280 at 144-146; See also Bonnell and Koontz, n 289 at 161, 163.
\textsuperscript{344} John, n 9, p 239, 241-242.
institutional design and forms of government assistance that might best address organisational challenges that groups face over the long term.347

What happens to groups as they achieve their goals?

The relationship between survival and outcomes achieved by collaborative group also remains a controversial and under explored issue.348 As noted above, successfully improving the environment is often said to be one of the most important factors in ensuring benefits outweigh the costs for volunteer collaborators, and thus ensuring that they maintain their involvement. However even when collaborations are successful in achieving results, it also possible that returns from these gains may diminish over time, and non government collaborations may find the experience less rewarding than they had imagined.349 Engagement may consequently dim from exhaustion and disillusionment.350

Indeed, the challenge of maintaining collaborative momentum once many of the initial objectives have been substantially achieved raises broader policy questions of whether it is desirable for NEG collaborations to be sustained per se.351

On the one hand, from a cost benefit perspective it could be argued that sustaining a particular collaborative group that has achieved most of its initial objectives is undesirable, not least if the collaboration relies on continued support of scarce governmental resources that could be far better spent addressing other more serious environmental problems.352

However as suggested above, for others in the literature sustaining collaboration may be desirable for the purposes of ongoing adaptive management, and because collaborative institutions that engage citizens can act as a means of building civic capacities, enhance democracy and provide active networks for addressing other problems and environmental issues.353

These issues have led to a range of questions being identified in the literature that demand further research, including what happens to the participants when a collaborative initiative has

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347 Head, n 85, p 145; Bonnell and Koontz, n 289 at 165.
348 Koontz et al, n 21, p 183; Lubell et al, n 166, p 293.
349 Fung and Wright, n 27, p 38.
350 Fung and Wright, n 27, p 38.
351 Lubell et al, n 166, p 295; Dovers, n 317, p 518.
353 Koontz et al, n 21, p 183; Fung and Wright, n 27, p 27-29.

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achieved its goal? How long do collaborative institutions generally survive and how long should they survive to be useful? How and why do collaborative efforts end? \(^{354}\)

These and the other issues raised above are revisited in Chapter 8, where an investigation of three NEG case studies reveals a number of key lessons for NEG theory into the conditions for sustaining successful collaboration.

### 2.4.2 Issues regarding NEG’s Participatory and Deliberative Aspirations?

Like the issue of collaboration, NEG theory on successfully designing and implementing participatory and deliberative approaches to governing environmental problems has raised a range of important and complex theoretical and empirical questions. \(^{355}\) Many of these questions are raised in the context of non-government participation and deliberation in collaborative groups. As noted above, non-government involvement in collaborative groups is commonly expected to meet procedural criteria such as participation that is inclusive and/or representative of affected interests, and decision-making that adheres to conditions laid out by a deliberative ideal. As I now turn to explain, there are similarities and variations in these specific criteria, as well as the conditions proposed for securing them, with many of the later remaining contentious. \(^{356}\)

#### Inclusiveness

The criterion of inclusiveness relates to the issue of who is eligible to participate? \(^{357}\) Commonly, this is taken to be all those non-governmental actors who are affected. \(^{358}\) Of course this begs the question: who is “affected”, and different definitions are adopted in the NEG literature, such as “stakeholders”; \(^{359}\) those “most affected”; \(^{360}\) or those within a defined “place”

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\(^{354}\) Bonnell and Koontz, n 289 at 154; Lubell et al, n 166, p 294-295; Koontz et al, n 21, at 183; Fung and Wright, n 27, p 27.

\(^{355}\) Some relevant empirical issues are raised in the discussion below. Some of the key theoretical questions relate to ideas of “democracy” and theories of “democratic legitimacy”. See for example: Karkkainen, n 17 at 239 (asking “if a distinctive new flavor of participatory democracy is emerging here, by what theory of democratic legitimacy can it be justified, evaluated, and held accountable?”); Sabel and Simon, n 215, p 403 (noting that issues of accountability have allowed the discussion of democratic legitimacy to be deferred, and that new governance in the end, will “require us to rethink the very ideas of democracy on which our inveterate ideas of accountability are founded”).

\(^{356}\) Moore, n 98, p 127.

\(^{357}\) Fung, n 171 at 67.

\(^{358}\) As De Burca and Scott put it, “new governance processes generally encourage or involve the participation of affected actors (stakeholders)”; De Burca and Scott, n 137, p 3.

\(^{359}\) See for example: Freeman and Farber, n 11 at 895; Trachtenberg and Focht, n 178, p 57, 29; Head, n 85, p 148

\(^{360}\) Fung and Wright, n 27, p 16, 18.
or “community”. Others suggest a broader interpretation that includes future generations, non-human objects and those affected outside a specific geographic boundary.

Within these various criteria, the common conditions imposed for a given collaborative forum is that its institution place few restrictions on which non-government actors can participate (eg. “open door” policy for all who are “affected”), or that those likely to be “affected” by a decision should at least be represented in the decision-making (as discussed below).

Representation

The second criteria of representativeness overlaps with the first and recognises that constraints on group size and differences in power and capacity mean that not everyone who is affected may or can participate. This means concepts of “representativeness” are often drawn upon. While some authors remain abstract, or overlook the role of representation in their visions of more direct participatory democracy, many NEG theories emphasise representation in either a “principal agent sense” or more commonly, but overlapping, in a form of “descriptive sense”.

The former emphasises representation where participants are spokesersons/agents and are accountable to particular affected interests/principals. Debates exist about the conditions for securing a reliable principal/agent relationship, with some scholars suggesting only formal mechanisms such as direct elections of representatives will be effective. Others propose

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361 Cannon, n 273 at 379.
362 See for example Moore, n 98, p 127-128; Lawrence, n 116 at 11; For further see: Dryzek J, Deliberative Democracy and Beyond (Oxford UP, 2000) p 152-153.
363 See for example: Cohen and Sabel, n 25 at 332-333 (“open to providers and parities affected by the extent and manner of provision…open meetings, with equal rights to participate in discussions and decision-making for all affected parties”); Karkkainen, n 12 at 75 (“the perceived legitimacy of the institutional arrangement rests in large measure upon its open and participatory character”); Freeman, n 5 at 22 (“Participation by interested and affected parties in all stages of the decision-making process”); Leach, n 178 at 101 ( providing a normative framework for assessing democratic merits of collaborative public management and noting that “an inclusive process places few formal restrictions on participation”).
364 Moore and Rockllof, n 123 at 259, 268 (noting that the “ideal of democratic decentralisation” makes “normative statements regarding fairness and decision making” that include (i) in democratic societies, those likely to be affected by a decision should be involved (or at least represented) in the decision making”); See also Ribot J, “Representation, Citizenship and the Public Domain in Democratic Decentralization” (2007) 50(1) Development 43 at 45; John, n 9, p 231-232, 236, 238.
366 See for example Cohen and Sabel, n 25 at 332-333 ( noting “very little can be said in general terms about the requisite representational form…there is every reason to expect at least as much variation as we currently see in polyarchies”).
367 See for example Fung and Wright, n 27, p 24, 26, 33-34.
368 Parkinson, n 365, p 30.
369 Parkinson, n 365, p 30.
370 Seidenfeld M, “Empowering Stakeholders: Limits on Collaboration as the Basis for Flexible Regulation” (2000) 41 Wm and Mary L. Rev. 411 at 487 – 500; Ribot, n 364 at 45; See also Trachtenberg and Focht, n 178, p 59; Moore and Rockllof, n 123 at 267-268.
informal requirements, such as a volunteer, or appointed participants maintaining active communication with those they "represent". At best it remains unclear as to when and which form of principal/agent representation can meet a normative criterion of ensuring representatives are legitimate proxies for the views of their constituents.

The second but overlapping form of representation, the descriptive form, requires that non government representatives ideally reflect divisions, perspectives and interests of those who are affected. Authors accordingly tend to emphasise a broad expectation of "equal" or roughly "balanced" representation, particularly sensitive to less powerful or marginalised groups. This includes, for some authors, environmental groups or government officers acting as proxy representatives of those that cannot represent themselves (eg. future generations and/or nature).

The precise detail of this equal or balanced representation tends to vary with definitions of "affected". However, regardless of how one defines and measures such "balance", theories generally propose base conditions for meeting this criterion such as procedures of representative elections or more commonly, voluntary self selection in an open system of representation.

The latter condition is seen by some commentators to pose a daunting impediment to NEG's participatory and deliberative aspirations. This is because in a process of voluntary self-selection, it is typically only those who hear about the opportunity and have the time and resources to participate that are represented. Connected to this issue are concerns that citizens in contemporary developed societies are generally too apathetic and consumed with private life to put forth the time, energy, and commitment required. The corollary is that under conditions

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371 Cohen J and Fung A, "Radical Democracy" (2004) 10(4) Swiss Journal of Political Science 23 at 30, (suggesting "democratic governments offer opportunities for any citizen to participate in direct deliberations, and at the same time that those who do participate are in networks with other citizens with whom they informally confer, even if those others are not directly involved in decision-making"); Trachtenberg and Focht, n 178, p 59; Mansbridge J, "Practice-Thought-Practice" in Fung A and Wright E (eds), Deepening Democracy: Institutional Innovations in Empowered Participatory Governance (Verso, 2003) p 194.


373 Parkinson, n 365 at 30.

374 See for example: Karkkainen, n 12 at 75-76 ("Participants typically include all state and nonstate parties who believe they have a sufficient stake in the outcome to justify the necessary investment of time and other scarce institutional resources..."key actors are invited to join in the governance process, based on rough equality among participants").

375 Moore, n 98, p 129.

376 For some examples of different criteria see Mansbridge, n 370, p 175-176, 193-194; Trachtenberg and Focht, n 178, p 59; Freeman and Farber, n 11 at 908.

377 Trachtenberg and Focht, n 178, p 59; Ribot, n 185, p 3, 13.

378 Fung, n 184 at 342; Karkkainen, n 12 at 75; Trachtenberg and Focht, n 178, p 59.


380 Fung, n 184 at 342; Margerum, n 280 at 141.

381 Fung and Wright, n 27, p 37-38.
of volunteerism, representation may end up skewed towards the richer, more educated people of an affected population or towards the same groups and "usual suspects" that have already had influence over decision making, rather than "ordinary citizens''. This is a particular concern for NEG theories that seek broader ideals of a more participatory and radical democracy.

Of course, the difficulties of volunteerism have been a long-standing issue for many governance initiatives and NEG scholars are fully conscious of the challenges it poses. Common responses, although not the only ones, are to suggest design conditions to overcome barriers that may prevent participation by ordinary citizens and/or achieve requisite balance of representatives in a collaborative institution or forum. These include the following suggestions derived from new governance theory and emerging, but limited, empirical work:

a) designing reasonable time, skills and resource demands of the NEG endeavour;
b) designing the NEG approach to involve an appropriate incentive to foster representation of marginalised groups and ordinary citizens (i.e. designing the NEG experiment to address environmental issues and deliver outcomes that are acutely important to ordinary citizens);
c) conducting education and community activities to broaden interest and engagement from wider affected interests;
d) government agencies funding underrepresented interests, acting as proxy representatives or directly focusing their own financial and human resources to determine which parties ought to participate in which collaborative forums;
e) organisers of the collaborative group ensuring appropriate representation, perhaps following government imposed procedural requirements on representation; and
f) legal frameworks that make funding to a collaborative forum conditional on meeting membership conditions.

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382 Fung, n 184 at 342.
384 See for example, the experience of Landcare and ICM: Curtis and Lockwood, n 91 at 66; Curtis, n 93, p 452-453.
385 Given the difficulty of achieving full representation of non government stakeholders, some authors have suggested that if full representation is not achieved then those that are represented must consider the testimony and expressions of concern by the full range of non governmental stakeholders; Trachtenberg and Focht, n 178, p 59.
386 Fung, n 184 at 342.
387 Fung, n 184 at 342.
388 Abers, n 383, p 200.
390 Trachtenberg and Focht, n 178, p 59; John, n 9, p 231-232, 236, 238; Freeman and Farber, n 11 at 908.
391 Lane, n 74 at 292.
392 See for example Cohen and Sabel, n 25 at 332-335.
One particular but not insurmountable shortcoming with condition (f), at least in view of Taylor’s studies in the UK, is that the potential availability of funding is likely to attract representatives from organised interests who are seeking funding for their organisation, as opposed to “ordinary” citizens or other sought-after representatives.\(^{393}\)

More generally, a noted\(^ {394}\) lack of empirical evidence on representation and participation patterns in different and varied NEG institutions\(^ {395}\) has left NEG open to a range of commentators who remain unconvinced that the above conditions can necessarily ensure “real participation”.\(^ {396}\) For that reason, there have been various calls in the literature for research into exactly what kinds of representation and participation are actually occurring in practice and what conditions caused these patterns.\(^ {397}\) Particular questions also remain as to securing representation of environmental interests, a matter I return to discuss below.

**Deliberative decision-making**

In addition to concerns of inclusiveness and representativeness of collaborative forums, criteria of decision-making are also relevant. For present purposes it is not necessary to detail the specific variations between ideals of the deliberative\(^ {398}\) or “negotiation” style decision making that typically inform NEG decision making processes.\(^ {399}\) However it is relevant to note that both procedures generally require, *inter alia*,\(^ {400}\) open and honest communication, all relevant information being available and utilised, and parties giving reasons, arguments, and

\(^{393}\) Taylor, n 145, p 185-186.

\(^{394}\) Fung and Wright, n 27, p 34; Steinzor, n 235 at fn 20 and 21, page 8 of “pdf”; Sunstein, n 351, at 28-29.


\(^{397}\) Collaborative Democracy Network, n 171 at 169; Leach, n 178 at 108; Karkkainen, n 13, p 222-223; Karkkainen, n 17 at 238-239.

\(^{398}\) See for example “ideal deliberative procedure (Cohen, n 28, p 74-75) or Habermas’s “ideal speech situation” (Habermas J, “Toward a Theory of Communicative Competence” (1970) 13 Inquiry 360).


\(^{400}\) Procedures of negotiation and deliberation also typically emphasise the abovementioned necessity of including representatives from all relevant stakeholders and/or perspectives; Sabatier et al, n 265, p 195.

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principles to reach some form of mutual or workable agreement, rather than say relying on coercion, bargaining or an imbalance of power or resources.\textsuperscript{401}

One of the primary concerns in the literature is that meeting these demanding conditions in practice may be difficult, if not impossible, given the reality of power and capacity imbalances among decision makers.\textsuperscript{402} Two of the more controversial issues arising from power disparities relate to the danger that decision-making will be dominated either by (i) more well resourced, knowledgeable or skillful non governmental parties such as industry;\textsuperscript{403} and/or (ii) those typically accustomed to influencing decisions such as bureaucrats and government agencies.\textsuperscript{404}

In terms of the former, some authors remain concerned that most non-governmental actors will not have the capacity to match industry’s expertise in scientific and technical issues, or their ample resources.\textsuperscript{405} Leading NEG authors have accordingly tried to counter such concerns through suggesting the need for appropriate power balancing conditions. Some authors, for example, contend that harsh default rules\textsuperscript{406} or some form of government assistance is needed (eg. funding, technical assistance or other support) to ensure information is revealed and equality fostered.\textsuperscript{407} Steinzor, however, questions the latter, arguing that any such funding will be too small to be effective,\textsuperscript{408} and/or that direct assistance from government officers will be ineffective because the experts who work for industry will overwhelm government efforts.\textsuperscript{409}

Such “assistance” also raises the second concern: potential dominance of the decision making process by government officials. This concern resonates with the long recognised criticism raised by Arnstein\textsuperscript{410} and others of supposedly participatory public fora that instead serve as spaces in which governments create the illusion of popular control, while still making the decisions (in the “back room” or through other subtler use of the levers of power which they control).\textsuperscript{411} This is a complex issue, given that most NEG approaches involve non-government

\begin{thebibliography}{1}
\bibitem{402} Sturm, n 213, p 331.
\bibitem{403} Farber, n 396 at 24; Steinzor, n 379 at 142.
\bibitem{404} Abers, n 383, p 200; Head, n 239, p 54-57.
\bibitem{405} Steinzor, n 235 fn 41, 97 page 9 and 18 of “pdf”.
\bibitem{406} Fung and Wright, n 27, p 15, 23-24; Cohen, n 28, p 74.
\bibitem{407} See for example Freeman, n 5 at 32 (“In order to prevent well-resourced groups from dominating deliberative processes, the agency may provide technical assistance grants or other needed support to consumer or community groups”).
\bibitem{408} Steinzor, n 235, page 19 of “pdf”.
\bibitem{409} Steinzor, n 235, page 19 of “pdf”.
\bibitem{410} Arnstein, n 181 at 217; Ross et al, n 171 at 205.
\bibitem{411} Abers, n 383, p 200.
\end{thebibliography}
actors deliberating or negotiating with professional government officers, who may dazzle the untrained or uninitiated and impose their preferences with little meaningful discussion.412

Perhaps the most promising condition for balancing power between government officials and citizens (or indeed industry and community members), is Fung and his collaborator's ideas on "countervailing powers":413 Akin to earlier notions of tripartism,414 the term countervailing power is used to describe a variety of mechanisms (such as public interest groups) that reduce, and perhaps even neutralize, the power-advantages of ordinarily powerful actors and thus yield the benefits of democratic governance.415

However the issue of generating countervailing power remains problematic. Fung and Wright do not yet have a theory as to the mobilization of countervailing power or how much is enough to achieve the democratic potential of new governance designs.416

The smooth conversion of current national or state environmental interest groups to collaborative forums is arguably prevented by issues of scale (e.g. under resourced national or state public interest groups may struggle to engage in numerous localised collaborations) and their cognitive frames (i.e. adversarial public interest groups versus collaborative forums).417 Fung and Wright accordingly speculate that appropriate collaborative countervailing power sources may include:

• locally organised adversarial organisations participating in collaborations; and

• larger social movements with local affiliations participating in collaborations.418

However, barriers may also remain regarding the willingness of these local organisations to collaborate. Like their national or state counterparts, they too may possess adversarial cognitive frames that may lead participants to be suspicious of proposals for collaboration.419 Furthermore, the fact that their existence depends on "capricious factors" (e.g. factors that give rise to social movements as well as lower barriers to collective action generally) may mean local...
environmental interest groups will be strong in some areas but weaker or non-existent in others.420

Even if the participation of local environmental interest groups is secured, some authors have cautioned that such countervailing groups may not necessarily act to further the interests of the general public, nor have the necessary political vision or expertise to countervail against wider dominant social and political powers.421 Questions also remain as to how they can simultaneously be harnessed through participation in NEG and yet remain sufficiently “outside” to perform their countervailing function.422

Sharing the above concerns, some authors have hypothesised that the adequacy of environmental or other interests’ representation in locally based collaborative processes may be improved by the introduction of nested sets of collaborative arrangements (i.e. local, regional, state and national).423 This can inject a larger scale from which to identify individuals and formal organisations to be represented in decision-making (eg. providing an avenue to bring in state environmental interests).424 The potential of this approach however remains largely untested in practice.425

Ultimately, the above doubts about national and local environmental interests meaningfully participating in collaboration have led some commentators to suggest that localised and “place based” collaboration will effectively disenfranchise stakeholders who favour environmental protection.426

Facing these questions, Fung and Wright and others accordingly urge the need to study the roles, forms, and sources of political power in the distinctive structure and politics of collaborative approaches to governing.427 Chapter 6 responds directly to these calls and the other issues raised above, to examine through three case studies the conditions under which NEG can achieve meaningful participation and deliberative decisions making. Doing so, the findings in the chapter provide some vital insight into the conditions for achieving inclusive and

420 Fung and Wright, n 331, p 267, 283-284.
422 Some authors such as Taylor and her colleagues have used their research in the UK to suggest that so called “insider” and “outsider” strategies are dependent on each other and both types of approaches and organisations are useful and necessary; See Craig et al, n 130 at 233-236; Sturm, n 213 at 331.
423 Marginum, n 280 at 145, 148.
424 Marginum, n 280 at 145, 148.
425 Marginum, n 280 at 145, 148.
427 Fung and Wright, n 331, p 286; Collaborative Democracy Network, n 171 at 169; Koontz and Thomas, n 245 at 115; Karkkainen, n 17 at 239; Shane, n 415 at 154-155; Sturm, n 213, p 331.
representative NEG institutions and reveal some important empirical examples of relatively novel countervailing power arrangements that may be necessary for securing meaningful participation by less powerful groups in decision making.

2.4.3 When and how can NEG foster effective learning and adaptation?

There has been little theorising, or research into the existence and operation of practical mechanisms for learning and adaptation.\(^ {428}\) This has left NEG open to criticism for paying insufficient attention to whether and how actors can gather, analyse and act on information about shortcomings in their practice.\(^ {429}\)

There are of course a range of different issues and debates associated with the three different learning and adaptation ideas under this third defining feature of NEG. Reflexive law approaches, for example, seek to set up processes for self-regulation that instil self-critical thinking, learning and adaptation. However some authors suggest its success may depend on additional conditions other than the processes themselves. That is, whether sufficient incentives exist to both drive regulated actors to improve environmental performance and/or ensure their commitment to using and following the process.\(^ {430}\)

In the case of pragmatism and adaptive management approaches, there is still very little known about the conditions and operating mechanisms under which collaborative groups will best conduct monitoring and evaluation processes to achieve effective learning and adaptation.\(^ {431}\)

The few studies that have explored these issues in the context of NEG approaches such as Habitat Conservation Plans\(^ {432}\) and Integrated Catchment Management,\(^ {433}\) have revealed that collaborators often lack the capacities, or support to ensure effective learning and adaptation. This and other research,\(^ {434}\) suggest that effective learning and adaptation may depend on conditions including available monitoring and science technologies,\(^ {435}\) penalty default rules to...
compel parties to take necessary action,\textsuperscript{436} and funding and information support.\textsuperscript{437} However, whether governments and/or collaborative groups will be able to source such technologies and funding for the likely extensive and costly ongoing monitoring of outcomes/trends required for complex environmental problems remains uncertain.\textsuperscript{438}

Similar “knowledge gaps” exist regarding NEG approaches that seek more “systemic learning”. Beyond the architecture outlined by democratic experimentalism,\textsuperscript{439} and studies of the OMC in the EU,\textsuperscript{440} there have been few examples or investigations of NEG structures for systemic learning in practice.\textsuperscript{441} Accordingly, an important area for research is the investigation of conditions under which local experiments can be linked and central monitoring can be conducted successfully to foster systemic efforts to refine policy determinations, diffuse the most successful models, and to learn from the errors of the failures.\textsuperscript{442}

One final challenge for fostering successful learning and adaptation in NEG is the conditions of accountability. Most learning structures require provisional decision-making, flexibility and discretion. These characteristics potentially expose NEG to abuses of discretion and power.\textsuperscript{443} However the paradox is that limiting discretion to lower the risk of such defects will likely frustrate the goals of learning and adaptation.\textsuperscript{444} The answer, according to many NEG scholars, may lie with successfully designing “new” forms of accountability.

Given this link between accountability structures and effective learning and adaptation, these two features of NEG are considered together in chapter 7. In particular, chapter 7 examines both reflexive law and adaptive management approaches to learning and adaptation, as well as attempts at more systemic learning in practice. The findings reveal a range of relevant insights into the above debates and questions and point to some key conditions for NEG approaches to best promote learning and adaptation.

2.4.4 Issues regarding “new” forms of accountability

The final feature of NEG is “new” forms of accountability. Accountability itself is an issue that has raised numerous broader debates within the new governance literature, many of which

\textsuperscript{436} Karkkainen, n 43 at 978, 981.
\textsuperscript{437} Thomas, n 13 at 167, 169; John, n 9, p 239; Freeman and Farber, n 11 at 889.
\textsuperscript{438} Head, n 85, p 145.
\textsuperscript{439} Dorf and Sabel, n 20; Sabel et al, n 4 at 4.
\textsuperscript{440} See for example: Sabel and Zeitlin, n 128.
\textsuperscript{441} Camacho, n 428; Thomas, n 13 at 156-158; Karkkainen, n 13, p 218.
\textsuperscript{442} Head, n 85, p 146; Karkkainen, n 17 at 243; Paton et al, n 123 at 262; Fung and Wright, n 27, p 32.
\textsuperscript{443} Freeman and Farber, n 11 at 893-894; Hornstein, n 241 at 949, fn 197; Doremus, n 234 at 52, 88; Freeman, n 5 at 83-87; Karkkainen, n 43 at 963.
\textsuperscript{444} Freeman, n 5 at 87-91; Wondolleck and Yaffee, n 16, p 231-237.

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continue today. However, important empirical questions also remain. Investigating the operation of some specific “new” mechanisms and approaches to accountability raised in the NEG literature in practice is seen to have particular merit as it is rare within the new environmental governance literature to find empirical examination of the “is” of accountability as opposed to “the ought”.446

Accordingly, there is particular benefit in focusing attention on the structures and processes of accountability in a real world context and in exploring the conditions under which effective “new” forms of accountability are most likely to be achieved.447 One critical question is the extent to which NEG institutions can be perverted into rent-seeking vehicles and the efficacy of efforts to check this tendency.448 Another relates to performance of NEG in dealing with the uncomfortable dilemma raised in most debates over accountability, namely how to give sufficient autonomy to NEG groups for them to achieve their learning and implementation tasks while at the same time ensuring an adequate degree of consistency and control.449

Certainly the NEG literature contains a range of suggested conditions and “new” mechanisms for ensuring accountability, although there is little agreement on these issues and even less empirical research to assist in choosing between them.

Accountability in reflexive law inspired process-based approaches typically focuses on the features of the desired system and the adequacy of actual management systems.450 However, a noted shortcoming of ensuring accountability for process, rather than performance, is that there is no guarantee that results will be achieved. As with learning aspirations, its success may depend on whether sufficient conditions exist to drive industry to improve environmental performance and ensure their commitment to using the management system.451

Accountability for performance452 is usually sought through the setting of performance standards and many (but by no means all) theories have made concrete recommendations for how performance standards are to be set. For example, Karkkainen recommends setting continually refined regulatory bottom lines in the form of penalty default rules based on best available knowledge.453 Central here is recognition that actors will often need incentives to

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445 Not least, questions remain as to whether the fragmentation of responsibility and involvement of private and third parties in NEG serves to obfuscate and reduce (Freeman and Farber, n 11 at 906-907), add to (Freeman, n 48 at 665; Freeman, n 22 at 198-201; Weber, n 70 at 463-467) or transform NEG accountability (generally Sabel and Simon, n 215).

446 Weber, n 70 at 454; Fung and Wright, n 27, p 37.

447 Weber, n 70 at 454; Karkkainen, n 17, at 237; Sturm, n 213, p 331-334.

448 Fung and Wright, n 27, p 37.

449 Wondolleck and Yaffee, n 16, p 235-237; Scott, n 214 at 39; May, n 214 at 23.

450 As noted above, professional accountability, third-party certification and independent auditors may all play an important accountability role; Freeman, n 5 at 30, 96; May, n 214 at 11,13.

451 Fiorino, n 205, p 413-416.

452 See for example Karkkainen et al, n 24; Karkkainen, n 43 at 992-997; Wondolleck and Yaffee, n 16, p 240-241.


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reveal information, and it is necessary to focus their attention on setting locally tailored and objectively measurable environmental performance targets. Doubts remain however whether government or collaborators will be able to meet the significant costs of generating data to set meaningful standards, given that establishing baseline conditions of the ambient environment and the implications of its contamination is often extremely demanding. If they cannot, holding groups accountable for performance becomes tenuous.

If enough information can be generated to set meaningful performance standards, collaborations may be required (eg. by government) to identify indicators or methods of assessing performance, and then monitor and report on their adherence to performance goals. However questions remain as to whether and under what conditions local collaborations are capable of being effective monitors and able to produce data on which their performance can be assessed.

Furthermore, an ongoing concern in the literature is whether externally imposed requirements for more self monitoring and reporting on implementation or the use of government grants will be too prescriptive, stringent or onerous, and thus stifle flexibility, learning and effectiveness at collaborative level.

Assuming that a collaborative group is effective in monitoring and reporting on its performance, the information generated may be used by various forums to hold the group accountable for performance. While there are a range of questions and debates in the literature regarding different forums and their collective interaction, two important areas for research relate to conditions of effective government monitoring, and mutual accountability between collaborative groups.

Addressing these in turn, some authors suggest government agencies and officers can contribute to effective accountability by acting as the final decision maker, ensuring law is respected, limiting opportunistic behaviour and encouraging responsible practices among collaborators. Others remain sceptical of this approach, questioning whether agencies are likely to abuse what is often quite significant discretion in flexible adaptive management

454 Karkkainen, n 43 at 993-997; Karkkainen, n 79, p 310-314.
456 Sturm, n 213, p 331-334.
457 Wondolleck and Yaffee, n 16, p 241; Karkkainen et al, n 24 at 691; Freeman, n 5 at 29-31.
458 Fung and Wright, n 27, p 31-32; Gaines, n 67 at 16; Sturm, n 213, p 333.
Some also query whether cooperative relationships compromise the ability of government to maintain pressure for high levels of environmental performance. Here, access to courts for reviews of agency decision making and having the legislature guide and bound agency decision making through outcome orientated statues and regulatory bottom lines may help mitigate such problems.

However as some authors suggest, setting such goals themselves may be problematic particularly balancing specificity and generality (too much specificity may impede creativity and local context in site specific agreements while too little may invite abuse or let them be ignored). Another method for ensuring regulated parties are not able to dominate decision making is suggested by the democratic experimentalist model, where a more independent, central government monitor of groups has a key disciplining and accountability role. Vital here is the use of an administrative “destabilisation right” - a right to intervene, destabilise and disentrench efforts that evidenced chronic underperformance relevant to expectation, problems of capture, distortions arising form bargaining or other procedural defect (eg. political blockage).

Consistent with the ideal of experimentalism, this “destabilisation” would involve an agency offering a normative critique of the NEG group (rather than specifically prescribing new arrangements) that would fashion a fresh start. Monetary compensation or a requirement to offset adverse impacts may also be imposed. While an important and novel suggestion for fostering accountability, at present the effectiveness of this destabilisation right in NEG remains largely theoretical, with some authors questioning whether interventions justified by a group’s failure could thwart the necessary openness and engagement for collaborative problem solving to work.

In terms of more horizontal avenues for ensuring accountability for performance, some authors suggest effective forms of mutual accountability require that environmental interests gain a foothold in the collaborative group to provide a form of countervailing power.

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461 Doremus, n 234 at 87-88; Freeman, n 5 at 91-94.
463 Doremus, n 234 at 87-88; Freeman, n 5 at 91-94; Karkkainen n 43.
464 Dana, n 22 at 53-53. May, n 214; Freeman, n 5 at 92-95; Wondolleck and Yaffee, n 16, p 241.
466 Karkkainen also discusses another more “bottom up” destabilisation right based on citizen suit provisions; Karkkainen, n 79, p 318-320.
467 Karkkainen, n 79, p 31; Karkkainen, n 43 at 980-981.
468 Karkkainen, n 79, p 317.
469 Karkkainen, n 43 at 980-981.
470 Sturm, n 213, p 333.
471 Wondolleck and Yaffee, n 16, p 238; Freeman and Farber, n 11 at 905-906, 908.
472 Fung and Wright, n 331 at 271; Karkkainen, n 43 at 961-962.
raises questions noted above regarding the difficulty of environmental groups participating in NEG. Other authors however have questioned whether mutual interest\textsuperscript{473} in fact compromises the ability of collaborators to act as effective accountability mechanisms, particularly where localised collaborations favour more powerful “industry” interests under highly flexible and discretionary standards like those seemingly required for adaptive management.\textsuperscript{474}

Chapter 7 responds and provides some insights into many of these questions and debates by examining in practice the operation of various “new” forms of accountability across the three case studies of this thesis.

2.5 Conclusion

The focus of this chapter has been the emerging theory and research on NEG. Throughout the above discussion an ongoing tension between divergence and convergence in NEG scholarship has been at play. As we have seen, there are many diverse NEG experiments from across the globe that have been studied by scholars using a range of methodologies and applying a range of distinct theoretical rationales.\textsuperscript{475}

It is apparent however that we can still acknowledge such diversity without losing ourselves amongst the metaphorical trees. Drawing on emerging attempts to synthesise new governance theory, the figurative “forest” that is NEG took shape around 4 key, but broad groupings of approaches common across many NEG experiments and theories. That is, collaboration, participatory and deliberative aspirations, learning and adaptability, and “new” forms of accountability. While there is some variation in how these broad approaches are conceived by individual theories, it was suggested that each can be seen as a vital feature that defines NEG’s unique approach to governing the environment.

As we saw from the general normative claims made in the NEG literature, each of these four approaches is seen to promise a generally more effective and more democratic form of environmental governance than other traditional approaches. Taken together, these characteristics of NEG offer a “new” way of thinking about and creating arrangements for “good” environmental governance.

However, exactly whether, when and how NEG’s approach to governing can be successfully achieved in practice is not immediately clear. The current dearth of research into NEG in practice and the diversity of NEG theories has given rise to a range of debates and questions about exactly how “good” NEG can be achieved.

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\textsuperscript{474} McCloskey, n 421; Koontz and Thomas, n 245 at 113; Karkkainen, n 43 at 961.

\textsuperscript{475} Karkkainen, n 1 at 472, 496; Lobel, n 2 at 499-501.
The chapter proceeded to highlight those debates, to identify unanswered questions and gaps in knowledge and to highlight a significant lack of empirical research regarding the conditions under which each of NEG's defining approaches to governing may be successful secured in practice. As pointed out, subsequent chapters respond to these gaps and debates and seek to offer insights into developing better theory about the conditions under which NEG may best operate in practice.

Doing so it is guided by a primary research question: under what conditions can "good" NEG be achieved? More specifically, to answer this question five sub research questions are examined. These are:

• what conditions foster the emergence of successful collaboration?
• what conditions contribute to sustaining successful collaboration?
• what conditions foster meaningful participation and deliberation?
• what conditions foster effective learning and adaptation?
• what conditions foster effective “new” forms of accountability?

Before turning to investigate these questions, however, it is useful to outline the methodology of this research project and provide some background to the cases. These are the subjects of the next two chapters.
Chapter 3: Methodology - examining the conditions of "good" NEG

3.1 Introduction

From the previous chapter it will be apparent that much empirical research is still needed to understand what is working in NEG, what is not, and why. However, like most policy and governance processes, NEG is a complex phenomenon to study empirically, involving multiple public and private actors, and distinct institutions at local, regional, national and even international scales. There are also decidedly distinct views in the literature on appropriate methods, criteria, and standards for effectively evaluating NEG. Indeed, the lack of any agreed methodology makes the limited NEG empirical research that has been conducted thus far difficult to compare, synthesize, and learn from because the evaluation criteria, theoretical orientation (if any) and the basis for the methods chosen were not always clear. Ideally, agreed common criteria, weightings, and methods should be used to study NEG so as to enable studies to be fairly compared to each other. However, such methodological consensus seems a long way off and in the meantime, the best that individual research can do is to make transparent its own assumptions, methodologies and measures so as to facilitate efforts to compare and learn from its insights into NEG.

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3 There are various criteria for assessing processes, environment outcomes, social outcomes and NEG experiments: Conley and Moote, n 2 at 375.
4 For example empirical studies have sought to illustrate ideals, test theories, evaluated collaborative efforts against its own goals, or against another NEG effort; Conley and Moote, n 2 at 377.
6 Sabatier et al, n 5, p 11-12; Conley and Moote, n 2 at 373.
7 Conley and Moote, n 2 at 376, 382.
8 See particularly discussions in Conley and Moote, n 2.
9 Conley and Moote, n 2, at 376, 382.
Accordingly, it is essential that the logical basis of this empirical research project and its methods of data collection, interpretation and analysis be thoroughly explained. This is the purpose of the chapter, which will proceed in 5 main sections.

Section 3.1 of this chapter begins by clarifying the theoretical perspectives and knowledge claims on which this study is founded. Initially, a brief overview of the differences between quantitative and qualitative analysis is provided. This overview informs a discussion of why a primarily qualitative approach was selected. The focus of the chapter then shifts to the issue of knowledge claims and theoretical perspectives, discussing the ontological and epistemological assumptions of the research project.

Section 3.2 then introduces the strategies of inquiry used by this thesis, covering the process of and reasoning for the selection of this research project’s two strategies of inquiry, namely “adaptive theory” and a “collective case study” approach. Section 3.3 then focuses on key features of the research design, reflecting on its flexible and adaptable nature, before discussing how and on what grounds the cases and interviewees were selected.

Section 3.4 examines the methods of data collection and the process of data analysis used to answer this project’s research questions and explains how the thesis addresses a range of pertinent ethical and validity issues. Section 3.5 concludes by bringing together the three parts of this chapter and offering a summation of the project’s orientation, collection of data, interpretation and analysis of findings.

### 3.2 Theoretical Perspectives and Knowledge Claims

This section seeks to lay bare the methodological foundations of the thesis. Specifically the theoretical perspectives and knowledge claims on which this study, its inquiry and methods are based. This involves outlining the reasons for selecting a primarily qualitative approach to analysis before turning to discuss its ontological and epistemological assumptions.

#### 3.2.1 Qualitative and Quantitative Research
As outlined in chapter 2, this thesis' research is focused on answering the question: under what conditions can “good” NEG be achieved? This general question is broken down into the following 5 sub research questions that correspond to key defining features of “good” NEG:

- what conditions foster the emergence of successful collaboration?
- what conditions contribute to sustaining successful collaboration?
- what conditions foster “meaningful” participation and deliberation?
- what conditions foster effective learning and adaptation?
- what conditions foster effective “new” forms of accountability?

These questions are all focused squarely on developing an understanding of the conditions that impacted on the workings and effectiveness of NEG processes in practice. This naturally requires the exploration of a number of issues. These include the context and institutional arrangements of NEG, the thoughts, views, attitudes and practices of participants in NEG experiments, particularly regarding which conditions were important, beneficial and/or detrimental for successfully fostering the key features of “good” NEG.13

A qualitative approach is accordingly well suited to answering these questions because qualitative research has the capacity to embrace issues of context while also pursuing a preference for understanding meanings and consciousness of actors and events in the social world.14

Generally speaking, qualitative research15 can be characterised by a variety of methods16 and traditions17 that study and collect empirical materials, resulting in textual or narrative descriptions or analyses of moments and meanings in individuals' lives.18 This approach has

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14 Hammersley, n 13, p 165; Silverman, n 13, p 8; Neuman W, Social Research Methods : Qualitative and Quantitative Approaches (5th ed, Allyn and Bacon, 2003) p 166.
17 For an excellent summary of the variety of traditions in qualitative research see: Creswell J, Qualitative Inquiry and Research Design: Choosing Among Five Traditions (Sage Thousand Oaks, 1998) p 6.
sometimes been segregated and at odds\textsuperscript{19} with a more quantitative approach,\textsuperscript{20} characterised by numerical information and statistical analysis.\textsuperscript{21}

Although a more quantitative approach (using methods such as surveys, structured observation etc) could have been adopted to collect and analyse the workings of NEG in practice, such an approach was considered inappropriate for this study. Statistics and numeration of quantitative data have noted difficulty accommodating the complex and dynamic nature of collaborative efforts, their contexts and institutional design\textsuperscript{22} and are unlikely to ‘fully’ capture the experience of the participants in terms of the successes or failures in studying all the elements of NEG.\textsuperscript{23}

However, to the extent practicable quantitative data should be used to round out qualitative research,\textsuperscript{24} and for this reason the thesis does support its qualitative approach to researching NEG by utilising some limited quantitative data, albeit sourced from secondary documents and other sources.\textsuperscript{25} It does so particularly where qualitative research may be weaker or less appropriate than numerical and objective data (eg. numbers of participants, funding levels) to develop an understanding of the conditions that support the elements of NEG.\textsuperscript{26}

\textbf{3.2.2 Knowledge Claims and Theoretical Perspectives}

Regardless of the mix of qualitative or quantitative approaches to research adopted, there are many ontological (an outlook of social reality) and epistemological (a belief about knowledge/what can be known about reality) bases from which a researcher can approach their project.\textsuperscript{27} Broadly speaking, these beliefs form the “worldview” that defines for its holder the nature of the world, the individual’s place in it and the range of possible relationships to that

\textsuperscript{19} Creswell, n 11, p 4.
\textsuperscript{20} Quantitative research is social research strategy that primarily analyses patterns of covariation across cases, using methods that engender numeric information and apply statistical tests and models; Silverman D, \textit{Doing Qualitative Research A Practical Handbook} (Sage, 2000) p 3; Maxwell, n 18, p 4; Rabin C, \textit{Constructing Social Research} (Sage Thousand Oaks, 1994) p 190; Bryman A, \textit{Quantity and Quality in Social Research} (Unwin Hyman, 1988) p 11-12.
\textsuperscript{22} Conley and Moote, n 2 at 379.
\textsuperscript{23} Indeed, a study that relied primarily on quantitative research techniques may have been more likely to be open to possibilities of concealing rather than revealing important conditions and factors relevant to success or failure of the elements of NEG; Silverman, n 20, p 8.
\textsuperscript{24} See for instance: Maxwell, n 18, p 1; Silverman, n 20, p 11; Neuman, n 14, p 139.
\textsuperscript{25} Neuman, n 14, p 166.
\textsuperscript{26} Neuman, n 14, p 139.
\textsuperscript{27} Creswell, n 17, p 74.
world and its parts. This view of the world is typically referred to as a “paradigm” and has been discussed as forming a continuum that ranges from positivism at one end to constructivism at the other.

The ontological and epistemological assumptions made by this thesis lie roughly in between these two extremes and have been greatly influenced by the ontological and epistemological underpinnings of Derek Layder’s “Adaptive Theory” approach (AT). As discussed in more detail below, AT is a strategy of inquiry that represents an amalgam of different influences and approaches to research, and specifically emphasises the interaction between existing theory and ideas derived from empirical examination.

Guided by AT, this thesis’ ontology views social activity (perceptions and meanings) as conditioned and shaped by systemic phenomena (ideology, power, money, institutions), while acknowledging that the activity itself simultaneously serves to reproduce, sustain or transform these systemic features. Its epistemology incorporates the “internal” subjective point of view, which relates to social interaction. However, it also adopts a moderate (as opposed to a strict positivist) objective observer’s point of view to account for the fact that systems have their own “emergent properties” tied to the world of social interaction.

These knowledge claims enable a balance to be struck between the more objective concerns of positivist paradigms and the more subjective concerns of interpretive paradigms and grounded theory. This balance seeks to incorporate emic views of participants in NEG processes, while allowing for structural insights as a central part of social research. As a result, this thesis examines features of “good” NEG such as effective collaboration, participation and accountability in relation to experience and perspectives of participants, while also paying close attention to the institutional design and other contextual factors of cases.

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28 That is, the metaphysics that defines for its holder the nature of the world, the individual’s place in it and the range of possible relationships to that world and its parts; Guba and Lincoln, n 21, p 17, 21; Creswell, n 17, p 74-75.
29 Guba and Lincoln, n 21, p 17-24; Creswell, n 11, p 6; Neuman, n 14, p 68-94; Creswell, n 17, p 76-84; Silverman, n 20, p 77-78; Denzin and Lincoln, n 15, p 33-34.
30 For example, Guba and Lincoln identify “inquiry paradigms” that range through positivism, post positivism, critical theory (poststructuralism, postmodernism and a blending of the two) and related ideological positions (eg participatory inquiry, Feminism, materialism, neo-Marxism) participatory/cooperative and constructivism; Guba and Lincoln, n 21, p 17.
31 For an overview of Layder’s extensive work see one of his most recent books: Layder D, Sociological Practice Linking Theory and Social Research (Sage Publications, 1998).
32 Layder, n 31, p 1, 5.
34 Layder, n 31, p 141.
35 Layder, n 31, p 140-141.
36 Layder, n 31, p 140-143.
37 Layder, n 31, p 143.
38 Layder, n 31, p 146.

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Focusing on interaction between meanings and structural factors is particularly important to this research project given that a critical focus on the influences of structural factors, such as power and domination, are often central considerations in understanding and achieving key elements of good NEG's. For example, as we saw in chapter 2, a primary concern in the literature is whether, and if so when, NEG aspirations of meaningful participation and deliberation will be distorted by formal positions of authority, funding and other conditions that may give rise to power imbalances.

In summary, the ontological and epistemological assumptions of this thesis have been influenced by AT and focus on the interweaving of system elements with micro features of social life. Now that the reader understands the worldview of this study the next section turns to address the strategies of inquiry and considerations relevant to designing the research process.

### 3.3 Strategies of Inquiry that Inform the Research Project

The thesis' primary strategy of inquiry is the AT approach to research. The following discussion provides a detailed overview of this approach and researches and discusses why it was selected. A second supporting strategy of inquiry which is also used by this thesis is then discussed, namely a “collective case study” approach.

#### 3.3.1 Why Adaptive Theory?

The AT approach to research falls between deductive/theory-testing approaches and inductive/theory-generating approaches. More specifically, AT adopts, modifies and simultaneously combines the spirit and practical implications of the deductive “middle range theory” approach. It also looks at prior theoretical ideas and models that feed into and guide

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39 Neuman, n 14, p 81.
40 Layder, n 31, p 148-149.
41 Layder, n 31, p 148-149.
42 Layder, n 31, p 144.
43 Layder, n 31, p 5.

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research and the more inductive "grounded theory"\textsuperscript{45} approach that focuses on generating theory from ongoing analysis of data.\textsuperscript{46}

This synthesis offers an iterative strategy of inquiry that incorporates theory into research by using pre-existing theory to guide the study, while simultaneously generating theory from data analysis in the formulation and actual conduct of empirical research.\textsuperscript{47} In other words, AT facilitates the development of concepts and insights through adapting and shaping existing NEG theory to incoming evidence, while the data is simultaneously filtered through, and is thus adapted by, the NEG theory relevant to the analysis.\textsuperscript{48}

This approach to research has particular resonance with this thesis' purpose and methodological needs to develop better knowledge of conditions under which "good" NEG can be achieved. As we have seen, a significant portion of the limited empirical research into NEG often lacks a firm grounding in any one body of theory (with even fewer testing multiple theories).\textsuperscript{49} Furthermore, many key NEG theories are closer to ideals than descriptive or explanatory reflections of what works in practice.\textsuperscript{50} In view of this, AT's emphasises on simultaneous anchorage in theoretical materials and empirical data offers a particularly apt approach to closing these gaps between theory and empirical research to advance NEG theory and our understanding of the conditions for achieving NEG's vision of good governance.

The direct engagement with empirical material also aids in clarifying existing debates by (i) testing out various explanatory claims; and (ii) reformulating, adding or qualifying the explanatory scope and domain of the original theoretical materials.\textsuperscript{51} Further, AT reinforces and enhances the capacity of the thesis to potentially develop new insights from analysis of empirical research that may have been overlooked by the still developing and nascent NEG theory.

Over and above these benefits, AT also remains open to other methodological approaches and can be employed alongside them.\textsuperscript{52} This is particularly relevant to this thesis which utilises a second supporting strategy of inquiry, namely a collective case study.\textsuperscript{53}

\textsuperscript{45} For information on grounded theory see: Glaser B and Strauss A, \textit{The Discovery of Grounded Theory} (Aldine, 1967).
\textsuperscript{46} Layder, n 31, p 19.
\textsuperscript{47} Layder, n 31, p 1 and 5.
\textsuperscript{48} Layder, n 31, p 3, 5.
\textsuperscript{49} Conley and Moote, n 2 at 377-379; Sabatier et al, n 5, p 11-13.
\textsuperscript{51} Layder, n 31, p 167-168.
\textsuperscript{52} Layder, n 31, p i.
3.3.2 Why a Collective Case Study?

Case studies are generally conducted and written to include either the simple presentation of individual cases or to arrive at broader generalisations based on case study evidence. In this regard, Robert Stake distinguishes between three types of case studies: (i) intrinsic case studies that are undertaken to gain a better understanding of the particular case; (ii) instrumental case studies that are undertaken mainly to provide insight into an issue or to redraw a generalisation; and (iii) collective case studies, which involve jointly studying a number of cases in order to gain a better understanding, or better theorising, about a still larger collection of cases such as a phenomenon, population or general condition.

For this thesis, a collective case study strategy of inquiry is particularly suited to achieving the research project’s goal of developing a better understanding and providing insights into the conditions under which “good” NEG can be achieved. Indeed, a collective case study framework can go some way towards capturing the diversity of NEG theories and experiments by incorporating different types of NEG experiments as cases that represent the broader phenomenon of NEG writ large.

As much of recent empirical scholarship on NEG has been limited to either individual case studies or studies within a single case setting, a comparative approach provides a valuable addition to the literature and can explore the effects that different features and variables have on NEG. In this sense, adopting a collective case study was deemed to improve the analytical benefits of the study, in particular allowing more comprehensive contrasts and comparisons to be made regarding NEG and its different forms and contexts. In addition, a collective case study approach may draw focus to complexities that require further investigation, as well as the limits of generalisability and NEG theory.

The methodological orientation of a collective case study approach can differ in terms of its analytical strategy, including following theoretical assumptions of the overall study, looking for rival explanations or seeking to provide a case description. This thesis follows methodology

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55 For an overview of other classification systems see: Stake, n 53, p 136-138.
56 Stake, n 53, p 136-138.
57 It provides a concrete framework suited to addressing the multiple units of analysis, namely the three NEG case studies; Lewis, n 21, p 52.
58 Stake, n 53, p -138, 156.
59 As discussed below the three cases being evaluated share enough characteristics typical of NEG to make this comparison meaningful; Conley and Moote, n 2 at 378.
62 Yin, n 54, p 53-54.
63 Stake, n 53, p 146.
author Yin’s preferred approach by applying theoretical propositions that led to the case study, which in turn guide the study’s objectives, design, research questions and reviews of literature, analysis and propositions. This ensures that the empirical based findings, generalisations and insights generated from the collective case study remain firmly focused on NEG scholarship and theory from which the research questions and focus of this research study were drawn.

Despite the benefits of the above case study approach, one of its primary challenges is that there will often be many more variables of interest than data points in the cases studied. However the combination of the collective case study approach with AT serves to mitigate the complications that can arise from this challenge by ensuring that extant theory and its propositions are used to direct and steer research, data collection and analysis (while still incorporating the detailed empirical information gained from the case studies and remaining open to ideas that emerge from the data).

Indeed, the application of these two complementary approaches to research facilitated this thesis to develop a robust research design, and also served to refine the process of case selection and methods of data collection and analysis. These steps are elaborated in the following sections.

3.4 Research Design and Process

This section discusses the design of the research process, reflecting on its general flexibility before turning to discuss the process of case and interviewee selection.

3.4.1 Flexibility in Research Process

The way a piece of research is planned and carried out is typically presented in methodology chapters as a series of sequential steps taken in a research project namely selecting a topic, sampling, the employment of data collection methods and techniques, analysis, and theoretical elaboration.

In contrast, AT suggests the steps of the research process are best seen as flexibly positioned and dependent on a number of factors. This view is arguably closer to the dynamic...
nature of how research occurs in practice, where the specific research topic and problem often come into focus as existing literature is reviewed and emergent ideas arise from research data.\(^{71}\)

Such flexibility certainly characterised this study, which commenced as a broad examination of new collaborative styles of governance and their capacity to fulfil environmental and other goals. However over the course of research this focus developed into a more precise analysis of the real world conditions under which key elements of NEG could be achieved in order to deliver “good” NEG.

While it is important that the dynamic nature of this study’s research process is acknowledged, for heuristic purposes the remainder of the chapter discusses the research process in a series of sequential steps, commencing with how and why the cases were selected, before turning to focus on considerations involved in interviewee selection.\(^{72}\)

### 3.4.2 Selecting Cases

There were two key steps involved in selecting cases for the thesis, and as will be explained below, central to both these steps was a desire to capture diversity.

The first step related to selecting suitable comparative case studies, namely examples of NEG experiments in Australia. In Australia, many of the most interesting and novel NEG experiments are government based NEG programs. The term “program” is used here to refer to a particular government policy or instrument such as National Landcare Program in Australia or Project XL in United States.

To identify programs that could potentially be the subject of a case study for this research, a review of Australian NEG literature was initially conducted. A process of scoping particular programs was then carried out, including contacting key stakeholders involved in NEG experiments, as well as academics interested in studying them. Using this information, three programs were selected as the case studies for this thesis.

The basis on which these cases were selected was reminiscent of a common qualitative research approach to case and interview selection known as purposive sampling.\(^{73}\) As the name suggests, it is an approach to selecting cases with a particular purpose in mind.\(^{74}\) While there are

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\(^{71}\) Layder, n 31, p 31-33, 166.

\(^{72}\) Layder, n 31, p 28-29.

\(^{73}\) There are many strategies that can be used for generating purposive samples. For a further discussion of purposive sampling see: Babbie E, *The Practice of Social Research* (8th Ed, Wadsworth, 1998); Neuman, n 14; Layder, n 31, p 46; Patton M, *Qualitative Evaluation and Research Methods* (2nd ed, Sage Publications, 1990) p 182-183.

\(^{74}\) Neuman, n 14, p 213.
a range of strategies on which cases could be selected (e.g. representativeness, homogeneity), in this thesis’ comparative case study approach, three key strategies/considerations contributed to the selection of the programs.

First, program selection was based in part on practical considerations. For example, the location of the program was an important consideration (e.g. to reduce costs of travel only cases in eastern states of Australia were considered).

Second, and more importantly, these programs were selected on the basis that they all shared the characteristics of “good” NEG outlined in Chapter 2. To do this a number of cases were reviewed, drawing on parliamentary speeches, legislation and guidelines, which helped to identify that at least some of their components embraced certain types of procedures, namely collaboration, participation and deliberation, learning and adaptation and “new” forms of accountability.

This rationale for case selection is obviously central to this thesis because it ensures the empirical data and comparative insights generated from the cases will span the key research questions and provide insights into when and how “good” NEG can be achieved. Given this significance, it is obviously crucial that the thesis fully substantiate how and to what extent each case study embodies the characteristics of “good” NEG. This is the specific task of Chapter 4, which draws on parliamentary speeches, legislation, guidelines and interviews with key policy makers to investigate and describe the cases’ objectives with respect to the main characteristics of “good” NEG.

The third and final consideration for the selection of cases was aimed at capturing diversity of conditions in NEG. The decision to use this selection criteria was motivated by the very real diversity in NEG experiments and scholarship, including the type of environmental problems addressed, the age of NEG experiments, the extent and nature of stakeholders involved and the unique institutional designs (see chapter 2). Accordingly, the three cases were selected to ensure they (i) involved pollution control and natural resources issues; (ii)

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75 See for example: Lewis, n 21, p 52; Creswell, n 17, p 63; Stake, n 53, p 152; Patton, n 73, p 182-183.
76 This is similar to the idea of convenience purposive sampling; Patton, n 73, p 182-183.
77 Conley and Moote, n 2 at 378.
78 Conley and Moote, n 2 at 378.
79 This is roughly similar to the idea of criterion and Theory-Based/Operational Construction strategy of purposive sampling; Patton, n 73, p 182-183.
80 Conley and Moote, n 2 at 378.
81 Conley and Moote, n 2 at 378.
82 Conley and Moote, n 2 at 378.
83 Conley and Moote, n 2 at 378.
84 This is similar to maximum variation: Patton, n 73, p 213.
85 In this sense the process of case selection was similar to what is known as “replication logic”, which emphasises focusing on prior theorising of different types of conditions and selecting cases to address a desire to have subgroups of cases covering each type; Yin, n 54, p 47, 52.
occurred at different scales of action; (iii) incorporated different types, ratios and roles for
government and non government stakeholders, (iv) were different in maturity and development,
(v) involved different policy contexts and (vi) different degrees of complexity.

By selecting for these types of diversity, the thesis aimed to ensure it examined an
extensive range of the different NEG approaches to governing, and accordingly shed light and
provided insights into whether and how different conditions, processes and contexts affect the
achievement of “good” NEG.86 Further, where different NEG institutions employ the same
institutional techniques or mechanisms, an examination of its impacts across a range of different
contexts can begin to shed light on the wider applicability of institutional designs for achieving
“good” NEG. Chapter 6, for instance, examines a number of institutional conditions common to
most NEG approaches (including the case studies) that seek to ensure representative
participation. However, the findings suggest that these processes appear likely to secure
adequate representation in only very specific contexts.87 The diversity ofNEG cases studies in
this thesis also has the virtue of enabling the thesis to simultaneously test theoretical claims
across a variety of different contexts. For example, chapter 5 examines competing claims about
the role of trust in the emergence of successful collaboration, with the findings suggesting that
the importance of trust may depend on certain traits of the environmental problem.

The above three criteria led to the selection of three cases: Environment Improvement
Plans (EIPs); Neighbourhood Environment Improvement Plans (NEIP); and Regional Natural
Resource Management (RNRM). As illustrated in Table 3.1 below, these cases ranged in
environmental issues and scales of action, from local areas affected by point source pollution
such as in the EIP, to large regional areas and natural resources such as RNRM. The programs
cover different mixes of stakeholders. For example, some programs involve few governmental
bodies (EIPs), while others comparatively involve much high numbers of government agencies
and different levels of government (NEIPs and RNRM).

While all cases rely on an approach that involves plan development, implementation and
monitoring and adaptation, the institutional structures and associated roles and responsibilities
for stakeholders also vary across the experiments. For example, some programs are directly
funded by government while others are not. Responsibilities such as implementing a plan also
vary, involving only one industry actor in EIP, the resources of the entire collaborative group in
NEIP, or the facilitation and use of government investment in RNRM. The programs also vary
in maturity, some being older programs such as EIP while others are comparatively young, as
with NEIP and RNRM.

86 Conley and Moote, n 2 at 378.
87 This is of course an overgeneralisation and chapter 6 qualifies this finding further.
Taken together, the foregoing differences also ensure the three cases broadly differ in
degrees of complexity. That is, the EIP contains a relatively small number of stakeholders and is
focused on one primary source of environmental pollution. The NEIP involves a much greater
mix of public and private stakeholders and addresses multiple diffuse problems across a
neighbourhood area. Finally, the RNRM case is even broader again, focusing on regional scale
and involving stakeholders from national, state, regional and local levels.

Finally, the programs all vary in policy contexts, involving either the environmental
regulator in Victoria (EIPs and NEIPs) or a Federal and Queensland government program
(RNRM). Notably, both EIP and RNRM programs are operational in multiple jurisdictions, so it
is worth briefly reflecting on why these particular policy contexts were selected for this thesis.

Regarding the EIP program, this NEG experiment and broadly similar initiatives,88 can be
found across a range of Australian states.89 This thesis selected the Victoria EIP program
because it was the pioneer, and remains the leading exponent of this approach in Australia. As
elaborated in chapter 2, this EIP program has received previous academic attention,90 however,
it was considered an apposite case for research in this thesis because most of the early research
was policy based, lacked a comparative aspect, and had not located the EIP initiative within the
then embryonic NEG literature.91

Regarding the RNRM program, as explained in more detail in chapter 4, RNRM is based
on two federal government programs know as Natural Heritage Trust (NHT) and National
Action Plan for Salinity and Water Quality92 (NAP) that ideally would have been delivered
uniformly across the nation.93 However the practical need for the federal government to engage
and reach agreement with unique state and territory governments to support these programs
resulted in differences between state jurisdictions.94

As such, short of a comparative study of examples of RNRM from all state and territory
jurisdictions (a task well beyond this thesis’ resources or time), the choice to study the RNRM
program necessarily carries with it a choice of a particular state and its own unique features and

88 See Environmental Protection Act 1994 (Qld), Ch 7, Pt 3 regarding Environmental Management Programs;
Environmental Management and Pollution Control Act 1994 (Tas) Pt 3, Div 7 regarding Environmental Improvement
Programmes.
89 Various forms of EIP can be found in South Australia, Western Australia and Victoria: See Environment Protection
Act 1993 (SA), ss 44, 54 (In South Australia the EIP is exclusively limited to bipartite relationships between the
regulator and enterprise); Environmental Protection Act 1986 (WA), s 62A; Western Australia, Department of the
Environment, Environmental Improvement Plans - Explanatory Document Western Australian Model (WA DOE,
2004); VEPA, Guidelines for the Preparation of Environment Improvement Plans (Publication 739, VEPA, 2002).
90 Wills I and Fritschy S, “Industry-Community-Regulator Consultation in Improving Environmental Performance in
93 For a useful discussion on these programs see: Head B, “Participation or Co-governance? Challenges for Regional
Natural Resource Management” in Evenole R and Martin J (eds), Participation and Governance in Regional
Development (Ashgate, 2005).
94 Head, n 93, p 144.
considerations. In this thesis, the choice to study RNRM in Queensland, as opposed to other manifestations in eastern states, was made on the basis that the RNRM program in Queensland offered a different policy context to the other two NEG experiments in Victoria, as well as a relatively unique approach to RNRM program. Indeed, compared to Victoria, which has a mature statutory NRM approach, or New South Wales, which recently created a statutory role for its RNRM bodies, the RNRM program in Queensland is “community” rather than statutory based. This arguably gives RNRM in Queensland a much stronger NEG flavour, with its emphasis on more participatory, collaborative endeavours without formal legal authority. Furthermore, although RNRM in Queensland has sparked scholars’ attention (see chapter 2), research so far has generally led to calls for further empirical evaluation of the many issues that arise from RNRM. These include questions such as whether RNRM amounts to devolution of power rather than responsibility? Whether there are opportunities for groups to learn from each other; and whether groups are adequately funded to fulfil responsibilities expected of them.

Having selected three programs as comparative case studies the first step of case selection had been completed. However, across the three programs there were approximately 70 EIPs collaborations and 7 NEIPs collaborations in Victoria and 14 RNRM collaborations in Queensland that were all operational or being negotiated at the time of writing. A second step in case selection was accordingly needed which involved searching and selecting examples of these programs from these many “on ground” examples. For ease of reference, as the program is referred to as the “case study” in this thesis, the specific on-ground manifestation(s) are referred to as a “sub-case study”.

On-ground manifestations of NEG programs can and do vary on a number of variables, not least in who and how many actors come together. Accordingly, one must be clear why and for what reasons specific examples were selected.

The process of selecting this thesis’ sub cases followed AT’s iterative approach to research, and used a variety of considerations and steps to arrive at the selection of sub cases. As discussed below, these steps included scoping, selection, pilot studies, an assessment of

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95 Head, n 93, p 144.
96 Head, n 93, p 145-148.
97 This number includes a range of different “types” of EIPs. For further see chapter 4.
99 Note there were originally fifteen regional boundaries required; See “My region” (The state of Queensland, Qld) April 2007. http://www.regionalnrm.qld.gov.au/my_region/index.html viewed 10 May 2008; Head, n 93, p 144.
100 EIP and NEIP numbers are based on statistics obtained from the EPA (May 2005) and interviews.
102 Layder, n 31, p 3.

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suitability based on the research data that emerged and a decision to return to the case or pursue alternative or additional cases.

<table>
<thead>
<tr>
<th>Case</th>
<th>Overview of features</th>
</tr>
</thead>
</table>
| EIP      | • **Issue:** pollution from single industry.  
          | • **Scale:** local areas affected by industry (e.g. suburbs adjacent to industry discharge points).  
          | • **Structure:** small collaborative groups (10-20 people); no direct government investment; the group periodically negotiate, draft, monitor and adapt a plan that is implemented by an industry to improve its environmental performance.  
          | • **Maturity:** 1989–ongoing.  
          | • **Type of stakeholders:** single industry, multiple local residents and non government groups, the environmental regulator which may include a few local government bodies and one or two businesses.  
          | • **Policy context:** program of Victoria regulator.                                 |
| NEIP     | • **Issue:** natural resource and/or diffuse industrial and urban pollution sources.  
          | • **Scale:** catchment or small township.  
          | • **Structure:** small to medium collaborative groups (20-30 people); no direct government funding; the group periodically negotiate, draft, fund, implement, monitor and adapt a plan to improve an environmental issue(s).  
          | • **Maturity:** 2001–ongoing.  
          | • **Type of stakeholders:** multiple industries and businesses, local residents, non government groups, and state government bodies, a few local governments and the environmental regulator.  
          | • **Policy context:** program of Victoria regulator.                                 |
| RNRM     | • **Issue:** natural resource issues (e.g. salinity, water quality, biodiversity sustainable land, water and marine natural resource use).  
          | • **Scale:** region, typically involving multiple catchments.  
          | • **Structure:** regional collaborative group and staff (10 to 40 + people); program primarily funded by government investment; the group periodically negotiate, draft, monitor and adapt a plan and investment strategy, as well as facilitate the use of funds for implementation to improve resource condition/decrease rate of degradation.  
          | • **Maturity:** 2000/2001 – ongoing.  
          | • **Type of stakeholders:** multiple “farming” industries, regional residents, indigenous peoples, non-government groups, collaborative groups (e.g. Landcare) and local, state and federal government bodies.  
          | • **Policy context:** Federal government programs of Natural Heritage Trust 2 and National Action Plan for Salinity and Water Quality, delivered in partnership with Queensland government. |

Table 3.1: Overview of Programs Selected as Case Studies.

The initial step of scoping potential EIP, NEIP and RNRM sub cases relied on established contacts in each program and available public information (e.g. websites about particular EIP,

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NEIP or RNRM groups). A process of purposive sampling was then used to select from the available sub cases. At this time three key criteria were important.

First, practical considerations were again relevant, particularly relating to the willingness of a sufficient number of key actors in sub cases to participate in the study and the agreeability of participants to accommodate the researcher in the earlier stage of the research. Aside from 2 sub cases in EIP and NEIP programs, it was however rare for sub cases to be excluded from the study on the basis of such practical grounds.

The second selection criteria sought to ensure sub cases were “information rich”, and captured sufficient data on the conditions of each program to allow the study of the case to be sufficiently detailed and intensive. For example, while RNRM consists of two programs (NHT and NAP), not all regions receive funding from both programs (see chapter 4). Accordingly, selecting a region that embraced both programs was considered more likely to provide richer data on the operation of the RNRM program overall.

Third, following an initial review of NEG theory, the researcher had identified some limited but potential “dimensions of interest” on which initial sub cases could be selected. For example, whether the sub case involved “nested” structures and/or appeared successful in involving environmental interests in collaboration. As we saw in chapter 2, both are hypothesised as conditions that can have important ramifications for features of “good” NEG.

Drawing on these considerations, one EIP, one NEIP and one RNRM sub case was selected as a pilot study for each case (see Table 3.2 below). These pilot studies were conducted at different times during mid 2005, after 9 months of reviewing NEG theory and methodological literature. Each pilot study involved the researcher visiting the selected sub case area for a period of 1 to 2 days and conducting pre-arranged interviews with a limited number of key participants from each case. The interviewing process is detailed below, but for present purposes Table 3.2 summarises the number and types of actors interviewed for each pilot.

These pilots provided the occasion to compare issues and conditions that arose from the sub cases with the existing themes and ideas identified in the NEG literature, and assisted in

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104 This is similar to the idea of convenience or opportunistic purposive sampling; Patton, n 73, p 182-183.
105 Yin, n 54, p 79.
106 As Robert Stake has argued, practical considerations are important in selecting cases because having an actual “opportunity to learn” is vital to any study; Stake, n 53, p 153.
107 Only two sub cases (1 NEIP and 1 EIP) were excluded on the basis that key stakeholders (typically industry in EIP case and local government/environmental regulator in NEIP case) were unwilling to participate in the study.
108 This is close to the idea of purpose sampling for intensity; Lewis, n 21, p 52; Neuman, n 14, p 33; Stake, n 53, p 139-140; Patton, n 73, p 182-183.
109 This criteria is consistent with the “case study” approach of the thesis.
110 This is similar to the theory based or operation construct of purposive sampling where a case is chosen based on a manifestation of a theoretical construct of interest; Patton, n 73, p 182-183.
111 Yin, n 54, p 79.
112 Yin, n 54, p 80.
refining the research focus and questions. Furthermore, the researcher was able to develop a greater understanding of the individual programs, their features and operations. Such understanding also assisted in reflecting on the richness and adequacy of information likely to be gained from the individual sub cases in terms of answering this thesis' research questions.¹¹³

<table>
<thead>
<tr>
<th>Pilot</th>
<th>Number and Type of Interviewees</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIP</td>
<td>5 interviewees, including industry, local residents and the Victorian Environment Protection Agency (VEPA).</td>
</tr>
<tr>
<td>NEIP</td>
<td>5 interviewees, including local government, environmental interest group, state government agency, VEPA.</td>
</tr>
<tr>
<td>RNRM</td>
<td>10 interviewees, including regional body staff, regional body members, subregional body members, sub regional body staff, state and federal government agencies, science/researchers.</td>
</tr>
</tbody>
</table>

Table 3.2: Pilot Sub Cases - Number and Type of Participants.

Taking stock of these issues, all pilots were deemed relevant and suitable for further study. However, there were two key but competing considerations that arose in subsequent decision about whether to pursue additional cases.

First it was clear from interviewing key participants in each sub case that there were variations between the pilot sub-case and other sub cases in each program. For example, interviewees pointed to differences in age of particular collaborations, and the actual organisation, types, behaviour and nature of individual stakeholders.¹¹⁴

Understanding and examining much of this variation in terms of the behavioural and contextual conditions is obviously in keeping with the epistemological and ontological approach of this thesis. Moreover, it is particularly vital to this study and its research questions, which seek to examine the impact of such conditions in practice, to identify possible important common patterns that cut across these variations and contribute to achieving "good" NEG.¹¹⁵

The second consideration arose from an identifiable distinction between the richness of data in EIP and NEIP sub cases on the one hand, and RNRM sub case on the other. The initial interviews in both the EIP and NEIP case suggested there was only so much qualitative data and information that could be gained about the program from any one in-depth sub case. Indeed, both sub cases appeared to contain only a limited number of key stakeholders, and different respondents had produced quite similar data.

¹¹³ Yin, n 54, p 80.
¹¹⁴ Stake, n 53, p 141.
¹¹⁵ Patton, n 73, p 182-183.
In contrast, the RNRM program threw up extensive and diverse data from interviewees.\textsuperscript{116} Pilot interviewees in RNRM were also quick to point out a plethora of additional key stakeholders, both in the region and in locations outside of the region (eg. key federal and state agency officials in capital cities that oversee the operation and approval of RNRM plans and funding), that they suggested were vital sources of information regarding the program.\textsuperscript{117}

Balancing these two considerations, it was decided to improve this thesis’ depth of inquiry into the EIP and NEIP program through selecting additional sub cases.\textsuperscript{118} While in an ideal world, with unlimited time and funding it would have been beneficial to also contrast multiple RNRM sub cases, this was not possible given the extensive data needed to fully capture the conditions under which the RNRM program operated, both from within and outside of the region, and across a wide range of stakeholders. In an effort to compensate for this lack of comparison, key stakeholders from higher levels of the program (eg. government officials) were asked to reflect on differences between regions and impressions of the whole RNRM program in Queensland.

In terms of selecting additional EIP and NEIP sub cases, elements of replication logic\textsuperscript{119} and purposive sampling were used to capture variation.\textsuperscript{120} These included variations identified from the pilot studies, such as environmental issues and maturity of the cases. For example, the selection of NEIP sub case 2 was based heavily on its maturity, and the fact that along with the pilot sub case, it was the only other NEIP to have commenced implementation of its plan.\textsuperscript{121} Both NEIP 1 and 2 had been two of three “test” cases selected by the VEPA\textsuperscript{122} following a call for expressions of interest into experimenting with the new NEIP instrument. These “test” cases began shortly after the introduction of the NEIP in 2001, in an attempt by the VEPA to “learn” about their new policy tool.\textsuperscript{123}

In EIP program, the pilot EIP revealed that the location of individual EIPs determined which of seven different jurisdictional offices of the environmental regulator managed their operation. Accordingly, in an effort to account for potential variation between offices’ practices, EIP sub cases were selected in part to ensure as close as practicably possible that at least one sub case from each of the seven different VEPA jurisdictional units were included.

\textsuperscript{116} This was attributable to its comparatively larger mix of government and non-government stakeholders and wider geographic and environmental scope.
\textsuperscript{117} In contrast, nearly all key stakeholders in both EIP and NEIP program were actively involved in and around the sub case, such as VEPA officers who hold oversight and accountability responsibilities relating to the EIP and NEIP.
\textsuperscript{118} Creswell, n 17, p 63.
\textsuperscript{119} Stake, n 53, p 148-149.
\textsuperscript{120} The researcher was assisted by VEPA officers in contacting sub cases.
\textsuperscript{121} The third pilot had yet to commence implementation at the time of research.
\textsuperscript{123} VEPA, n 122, p 41.

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Practical considerations were also a factor, such as limiting the number of replications to account for research time available. A "snowball" strategy to sampling was also used to select sub cases. The latter relied on key people (typically officers of the environmental regulator) who knew other actors that knew what cases may have been good examples for this study, such as particularly interesting variations in on-ground conditions and associated successes and disappointments.\textsuperscript{124} To illustrate, snowballing assisted the researcher to identify a NEIP sub case based on its comparatively unique conditions that involved a very small cohesive township of around 150 people (as opposed to a wider population base of the pilot NEIP which was 11 000 people).

These processes resulted in the selection of seven additional sub cases in EIP and two additional sub cases in NEIP. As Table 3.3 summarises below, these sub cases varied in environmental issues, location and group size. The maturity and progress of cases also varied, such as in the EIP case where some sub cases had drafted and were currently implementing one plan, while others had drafted, implemented, reviewed and redrafted a number of subsequent plans in a continuous effort to try and improve their environmental performance. The scale of issues being addressed also varied among cases in NEIP where a neighbourhood boundary is defined by each sub case. Variation in issue size was not however relevant in the EIP case where no specific boundary is defined. All cases also involved a different mix of stakeholders, however details on these and other variations will obviously emerge over the course of this thesis' analysis.

The above discussion has outlined the considerations, sampling criteria and processes used by the thesis to select three Australian NEG programs as case studies. Each case embraces the broad characteristics of "good" NEG, but together they capture a diversity of NEG experiments, conditions and contexts. As explained, the thesis analyses the three cases through the investigation of a number of on-ground manifestations of each program. These sub cases were selected to ensure they provided rich information on how each of these programs operate, dimensions of interest to NEG theory and, where possible and pertinent, variations in the different contexts and conditions involved. Given this, the thesis is accordingly well placed to shed light on and provide insights into whether and how different conditions, processes and contexts affect the achievement of "good" NEG.\textsuperscript{125}

\begin{footnotesize}
\textsuperscript{124} Patton, n 73, p 182-183.
\textsuperscript{125} Conley and Moote, n 2 at 378.
\end{footnotesize}

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## EIP Sub Cases

| Pilot | **Key Issues**: environmental aspects of paper production industry (eg. noise, waste).  
|       | **Location**: residential city suburbs.  
|       | **Maturity**: commenced 2000, 2 plans completed, currently implementing 3rd.  
|       | **Group Size/Issue Scale**: ≈12 people; area near industry/general environment. |
| 2     | **Key Issues**: environmental aspects of sewage treatment plant (eg. odour, effluent).  
|       | **Location**: residential city suburbs & beach town.  
|       | **Maturity**: commenced 2003, plan finalised 2004/2005 & currently being implemented.  
|       | **Group Size/Issue Scale**: ≈23 people; area near plant & outfall/general environment. |
| 3     | **Key Issues**: environmental aspects of power station (eg. dust, greenhouse).  
|       | **Location**: rural townships.  
|       | **Maturity**: commenced 1997, 2 plans completed, currently implementing 3rd.  
|       | **Group Size/Issue Scale**: ≈16 people; area near industry/general environment. |
| 4     | **Key Issues**: environmental aspects of power station (eg. sulphur, visual).  
|       | **Location**: coastal township.  
|       | **Maturity**: commenced 2003, 2 plans completed, currently implementing 3rd plan.  
|       | **Group Size/Issue Scale**: ≈17 people; area near industry/general environment. |
| 5     | **Key Issues**: environmental aspects of car production industry (eg. odour, water use).  
|       | **Location**: residential/industrial city suburbs.  
|       | **Maturity**: commenced 2003, 1 plan completed, currently implementing 2nd plan.  
|       | **Group Size/Issue Scale**: ≈9 people; area near industry/general environment. |
| 6     | **Key Issues**: environmental aspects of plastics, rubber, resin industry (odour, flares).  
|       | **Location**: residential/industrial city suburbs.  
|       | **Maturity**: commenced 1993/94, 3 plans completed, currently implementing 4th plan.  
|       | **Group Size/Issue Scale**: ≈19 people; area near industry/general environment. |
| 7     | **Key Issues**: environmental aspects of wood fibre panel industry (noise, waste).  
|       | **Location**: rural city.  
|       | **Maturity**: commenced and plan completed 2004/2005, currently implementing.  
|       | **Group Size/Issue Scale**: ≈11 people; area near industry/general environment. |
| 8     | **Key Issues**: environmental aspects of rendering plant (odour, greenhouse).  
|       | **Location**: residential/industrial city suburbs.  
|       | **Maturity**: commenced 2001, completed 1 plan, currently implementing 2nd.  
|       | **Group Size/Issue Scale**: ≈9 people; area near industry/general environment. |

## NEIP Sub Cases

| Pilot | **Key Issues**: improving quality of polluted creek & its corridor.  
|       | **Location**: residential/industrial city suburbs; pop. 11 000 people. |
• Group Size/Issue Scale: ~18 people; catchment of ~20 square kilometres.

2
• Key Issues: developing a more sustainable community.
• Location: small coastal town; pop. 2,000 people.
• Group Size/Issue Scale: ~23 people; township of ~5 square kilometres.

3
• Key Issues: improving quality of polluted creek that supplies town drinking water.
• Location: small rural town; pop. ~150 people.
• Maturity: Commenced 2003; 5 year plan finalised in 2006; currently implementing.
• Group Size/Issue Scale: ~35 people, catchment ~22 square kilometres.

RNRM Sub Case
Pilot
• Key Issues: improving condition/reducing rate of degradation of natural resource assets (eg. land, biodiversity, water, coastal and marine, cultural resources).
• Location: North eastern Queensland, population ~ 190,000 people.
• Group Size/Issue Scale: ~11 people; region ~133,000 square kilometres (3 bioregions).

Table 3.3: Overview of Sub Cases.

3.4.3 Selecting participants
During the process of selecting cases, a simultaneous process of selecting interviewees was also being conducted. This selection process was based on purposive sampling and employed a snowball sampling approach as well as a mix of the following:

• criterion sampling – choosing interviewees that meet some predetermined criterion;
• stratified purposeful sampling – choosing interviewees on the basis that they illustrate characteristics of particular subgroups of interest; and
• opportunistic sampling – following new leads during fieldwork to choose interviewees.²²⁷

Using this mix of criterion to select interviewees²²⁸ helped to compensate for the weaknesses of each technique with the strengths of others to ensure a sample of highly relevant

²²⁶ Yin acknowledges the benefits for case study research of respondents suggesting other people and sources of evidence during interviews; Yin, n 54, p 90; Neuman, n 14, p 211, 214; Miller W and Crabtree B, "Depth Interviewing" in Hesse-Biber S and Leavy P (eds), Approaches to Qualitative Research: A Reader in Theory and Practice (Oxford University Press, 2004) p 191.
²²⁷ Patton, n 73, p 182-183.
and in-depth data from each of the EIP, NEIP and RNRM sub cases. Table 3.4 below provides illustrations of how each strategy was used and the benefits they provided.

<table>
<thead>
<tr>
<th>Sampling Approach</th>
<th>Illustration</th>
<th>Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criterion sampling</td>
<td>Selecting interviewees according to the criteria that they were directly engaged in the sub case or had a direct impact upon the program (eg. government agency who designed or oversaw the operation of the program).</td>
<td>Ensured data relevance.</td>
</tr>
<tr>
<td>Stratified purposeful</td>
<td>Select interviewees to illustrate key stakeholders groups involved in each sub case (eg. state government, local government, industry, resident, non government group, farmer etc.)</td>
<td>Captured diversity of views and facilitated comparisons between them.</td>
</tr>
<tr>
<td>Snowball and opportunistic</td>
<td>Identifying broader networks of vital interviewees that may have otherwise been overlooked (eg. in RNRM this process helped identify and arrange interviews with key farmers and government agencies; in the EIP and NEIP cases, EPA officers interviewed were often a key source of identifying key local resident and community group interviewees).</td>
<td>Enhanced depth and richness of data.</td>
</tr>
</tbody>
</table>

Table 3.4: Examples of Sampling Approach and Benefits to Study.

Using these selection strategies, interviewees were selected and subsequently took part in 80 semi-structured interviews. Table 3.5 below summarises the type and number of interviews in each case. It is important to note that the stakeholder categories used in this table are broad generalisations. A number of interviewees could be classified within a multiple stakeholder group. For example, many government agency interviewees were also local residents in the sub case area. Some interviewees had also participated in two or more sub cases, cases and/or other

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128 As Patton noted: "Because research and evaluations often serve multiple purposes, more than one qualitative sampling strategy may be necessary. In long-term fieldwork all of these strategies maybe used at some point"; Patton, n 73, p 181.

129 Snowball sampling is a method for identifying and sampling (or selecting) the cases in a network and usually involves getting cases using referrals from one or a few cases and then referrals from those cases and so forth; Neuman, n 14, p 211, 214; Miller and Crabtree, n 126, p 191.

130 Over the course of the research, another criteria used was selecting participants based on their value to ideas emerging from the prior theory and the collection and analysis of data. As discussed further below, this was facilitated through taking an iterative and starded process to data collection and analysis; Layder, n 31, p 3, 47-48.

131 Consistent with snowball sampling, respondents were asked at the completion of the interview if he or she would recommended any other individuals as relevant to the research project. This individual’s details were then usually obtained through key government contacts or from a public source. Time and funding considerations meant that not all recommended interviewees were contacted.

132 All interviewees in EIP and NEIP cases were from the collaborative group itself, while in keeping with the more complex structure of RNRM, the interviews included interviewees active both in RNRM group and region as well as stakeholders in the wider RNRM program. Further details on interview methods and period of data collection is discussed in the sections below on data collection and analysis. There was some overlap between interviews. This was primarily in the case of EIP and NEIPs where some interviewees were involved in both EIP and NEIP sub cases (typically EPA officers). However the numbers below generalise the interview numbers into each case.

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on ground manifestations of the program. This was common among government officers and some local residents in EIP and NEIP cases, as well as some key RNRM interviewees who had experience in other RNRM regions in Victoria and Queensland.

<table>
<thead>
<tr>
<th>EIP Sub Cases</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Residents/non government groups</td>
<td>7(^{133})</td>
</tr>
<tr>
<td>EPA/local government</td>
<td>8</td>
</tr>
<tr>
<td>Industry</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>24</strong>(^{134})</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NEIP Sub Cases</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Residents/non government groups</td>
<td>9</td>
</tr>
<tr>
<td>EPA/state and local government</td>
<td>14</td>
</tr>
<tr>
<td>Industry/business</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>26</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RNRM</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Stakeholders directly connected with regional/subregional bodies (eg. advisor, member, staff, regional farmers)</td>
<td>11</td>
</tr>
<tr>
<td>Government bodies involved in the program (eg. federal, state, local, science)</td>
<td>12</td>
</tr>
<tr>
<td>Non government bodies (eg. peak industry and conservation bodies)</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>30</strong></td>
</tr>
</tbody>
</table>

Table 3.5: Number and Types of Interviews for Each Case.

Having explicated this study's adaptive theory and collective case study approach to research, the design and rationale of selecting cases, and the process of selecting interviewees, the next section turns to focus on the methods of data collection and analysis.

### 3.5 Methods of Data Collection and Analysis

#### 3.5.1 Methods of Data Collection

This section outlines the methods used to collect data from the cases and the subsequent process of data analysis. The collective case study and adaptive theory methodology that guide this research project both encourage the use of multiple data collection methods, which can

\(^{133}\) One resident was involved in two EIP sub case and was accordingly interviewed about both.

\(^{134}\) Note that EIPs were also discussed in 3 NEIP interviews (2 government and 1 industry).
include both qualitative and quantitative approaches.\textsuperscript{135} Consistent with the qualitative orientation of this thesis, the primary method used for data collection was interviewing. Documentary analysis methods were also used, as well as limited observation made in the field and some secondary quantitative data.

The discussion that follows focuses on the two main data collection methods used, namely interviewing and documentary analysis, and examines both the reasons behind their selection and how they were conducted. First the interviewing method is examined by sequentially outlining the following five key issues: (i) the reasons for selecting interviewing as the primary method of data collection; (ii) the type of interviewing method used; (iii) how the interview questions were developed; and (iv) the process of interviewing, including how the researcher dealt with problems of bias and misunderstanding in the interviews. The method and extent of documentary analysis is then discussed. As this section proceeds, pertinent ethical, and validity issues addressed by the thesis are also examined.

3.5.2 Interviewing

3.5.2.1 Rationale for choosing interviewing method

Interviewing was chosen as the primary method of data collection for this research project, not least because interviews are one of the most important sources of data for case studies.\textsuperscript{136} Unlike other qualitative methods such as documentary techniques,\textsuperscript{137} interviewing suited more closely the scope and nature of the project. In particular, interviews allowed a great deal of detailed information\textsuperscript{138} to be obtained about NEG and importantly provided the opportunity to draw on and explore actual participants’ experience with NEG in practice, eliciting in-depth views and insights into what had or hadn’t worked in the NEG programs, and the respective conditions that had brought about these outcomes. In contrast, utilising documentary analysis as the primary research tool would mostly have been too limiting because documents themselves are unlikely to capture detailed data on the specific conditions, context and relationships that impacted on the operation of NEG.\textsuperscript{139}
Of course, interview methods are not without their limitations. Not least, interviews have been criticised for being too subjective, contingent on respondent’s memories and because they may suffer from problems of cognitive dissonance, or the “halo effect” (i.e. collaborators who experience positive interpersonal relationships in a collaboration are likely to have a positive bias toward their views of environmental and social outcomes of the group).

To mitigate these weaknesses, triangulation of multiple sources of data (interview, documentary, and limited observation and quantitative data) were employed to corroborate findings and contribute to improved validity, as well as broaden and deepen the investigation by taking a multi perspective look at NEG and its conditions in practice.

3.5.2.2 Type of interviews

The majority of the 80 interviews conducted in this thesis were in-depth conversations and followed a semi structured interviewing technique.

Unlike its unstructured equivalent, the semi-structured interviewing approach was able to use NEG theoretical themes and issues to orient and sharpen the issues discussed in the interview. This use of prior theory to add some structure to the interview was particularly important to this thesis given its focus on empirically examining and testing NEG theory on the conditions relevant to achieving “good” NEG. Further, the semi structured approach was well suited to

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140 Conley and Moote, n 2 at 381; Kooontz and Thomas, n 2 at 115-116; Lubell et al, n 2, p 278-280.
141 Coglianese, n 2; Leach et al, n 2 at 654.
143 Neuman, n 14, p 138 (Neuman identifies the following four types of triangulation - measure triangulation, observer triangulation, theory triangulation and method triangulation); Layder, n 31, p 68.
144 Stake, n 53, p 148; Silverman, n 20, p 177.
145 Stake, n 53, p 148; Silverman, n 20, p 177; Yin, n 54, p 98.
146 Some interviews were more informal and shorter in nature due to practical constraints such as an interviewee having to leave earlier than expected due to personal issues.
147 Layder, n 31, p 52.
148 Semi structured interviewing involves the researcher asking the same predetermined questions in each interview, however he/she can do some probing for further information; Arthur S and Nazroo J, “Designing Fieldwork Strategies and Materials” in Ritchie J and Lewis H (eds) Qualitative Research Practice A Guide for Social Science Students and Researchers (Sage, 2003) p 111.
149 This approach can be compared to other types of interviews (eg. highly structured, standardised quantitatively oriented survey interviews, face to face interchange, focus groups, brainstorming, in-depth interviews, free flowing exchanges and so on). For further see: Fontana A and Frey J, “The Interview from Structured Questions to Negotiated Texts” in Denzin N and Lincoln Y (eds) Collecting and Interpreting Qualitative Materials (2nd ed, Sage, 2003) p 62; Holstein J and Gubrium J, “The Active Interview” in Silverman D (ed) Qualitative Research Theory Method and Practice (Sage, 2004) p 141; Miller and Crabtree, n 126, p 188.
150 Unstructured interviews include in-depth interviewing, which typically involve a broad agenda but the order and way in which the agenda is followed varies considerably between the interviews; Arthur and Nazroo, n 148, p 111.
suited to supporting and assisting the comparative focus of the thesis as it ensured that each interview across the distinct cases and subgroups covered broadly the same issues.  

Of course, structured interviewing could equally deliver such benefits. However the semi structured interviewing technique importantly maintained the ability of the research project to be open to issues and information raised by participants regarding conditions in practice that may have been overlooked or unexplored by NEG theory.  

In short, the semi-structured interview approach ensured the same issues of interest to the thesis could be covered in each interview, while allowing individual experiences, meanings and perceptions to emerge.

Having given the reader an understanding of the reasons behind choosing semi structured interviewing as the primary method of data collection, the following discussion turns to outline relevant details of the interview process, commencing with how the questions were formulated, before discussing how the interviews were conducted.

3.5.2.3 The questions

The structured questions used in the interview were developed through a review of NEG literature and legislative and policy documentation relating to each program. An interview protocol was developed that listed a number of largely open-ended questions about germane elements of the program. These questions were supported by potential probes relating to relevant conditions about that element. For example, an open-ended question such as “tell me about the process of decision making” may have been followed up with probes regarding particular conditions (eg. mediators) if sufficient detail was not forthcoming.

The open ended questions were structured to build rapport and ease respondents into the interview by using opening biographical questions followed by questions that were

151 Arthur and Nazroo, n 148, p 111.
152 Structured interviewing involves the researcher asking all respondents the same series of pre-established questions, each with a limited set of response categories; Fontana and Frey, n 149, p 649.
153 Fontana and Frey, n 149, p 650-651; Arthur and Nazroo, n 148, p 110-111.
154 Yin, n 54, p 90.
156 Miller and Crabtree, n 126, p 190.
157 Miller and Crabtree, n 126, p 190.
158 The predetermined questions for the interviews were ordered and structured in relation to the following matters: (i) the opening questions were biographical in nature and were designed to build rapport and ease the participant into the interview context eg. asking the participant to describe his or her position and experience in the program; (ii) the questions that followed were general contextual questions about successes and failures, followed by more specific questions on relevant research topics and specific conditions of the sub case; and (iii) to wind down the interview, participants were given the opportunity to raise any additional issues they thought may have been overlooked in the discussion (eg. possible issues or conditions they thought vital to improving the NEG program). Arthur and Nazroo, n 148, p 112-113; Miller and Crabtree, n 126, p 185.
formulated to use “how” inquiries rather than “why”, the former being advocated by case study authors such as Yin as being more friendly and thus avoiding defensiveness from the informants.159

The questions were also refined throughout the data collection. For example, the original questions developed were honed after the initial pilot study. This provided an opportunity to learn about the “everyday commonsense understanding” and terminology of the interviewees regarding the programs. This learning was used to ensure that the language and specific terms used in subsequent interviews was better suited and comprehensible to those being interviewed.160

Furthermore, because the semi structured interviewing technique gave respondents the flexibility to express their own perceptions and understandings of NEG program and its operation, the researcher iteratively developed additional questions or probes over the course of the research to pursue fruitful lines of questioning.161 For instance, insights or issues raised in one interview were often used to develop additional interview questions to inform the direction of inquiry of following interviews.162 This approach effectively treated the interviews as an ongoing conversation between the researcher and those involved in the case, testing, refining and balancing opinions and views of respondents through the views of others163 in an effort to build a more complete picture of the NEG program as the interviews proceeded.

While the order of topics and questions sometimes varied between interviews, a sample of an interview guide used is contained in the Appendix of this thesis.

### 3.5.2.4 Interviewing Process

Turning to examine the interview process, most interview data was collected in mid to late 2005. The interviewing process was purposefully conducted in a staged manner for each case. For each case this involved at least 2 primary “rounds” of interviewing.164 The first round was the pilot. The second round spanned between 3 to 7 days. This interviewing occurred during the following periods:

- **EIP**: May (pilot), June and August 2005;

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159 Yin, n 54, p 90.
160 Fontana and Frey, n 149, p 86; Miller and Crabtree, n 126, p 190.
161 Bonnell and Koontz, n 155 at 156.
162 Layder, n 31, p 48.
163 In keeping with the ethics of this thesis, this testing and refining was done in an anonymous fashion. A common technique across the interviews was to say “There is an opinion that “X”.
164 I note due to practicalities such as time and availability there were some interviews conducted at different periods throughout the research.
• NEIP: July (pilot) and August 2005, December 2006, February 2007; and
• RNRM: July (pilot), October and November 2005

Following one round of interviews such as the pilot study, the data would be transcribed and an initial analysis conducted (as discussed below). Consistent with AT, the purpose of this initial analysis was to help support an iterative approach to the next round of interviewing. Among other things, this contributed to the research and assisted with the testing and refining of ideas that had emerged from the initial round of data collection and analysis.

When arranging and conducting the interviews a primary concern was the researcher’s ethical responsibilities. Indeed, this thesis’ interviews and research were conducted in accordance with guidelines and clearance of the Australian National University Human Research Ethics Committee. Pursuant to these guidelines, arranging and conducting interviews required interviewees to give their informed and voluntary consent, and for the researcher to respect the privacy and confidentiality of participants. A number of procedures were used to meet these requirements. This included ensuring the details of potential interviewees were always obtained from either a public source (eg. website) or from an intermediary actor (eg. government officers) who had obtained the interviewees consent.

When the researcher was initially contacting participants by telephone or email the research project was always described in full, including acknowledging the role of the

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165 I note that interviewing in NEIP case was required to be put on hold in 2005 and subsequently conducted at comparatively much later stages in the research process (2006 and 2007) due to staff turnover and internal decisions made by the industry partner to the study, the Victorian Environment Protection Agency.

166 As discussed above, the ideas emerging from the analysis of data and theory also helped to contribute to the selection of the next round of interviewee participants.

167 Layder, n 31, p 48.

168 Neuman, n 14, p 116.

169 The discussion of ethical considerations is based on the research project’s approved ethics application form made to the Australian National University Human Research Ethics Committee.

170 There are of course wide arrays of other ethical issues that pertain to the research. For example, ethical issues can relate to the role of the researcher and “using” those who you study for your own “personal gain”. In my role as a researcher I did not identify any ethical dilemmas regarding the exclusive use of participants for my own personal gain. That is to say, whilst I may gain benefit from publishing data obtained from government, industry, farming or community groups involved in the ongoing programs, the participants in these initiatives will hopefully gain benefit from my research findings as well, which seek to make recommendations that may prove to provide more efficient and effective outcomes for the participants own program arrangements and others like it; Glesne C and Peshkin A, *Becoming Qualitative Researchers An Introduction* (Longman, 1992) p 112-117; Creswell, n 11, p 63.


172 Neuman, n 14, p 126; Christians, n 171, p 139.

173 The officers would contact a potential interviewee on behalf of the researcher (following the same ethics protocol discussed below) and seek their consent to pass on their details to the researcher.

174 This involved outlining the aims of the project, the intended use of interview and possible documentary data, the safeguards taken with respect to confidentiality, privacy an anonymity (including that they may freely choose to stop participation at any point in the study), and the nature of the questions they were likely to be asked; Glesne and Peshkin, n 170, p 112.
Victorian EPA as an industry partner, and asking whether they would consent to the interview being recorded.

If the prospective interviewee agreed to participate in the research project, a formal interview was scheduled for a time that was suitable to them, usually at least 1 to 2 weeks later. At the time of scheduling the interview, the participant was provided with a choice of venue, including their home, their work, or a suitable alternative venue.

At the scheduled interview, the participants were given an information sheet for their records and a written consent form, both of which provided details of the research, the intended use of interview data, the safeguards taken with respect to confidentiality, privacy and anonymity considerations, and contact details of the researcher and the Human Ethics officer of ANU. In addition, interviewees were informed that they did not have to answer questions, could discuss issues “off the record” and end the interview at any point they wished. If the prospective interviewee agreed with this arrangement, they were asked to sign the consent form (see Appendix for a copy of the form).

Nearly all interviews were recorded. To avoid any deception, the researcher always rechecked with the interviewee at the beginning of the interview whether a tape recorder could be used. It was only used when permission was granted from participants. The tape recorder was also always located in clear view of the interviewee and researcher. In 6 of the 80 interviews, participants chose not to be recorded but consented to notes being made.

Most interviews were conducted one on one and in person. However, in 11 of the 80 interviews telephone interviews were used due to availability and schedule conflicts between the researcher and interviewees. These interviewees were arranged and conducted following a

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175 Although this project is conducted in partnership with the Victorian EPA, it is also important to note that they made no attempt to restrict the findings that are published in this thesis. Furthermore, at no time did the EPA breach any ethical boundaries that impacted upon the conduct of this research according to accepted standards; Neuman, n 14, p 130-132.

176 The details of the description of the research project and the nature of the questions they were likely to be asked are contained in Appendix to this chapter.

177 These included: (i) protecting the identity of each participant and/or organisation by using a system of identifier codes on transcripts and documents (as discussed above); (ii) taking all reasonable steps to ensure that any information in this thesis will not enable the reader to identify who was spoken to; (iii) storing all data in password protected computer system and/or a locked cabinet in the locked office. Furthermore, this interview data was stored separately from the list of identifier codes.

178 In a few instances respondents asked that the tape recorder be turned off while they discussed “off the record” issues. Such requests were always complied with.

179 Neuman, n 14, p 123; Christians, n 171, p 139.

180 As discussed above some respondents chose not to have the interview recorded but consented to notes being taken about the interview.

181 While I sought to arrange only one-on-one interviews, some interviewees had a preference for their associates to attend the interview with them, and I accordingly accommodated. In the later stages of interviewing some interviews in the respondent validation process discussed below were, for practicality reasons, arranged to have a number of interviewees. Early in the project a few interviews involved and were conducted jointly with 2 other researchers.
broadly equivalent process to that described above. Telephone interviews obviously have restrictions as an interviewing tool, not least reducing capacity to build rapport and make visual observations. Even so, given time and location constraints it acted as a workable substitute. For the interviews that were face to face, the researcher always sought to ensure that the interview was conducted in the most private and quiet area of the chosen venue to ensure it was conducive to the participant being open and comfortable. Interview time tended to range form between 10 minutes to 2 hours with most typically lasting for about 60 minutes. The interviews were conducted over a period of approximately 6 weeks in total.

Discussing the process of interviewing also raises the important issue of how interviewees’ responses were treated by the researcher. Interview statements can have multiple meanings. According to constructionist schools of thought, the perspectives and meaning elicited in the interview process is actively constructed from the actions undertaken to obtain it. Thus “respondents are not so much repositories of knowledge...as they are constructors of knowledge in association with interviewers”.

This was the experience that played out in most of this thesis’ interviews, with many respondents seeking to comprehend and reflect on the interview questions and why they had been asked. A simple illustration of this process in action is evident from one interview where discussion had led the researcher to ask “So what is your general impression of the NEIP as a tool for environmental improvement?”, with the interviewee responding “So are you asking me whether I think a neighbourhood environment improvement plan as a model is a good model?”. This is essentially an active style of interaction between interviewer and interviewee that is less a neutral tool of data gathering and more an approach that produces negotiated contextually based results. The obvious weakness of this style of interviewing is that it can augment opportunities for bias and misunderstanding.

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182 In these 11 interviews, initial contact with the participant followed the above procedures and arranged for a phone interview at later date. At the phone interview I again sought consent to use the tape recorder and made it clear to the interviewee if and when the tape recorder was being used. I also ensured consent and information forms were forwarded to the participants via email or post.
184 Where interviewing was in a more public area, or another person interrupted the interview, I ensured that the interview was stopped whilst others were within hearing range; Miller J and Glassner B, “The ‘inside’ and the ‘outside’ Finding Realities in Interviews” in Silverman D (ed) Qualitative Research Theory Method and Practice (Sage, 2004) p 133.
185 Silverman, n 20, p 32.
186 Silverman, n 20, p 36.
187 Miller and Glassner, n 184, p 125-126; Holstein and Gubrium, n 149, p 141.
188 Holstein and Gubrium, n 149, p 141.
189 Interview 216, Business Association.
190 Fontana and Frey, n 149, p 62.
191 Holstein and Gubrium, n 149, p 141.
In order to lessen the potential for bias, error, misunderstanding or misdirection in the interviews, a number of strategies were employed by the researcher. First, after an interviewee had finished answering a question the researcher would seek to rephrase what the interviewee said and then give the interviewee an opportunity to further confirm or further explain their response. This process helped to ensure that the researcher understood their responses and that they understood the questions that were asked.

In a similar vein, a second strategy for reducing misunderstanding and bias was to use multiple interviewees to corroborate contested interviewee opinions, as well as test the researchers’ tentative ideas and findings. This process was facilitated by the staged approach to interviewing and analysis, which allowed the researcher to reflect on what had been said in one round of interviewing and “test” these ideas in subsequent rounds. In addition, a more formal process of checking for clarity and validity was used in the later stages of the research through a process of respondent validation (discussed below).

A third strategy to lessen the potential for bias, error or misunderstanding was to actively foster the trust of interviewees, which in turn was aimed to contribute to gaining better mutual understanding between the interviewee and researcher. This trust was achieved through various methods of rapport building, including taking all interviewees seriously, respecting what was said, letting interviewees know that what they had to say matters, and assuring confidentiality (eg. stopping the interview if requested).

Like most interviews, the particularities of the interviewee and interviewer may also have had some influence on the interviewing process. The interviewees ranged in age, gender, race and profession. As such, the researcher aimed at all times to be conscious of how they presented themselves to the interviewees, in order to limit the influence this presentation may have had on interviewees’ ability and willingness to tell various sorts of stories. In general, the personal information shared with interviewees was limited to knowledge about the researcher’s role. In keeping with ethical requirements this typically involved making sure that interviewees were aware of contact details, the goals of the research project, and what they

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192 For example, in one NEIP interview the researcher asked a respondent whether they thought the NEIP collaborative group was sustainable over the longer term. Answered by the respondent the researcher proceeded: “Sure. So if I was to paraphrase what you’re saying, and correct me if I’m wrong. The group or the NEIP in some form or another is going to continue but...the effectiveness of the group at particular periods of time will be dependent on available funding”; Interview 215, Local Government; Hendriks, n 11, p 58-59.
193 Silverman, n 20, p 176; Yin, n 54, p 35.
194 Miller and Glassner, n 184, p 131.
195 Miller and Glassner, n 184, p 133.
196 From their early 20s to their 70s.
197 Most, but not all, interviewees appeared to be Australians of European descent.
198 Miller and Glassner, n 184, p 130.
could do after the interview in terms of further contact or questions with the researcher. Overall, most respondents were eager to disclose information and openly talk about the programs in which they had invested a large part of their work and/or private time.

Finally, to try and avoid the problems of bias the researcher sought to corroborate interview data with general observations, and associated memos taken during the rounds of interviewing and fieldwork, and more particularly, information from documentary sources.

### 3.5.2.5 Documentary Analysis

The documentary analysis method used in this thesis involved, first, selecting relevant documents based on whether they related to or impacted on the operation of the sub cases and cases. The documents selected included:

- agendas, announcements and minutes of meetings;
- plans, legislation, parliamentary speeches and guidelines;
- public administrative reports (proposals, progress or annual reports, budgets);
- other studies or evaluations of the case;
- newspaper articles or community newsletters; and
- reports containing relevant quantitative data.

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199 Even so, the researcher's personal characteristics appeared to have had some influence, with a few interviewees using "familiar" narrative constructs rather than provide meaning into their subjective views. As a younger researcher with a legal professional background I found this to be true mainly with a few older, rural respondents who were sometimes not forthcoming. I found in these times that revealing a little more about my own background, such as emphasising my own childhood and adolescence on a farm was a useful way to break through this barrier and facilitate a context where they were more willing to disclose information; Miller and Glassner, n 184, p 127; Hendriks, n 11, p 57-60.

200 These observations involved recording observations of the conditions of the general site and environmental problems. These observations were designed to add important dimensions to developing an understanding both to the context and phenomena of the environmental problem and the NEG approach designed to address it; Yin, n 54, p 92-93.

201 For instance, making field notes about observations or documenting connections between issues raised in particular interviews and identify possible categories and concepts that were being revealed from the data that potentially fit into my own ideas developed from extant theory; Layder, n 31, p 58-61.

202 Yin, n 54, p 92.

203 The collection of documents occurred via two systematic searches. Firstly, as a part of identifying the three programs and pilot sub cases, an initial search and review of documents was conducted. This included searches of websites, newspapers, Victorian legislation databases, case databases, Hansard, Legislative Councils agendas, minutes and reports. The second search focused on obtaining more specific documents about the pilot and/or additional sub cases themselves. For example, the available minutes of meetings, agendas, annual reports and newspaper clippings. Many of these documents were accessible from websites, and others were made available by interviewees during the fieldwork.

204 Yin, n 54, p 85-86.

205 The quantitative data used in this project was sourced from the relevant government agencies or industry and related to a limited number of issues such as number of environmental incidents and prosecutions of firms or available quantitative baseline and trend measurements of pollutant discharges or environmental and natural resource conditions; Maxwell, n 18, p 5.
While not amounting to a complete collection of all relevant documents, the documentary information collected added substantial depth to the thesis’ inquiry into the operation of the EIP, NEIP and RNRM programs. For example, while most non-government and government interviewees focused on the ongoing operation of the programs, the legislation and parliamentary documents provided important background data and insights into the political context and original intention of each program. As we will see in the chapter 4, this background is vital to identifying the general intent and goals of each case regarding the common elements of NEG (eg. nature and extent of collaboration) and subsequently investigating and analysing how successful each program was in practice.

3.5.3 Data Analysis

Having outlined exactly how and what data was collected for this research project above, this section examines the procedures and systems used to manage and analyse data.

In accordance with the stipulations of AT, the analysis and management of data for this research project was conducted simultaneously with data collection. As discussed above, this involved at least 2 stages of data collection, interspaced with preliminary data analysis. This preliminary analysis applied extant NEG theory to develop and apply possible concepts and categories to the interview and documentary data collected, while simultaneously thinking about possible emerging ideas and categories from the data itself. This analysis informed the subsequent collection of data, which was then itself transcribed, analysed and compared with the provisional categories. Following the completion of this analysis and data collection, a re-analysis of all the data was conducted within each case and between cases.

Notwithstanding this ongoing process of data collection and analysis, there were two broad interrelated steps employed in the data analysis process that took their general cue from AT’s approach to coding and Robert Yin’s theory-based analytical strategy for analysing case study evidence.

The following discussion sequentially outlines these steps. The first step discussed relates to matters of transcribing interviews, and the use of a computer assisted qualitative data analysis system in data management and analysis. Particular attention is paid to the rationale for choosing a qualitative data analysis system and the benefits it provided the research project. The second step discussed relates to processes of “coding” data to analyse patterns and peculiarities.

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206 Yin distinguishes between documentary materials and archival materials (computer files and records, census data etc), however any relevant archival material has been incorporated into this section on document collection Yin, n 54.
207 Yin, n 54, p 85; Atkinson and Coffey, n 139, p 59.
208 Yin, n 54, p 112.
that emerged within and between the cases and how these came to inform the analysis chapters of this thesis.209

3.5.3.1 Transcribing and NVivo

In accordance with the ethical and confidentiality responsibilities of the thesis, the process of transcribing interviews required that the identity of each interviewee be protected by using a system of identifiers. This identifier system is used throughout the thesis and categorises each interview using a number between 3 to 4 digits in length, followed by a statement of the general category of stakeholder type.

The first digit in the identifier relates to case type – EIP (1), NEIP (2) and RNRM (3). The second digit indicatively210 signifies either the relevant sub case in the EIP and NEIP case (EIP 1 to 8, NEIP 1 to 3) or a general grouping of stakeholder type in RNRM case (1 represents non-government bodies such as peak industry bodies, 2 or 3 represents government or science bodies, 4 represents stakeholders connected to the region such as regional body staff or members). The third and/or fourth digits in the identifier signify the order in which the interview was conducted in each sub case or grouping of stakeholders. To briefly illustrate, the identifier for the first interview conducted in the EIP pilot case with an industry representative would be “Interview 111, Industry”.211

Nearly all interview recordings and written records were transcribed verbatim into an electronic format to ensure a rich and complete record of data. However, given the large number of interviews (n80), limits on time and resources, and the tendency of some interviews (particularly in the later stages) to produce opinions and information that was largely consistent with early interview data, 11 of the 80 interviews were not transcribed in full (3 EIP, 3 NEIP and 5 from RNRM).

Not transcribing interviews in full can of course lead to fractured analysis, promote deductive over inductive reasoning and/or result in the researcher overlooking valuable data (eg. data may not appear relevant or vital initially but may prove to be significant as analysis progresses).212 To mitigate this problem, the computer assisted qualitative data analysis system213 that was applied in this thesis (discussed below) was used to link the original

210 That is, these “second digit signifies” are only indicative because interviewees sometimes were involved in multiple sub cases or stakeholder types. For example one EIP interviewee was involved in both EIP sub case 5 and 6, while some RNRM interviewees were both non-government and regional interests.
211 Another example would be an interview with a regional body representative in the RNRM program: “Interview 341, Regional Body”.
212 Miller and Glassner, n 184, p 127.

Cameron Holley
New Environmental Governance
recording or written record of the interview to a “proxy” electronic file, typically containing electronic notes of key quotes or a summary of the interview. By including and connecting the original recording or written record in this way, the researcher sought to facilitate easy access to key insights and the full data record (eg. clicking on the link to listen to parts or the whole interview record) to ensure the 11 interviews were fully accounted for in the data analysis.

A similar process of creating proxy files that linked to key electronic or hard copy documents and field notes on observations was also conducted. Along with these proxy files, the 69 fully transcribed interviews were also entered in full as separate files into the computer assisted qualitative data analysis system known as NVivo.

While computer assisted qualitative data analysis systems have sometimes been subject to criticism, the NVivo software program was deemed suitable to assist the researcher in storing, organising and analysing data in this project. Box 3.1 below outlines the NVivo program and its suitability to the research project.

**NVIVO**

NVivo provides the capacity to electronically store, distinguish and track case study data, as well as sort and connect different portions of the data as they relate to a particular case or issue. This was useful and important for the case study approach employed in this project because it allowed all relevant data to be sorted into three rough case study databases. It also ensured that interrelated documents and interviews could be electronically linked and cross referenced to ensure all relevant data was considered in analysis.

NVivo was also well suited to this thesis because, consistent with AT, it is designed to employ an efficient coding based data analysis technique. Coding is a common tool of organising and analysing data and basically involves creating

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215 For example, the database capacity of NVivo was adequate in terms of the number of cases, and expected size of the interview transcripts and documents. See for instance: Bazely P and Richards L, *The NVivo Qualitative Project Book* (Sage, 2000); Weitzman, n 213, p 327.

216 NVivo was used to classify every interview or document from a round of fieldwork according to case type (EIP, NEIP, or RNRM), type of record (i.e. Document or interview) and where relevant, the type of interviewee (eg. industry, state government). This provided the useful ability to act as an organised storage system that assisted in quickly and easily locating material; Creswell, n 17, p 155; Weitzman, n 213, p 325; Yin, n 54, p 102.

217 Yin, n 54, p 103.

218 Weitzman, n 224, p 320, 324-325; Creswell, n 17, p 155; NVivo Online Help, Appendix A, “What Is Qualitative Research?” QSR International Pty Ltd NVivo 2.0.

219 Marshall, n 209 at 56, 58.

220 Weitzman, n 213, p 320, 324-325; Creswell, n 17, p 155.
specific categories/codes that relate to the relevant question, concept and themes of the research and assigning them to passages of text relevant to that issue or theme. Rather than carry out data analysis by hand (typing, photocopying, marking text with highlighters, pasting text on file cards), NVivo allows the researcher to electronically create a “node” as a code and then select and assign that node to specific text or passage. This coding is possible only where text data is compatible with NVivo, such as properly formatted interview text. Most of the documents obtained by this thesis such as reports on quantitative data, parliamentary speeches and plans were not in an appropriate format. Thus, while all were reviewed in detail, they were not subject to the specific coding process in NVivo.

Even so, using NVivo helped to improve the rigour and consistency of interview coding and improve validity and reliability. In particular, the searching tools in NVivo increased the power of engaging with the whole corpus of data to assist in coding and ensure thorough data treatment. Such tools ensured that the thesis was careful about finding deviant “cases” and not missing important data.

Box 3.1: Overview of the NVivo Program and its Suitability to the Study.

Having outlined the initial step of transcribing interviews and the choice and general benefits of the NVivo qualitative data analysis system, the next section discusses the second step of coding processes and analysing the patterns and peculiarities that emerged in and between the case studies.

3.5.3.2 Data Analysis and Coding Using Adaptive Theory

A dynamic process of analysis and coding was employed that involved preliminary analysis of data, a discrete case study analysis and more comparative analysis between the cases.

After importing the data from the first round of field work into NVivo, the first process conducted was a system of provisional coding pursuant to the approach set out in AT.

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222 I note in relation to quantitative data that as they were sourced from secondary sources such as condition and trend measurements required little analysis. Some quantitative data was however entered into Excel and “analysed” using descriptive statistics to arrive at the number and patterns of participation. This analysis did not pose any concerns relating to ethical issues such as identifying specific industry bodies.

223 In addition, the program helped me in locating particular words, ideas, statement or phrases more quickly and easily when organising codes or statements; Creswell, n 17, p 155-156.

224 That is all cases must be incorporated into the analysis such that any generalisation is able to apply to every single piece of relevant data collected; Silverman, n 20, p 179-185: Lewis J and Ritchie J, “Generalising from Qualitative Research” in Ritchie J and Lewis H (eds), Qualitative Research Practice A Guide for Social Science Students and Researchers (Sage, 2003) p 275-276; Yin recognises approaches that adopt a somewhat similar logic to ensuring internal validity. He terms these techniques rival explanations, logic models, explanation building and pattern matching. For a discussion of these techniques see: Yin, n 54, Chapter 5; Seale, n 214, p 155.

225 Weitzman, n 213, p 316.
Provisional coding, as the name suggests, is the use of provisional code names/labels to indicate text that may relate to a particular concept or category. 226

Drawing on extant NEG theory, as well as the researcher’s own thoughts and notes about themes in the data that emerged during its collection, a number of prior theoretical ideas were used as orienting concepts. 227 These concepts stimulated some provisional codes 228 relevant to the thesis’ broad research focus on NEG. For example, the collective action literature and discussions in NEG theory provided inspiration to develop concepts and codes to refer to the challenges of collaborating. These and other codes were entered into NVivo as “free nodes” and were used in the process of provisional coding of lines, words and larger sections of text. These and other provisional codes were employed throughout subsequent periods of data analysis and were concurrently and dialogically engaged with emergent core codes and concepts (discussed below) to encourage serendipitous discovery of emerging theory and to ensure a conduit to existing NEG theoretical ideas. 229 Table 3.6 below provides an illustration of some codes that were used by the researcher.

<table>
<thead>
<tr>
<th>Code</th>
<th>Explanation</th>
<th>Illustration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representativeness</td>
<td>Responses about the representativeness of the collaborative group and conditions that impacted upon it.</td>
<td>“we have tried to have people represented and we have gone out...to get people involved and in reality we were only able to elect back the members we had in the first place really with one additional one, so that hasn’t been as successful as it should have been, because we had people sitting on the sidelines snipping a bit at some of the things we weren’t doing but they weren’t prepared to put their hand up”. 230</td>
</tr>
<tr>
<td>Countervailing power</td>
<td>Responses regarding the presence, absence and associated impact of environmental groups.</td>
<td>“we’ve got conservation people that have got very deeply entrenched attitudes and belief systems...so some of the [environmental groups] have made the strategic decision not to engage in the process”. 231</td>
</tr>
<tr>
<td>Government tensions</td>
<td>Responses about relationships between agencies,</td>
<td>“the commonwealth bureaucracy attempt to use [money investments] as a lever [with the states] and it really gives me the stirks so when you have</td>
</tr>
</tbody>
</table>

226 Layder, n 31, p 53-54.
227 Layder, n 31, p 101.
228 Layder, n 31, p 54.
229 Layder, n 31, p 54-55.
230 Interview 131, Industry.
231 Interview 318, Environmental Group.

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different levels of government. programs like that and you have 20 or 30 million a year well I spend that downstairs on salaries". 232

Table 3.6: Examples of Coding Used in Research.

After a significant amount of data had been collected about each of the three cases, and a large number of interview transcripts had been provisionally coded, the researcher commenced a relatively discrete analysis of each case. This involved analysing and bringing together the specific details of sub case(s) to build up a collective and more holistic picture of the operation of the NEG program. 233

Broadly employing Stake’s and Creswell’s suggested approach to data analysis, the researcher focused not only on coding and recoding data to capture patterns, but also to capture discrepancies across the interviews and sub cases. 234 An example of identifying such a discrepancy arose in the analysis of the NEIP sub cases, where coding around the concept of “representativeness” revealed that while all three sub cases shared a range of common features, the peculiarity of an extremely small population in one sub case produced quite distinct results from the other 2 sub cases.

Having developed a more in-depth understanding of some general themes emerging from the experience in the cases, the researcher revisited the provisional codes to see if they accounted for the experience in the cases and/or if they needed to be confirmed as core concepts, or modified, refined, abandoned or supplemented with additional codes. 235 Additional codes consequently emerged (both from the data such as tensions between government and collaborative groups, and from the NEG literature 236 ) as the researcher developed an understanding of each cases’ institutional arrangements, its aspirations, and general strengths and weaknesses as an environmental governance program. For example, the analysis of the RNRM case brought to the attention of the researcher its complex accountability structure. Accordingly, additional concepts were drawn from the NEG literature to refer to these particular challenges.

It is important to note that during this analysis and coding, not every line or word of text was coded. For example, some interview data was focused on clarifying questions, providing background data on roles and positions within the program and building trust. However the researcher sought at all times to ensure comprehensive data treatment that coded all pieces of

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232 Interview 323, Government Agency.
233 This also involved an analysis of the more general interviews from government respondents in RNRM.
235 Layder, n 31, p 54.
236 Creswell, n 17, p 153-154.

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relevant data collected.237 Further, the researcher was careful to ensure that there was a good fit between specific concepts and empirical indicators, as well as being clear about what ‘slice of reality’ was referred to by the concept.238 Following AT,239 this process involved an ongoing rigorous and recursive process of reviewing and scrutinising NEG theory and data, as well as exploring the connection of the coding concepts to the thesis' primary research goal.

The validity of case analysis and its conclusions were also checked through a process of respondents’ evaluation240 conducted near the end of the fieldwork for each case. Here, a limited number of key informants were engaged to discuss some preliminary findings from my initial analysis of the case data.241 This involved holding a dialogue/reinterviewing 5 key government and/or non-government participants (1 in EIP, 2 NEIP and 2 RNRM) that had significant carriage and/or involvement in each of the three programs.242

Rather than attributing a “privileged status” to the responses given by these key participants on the findings,243 the researcher used this validation process to help identify and address various relevant perspectives,244 which lessened the likelihood of further analysis overlooking any key issues and/or falsely reporting an event.245

This preliminary validation and ongoing case analysis merged into the final stage of data analysis that focused on broader comparative patterns and themes between the cases. While such patterns and themes emerged at various stages of the project, this process became more organized after the initial cases analysis had been completed. This second stage of analysis involved a process of comparing and contrasting the three cases’ individual institutional arrangements, conditions and concepts that had emerged from the data on each case.

Important to this analysis was a process of grouping concepts within and across the cases into wider configurations. That is, the researcher identified concepts developed from the above coding which appeared to be ‘core’ and those concepts that appeared to be related to or further dimensions of this core concept.246 In this sense, related concepts were used to develop

237 Silverman, n 20, p 179-185; Lewis and Ritchie, n 224, p 275-276; Yin recognises approaches that adopt a somewhat similar logic to ensuring internal validity. He terms these techniques rival explanations, logic models, explanation building and pattern matching. For a discussion of these techniques see Yin, n 54, p Chapter 5.
238 Layder, n 31, p 97-98.
239 Layder, n 31, p 56.
240 Respondent validation refers to the practice of going back to participants with tentative results and refining them in light of subject’s reactions and accounts of the context of their actions; Silverman, n 20, p 99, 176; Yin, n 54, p 35.
241 That is prior to the completion of coding and analysing all available interview data.
242 I note that this technique of improving the study’s validity could have been more robust if it had been employed after the analysis had been completed and/or the researcher had given a greater number of respondents an opportunity to respond to the findings, however practicalities of time, access and resources prevented this from occurring.
243 Fielding N and Fielding J, Linking Data (Sage, 1986) p 43; Silverman, n 20, p 177.
244 Yin, n 54, p 34159-160.
245 Yin, n 54, p 34, 159-160.
246 Layder, n 31, p 117.

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conceptual clusters or networks in order to represent a wider range of phenomena than that represented by a single concept.247

For example, relations were drawn across the cases between various coding concepts relating to the representation processes, countervailing powers, and the decision-making process. These were subsequently grouped under the overarching theme of meaningful participation and deliberation in NEG. This and other conceptual clusters were ultimately grouped into 5 overarching themes on the emergence of successful collaboration, sustaining collaboration, meaningful participation and deliberation, effective learning and adaptation and new forms of accountability. This reflected the character of the concepts that had emerged from the interplay between data and theory, but also connected the empirical research with broader NEG theory and the research focus of this thesis.248

While the majority of this analysis was conducted in NVivo, as the main themes and core coding began to take shape, the researcher began to collect and analyse coded text through writing “reports” on each of the main research themes.249 These reports broadly followed the standard approach for composing journal or research articles.250 The report purposefully sought to check and link themes with the literature to explicitly produce insights for NEG theory and practice. It did this by outlining relevant theory on conditions to each theme; drawing on the coding and analysis, it identified the relevant goals and institutional arrangements of the three programs for each theme and the different issues and conditions that had impacted on the achievement of the goal in practice. These reports formed the first drafts of the analysis chapters 5-8.

Throughout the above analysis, and the chapters produced, the researcher endeavored to define and make clear the standards of “success” or “effectiveness” when drawing conclusions regarding each of the defining features of “good” NEG (e.g. “successful” collaboration).251 Even with these criteria, it is important to remember that as with every research project value judgments will often be the basis for determining what makes a process successful or unsuccessful, and different evaluators may well judge the same process differently.252 Indeed, given the complexity of conditions in NEG, the impact of context on qualitative research253 and the large data set like that used in this thesis, others examining the same case studies may arrive at different conclusions.254 Certainly the findings are not claims of “truth” offering some

247 Layder, n 31, p 159.
248 Layder, n 31, p 159.
249 Yin, n 54, p 133 to 158; Creswell, n 17, p 186.
250 Yin, n 54, p 133 to 158; Creswell, n 17, p 186.
251 Conley and Moote, n 2 at 377-378.
252 Conley and Moote, n 2 at 376.
253 Lewis and Ritchie, n 224, p 270.
254 Conley and Moote, n 2 at 376.

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independent and utterly reliable access to reality. Like most qualitative research, the findings may have been influenced to some extent by the researchers own background. Further as the cases are all ongoing, the data and findings in this thesis are obviously limited to the period of the study. As the cases studied capture only a certain set of institutional conditions and contexts, the findings' generalisability may also be limited to cases in similarly settings.

Even so, the conclusions, linkages and findings made by this thesis are intended to offer a logical set of statements and insights into how “good” NEG can be achieved. Indeed, the insights this thesis offers have emerged from an iterative and continuous comparative analysis that accounts for a wide diversity of NEG institutions and conditions exposed through three examples of NEG that have been supported by multiple sub case analysis and/or extensive interviewing, validity assurances and the use of several data sources.

### 3.6 Conclusion

This chapter has outlined the methodological orientation, data collection methods and data analysis approach applied by this thesis. From this discussion, the reader should be aware of both the purpose of the study and the basis for choosing its methods, which hopefully will facilitate (rather than confound) attempts to compare and learn from its insights into NEG.

As should be apparent, the orientation, methodology and data collection methods laid out in the above discussion are not those of a research project that is seeking to develop an all-embracing descriptive, explanatory or normative theory about NEG. Rather, the adaptive theory and collective case study approach that guides and underpins this thesis is well matched to its more modest, empirically focused goal. That is, to draw on NEG theory and qualitative case study data to provide a range of empirically based insights for NEG theory and accordingly begin to fill in some of the gaps, resolve some of the debates and advance our understanding of the conditions of possibility for achieving NEG’s vision of “good” environmental governance.

The qualitative focus and ontological and epistemological beliefs of this thesis seek to ensure that these insights into NEG’s operation in practice are firmly rooted in and make the most of the unique thoughts, views, attitudes and practices of participants in NEG programs.

255 Hammersley, n 13, p 69.
256 McNeil, n 10, p 129.
257 That is, this study does not involve a “retrospective study” approach; Yin, 54.
258 Sabatier et al, n 5, p12.
260 Conley and Moote, n 2 at 382.
However, critical focus is also placed on the influences of structural factors261 and their interaction with social activity to ensure that vital issues such as power and domination are not overlooked in seeking to understand when and how key elements of “good” NEG can be achieved.

The above discussion has also emphasised the comparative nature of this thesis’ research. While the thesis examines three cases that all aspire to and can be defined by the broad characteristics of “good” NEG,262 these cases also account for a wide range of different NEG approaches. Indeed, the EIP, NEIP, and RNRM cases collectively address different environmental and natural resource issues, occur at different scales of action, incorporate different types, ratios and roles for government and non-government stakeholders, and cross different policy contexts. The thesis compares and contrasts these different examples and conditions of NEG through examining a number of information rich sub cases that included potential “dimensions of interest” for NEG theory. Moreover, by studying multiple sub cases in both EIP and NEIP, and interviewing higher order officials in RNRM, the study seeks to bolster the diversity of context and conditions captured by the cases.

As indicated, this diversity across the cases heightens the possibility for this thesis to explore, test and clarify theoretical claims across different contexts and NEG approaches, as well as shed light and provide insights into whether and how different conditions, processes and contexts affect the achievement of “good” NEG.263

As explained above, arriving at these insights involved the collection of data from each case study, ensuring validity was checked through respondent validation and triangulating processes. Analysis of this data involved methodically coding and using both extant theory and ideas that emerged from empirical data. This coding and analysis process first involved a relatively discrete analysis of each case before comparing, contrasting and synthesising the data from the three cases to produce the 4 key foci of the research project, namely the issues of collaboration, participation and deliberation, learning and adaptation, and new forms of accountability.

The chapters that follow take up these themes and investigate whether and under what conditions these four features of “good” NEG were achieved in practice. The investigation and findings lead each chapter to confirm and reformulate, as well as adding to a number of suggested conditions and mechanisms raised in NEG theory for achieving “good” NEG. Where theoretical claims do not hold, each chapter draws on both insights from the findings and wider new governance theory to suggest alternative conditions, reformed approaches and in some cases

261 Neuman, n 14, p 81.
262 Patton, n 73, p 182-183; Conley and Moote, n 2 at 378.
263 Conley and Moote, n 2 at 378.

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the need for better clarification and greater discipline in NEG theorising.264 Before commencing this investigation however, it is useful to provide some background to the cases, both to set the context and to demonstrate how and to what extent each of the three case studies embraces collaboration, participation and deliberation, learning and adaptation and new forms of accountability.

264 Conley and Moote, n 2 at 379.
Chapter 4: The Case Studies - Aspiring to New Environmental Governance

4.1 Introduction

The approach of this thesis is to empirically examine three case studies to provide insights into the conditions under which "good" new environmental governance (NEG) can be achieved. However, to assess, evaluate and learn from the cases in practice, it is necessary first to identify precisely whether and how each case study embodies the broad defining features of "good" NEG, namely collaboration, participatory and deliberative aspirations, learning and adaptation, and new forms of accountability. Indeed, it is characteristic of the still emerging and evolving nature of NEG that these broad approaches can take different forms (e.g. "once off" collaborative decision making versus long term, collaborative problem solving and implementation) or embrace slightly different principles (e.g. a reflexive law approach to learning and adaptation versus a pragmatist one) (see chapter 2). Accordingly, it is important to be clear about the unique form each feature takes in the case studies.

This chapter satisfies this purpose by drawing on parliamentary speeches, legislation, guidelines and interviews with key policy makers to investigate and describe the cases' objectives with respect to the characteristics of "good" NEG. This analysis serves three vital functions for this research project. First, it provides the reader with an understanding of the context of each case, and its location among the variety of NEG experiments. Second, it provides the necessary background for the subsequent chapters to evaluate and compare each case relevant to the characteristics of "good" NEG. Third and finally, by explicating the specific goals of the cases with respect to each of the defining features of "good" NEG, this chapter begins to flesh out the evaluative standards against which the cases' experience in practice will be later evaluated.

The chapter proceeds in three sections, each dedicated to an examination of one of the three cases - Environment Improvement Plan (EIP), ¹ Neighbourhood Environment Improvement Plan (NEIP)² and Regional Natural Resource Management (RNRM). To provide some background to these programs, each section commences by describing the historical origin


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of the program and the reasons behind its development. The discussion then provides a brief overview of the program and places it within the context of wider NEG developments by connecting it with similar NEG experiments around the world. Finally, the investigation turns to discuss how the case study embodies the four characteristics of "good" NEG.

### 4.2 Environment Improvement Plan – NEG and Point Source Pollution

#### 4.2.1 Background and History of EIP

During the early 1990s, the Victorian Environmental Protection Agency (VEPA) pioneered the EIP. It was heralded as a mechanism to engage a broader range of stakeholders in the regulatory process and to generate co-operative and innovative approaches to addressing the environmental challenges confronting (usually large) industrial enterprises.

Like many NEG initiatives, the concept of EIP evolved not from elegant theorising but as a practical response to a concrete and pressing environmental problem: the stand off between a local community and the collection of industries that made up the Altona Chemical Complex in Melbourne (the Complex).

In a familiar failure of planning, the Complex, although initially located at some distance from residential areas, found itself in increasingly close proximity to the expanding and sprawling suburbs of Melbourne. Over the years, the local community and the Complex became increasingly polarised over the Complex’s severe pollution impacts, such as odour, noise and the health impacts of chemical discharges.

Finding the Complex’s management unresponsive to their concerns, residents turned to the VEPA, demanding that it take action to address their concerns. However, when the VEPA investigated, it found no easy solution to the conflict (tough action to reduce pollution might threaten the economic viability of chemical complex facilities, and there was little room for compromise). For a period, there was a stand off. The community, unhappy with the VEPA’s slow response, began to take "radical" action, opposing all development proposals by the offending facilities (including a proposal for a bike shed!). In 1989, the local Member for Parliament, facing heated demands from both sides, orchestrated a number of public meetings between concerned community members, the industries, the VEPA and local government.

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5 This included an oil refinery, carbon black manufacturer and a number of chemical industries; Meek T, “Environment Improvement Plans – Going Beyond Compliance to Achieve Sustainability” 13th World Clean Air and Environmental Protection Congress and Exhibition London, UK, August 22 - 27, 2004 at 2.

6 Meek, n 5 at 2.


8 Wills and Fritschy, n 7 at 158 - 159; Meek, n 5 at 2.
members. One outcome was an agreement to form the Altona Complex Neighbourhood Consultative Group ("ACNCG") comprising all the main stakeholders.9

At this point the VEPA took on a new role.10 Using the ACNCG forum, the VEPA facilitated the group's development and ultimately steered it towards a negotiated solution. That solution committed the Complex to improve emissions to air, reduce liquid and solid waste generation and manage noise emissions.11 In return, the local community stopped blocking the Complex's various expansion plans. Over time, through continuing dialogue and the consultation process, the industries in the Complex came to enjoy an increasingly productive and less adversarial relationship with the local community and VEPA.12

So successful did the VEPA regard this Altona model, that it decided to "roll it out" across the state.13 They did so under the banner of EIP.

4.2.2 Overview of EIP and international comparisons

As described by the VEPA an EIP is:

a public commitment by a company to enhance its environmental performance. The plan outlines areas of a company's operations to be improved and is usually negotiated in conjunction with the local community, local government, EPA and other relevant government authorities. Where possible, an EIP contains clear timelines for completion of improvements and details about on-going monitoring of the plan. Improvements may include new works or equipment, or changes in operating practices. Monitoring, assessments and audits are undertaken to plan and support these improvements.14

While these features are common to most EIPs,15 over the decade and half since the EIP was introduced a number of distinct forms of EIP have emerged.16 These are outlined in Box 4.1 below.

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9 Wills and Frischy, n 7 at 158 - 159; Meek, n 5 at 1-2.
10 Meek, n 5 at 2.
11 Robinson B (Chairman of EPA) "Cleaner Production – Pathways for the Future" 2nd Asia Pacific Cleaner Production Roundtable held in Brisbane, Australia 21-23 April 1999 p 7.
12 Meek, n 5 at 3; Robinson, n 11 at 7.
13 Meek, n 5 at 4; Gunningham N and Sinclair D, Leaders and Laggards (Greenleaf, 2002) p 159.
15 In principle the EIP process may abandon direct local stakeholder involvement in favour of a bipartite approach involving just the industry and VEPA, however this was very uncommon. Such a bipartite form would obviously struggle to satisfy participation and arguably many forms of collaboration characteristic of NEG. Accordingly, the empirical component of the research focused principally on voluntary and multi-stakeholder EIPs.
16 See generally Gunningham and Sinclair, n 13.

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By far the most common form of EIP is the “voluntary EIP”. Comprising the large majority of approximately 70 EIPs that were operational or being negotiated at the time of writing, the voluntary EIP is developed by industry, local stakeholders and VEPA pursuant to VEPA guidelines. These guidelines are designed to encourage both poor and better performing industries to genuinely volunteer to participate in the EIP process.

A similar type of voluntary EIP emerged in 1994 as a part of VEPA’s “accredited licence scheme” (AL). AL is targeted at leading environmental performers and provides them with a less prescriptive alternative to the standard works approval and licence. To obtain an accredited licence a firm must develop or have in place, inter alia, an EIP. Nonetheless, as previous research on AL in Victoria has shown, very few enterprises have gone down this path. Indeed based on the author’s research, only 21 accredited licences had been granted, out of the approximately 1000 licensed premises in Victoria.

Beyond these two types of voluntary EIPs, there are two compulsory forms. The first is an EIP under s 31C of the Environment Protection Act 1970 (Vic) (the Act). This section empowers VEPA to effectively compel industries to develop and implement an EIP. This is achieved through a convoluted mechanism, which involves “declaring” a particular highly polluting industry sector to be subject to s 31C of the Act and then offering individual industry enterprises within it the “option” of entering an EIP as a more palatable alternative to a mandatory environmental audit. The second compulsory EIP arises from VEPA’s legislative powers, which conceivably allow it to impose an EIP on any scheduled premises as a licence condition, or as a term of a work approval, notice or other statutory mechanism. These powers, as well as s 31C of the Act, are rarely executed in practice. However, as we’ll see in subsequent chapters, these powers are far from redundant and can have an important role in acting as an incentive altering mechanism to tip industry’s cost benefit equation and encourage them to collaborate.

Box 4.1: Types of EIPs.

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17 Total EIP numbers based on statistics obtained from VEPA.


21 Environment Protection Act 1970 (Vic), s 26B(2)(c).

23 The main reason for this is that very few industries have seen the purported benefits of an accredited licence as worthwhile (i.e. a reduced licence fee, greater flexibility and autonomy in determining how to handle environmental management issues and enhanced credibility with the community). Gunningham and Sinclair, n 13, pp 171-174.

24 The number of accredited licensees was based on statistics obtained from the EPA. Estimate of total licences based on most recent published figures of VEPA licence numbers; VEPA, Annual Report 2002-2003 Compliance Report (Publication 919, VEPA, 2003) p 2.

25 See Environment Protection Act 1970 (Vic), s 31C(6).

26 In these cases the contents of an EIP will be tailored to the issues of the particular development and will include an emphasis on site operating conditions; VEPA, n 4, p 1.

27 In addition, pursuant to VEPA authority under a number of State Environment Protection Policies (SEPPs), VEPA can also require an enterprise to develop an EIP: VEPA State Environment Protection Policy (Air Quality Management) 2001 (Vic), cl 20; State Environment Protection Policy (Control Of Noise From Commerce, Industry And Trade) No N-1 1989 (Vic), cls 17A-17G; State Environment Protection Policy (Prevention And Management Of Contamination Of Land) 2002 (Vic), cl 17.See for instance Environment Protection Act 1970 (Vic), s 206(6)(b); VEPA, n 4, p 1.

28 The VEPA has only sought to use its powers under s 31C of the Act and VEPA confirmed that imposing licence condition EIPs was rare in practice: See Gunningham and Sinclair, n 13, p 163.

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Regardless of the particular form an EIP takes, they all share the same overarching goal. That is, to accomplish continuous corporate environmental improvement, including extending "beyond compliance" with legal requirements.  

Similar goals for improving the environmental performance of industry have been pursued by international NEG experiments, including Project XL in the United States of America (USA), and environmental agreements and covenants in Europe. Like EIP, these NEG experiments have focused on encouraging leading or "good" performers to voluntarily aspire to go beyond compliance. However, the EIP embodies two characteristics that set it apart from these NEG experiments. First, the EIP is one of few NEG approaches to focus on improving the environmental performance of both the best and the worst industries. The second unique characteristic of the EIP initiative is that it was introduced a number of years before "regulatory flexibility initiatives" such as Project XL, making EIP a considerably more mature example of NEG.  

Such differences aside, like all NEG experiments focused on pollution control, the EIP represents a move away from conventional command and control regulation (notwithstanding that VEPA’s traditional regulatory powers still underpin the EIP’s operation).  

Similar to its counterparts in Europe and the USA, the EIP was (and remains) symbolic of the "new" way of governing industry pollution in the face of world wide trends of shrinking government resources, mounting criticism of command and control regulation, industry demands for more self regulation and citizens’ expectations of inclusion in decision-making. This "new" way of governing is evident in the design of the EIP that involves the quintessential features of NEG: (i) collaboration between industry, VEPA and non government stakeholders; (ii) participation of local residents and non government actors and deliberative decision making; (iii) "reflexive" and "adaptive management" processes of learning and adaptation; and
(iv) many "new" forms of accountability, including third party monitoring, process and the performance based accountability regime. The following discussion focuses on each of these features to demonstrate and provide greater insight into how the EIP gives expression to these defining characteristics of NEG.

4.2.3 EIP and the defining characteristics of NEG

4.2.3.1 Collaboration

At the heart of the EIP is "effective collaboration" between industry, VEPA and non-government stakeholders. This design feature is reflective of VEPA's overall approach to governance, which assumes there is more to be gained through "strategic alliances and forming or facilitating partnerships for environment protection with industry, local government and the community" than by adversarial, government centred regulation. Indeed, for the VEPA, face to face negotiation among partners and cooperative action is thought more likely to dissipate conflict, mobilise new resources and provide innovative solutions than the other more conventional tools in their kit. Achieving such benefits through a collaborative EIP process are particularly germane to VEPA's efforts to deal with situations like Altona. That is, situations where industries often have severe environmental impacts on local residents, traditional tools are inadequate to resolve the problem and the situation is rife with conflict and community dissatisfaction.

The collaborative approach that will ideally emerge under the EIP involves the relevant stakeholders forming a "Community Liaison Committee", modelled on the tripartite consultation process that proved so successful at Altona.

The committee is flexible in size, but ideally will be made up of about twelve members comprising two to three enterprise representatives; government representatives (local and VEPA); two to three representatives of interested groups such as NGOs; and five to six local

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34 VEPA, n 18, p 1; VEPA, n 4, p 2, 10.
38 VEPA, n 18, p 1; Holley and Gunningham, n 1.
39 "In many cases...industries or housing have been allowed to develop too close together, causing amenity problems for nearby residents. Conflicts have then sometimes emerged...there are generally no winners in these situations, and a traditional regulatory approach has not always worked...In an attempt to more effectively deal with these more challenging situations, some years ago, EPA Victoria recognised the value of getting industry and its community neighbours together to attempt to resolve these problems"; VEPA, n 18, p 1.
40 VEPA, n 18, p 1; VEPA, Ten steps to successful community/industry consultation (Publication 520, VEPA, 1996); VEPA, n 4, p 1, 2, 7; VEPA, n 35, p 4, 5.
41 As the guidelines point out: Proponents, facility operators and affected communities have been able to develop collaborative approaches to solve problems and potential issues of concern"; See: VEPA, n 35, p 1.
community representatives. These members collectively participate in and are given responsibility for defining and assessing aspects of the industry's environmental performance, and effectively “tailor” the EIP to the specific environmental and industrial conditions in each case.

The group accordingly develops, agrees to, monitors, evaluates and adjusts a single plan that governs improvements to industry's environmental performance for an agreed period (usually between 1-3 years). The EIP is not, however, intended to be a “once off” collaborative problem-solving endeavour. While the guidelines do not offer any specific time line as to the length of time collaborative groups are expected to survive, the EIP is designed specifically to be a long term collaborative endeavour. Indeed, when an industry has completed implementing a given plan, the group is required to redraft and agree to a new one in a manner that is consistent with the EIP's goals for continuous environmental improvement and adaptive management (discussed in more detail below).

4.2.3.2 Participatory and Deliberative Aspirations

In addition to collaboration, the EIP has identifiable participatory and deliberative aspirations. Indeed, the EIP is one of the key environmental governance instruments in the State of Victoria intended to deepen the ways in which non governmental actors participate in and influence decisions about environmental problems and policies that affect their lives.

In Victoria, as elsewhere, political appeals to “third way” and non-government participation in governance have grown over the last three decades, culminating in the recent “Growing Victoria Together” plan. Like other “third way” reforms in Australia, this plan
embraces “building cohesive communities” and “partnerships” and “community participation and engagement”.\textsuperscript{53} Unsurprisingly, this message has trickled down to the VEPA whose EIP program (and the more recent NEIP initiative discussed below)\textsuperscript{56} are intended to support the VEPA corporate objective\textsuperscript{57} to “engage with and enable communities in ways that are meaningful to people”.\textsuperscript{58} The EIP has a particularly significant role to play here because its intention to address “amenity problems” for residents near industries\textsuperscript{59} can give voice to the typically disenfranchised interests of those who bear the brunt of society’s industrial lifestyle (such as the environmental justice movement\textsuperscript{60} did on a broader scale in the USA).\textsuperscript{61} Notably, the EIP focus is also broad, and can give others such as environmental interest groups voice in seeking to reduce wider environmental impacts of industry.

However, the reader should be aware that the participatory aspirations of EIP are distinct to what we shall see below is a more “community building” focus taken by the other two cases.\textsuperscript{62} That is, while the EIP is concerned with empowering citizens to have a greater say over environmental problems that affect them, its narrow focus on “what comes out of a single industry” mean there is little attempt to connect residents or other interests to the broader local environment per se or establish a sense of “community” with others in the local area.\textsuperscript{63}

The collaborative EIP group has been designed as the vehicle through which these aspirations are to be achieved. This involves requirements for collaborative groups to meet procedural criteria common in NEG regarding inclusiveness, representativeness, and decision making processes (see chapter 2). These criteria are discussed in more detail in chapter 6, but they include requirements for the EIP to involve the “affected community”, including “as much

\textsuperscript{54} Victorian Government, n 36, p 22.
\textsuperscript{55} Victorian Government, n 36, p 22.
\textsuperscript{56} The VEPA’s more recent corporate plan goes further, making “community involvement” one of only five key results area for the organisation, with a primary aim “to improve Victoria’s environment through community involvement”, specifically through EIPs and NEIPs; VEPA, Corporate Plan 2004-2005 (Publication 913, EPA Victoria, 2003) p 7.
\textsuperscript{57} The VEPA’s more recent corporate plan goes further making “community involvement” one of only five key results area for the organisation. According to the plan, “community involvement is central to EPA’s work” and achieving this specifically involves developing, delivering and facilitating “Environment Improvement Plans (EIPs)”. VEPA, n 56, p 7.
\textsuperscript{58} VEPA, n 36, p 1, 6, 41.
\textsuperscript{59} VEPA, n 18, p 1.
\textsuperscript{60} For a recent overview see Ringquist E, “Environmental Justice” in Durant R, Fiorino D, and O’Leary R (eds), Environmental Governance Reconsidered (MIT Press, Cambridge).
\textsuperscript{63} Cannon, n 62 at 421-422.
resident participation as possible” as well as “different community interests and perspectives”.\textsuperscript{64} Decision making is also to occur through “negotiation”,\textsuperscript{65} where industry is to “communicate clearly and without the use of jargon and industry specific language”, treating non-government actors fairly and as equals,\textsuperscript{66} to arrive at joint decisions about objectives, targets and actions designed to improve industries’ environmental performance.\textsuperscript{67}

The intent is that over time, using this participatory and broadly deliberative approach, residents’ comments and suggestions will lead to effective solutions to their long-standing problems.\textsuperscript{68}

\textbf{4.2.3.3 Learning and adaptation}

The third NEG feature embraced by EIP is processes of learning and adaptation. Here, the EIP is unique among the case studies as it is the only one designed to combine a “process-based” approach to learning and adaptation, with an overlapping implementation method akin to “adaptive management”.

It may seem somewhat odd to associate the EIP with “adaptive management”. Certainly, the point source pollution problems addressed by EIP are a far cry from the ecosystem situations where Holling’s original “adaptive management” methods of scientific hypothesis testing were applied.\textsuperscript{69} However, consistent with the trend to extend the basics of this adaptive approach to different institutions and scales,\textsuperscript{70} the designers of the EIP appeared to believe that point source pollution governance should also be adaptive. Indeed, the EIP has been designed to involve an implementation method that roughly mirrors a “passive” adaptive management approach.\textsuperscript{71} As Karkkainen describes it, “passive” adaptive management is characterised by heightened monitoring of key indicators and subsequent adjustments in policies in light of what may be learned.\textsuperscript{72}

This process is evident in EIP requirements for the collaborative group to set measurable objectives; identify critical aspects of each objective and the standard that is to be maintained;
monitor these aspects and performance against the objective; and adapt actions in the plan as necessary.73 Much of this is carried out by industry, which must report monitoring data to the collaborative group in order to facilitate the cooperative identification of any shortfalls in meeting targets and standards, and develop actions to remedy them.74 The local knowledge of residents on the collaborative group is also central to monitoring the impacts of actions taken under the EIP. As the guidelines note, residents may alert the group to any problems or new issues that need to be remedied over the course of the EIP:

[Residents] live in the area, experience the problems and may be able to help in tracking down sources of the problem if they are not immediately obvious.75

These features will ideally ensure that EIP is more effective and responsive to the uncertainties and dynamic nature of industries' operations and their environmental impacts on local communities.76

Overlapping with the adaptive method of EIP is a second approach to promoting learning and adaptation that arises from a “process-based approach” to regulation. Much like reflexive law ideas outlined in chapter 2, process approaches assume that far more will be achieved by influencing attitudes and creating a framework for better environmental organisation than by the imposition of detailed prescriptive standards.77 The focus is similarly on developing systems for managing environmental performance across an organisation as a whole through requiring industry to set objectives and targets, establish a management program, set procedures for achieving the targets, and measurement techniques to ensure that they are reached.78 By systematically examining its environmental impact and means of reducing it, these processes will ideally stimulate a continuous search within the organisation for environmental impacts that fall outside of current regulation, followed by system self-correction and thus a process of continuous adjustment and improvement.79

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73 VEPA, n 4, p 9-10 (noting that “The EIP should provide for periodic (usually annual) review of assessment and monitoring data, and overall environmental performance...[including] updating the EIP itself following the review”.
74 VEPA, n 4, p 9-10.
75 VEPA, n 4, p 18.
76 As Ruhl has generally pointed out “it is almost universally the case that advocates of regulatory innovations also advance the method of implementation known generally as adaptive management: Ruhl, n 70, p 28; Fung and Wright, n 49, p 21-22.
78 Holley and Gunningham, n 1.
As other authors have pointed out, the EIP has been designed to operate along these lines. Specifically, the negotiated plan must include a range of processes as minimum requirements, including: undertakings to comply or go beyond compliance with licences and regulations; emission and waste production standards; monitoring of compliance; audits and assessments; improvement project details including what needs to be done, how it will be done and by when; provision for upgrading of plant; assessment of new and emerging technology; emergency and contingency plans; assessment and monitoring; review, reporting and updating, enhanced response to community complaints; community relations, health and safety issues; and community reporting requirements on progress.

As the last three requirements given above make clear, the processes inherent to this approach intermesh heavily with the adaptive approach carried out by the collaborative group. Even so, the more discrete intention of the EIP process based approach is to provide “an effective tool to guide a company’s environmental management”. Doing so, the EIP is aimed at enabling and encouraging industry to change its behaviour in response to new information and opportunities about its operations and environmental impacts, and thus achieve “continuous improvement”.

4.2.3.4 “New” Forms of Accountability

Finally, to ensure industry and collaborators contribute to (rather than pervert) environmental improvement, the EIP has been designed to employ a range of “new” forms of accountability. As with other accountability discussions in NEIP and RNRM, this section focuses on accountability design features of the case study, but acknowledges that wider mechanisms such as judicial review may operate to support elements of the process (eg. agency accountability).

As is characteristic of NEG’s “new” forms of accountability, the EIP supplements traditional hierarchical accountability relationships (eg. industry to VEPA) with horizontal ones (eg. industry to local residents). It also capitalises on the involvement of private actors such as industry, auditors and local residents in EIP, and the roles they can play in ensuring accountability for performance. By doing so, it is designed to ensure performance and make

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80 Gunningham and Sinclair, n 13.
81 VEPA, n 18, p 2; VEPA, n 4, p 9.
82 VEPA, n 4, p 2,10.
83 VEPA, n 4, p 1; Fiorino, n 79 p 402.
85 Freeman, n 84 at 96; May P, “Regulatory Regimes and Accountability” (2007) 1 Regulation & Governance 8 at 11.
the program responsive not only upward to agencies (and thus ideally parliament) but also to more immediate publics such as local residents.

The "new" forms of accountability in EIP are applied within two interrelated accountability regimes. That is, accountability for its process based approach, and accountability based on performance. While they overlap, for heuristic purposes the two are treated separately below.

In terms of the EIP's process based approach, accountability is centred on whether industry has an acceptable plan, rather than on the basis of its environmental outcomes. Industry's "professional accountability" is vital here, employing their professional expertise in designing the system. Further, accountability is to be delivered through VEPA oversight of the plan, supplemented by independent experts auditing of the system. These public and private actors are to determine "whether the EIP has been adequately implemented and is operating properly to manage environmental performance, rather than assessing the actual environmental performance of an organisation (through environmental monitoring)."

Overlapping with accountability for processes are a suit of mechanisms designed to ensure industry is also accountable for its performance. The core of this approach includes requirements for the industry (in negotiation with the others in the collaborative group) to set and be held accountable for measurable objectives. These objectives must meet a number of broad requirements, namely "improve environmental performance" by meeting or going "beyond-compliance" with licences and regulations.

Central to ensuring accountability for performance is a reliance on industry self monitoring and reporting to VEPA and a collaborative group, as well as horizontal mechanisms of accountability fostered through industry's and VEPA's collaboration with non government stakeholders. Indeed, non-government actors are expected to play "a valuable role in monitoring..."

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86 This section overlooks precisely how links between agencies and parliament are designed, as these considerations are beyond the scope of the specific design of the EIP.
87 Freeman, n 84, p 96.
88 VEPA, n 4, p 10.
89 May, n 85 at 13.
90 May, n 85 at p 10.
92 VEPA, n 4, p 10.
93 VEPA, n 4, p 9-10.
94 For example "Ensure no offensive odours are discharged beyond the boundaries of the premises" or "Reduce the volume of sludge wastes by 20 per cent within the next two years"; VEPA, n 4, p 7.
95 The EIP also aims to achieve social outcomes such as resolving conflict between industry and local community; VEPA, n 4, p 1.4-11; VEPA, n 18, p 1-3.
96 This will involve either "eliminating", "reducing" or "controlling" its "environmental impacts and risks" VEPA, n 4, p 7.
97 Further, the ongoing participation of agency officials in collaboratives may provide ongoing checks on industry to ensure they adhere to performance goals, and assist them to learn and adapt.

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and reviewing the performance of existing facilities". Such an approach not only checks industry behaviour but also adds to transparency. The aim is for stakeholders to "blow the whistle" or otherwise bring pressure to bear (eg. using local media to threaten industries' reputation and social licence) if decisions and actions are failing to achieve the set targets and reduce its impacts on the local area.

The mutual accountability and third party auditing mechanisms are also supplemented by the traditional command and control powers of VEPA. The VEPA retains a right to amend and approve plans to ensure the targets set are appropriate. The primary boundary on this decision being that the target must meet and/or go beyond minimum legal requirements. If slippage in a target is evident, the VEPA has recourse to its regulatory powers (eg. impose more stringent licence conditions or prosecution) that may be used as a threat if industry performance slips significantly below established thresholds.

### 4.2.4 Summary

To sum up, although the EIP is underpinned by command and control style powers of the VEPA, its approach to governing industry represents a significant departure from conventional rule based regulation. Its systematic approach to pollution prevention by encouraging greater industry self-management sets it apart from prescriptive regulatory approaches that demand adherence to fixed rules. It also evidences a shift away from a traditional bipartite relationship between the regulators and the regulated, to a “tripartite” approach involving disclosure of information to, consultation with, and empowerment of local communities. As demonstrated above, one can clearly discern within this distinctive program the intention to pursue, and successfully implement, a collaborative, participatory and deliberative process that fosters learning and adaptation to changing environmental issues and impacts, while ensuring performance and public interests are secured through a mix of traditional and new forms of accountability. Each of these key features take a unique shape relevant to the EIP approach, but all offer an expression of the defining features of NEG.

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98 VEPA, n 35, p 1.
99 Fung and Wright, n 49, p 16-17.
100 Local residents may also play a democratic accountability role in scrutinising VEPA actions and relationships with industry in pursuing environmental performance; Weber E, “The Question of Accountability in Historical Perspective: from Jackson to Contemporary Grassroots Ecosystem Management” (1999) 31(4) Administration and Society 451 at 453.
101 VEPA, n 4, p 11.
102 In the event of a breach of law, this may involve a prosecution. However, even for targets that go beyond regulatory baselines, if there is continual underperformance the VEPA may make the targets binding conditions of a licence, effectively compelling industry to meet them or face legal action. Even in cases where leading performers are involved, underperformance could lead to rescinding accredited licencee status. Meek, n 5, p 4, Gunningham and Sinclair, n 13, p 163.
The next section turns to consider a second NEG program and case study of this thesis: the NEIP. Despite a similarity in nomenclature with the EIP, the NEIP’s translation of NEG’s approach to governing is noticeably distinct.

4.3 Neighbourhood Environment Improvement Plan – NEG and Complex Environmental Problems

4.3.1 Background and History of NEIP

In 2001, the VEPA introduced the NEIP as a new tool to address complex local environmental problems. In distinct contrast to the EIP’s focus on single industry sites, the NEIP is designed to operate as a “place based” approach at a “neighbourhood” scale that involves multiple industrial, residential, commercial and/or agricultural causes of environmental problems. The NEIP also discards command and control for broad based “community” decision making that engages not only large point source polluters, but the entire gamut of public and private actors who contribute to or are responsible for environmental problems at a neighbourhood level.

The introduction of the NEIP instrument formed a part of a wider shift in the direction of environmental governance and policy toward developing new tools for addressing complex environmental problems. These so called “second generation” environmental problems include issues such as the cumulative impact of multiple sources of pollution at a local level.

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105 As the second reading speech spells out quite clearly: “The Environment Protection Act provides EPA with a range of tools to protect and improve the Victorian environment. In particular, there are many effective tools which EPA has used over the years to reduce emissions from industry, especially from larger industrial sites. These well developed statutory tools include licences, works approval and notices. However, as we are well aware, local environmental problems are increasingly the result of the cumulative impacts of multiple sources. For example, sources of air pollution in a local urban neighbourhood might include one or two large industrial sites, several small commercial premises, motor vehicles and emissions from lawn mowers and wood heaters. Furthermore, the responsibility for managing these sources is often split between EPA, local government and other state government agencies. Local communities and state and local government agencies need a new tool to help them address local environmental issues in a more useful and cost-effective way. In response to this need, the Bracks government is delivering on its commitment to improve the quality of the local environment and hence, the liveability of neighbourhoods through the establishment of neighbourhood environment improvement plans”; Garbutt, n 103, p 2.
106 Gunningham and Sinclair, n 13.
108 Gunningham and Sinclair, n 13.
109 Often, these diverse and diffuse sources of pollution have an overall environmental impact far exceeding that of the “traditional villain”, namely large industrial enterprises. It has been estimated that in the UK over 70% of total
As we saw in chapter 1, traditional regulatory approaches to these problems have often been ad hoc, lacking in integration and were largely ineffective in resolving these issues. For these reasons, the Victorian Minister for Environment and Conservation made the case in 2001 for a more holistic locally based governance approach known as NEIP that would be used to address complex environmental problems. NEIP was duly introduced into the Act and was described as:

a statutory mechanism to enable those contributing to and those affected by local environmental problems to come together in a constructive forum. In this forum, the members of the local community, including residents, industry and local government, can agree on the environmental priority issues for the neighbourhood. They can then devise a plan to address their agreed environmental issues in a practical manner.

4.3.2 Overview of NEIP and International Comparisons

Two types of NEIP were introduced: a directed, and a voluntary NEIP. At the time of writing, there have been no directed proposals and none were anticipated, at least in the short or medium term. Rather, the focus in practice has been, and will continue to be, on the voluntary NEIP processes. For this reason, it is the latter that is the focus of the remainder of this thesis. Box 4.2 below provides an overview of the structure of voluntary NEIPs.

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environmental pollution is caused by the activities of small and medium sized enterprises; Groundwork, Small Firms and the Environment: A Groundwork Status Report (Groundwork Foundation, 1998).

110 VEPA, n 104, p 2.

111 In particular she argued that: “local communities and state and local government agencies need a new tool to help them address local environmental issues in a more useful and cost-effective way”; Garbutt, n 103 p 2.


113 Environment Protection Act 1970 (Vic), s 19AD defines “neighbourhood environment improvement plan” to mean a neighbourhood environment improvement plan that is developed as a result of either a directed proposal or a voluntary proposal”.

114 Garbutt, n 103 p 2; VEPA, n 104, p 1.

115 In general terms, a directed proposal refers to a process whereby the VEPA directs a local government or some other “protection agency” to submit a NEIP proposal document to the VEPA for endorsement. For the specific requirements, notification obligations and timelines relating to this process see Environment Protection Act 1970 (Vic), ss 19AF, 19AG and 19AH.

116 Environment Protection Act 1970 (Vic), ss 19AD, 19AE and 19AH.

117 See generally VEPA, n 104.


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may involve tackling issues on a geographical basis, for example, as part of a water catchment or air shed, or the neighbourhood may be better defined by a social or administrative boundary like a township.\(^{119}\)

Pursuant to the Act, a NEIP cannot be developed without identifying a “NEIP sponsor”.\(^{120}\) A “sponsor” can be an actor from a particular group of State, region or a local governmental agency known as a “protection agency” that have powers or duties under legislation other than the Act but with respect to the Victorian environment.\(^{121}\) The most appropriate sponsoring agency will depend on the context and issue being addressed\(^{122}\) and the particular role of the chosen protection agency will also vary. For example, it can include taking a leadership role, providing funding or support, or merely acting as one of the many participants.\(^{123}\) However, the sponsor is required to act “on behalf of the neighbourhood community to take the proposal through the formal stage of gaining EPA endorsement”, ultimately submitting the proposal and plan to VEPA.\(^{124}\)

Once a sponsor is acquired and the plan is approved, the NEIP is intended to “improve the quality of the local environment”\(^{125}\) through multiple public and private stakeholders collaborating together to address a shared and complex local environmental problem.\(^{126}\) Notably, the NEIP program has no central source of government funding (such as RNRM program discussed below). Further, it is only members of the collaborative group who voluntarily agree and commit to take actions as a group. That is, the NEIP does not impart any direct regulatory authority to the collaborative group nor any significant resources to assist in, coerce or offer incentives to compel others to take action.\(^{127}\)

**Box 4.2: Overview of Voluntary NEIP.**

The NEIP’s approach shares some similarities with international NEG experiments. For example, the NEIP echoes elements of “civic environmentalism” identified by Dewitt John\(^{128}\) and others in the USA. However it is more closely related to the now defunct NEG experiment of Community Based Environmental Protection (CBEP) that was developed by the United States Environmental Protection Agency (US EPA).\(^{129}\) Like CBEP, the NEIP program aims to

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119 VEPA, n 104, p 2-3.
120 Environment Protection Act 1970 (Vic), s 19AE; VEPA, n 22, p 2.
121 Protection agencies are persons or bodies such as local governments, water authorities, catchment management associations or State government departments (eg the Department of Natural Resources and Environment or the Department of Infrastructure); Environment Protection Act 1970 (Vic), s 4(1); VEPA, n 104, p 7.
122 For instance, members of a local community who want to focus on natural resource and water quality issues may approach a catchment management authority, while a local government may be a more appropriate sponsor if members of a local community wish to develop a proposal to improve the health of local urban streams.
123 VEPA, n 104, pp 7-8.
124 VEPA, n 104, pp 7-8.
125 Garbutt, n 103.
126 Environment Protection Act 1970 (Vic) 19A(l); Garbutt, n 103 at 2.
128 For example, both NEIP and John emphasise ideas of “sponsors”, and both civic environmentalism and NEIP emphasise more bottom up efforts that embraced community capacity to govern local second generation environmental problems; John D and Mlay M, “Community-Based Environmental Protection: Encouraging Civic Environmentalism” in Sexton K, Marcus A, Easter K and Burkhardt T (eds), Better Environmental Decisions (Island Press, 1999) p 361.
129 US EPA, Community Based Approaches (US EPA) at [http://www.epa.gov/ecocommunity/](http://www.epa.gov/ecocommunity/) (viewed 5 March 2007). This has since been replaced by Community Action for a Renewed Environment (CARE) [http://www.epa.gov/care/](http://www.epa.gov/care/).
achieve a form of “top down support for bottom up community initiatives”. Similarly, both are “place-based” approaches that encourage collaboration between local stakeholders in a community to addresses complex and cross-media environmental problems. However, in contrast to the NEIP program, CBEP was not a statutory mechanism that was formally enshrined in legislation, nor was it a specific US EPA program. Rather, CBEP was a more general initiative, which aimed to build on the US’ EPA existing media-specific statutory program by incorporating CBEP into all US EPA programs to “change...how the Agency does business”.

The unique design of the NEIP involves the tell tale features of NEG, including: (i) **collaboration** between multiple public, private and non government actors within a local neighbourhood; (ii) **participation** of local residents and non government actors and **deliberative** decision making; (iii) “adaptive management” and “systemic” processes of **learning and adaptation**; and (iv) many “new” forms of **accountability**, including mutual accountability, contractual agreements, and a performance based accountability regime. The following discussion elaborates on each of these features to illuminate the way in which NEG is manifest in NEIPs.

### 4.3.3 NEIP and the Defining Characteristics of NEG

#### 4.3.3.1 Collaboration

Broadly consistent with VEPA’s abovementioned collaborative approach to regulation, the NEIP has been designed to make voluntary collaboration and “partnerships” a central feature of its approach. As the guidelines point out, the NEIP has been designed to address severe and complex environmental problems “which require concerted shared action”. These

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130 John and Mlay, n 128, p 361.


132 Partners can include a broad range of people including individuals and households, social groups and services, local businesses, industry and business organisations, local green groups, state and local government agencies, green peak bodies, professional associations, and financial institutions: VEPA, n 104, p 8; VEPA, *Annual Report 2003–2004 Community and Environment Report* (Publication 962, VEPA, 2004) p 10.

133 Indeed references to partnership abound in the NEIP guidelines. For example: (i) “Each Neighbourhood EIP will be comprised of different partners...Partners should include those groups, businesses or people contributing to the environmental problems in your neighbourhood as well as those concerned about it and with the responsibility to act on it...” (VEPA, n 104, pp 8-9); (ii) “EPA must be satisfied that the people or organisations...likely to be required to undertake works have been identified and have agreed to participate. These become ‘partners’ in the Neighbourhood EIP” (VEPA, *A Guideline for Submitting a Voluntary Neighbourhood Environment Improvement Plan Proposal* (Publication 847, VEPA, 2002) p 2); and (iii) one possible outcome of a NEIP is said to include “building relationships and partnerships across all community members, friendships and social networks” (VEPA, n 104, p 6).

134 VEPA, n 104, p 2; VEPA, n 133, p 1.

135 Karkkainen, n 118 at 76; Karkkainen, n 118.
include situations such as “when there are multiple sources of pollution and where a joint effort is required to develop and implement solutions” and/or existing “plans or programs are not being effectively implemented.” They will also generally be characterised by community dissatisfaction with the result of the status quo (eg. “community concern”). The assumption inherent in these statements is that collaboration will be better suited to addressing such complex second generation issues than traditional regulation. This is a common assumption of NEG which accepts that the active involvement of public, private and other local stakeholders in cooperative decision-making and implementation is more likely to mobilise knowledge sensitive to the local context and complexities of an environmental problem than an approach which relies on centralised regulatory decision-making and action.

Benefits such as these are to be delivered through a NEIP collaborative group that can be any size but must include the sponsor, “those groups, businesses or people contributing to the environmental problems” in the neighbourhood as well as “those concerned about it and with the responsibility to act on it” (such as the VEPA). This NEIP collaborative group is to be responsible for developing both the proposal and subsequently the planning document (both in consultation with the neighbourhood community). Upon the plan being approved by the VEPA it becomes a living document. Like EIP, the NEIP collaboration is intended to be an ongoing and long term collaborative process that is subject to a process of regular review and monitoring of progress, which can lead to plan amendments, and over the longer term a total review and redraft of plans.

4.3.3.2 Participatory and Deliberative Aspirations

Like the EIP, the NEIP forms a central plank in community empowerment and “Third Way” aspirations inherent in the “Growing Victoria Together” strategy and VEPA’s aims “to improve Victoria’s environment through community involvement”. Indeed, according to the relevant second reading speech, the NEIP was expressly designed to “operate on the basis of

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136 VEPA, n 56, p 7.
137 VEPA, n 104, p 3.
138 VEPA, n 104, p 4.
139 VEPA, n 48, p 9; Minister for Environment and Conservation, Garbutt, n 103.
141 VEPA, n 104, p 7.
142 Environment Protection Act 1970 (Vic), s 19AI(4).
143 Environment Protection Act 1970 (Vic), ss 19AI(3)(f) and 19AJ, 19AI(e)(f).
144 Environment Protection Act 1970 (Vic), 19AI(e)(f)
146 According to the plan, “community involvement is central to EPA’s work” and achieving this specifically involves developing, delivering and facilitating “Environment Improvement Plans (EIPs)” and “Neighbourhood Environment Improvement Plans (NEIPs)”, VEPA, n 36, p 7.
community agreement and participation"¹⁴⁷ (the community being defined as “the people who live, work and play” in the neighbourhood).¹⁴⁸

The fact that NEIP is intended to provide opportunities for local resident, non government groups and others in a neighbourhood¹⁴⁹ to play a greater role in environmental decision-making is also evident in a range of other statements about the NEIP. For example, the NEIP has been described as “a means of grass roots empowerment”¹⁵⁰ and as tool for giving control to local communities and “encouraging participation and commitment”.¹⁵¹ These statements reveal not only the extent of participatory focus but also the community building approach designed to transform citizen preferences through “building a shared vision, and an understanding of problems and options to address them”¹⁵² ideally leading to:

community empowerment, ownership and understanding, building relationships and partnerships across all community members, friendships and social networks.¹⁵³

These aspirational statements are to be achieved primarily through the collaborative group and its consultation and interaction with the neighbourhood community.¹⁵⁴ As in the EIP case, NEIP is designed to ensure that the members of the collaborative group contribute to its participatory and deliberative goals by requiring that the group meet procedural criteria regarding inclusiveness, representativeness, and deliberative decision making processes. As will be discussed in more detail in chapter 6, these criteria include requirements for NEIP to be “open to all parts of the community”, include representation from a cross section of the community¹⁵⁵ and use “negotiation” and “mediation” processes to make decisions (including in proposal and plan consultation processes).¹⁵⁶

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¹⁴⁷ Garbutt, n 103, p 4.
¹⁴⁸ VEPA, n 104, p 1.
¹⁴⁹ Of course government actors are also included in the NEIPs definition of community, however the general intent of “empowerment” noted in the statements above appear unlikely to apply to the already powerful and empowered government actors within the neighbourhood.
¹⁵¹ VEPA, n 104, p 3.
¹⁵² VEPA, n 104, p 8-9; Cannon, p 62 at 421-422.
¹⁵³ VEPA, n 104, p 6; Cannon, p 62 at 421-422.
¹⁵⁴ In addition, the NEIPs consultation also has an important role to play in ensuring community input into decision-making.
¹⁵⁵ VEPA, n 104, p 8. Although the quote from the second reading speech above suggests “community” includes “residents, industry and local government”, at other times “community” is juxtaposed with “industry and local government”; VEPA, n 25, p 10.
¹⁵⁶ VEPA, n 104, p 4-6, 9; VEPA, n 133, p 6; Environment Protection Act 1970 (Vic) s19AI(3)(d).
The intention is that these processes will allow the local residents and non governmental members of the neighbourhood to effectively “address environmental issues of importance to the community at the local scale”.

4.3.3.3 Learning and Adaptation

The third NEG approach embodied in the NEIP is an intention to foster learning and adaptation. It does this in two overlapping ways. First, the NEIP is designed to require a method of implementation broadly akin to an “adaptive management” approach. The fact that it does so is hardly surprising, given that NEIP deals with these types of complex and dynamic ecosystems, catchments and/or other neighbourhood scale environmental issues to which adaptive management approaches are commonly suited.

Like the EIP, the NEIPs adaptive approach appears to be closest to a “passive” style of adaptive management. This involves the NEIP group setting measurable targets and objectives, developing processes to measure progress including “milestones” such as “short and longer term indicators of progress towards goals”, monitoring these milestones and indicators, and conducting a “regular review and updating” of the plan to rectify any ineffective actions, update targets or address any new issues or problems that monitoring identifies. By following this process, the aim is to ensure the NEIP will perform better and be equipped to cope with the likely uncertainties and dynamic nature of the complex second generation environmental problems they are addressing.

In addition to its style of “adaptive management”, the NEIP is intended to establish a process of information sharing and learning that is broadly consistent with elements of pragmatic and democratic experimentalist ideas of “systematic learning”. Systemic learning is used for shorthand to describe two key processes of learning: (i) the sharing of information and innovations between local collaborations that follow “experimental”/adaptive management
methods;\textsuperscript{165} and (ii) the continual adaptation of explicitly provisional government policy determinations.\textsuperscript{166}

This systemic approach to learning was entirely absent from the aspirations in EIP.\textsuperscript{167} However, the NEIP case expresses a clear intention for the VEPA to collate and diffuse the different experiences of the NEIP collaborations. As the guidelines note:

EPA is seeking to document and share ways different communities develop Neighbourhood EIP proposals and plans.\textsuperscript{168}

Individual collaborations are also expected to embrace “learning objectives” that involve “developing and sharing Neighbourhood EIP models with other neighbourhoods”.\textsuperscript{169}

This approach appears to fall short of the full blown democratic experimentalist system, not least because there appears to be no express intention for the VEPA to use the information gained from collaborations as means to revise the rules that frame NEIP.\textsuperscript{170} However, the design of the NEIP clearly shares with experimentalists an appreciation for processes that diffuse information and innovative ideas between collaborative groups.\textsuperscript{171} Indeed, doing so may well lead to improved performance and problem solving capacities of individual collaborations.

4.3.3.4 “New” Forms of Accountability

Finally, the NEIP is designed to deploy a range of “new” forms of accountability to try and ensure the accountability of collaborators’ governing local environmental issues.\textsuperscript{172}

Like EIP, the NEIP employs not only traditional hierarchical accountability mechanisms, but also horizontal ones that seek to capitalise on the roles that its collaborators can play in holding each other to account.\textsuperscript{173} As discussed further below, central to this approach is the use of contractual controls to contribute to accountability of the program. These accountability

\textsuperscript{165} Such systemic learning has also been recognised outside of the pragmatist paradigm: See for example Paton S, Curtis A, McDonald G and Woods M, “Regional Natural Resource Management: is it Sustainable” (2004) 11 Australasian Journal of Environmental Management 259 at 262; (noting the failure of RNRM approach to identify lessons learned between regional NRM groups); Siriani C and Friedland L, “Civic Environmentalism” in Siriani C and Friedland L (eds), Civic Innovation in America (University of California Press, 2001) p 86.


\textsuperscript{167} There was no evidence that the agency responsible for overseeing EIP (the VEPA) intended second order learning for this program.

\textsuperscript{168} VEPA, n 104, p 4, 6.

\textsuperscript{169} VEPA, n 104, p 4, 6.

\textsuperscript{170} Sabel et al, n 166 at 693.


\textsuperscript{172} VEPA, n 104, p 3.

features ideally check environmental performance and make the program responsive to VEPA (and thus ideally parliament) as well as the more immediate neighbourhood community.174

Consistent with many NEG initiatives, these “new” forms of accountability are deployed within a performance accountability regime. This involves collaborations setting and being held accountable for the achievement of broad environmental targets175 to “improve the quality of the local environment”.176 Within this regime the collaborative group is expected to conduct self-monitoring and report to the VEPA.177

Akin to some NEG experiments,178 the NEIP use a form of contractual arrangement as a means to foster accountability. This arrangement is designed so that once the plan is approved by VEPA, it is subsequently “gazetted” as a statutory document,179 making the actions in the plan binding at law.180 Consistent with the voluntary approach to collaboration, a partner’s decision to commit to actions in the plan is voluntary in nature and they must formally sign-on to the plan to demonstrate their willingness to do so.181 However, those who choose to participate accordingly bind themselves to a form of agreement, which is essentially contractual in nature.182 The consequences of subsequent withdrawal or failure to fulfill the contractual terms are intended to involve a breach of law.183

This contractual mechanism is intended to provide a number of accountability and transparency benefits,184 including improving the capacity of collaborators to hold each other to account by enhancing capacity to shame or bring other formal pressure to bear on underperforming partners.185 As the guidelines sum up the intended benefits of this contractual approach:

A Neighbourhood EIP can…encourage greater commitment and accountability through a public and statutory document.186

The NEIP has also been designed to impart to the VEPA a number of powers to ensure the accountability of the collaborative group. The VEPA has powers to amend, impose conditions

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174 Freeman, n 84, p 96.
175 For example: “Improvements in environmental quality and amenity” of a creek or “improving neighbourhood sustainability, VEPA, n 104, p 6.
176 Garbutt, n 103.
177 Environment Protection Act 1970 (Vic), ss 19AI, 19AJ.
179 Environment Protection Act 1970 (Vic), s 19AI(4).
180 Environment Protection Act 1970 (Vic), s 19AI(4).
181 VEPA, n 133, p 6; Environment Protection Act 1970 (Vic), s 19AH.
182 Gunningham et al, n 2.
183 Gunningham et al, n 2.
184 Freeman, n 178 at 207.
185 VEPA, n 104, p at 3.
186 VEPA, n 104, p at 3.

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and/or approve the NIEP proposal and plan to ensure targets set are credible.\textsuperscript{187} The NEIP is designed to impose only very broad boundaries on the targets that groups’ set or on VEPA approval of them. While the NEIP at minimum must be “consistent” with any applicable existing planning and environment protection policies,\textsuperscript{188} the objectives and targets must “improve the quality of the local environment”.\textsuperscript{189}

The VEPA power to approve the plan also acts as an important check on whether the processes of monitoring, evaluation and reporting established by the collaborative group accord with guidelines.\textsuperscript{190}

### 4.3.4 Summary

In summary, the NEIP is a unique manifestation of NEG approach to governing which has the potential to provide a much needed addition to a regulatory toolkit that currently contains fragmented, ad hoc and largely ineffective means of addressing complex “second generation” environmental problems. Like the EIP approach, the NEIP pursues the features of NEG approach to governance. However, the NEIP embodiment of these NEG characteristics is also different to the EIP on number of dimensions. Not least, it addresses more complex environmental problems; involves a broader mix of public and private actors in collaboration; seeks learning gains through a process of systemic learning; and is focused exclusively on a performance accountability regime.

Having analysed and discussed both the NEIP and EIP case studies of this thesis, the next section turns to focus on the final case study, namely RNRM.

### 4.4 Regional Natural Resource Management- NEG and Natural Resources

#### 4.4.1 Background and History of RNRM

The final NEG case study of this thesis is regional natural resource management (RNRM). This program involves the federal and state governments committing billions of dollars of public funding to what is perhaps the most ambitious and substantial NEG initiative in Australia.\textsuperscript{191}

\textsuperscript{187} Environment Protection Act 1970 (Vic), ss 19AH(2), 19AI(2).
\textsuperscript{188} Environment Protection Act 1970 (Vic), s 19AI (3).
\textsuperscript{189} VEPA, n 104, p 1; Garbutt, n 103, p 2.
\textsuperscript{190} Further, the ongoing participation of agency officials in groups may provide ongoing checks on groups to ensure they adhere to performance goals and assist them to learn and adapt.
\textsuperscript{191} Moore, n 53, p 121.
There are many factors behind the introduction of RNRM, including the rise of "sustainable development" discourse in Australia and wider shifts in the roles of government and civil society in governance. However, perhaps the most influential factor was a need for government to find an alternative to the limitations of more traditional regulatory approaches (as discussed in chapter 1), as well as the shortcomings of three more innovative reforms in the governance of natural resources, namely Integrated Catchment Management (ICM), Landcare and the Natural Heritage Trust.

Both ICM and Landcare emerged during the 1980s and 1990s and both were integral to laying the groundwork for the emergence of RNRM. As we saw in chapter 2, ICM emerged primarily at the state level in response to growing concerns about the failure of traditional approaches to provide an integrated and holistic approach to managing natural resources. While these state ICM arrangements made a positive step toward a more holistic approach for managing natural resources, many of the ICM arrangements suffered from weaknesses that constrained their success, including: lack of funding, problems of representation, the limits of the supply of volunteer efforts, and particularly in Queensland, a general lack of legislative backing and mandate that reduced the influence of catchment groups over broader public policy.

Around the same time as ICM was being rolled out at the state level, the National Landcare Program emerged at the Federal level. This was a broad collaboration between government and "rural communities" involving limited government funding for demonstration and trials of new farming practices and education to assist farmers to become more skilled, informed and...
adaptive land managers (see further chapter 2). This program had its share of successes, including mobilising extensive numbers of the rural community. However, it soon became apparent that local Landcare groups, working with limited resources, were unlikely to effect landscape change necessary to protect critical natural resources assets. As discussed in chapter 2, the Federal government sought to address this problem in part by committing more funds to Landcare for on ground works.

These funds came through a new Federal program known as the Natural Heritage Trust, which was supported by a $1.25 billion reserve. This five year program was introduced in 1996/97 and is commonly called the ‘first phase’ of the NHT (NHT 1). NHT 1 was implemented through partnership agreements with the states to ensure effective planning and service delivery. The focus of the program was primarily on funding on-ground conservation works in addressing water, seas, coasts, sustainable agriculture, and natural resources management. The National Landcare Program was one of the programs funded under NHT, and landcare groups (as well as ICM groups) also became involved in other NHT programs.

NHT 1 grants extended to more than 12 000 projects around Australia and involved an estimated 400 000 Australians. The monies invested in the NHT Reserve also provided funding for a National Land and Water Resources Audit that collected and collated primary data and information related to Australia's natural resources and their management.

Despite NHT 1’s positive impacts, reviews of the program at the end of the 1990s pointed to substantial shortcomings. Some of the biggest weaknesses were that government...
investment tended to be piecemeal, lacked good performance information to measure outcomes, and had failed to be effectively strategic in targeting priority national and state natural resource problems.\textsuperscript{214}

In response, the Federal government began to think about ways for developing a more "strategic" approach to resource management\textsuperscript{215} and began moving towards a system of "regionally" focused governance.\textsuperscript{216}

4.4.2 Overview of RNRM and International Comparisons

The first step in this shift to a regional focused system was the announcement in 2000 of a new program known as "the National Action Plan for Salinity and Water Quality" (NAP).\textsuperscript{217} The program involves a federal and state commitment of $1.4 billion for seven years.\textsuperscript{218} Its focus was primarily on achieving "place based", regional natural resource management solutions that delivered on nationally agreed goals, namely preventing, stabilising and reversing salinity; and improving water quality for human use and the environment.\textsuperscript{219} The program is managed via both the Commonwealth and States under signed Bilateral Agreements, and focused on 21 "priority regions" across Australia (with 4 of these being in Queensland).

Investment is delivered into each priority region via a community/stakeholder based regional body (including local land-managers, local communities, NGOs and other ground level stakeholders) to manage and protect the region’s natural resources.\textsuperscript{220} Regional bodies are expected to develop a regional plan in consultation with the regional community that identifies regional priorities and regional targets that accord with nationally determined "matters" (eg. soil

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\textsuperscript{214} Head, 192, p 143; Paton, n 165 at 259; Natural Resource Management Standing Committee (NRMSC), M&E Key Documents, Draft Users’ Guide (preamble) Monitoring and Reporting on Natural Resource Management, (NRMSC, 2003) at 3.

\textsuperscript{215} NNRMTF (National Natural Resource Management Taskforce), Managing Natural Resources in Australia for a Sustainable Future (Agriculture, Fisheries and Forestry Australia, 1999).

\textsuperscript{216} As one government discussion paper pointed out "Policy approaches need to be applied in an integrated way across regions and catchments and at the local and farm levels...[involving] devolved authority and empowered regional communities"; NNRMTF, n 215, p 1, 29, 39, 43.

\textsuperscript{217} Council of Australian Governments, n 213.

\textsuperscript{218} $700 million from the states and $700 million from the Commonwealth.


condition) and contribute to national identified outcomes (eg. The impact of salinity on land and water resources is minimised, avoided or reduced).

The regional plan and a supporting “investment strategy” also identify projects and actions (eg. rehabilitation, best practice management) to deliver on these targets. The State and Federal government subsequently invest in these actions and projects which are carried out by the regional body itself or other subregional catchment management groups, farmers, science bodies or other stakeholders.

As the roll out of NAP commenced, the Commonwealth government announced in its May 2001 budget that it would invest a further $1.5 billion in a revised version of the NHT program for a further 5 years. This was the so called “second phase” of NHT (NHT 2) and provided a strategic shift in its delivery. The new focus and approach of NHT 2 was threefold: (i) investment relating to national priorities; (ii) investment at the regional level that, like NAP, was to rely on regional bodies and regional plans; and (iii) investments at the local level through the Australian Government Envirofund. For the purposes of this thesis, it is only the regional component of NHT 2 that is relevant.

The regional component of NHT 2 followed the format of NAP and created multi stakeholder regional bodies across the entirety of Australia. State and Territory governments also agreed to match, either directly or in kind, the Commonwealth’s investment. Regional bodies accordingly were to develop a plan to guide this investment and deliver regional outcomes that contributed to national goals of biodiversity conservation, sustainable use of natural resources and community capacity building and institutional change.

NHT 2 and NAP were subsequently aligned and are now jointly delivering, as far as possible, their different regional boundaries and dispersing their separate funding streams through the same regional bodies. Additional funding commitments have since been made by

222 Standards and Targets Framework, n 221, ss 4-11, Table 1 p 10.
223 Head and Ryan, n 220 at 13-14.
226 NHT Framework, n 224.
227 The full goal is as follows: “The conservation of Australia’s biodiversity through the protection and restoration of terrestrial, freshwater, estuarine and marine ecosystems and habitat for native plants and animals” NHT Framework, n 224, cl 3.
228 The full goal is as follows: “The sustainable use and management of Australia’s land, water and marine resources to maintain and improve the productivity and profitability of resource based industries” NHT Framework, n 224, cl 3.
229 The full goal is as follows: “Support for individuals, landholders, industry and communities with skills, knowledge, information and institutional frameworks to promote biodiversity conservation and sustainable resource use and management”; NHT Framework, n 224, cl 3.
230 NHT Framework, n 224, cl 3.
governments in both programs extending them into 2008. \(^{231}\) At the time of writing the federal government had signalled its intent to commitment to a “NHT 3” program until at least 2013. \(^{232}\)

For the present time, both NHT 2 and NAP are delivered through 56 regions across Australia and together they form what this thesis refers to as RNRM.

As we saw in chapter 2, these new RNRM arrangements have already sparked the attention of Australian scholars. \(^{233}\) As some of them have pointed out, despite its relative novelty in Australia, RNRM has a number of close NEG relatives internationally. \(^{234}\) Box 4.3 below provides an overview of some of these links between RNRM and other international examples of NEG. \(^{235}\)

### RNRM'S IMMEDIATE “NEG FAMILY”\(^{236}\)

RNRM’s immediate NEG family include collaborative regional ecosystem efforts in Chesapeake Bay, San Francisco Bay Delta and the multiparty, regional landscape scale Habitat Conservation Plans (what Karkkainen classifies as “Type II HCPs”) \(^{237}\) under the *Endangered Species Act* in the USA. While all share a broadly similar collaborative and regional ecosystem focused approach, there are also some differences. As we saw above, RNRM primarily relies on dedicated government investment to provide incentives and support to underpin the formation of collaborative groups, planning and implementation. In contrast, HCP’s overall approach to regional collaborative ecosystem governance depends less directly on government investment and more on legal incentives and mechanisms, \(^{238}\) particularly the operation of a “penalty default” style rule \(^{239}\) that encourages and compels landowners, local governments, and others to collaborate and engage in landscape-scale ecosystem planning. \(^{240}\)

RNRM is also distinct from the Bay Delta and Chesapeake Bay experiments. Both these experiments emerged in response to limitations of traditional approaches, citizen movements that demanded improvements in the Bays, and longstanding conflicts between key stakeholders. They have since developed their own unique and lengthy history, which has involved a greater deal of institutional innovation and evolution to address the problems plaguing their regional ecosystems. \(^{241}\) In contrast, RNRM stands as a far more structured and ambitious attempt to roll out a government designed regional ecosystem program across an entire country.

\(^{231}\) See Moore, n 53; Farrelly M, “Régionalisation of Environmental Management: a Case Study of the Natural Heritage Trust, South Australia” (2005) 43(4) Geographical Research 393.


\(^{233}\) For further see chapter 2.

\(^{234}\) Head, n 192, p 139; Lawrence, n 195 at 10.


\(^{236}\) Margerum, n 235; Frieder, n 235.


\(^{238}\) Margerum, n 235; Frieder, n 235.


\(^{240}\) See generally: Karkkainen, n 171.

\(^{241}\) This rule arises under a set of provisions of the Endangered Species Act that lists endangered species and imposes strong sanctions on those who harm/harass them or their habitat, unless a HCP is developed and approved; Thomas, n 237, p 145-150; Karkkainen, n 236, p 213-214.

\(^{242}\) See generally: Karkkainen, n 171.

A final comparison can also be made between the approach of RNRM and NEG experiments such as Open Method of Coordination in Europe (OMC) with both seeking to "combine the advantages of decentralised local experimentation with those of centralised coordination".242 In the case of RNRM, its decentralised regional approach seeks to grapple with the fact that regional ecosystems are diverse, dynamic, contextual, and interconnected with human systems and stakeholders (whose capacity and resources to manage them are likely to vary between areas/ecosystems). By giving regional bodies the freedom to identify issues and develop management responses that reflect their aspirations, the RNRM program intends to ensure the different social, economic and environmental dimensions of regions are fully considered and the program is accordingly adapted to respond to their specific circumstances.243 At the same time, RNRM seeks to take advantage of centralised government coordination and its ability to ensure that common national goals are achieved. It does this through the government framework of guiding national outcomes, matters for targets (and employing a range of performance monitoring and other controls discussed below). As the guidelines note, regional planning is "an effective way to engage all stakeholders and to build on activity at the property and local levels, while also complementing state and national activity".244

The OMC approach conducts a broadly similar process to RNRM but does so in the context of the European Union, where the pursuit of the Union’s common objectives are achieved through a system that respects the diversity of member countries in implementation and standard setting. Notably, the OMC appears to employ slightly different forms of formal coordination than RNRM, including requiring countries to carry out benchmarking and multilateral surveillance.245

Box 4.3: RNRM and International NEG Experiments.

Ultimately, while RNRM shares many similarities with other NEG experiments, it also stands as a unique experiment in NEG. While a number of authors have begun to define some of its key features, from the perspective of this study RNRM can also be characterised as involving the four key approaches of NEG.246 As discussed in more detail below, NEG is manifest in RNRM’s emphasis of (i) nested collaboration between multiple public, private and non-government actors; (ii) participation of regional communities/non-government stakeholders and deliberative style decision making; (iii) “adaptive management” and “systemic” processes of learning and adaptation; and (iv) “new” forms of accountability such as a nascent destabilisation right within a performance based accountability regime.

243 Bilateral Agreement between the Commonwealth of Australia and the State of Queensland To Deliver the Natural Heritage Trust, August 2004 (Cth, Qld), Attachment E, p 57 (hereafter “Bilateral Agreement NHT”).
244 Bilateral Agreement NHT, n 242, Attachment E, p 57.
246 See chapter 2.

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Before turning to discuss the first of these features, it is important to point out that the dimensions of RNRM vary slightly between States and Territories (as discussed in chapter 3).\(^{247}\)

The discussion that follows focuses primarily on RNRM arrangements relevant to the Queensland case study.

### 4.4.3 RNRM and the Defining Characteristics of NEG

#### 4.4.3.1 Collaboration

Collaborative processes have been common to earlier NRM programs such as ICM, Landcare and NHT.\(^ {248}\) Stemming from these experiments, RNRM logically continues this emphasis and seeks to govern natural resource’s problems through collaboration and partnerships.\(^ {249}\) This is evident throughout RNRM discussion papers and guidelines that repeatedly refer to “cooperative partnerships”\(^ {250}\) and “partnerships—between landholders, Landcare and catchment groups, rural industries, environment groups, Indigenous Australians, and the Commonwealth, State and Territory, and local governments”.\(^ {251}\) As one framework document aptly sums up: “Partnerships are essential to the success of this important initiative”\(^ {252}\).

Like many NEG experiments, including NEIP and EIP, the RNRM program appears premised on the assumption that a collaborative approach is better suited to governing complex, severe and increasingly urgent environmental problems than more traditional approaches.\(^ {253}\) Building on initiatives such as Landcare and Natural Heritage Trust, collaboration is seen to offer an effective process for “negotiating trade-offs, resolving conflict” at the regional level,\(^ {254}\) as well as enhancing capacity to address natural resource problems by “bringing together the efforts of individuals, communities and governments”.\(^ {255}\)

This intention to involve partnerships between individuals, community and governments engenders a more palpably distinctive collaborative arrangement than those of EIP or NEIP cases. While EIP and NEIP involve a single collaborative group of public and private

\(^{247}\) Head, n 192, p 144-145.

\(^{248}\) “Initiatives such as The Decade of Landcare and the Commonwealth Government’s Natural Heritage Trust show how people can all work together to improve the management of our natural resources”; Council of Australian Governments, n 213, p 3.


\(^{250}\) NNRMTF, n 215, p 27.

\(^{251}\) NNRMTF, n 215, p 27.

\(^{252}\) Council of Australian Governments, n 213 p 3.

\(^{253}\) Council of Australian Governments, n 213, p 3, 5.

\(^{254}\) Bilateral Agreement NHT, n 242, Attachment E, p 57.

\(^{255}\) Bilateral Agreement NHT, n 242, p 73.

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stakeholders, RNRM is designed as a “nested” arrangement, involving collaboration at several “levels”.

First, the RNRM case is designed to involve collaboration between ministers and governments at a national level, who define and oversee program frameworks. Below this are various federal/state collaborative groups comprised of agencies that influence government spending and regional level policy issues. Nested within this framework is the lower level regional and local scales, involving collaboration between regional community and stakeholder bodies. These collaborations are given devolved responsibility to manage natural resources within particular regions. To provide some context to this nested collaborative approach, some of the key institutional bodies at different national, state and regional levels are described in Table 4.1 below.

<table>
<thead>
<tr>
<th>Level</th>
<th>Structure</th>
</tr>
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<tbody>
<tr>
<td>National</td>
<td>• At the national level the overarching body of the program is the Natural Resource Management Ministerial Council. This body is comprised of Commonwealth and State Ministers and oversees the development and implementation of national natural resource management programs, including NAP and NHT. Also at the national level is the Natural Heritage Ministerial Board comprising the Commonwealth Minister for the Environment and Heritage and the Commonwealth Minister for Agriculture, Fisheries and Forestry who are responsible for administering the NHT funding account.</td>
</tr>
<tr>
<td>State</td>
<td>• At the Queensland State level, the key organisation is the Joint Steering Committee (JSC), which is predominantly comprised of multiple representatives from different Queensland and Federal government agencies. This body has primary responsibility for overseeing implementation of regional and state arrangements in Queensland and is the main vehicle for supporting regional bodies, authorising payments, bilateral decision making and making recommendations to the Ministerial Board and State Ministers regarding investment and planning approval. Below the JSC are four Regional Coordination Groups (RCGs) composed of senior management level representatives from governmental agencies. These groups operate at the meso regional level, having responsibility for one of 4 areas that divide the state and include multiple regions. These bodies are designed to support regional body operations, foster strong community-government partnerships, coordinate the whole of government processes, and resolve policy inconsistencies at the regional level.</td>
</tr>
</tbody>
</table>

256 Margerum, n 235 at 143.
257 Karkkainen, n 236, p 221.
258 I note that there are other government networks and stakeholder advisory groups not discussed here. For further see: An Agreement between the Commonwealth of Australia and the State of Queensland for the Implementation of the Intergovernmental Agreement on a National Action Plan for Salinity and Water Quality, March 2001 (Cth and Qld), s 22 (hereafter “Bilateral Agreement NAP”); Bilateral Agreement NHT, n 242, s 44, 45; Margerum, n 235 at 142.
260 Natural Heritage Trust of Australia Act 1997 (Cth), s 40.
261 Bilateral Agreement NHT, n 242, ss 37-43; Bilateral Agreement NAP, n 257, s 22.

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Regional • Nested below the RCG are regional bodies and more localised stakeholders such as local level farmers, Landcare groups or other sub regional collaborative bodies. There is no one specific prescribed form that the regional body must take, however they are required to meet a number of broad criteria to be “designated” as a formal regional body by higher level government bodies and thus receive funding. These requirements include that the body must be incorporated, involve a majority community membership, as well as relevant stakeholders including indigenous interests, and local government (coastal and marine stakeholders where relevant).

The regional body, in consultation with the regional community, are responsible for developing a plan and an investment strategy. While the former sets targets and actions to improve natural resources, the latter acts as a kind of prospectus, listing NRM actions for which the Regional Body is seeking funding from the government, and providing information to inform investment decisions (e.g. costing of actions and risk factors). Once the plan and investment strategy receive approval, the regional body will receive government funding and begin to deliver actions, in “collaboration” with other local and regional stakeholders.

Table 4.1: Illustrations of Nested Structures in RNRM.

Like the other two cases, the expectation appears to be that this nested collaborative model will be sustained over the longer term and involve the regional body conducting continuous development, monitoring, review and improvement of the plan. While it is unclear whether government investment will continue to support the program beyond their stated commitment periods, the intention for sustained regional collaboration appears inherent in requirements that regional groups set long term aspirational goals for at least 50+ years.

4.4.3.2 Participatory and Deliberative Aspirations

Akin to the other two cases, RNRM is emblematic of “Third Way” and other community governance approaches to politics and democracy. This way of thinking is evident in the rhetoric of prominent Australian political figures that broadly describe RNRM as a way to elicit the energies and influence of regional communities to solve NRM problems. As the former Prime Minister John Howard stated in 2000, RNRM’s intention was focused squarely around community involvement in decision making:

263 Bilateral Agreement NHT, n 242, s 68; Bilateral Agreement NAP, n 257, s 7.1.
264 Bilateral Agreement NHT, n 242, s 68(b), (c). Bilateral Agreement NAP, n 257, s 7.1(b).
265 Bilateral Agreement NHT, n 242, s 93, 87; NAP Bilateral s 13.1.
266 Bilateral Agreement NHT, n 242, s 93; NAP Bilateral s 13.1.
267 The national frameworks for RNRM suggest 50 year targets, and resource condition targets of between 10-20 years Bilateral Agreement NHT, p 72, Attachment H, s 11.
268 See Moore, n 53.
269 Fung and Wright, n 49, p 4-5.
the states and communities will develop plans to restore the natural environment in each area and then communities will be funded to do the work... importantly it seeks to marshal everybody in the community.270

This political lexicon was similarly replicated in national guidelines271 and the Bilateral Agreements between the Commonwealth and the state of Queensland. For example the NAP bilateral notes.272

The active involvement and participation of rural and regional communities is the cornerstone of this Plan...we seek to enable communities to take responsibility for planning and implementing natural resource management strategies, in partnership with all levels of government, that meet their priorities for sustainable development and ongoing viability.273

Such participatory aspirations are akin to broader trends towards democratic decentralisation of NRM such as identified by Ribot.274 However in contrast to Ribot’s emphasis on building on elected local representative systems, RNRM fulfils these aspirations via the regional collaborative group, most often formed through the process of stakeholder self nomination, and government appointment in consultation with the regional community.275 Like the other two case studies, RNRM is designed to ensure that the members of the regional group meet inclusiveness and representativeness criteria, and that regional decision making follow deliberative processes. These criteria are elaborated further in chapter 6, but include requirements that participants in the regional body involve a majority of regional community members and balance production and conservation interests.276 While the legislation and guidelines make no specific reference to how decision making among regional body members should be conducted, decision making in plan development is to involve “negotiation”, “facilitation”, and ensuer “general public and stakeholders [are] provided with adequate opportunities to participate in defining the problems, setting the region’s vision and targets... developing solutions and designing monitoring and evaluation systems”.277

271 National guidelines point to an intention for RNRM program to assist regions to "become self sufficient in managing their natural resources in the longer term"; Bilateral Agreement NHT, n 242, p 57.
272 See also: Bilateral Agreement NHT, n 242, ss 1, 13, Attachment E p 62.
273 Bilateral Agreement NAP, n 257, p 2.
275 Head, n 192.
276 Bilateral Agreement NHT, n 242, s 68.
277 EA and DAFF, n 212, at 6; NNRMTF, n 215, p 27; Cth and Qld Government, Guidelines for Community Engagement by RNRM Bodies (Qld/Cth, 2004) at 2, 4-5; Bilateral Agreement NHT, n 242, cl 83, Attachment E, p 59-60, 62, p 121; Bilateral Agreement NAP, n 257, s 12.5, Attachment 3, s12.

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By fulfilling these participatory and deliberative aspirations, RNRM aspirations, like the NEIP program, are intended to connect residents, farms and other stakeholders with regional resources to ultimately assist regional communities to “become self sufficient in managing their natural resources in the longer term”.278

4.4.3.3 Adaptation and Learning

The third feature of NEG embraced by RNRM is learning and adaptation. Like most NEG experiments focused on managing ecosystems, RNRM has been specifically designed to follow an adaptive management approach to implementation.279 This is plainly evident,280 in key RNRM discussion papers,281 national frameworks282 and Queensland Bilateral Agreements,283 which refer to the technique of “adaptive management”284 and define it as a process that enables:

lessons learned to be realised...and to make necessary adjustments in response...utilis[ing] monitoring and evaluation activities to form a feedback loop in order to make necessary adjustments.285

Adaptive management will ideally form a central focus of the efforts of regional bodies and government.286 As the guidelines note: “there will need to be regular reviews of targets to implement an adaptive management approach. Reviews will also enable targets to take account of improving information and scientific understanding about trends in resource condition and about ecosystem function”.287

The exact form of adaptive management to be implemented by regional bodies appears close to a “passive” approach to “adaptive management”, which involves them using best available information to set measurable regional targets for matters such as the condition of soil. Indicators are then to be set in accordance with those that are nationally recommended (e.g. Indicators for soil condition include soil properties such as measuring soil acidity and organic

278 Bilateral Attachment NHT, n 244, p 57; Cannon, n 62 at 421-422.
279 Karkkainen, n 71 at 70-72.
280 Of course RNRM builds on a history of governments and communities pursuing governance experiments grounded on underlying assumptions of change, adaptation and learning; See for example: Bellamy, n 158, p 106; Bellamy et al, n 193.
281 NNRMTF, n 215, p33; Bilateral Agreement NHT, n 242, Attachment E p 57.
283 Bilateral Agreement NHT, n 242, ss 106, 137 (e).
284 NNRMTF, n 215, p 13.
285 Bilateral Agreement NHT, n 242, at Attachment C, Attachment K, cl 11, p 118.
286 Utilising monitoring to enable “the region to evaluate the impact of its investment strategy on natural resource management outcomes and progressively adapt its strategy accordingly”; NRMSC, n 214, p 7; Bilateral Agreement NHT, n 242, s 1, 13, Attachment E, p 68.
287 Bilateral Agreement NHT, n 242, Attachment H, p 82.
Regional bodies are then expected to follow ongoing monitoring and evaluation processes established in their plan to ensure the plan and targets reflect new information and achieve continuous development and improvement over time. The state government may also assist the regional body by providing monitoring data on changes in resource conditions.

This adaptive management approach is designed to ensure regional bodies will better address uncertainties associated with natural resource issues and ecological processes and enable targets and actions “to take account of improving information and scientific understanding about trends in resource condition and about ecosystem function.”

While adaptive management is to be carried out at the regional body level, RNRM also aims to pursue an overlapping form of “adaptive” process across the program as a whole. Regional monitoring data (which is required to follow abovementioned indicators and follow common data protocols) is to be aggregated “to broader scales to describe the progress being made on NRM issues throughout the country”. This data will contribute, in part, to periodic reviews and evaluations that occur at “key decision points” throughout the life of the program. These evaluations are intended to assess the appropriateness, effectiveness and efficiency of the program in the achievement of its objectives and intended outcomes at all levels. The results inform “adaptive management by improving program design or delivery [and] may reorient activities and investments” and “fulfill accountability requirements”. Regional bodies are subsequently required to respond to and implement the findings of the evaluation.

This process appears broadly similar to elements of democratic experimentalist “systemic” learning (and other approaches that suggest adaptation at the policy level). However, in contrast to NEIP’s approach to experimentalist systemic learning, RNRM’s aspiration does not appear to specifically focus on processes that assist regional bodies to share experiences, information and learning.

Of course, in practice RNRM’s periodic evaluations may be used to identify “best practice” across regional bodies that could be used to assist regional bodies to learn from the experiences of others. Further, regional body monitoring and reporting (discussed below)
provides the higher governmental levels with extensive data on regional body performance.\textsuperscript{298} This information may be used to assist regional bodies to determine which bodies are similarly situated, what projects those bodies are pursuing and what modifications of the project might be needed under local conditions.\textsuperscript{299} However such sharing of information and experiences does not appear to be clearly stated in the guidelines.

Instead, RNRM focuses more on periodic adaptation of provisional government policy determinations.\textsuperscript{300} While evaluations are also used for accountability purposes to assess how well the program is performing per se, its approach appears to be only a pale reflection of the democratic experimentalist ideal, which suggests using locally reported data to periodically reformulate and progressively refine minimum performance standards or desirable targets that regional bodies would then be required to pursue.\textsuperscript{301} Nevertheless, RNRM’s aspiration for a more adaptive program is likely to produce a number of benefits, not least periodically addressing emerging problems in process and delivery to create a continually more effective system of governance.

\section*{4.4.3.4 "New" forms of Accountability}

Given that RNRM involves the application of billions of dollars of public funding, pursuing proper accountability was of particular concern to the architects of the program. As the guidelines point out, “the Parliament and the public need to be confident that program funds are being spent on actions that will make positive changes to Australia’s environment”.\textsuperscript{302}

RNRM is designed to achieve this using various “new” mechanisms and forms of accountability, including an embryonic form of “destabilisation right” (discussed below) and a performance based regime that expressly seeks to replace traditional accountability notions with an understanding of accountability that accords more with adaptive management. RNRM is also designed to utilise collaborators’ capacity to deliver democratic accountability as well as fulfill self monitoring and reporting tasks. However compared to the other two cases, RNRM places far heavier reliance on delivering accountability through hierarchical, bureaucratic monitoring

\begin{thebibliography}{99}
\bibitem{298} Bilateral Agreement NHT, n 242, p 145-151.
\bibitem{299} Cohen and Sabel, n 140 at 335.
\bibitem{300} Karkkainen, n 164 at 189 at 243; Karkkainen B, “‘New Governance’ In Legal Thought And In The World: Some Splitting As Antidote To Overzealous Lumping” (2004) 89 Minnesota Law Review 471 at 484-485.
\bibitem{301} Sabel et al, n 166; Karkkainen, n 299 at 484-485.
\bibitem{302} NRM M C, n 281, p 20.
\end{thebibliography}
requirements and fixed parameters of the program via government frameworks and monitoring and reporting strategies.

Commencing at the regional level and working our way up the nested structure, RNRM is designed to utilise the skills and capacities of regional bodies to contribute to program accountability. This includes requiring regional bodies to conduct extensive monitoring, evaluation and reporting to government on progress against management action targets (discussed below), outputs, finances and changes in resource conditions (the latter in conjunction with the state government who contributes to monitoring). Regional bodies are required to have a communications strategy that may, inter alia, contribute to transparency. Mutual accountability between different regional body stakeholders (who must balance production and conservation interests) may also be an important ongoing check against performance and the application of government investment, although the guidelines do not explicitly raise this role.

At the level of government, there are multiple accountability responsibilities and relationships between the various institutional scales of nested arrangements. There are various accountability controls on how government investment and accounts are to be managed, as well as multiple reporting requirements between the different state and national bodies, leading back to Ministers and Ministerial Council. Formal political and democratic accountability ideally exists at the top levels, with ministers being held accountable through the electoral system.

In terms of ensuring accountability for performance of the program, RNRM follows similar designs to other performance based NEG approaches but establishes more detailed controls over the type of targets that can be set and the outcomes they are to deliver on. Targets must be consistent with other planning processes and legislative requirements and meet overarching objectives and boundaries for targets.

303 NRMMC, n 221; NRMMC, 281.
304 Cth/Qld, n 290 (Queensland's is still largely in draft form); Bilateral Agreement NHT, n 242; Bilateral Agreement NAP, n 257.
305 Bilateral Agreement NHT, n 242, s 94; Bilateral Agreement NAP, n 257, s 14, 30.3.
306 Cth/Qld, n 290 6.2.1-6.2.3.
307 Bilateral Agreement NAP, n 257 s 24; Bilateral Agreement NHT, n 242.
308 Bilateral Agreement NHT, n 242, p 62-63.
309 Cth/Qld, n 290, s 5.2.1-5.2.3, 7.1.
310 Natural Heritage Trust of Australia Act 1997 (Cth), s 19: Bilateral Agreement NHT, n 242, s 6, Attachment J.
311 Bilateral Agreement NHT, n 242, s153, 154, Attachment J, s 8.1; Natural Heritage Trust of Australia Act 1997 (Cth), s 41, 43.
312 Bilateral Agreement NHT, n 242, Attachment E, p 64.
This involves requiring regional bodies to set relevant regional objectives against a minimum set of matters (see Box 4.4) that contribute to established national outcomes (see Box 4.5).

**Resource Condition Matters**

- Land salinity;
- Soil condition;
- Native vegetation communities’ integrity;
- Inland aquatic ecosystems integrity (rivers and other wetlands);
- Estuarine, coastal and marine habitats integrity;
- Nutrients in aquatic environments;
- Turbidity/suspended particulate matter in aquatic environments;
- Surface water salinity in freshwater aquatic environments;
- Significant native species and ecological communities; and
- Ecologically significant invasive species.

**Management Action**

- Critical assets identified and protected;
- Water allocation plans developed and implemented; and
- Improved land and water management practices adopted.

**Box 4.4: Matters for which Regional Targets Must be Set.**

(i) The impact of salinity on land and water resources is minimized, avoided or reduced.
(ii) Biodiversity and the extent, diversity and condition of native ecosystems are maintained or rehabilitated.
(iii) Populations of significant species and ecological communities are maintained or rehabilitated.
(iv) Ecosystem services and functions are maintained or rehabilitated.
(v) Surface and groundwater quality is maintained or enhanced.
(vi) The impact of threatening processes on locations and systems which are critical for conservation of biodiversity, agricultural production, towns, infrastructure and cultural and social values, is avoided or minimized.
(vii) Surface water and groundwater is securely allocated for sustainable production purposes and to support human uses and the environment, within the sustainable capacity of the water resource.
(viii) Sustainable production systems are developed and management practices are in place, which maintain or rehabilitate biodiversity and ecosystem services, maintain or enhance

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313 NRMMC, n 221, ss 4-11, p 10.
resource quality, maintain productive capacity and prevent and manage degradation.

**Box 4.5: Desired National Natural Resource Outcomes.**

When setting objectives against the matters, regional bodies are required to formulate three different types of targets: aspirational, resource condition and management action. These are outlined in Table 4.2.

<table>
<thead>
<tr>
<th>Type of Target</th>
<th>Definition</th>
<th>Illustration</th>
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| Aspirational   | Desired condition of natural resources over long term (e.g. 50+ years). | • Regional extent of native vegetation to be increased to X% cover.  
• X% Decrease in average salinity in regional streams. |
| Resource Condition | Setting a target for an “absolute improvement in resource condition or decreases in the rate of degradation” consistent with resource condition matters for medium term (10-20 year). | • Average salinity of X ECs at specific end-of-valley site by year Y.  
• X hectares of specific native vegetation type within region at year Y maintained or regenerated.  
• X stream sites within region in specific river condition category by year Y. |
| Management Action | Setting a short term “output” target (1-5 years) set against management action matters to progress towards the medium-term resource condition targets. | • X hectares of recharge zones within region to be revegetated by year Y.  
• X km of riparian zone to be fenced and managed for conservation and landscape function.  
• X% of farms covering Y% of region with whole farm plans. |

**Table 4.2: Overview of RNRM Targets.**

These broad requirements are intended to ensure the targets and subsequent actions taken by regional bodies will contribute to outcomes relevant to the nation. To ensure targets accord with frameworks parameters, Ministers (via the JSC) have approval rights over the plan ensuring that the targets set and the processes of monitoring, evaluation and reporting established, accord with these guidelines. The Joint Steering Committee also has primary...

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314 NRMMC, n 221, ss 4-11, p 10.
315 NRMMC, n 221, s 11.
316 Further, the ongoing participation of agency officials on regional bodies may provide ongoing checks on the bodies to ensure they meet performance expectations, and assist them to learn and adapt.
317 This accountability relationship between JSC and regional body exists pursuant to a “partnership agreement” which sets out inter alia: agreed outcomes to be achieved; financial, legal and administrative arrangements, as necessary (e.g. independent auditors); performance measures and milestones; obligations and accountability arrangements for reporting, monitoring, evaluation and review; compliance measures relating to specific performance under contractual arrangements; Bilateral Agreement NHT, n 242, s 69, 94; Bilateral Agreement NAP, n 257, s 14.1.
responsibility for holding regional bodies accountable for “agreed expenditure and achievement of targets”.

Regional bodies are subsequently to be held accountable for achieving their management action targets and the associated implementation and delivery of “management programs, strategies and policies for which funding has been provided.” In terms of resource condition targets, the program recognises that holding groups accountable for their achievement can be difficult given the complexity, dynamism and interrelated nature of ecosystems.

Indeed, it is seen to be inapposite to hold participants directly accountable for changes in resource condition where there is a lack of major scientific certainty or there are significant external factors over which the participants have little or no control. Performance against resource condition targets are accordingly to be assessed as part of the overall evaluation plans for the implementation of the National Action Plan and the Natural Heritage Trust, and government is to take the inherent uncertainties of NRM into account when assessing the regions’ progress towards resource condition targets.

The RNRM has also been designed to use various forms of “non traditional” mechanisms to ensure accountability. These include contractual based “partnership agreements” between the State Government and regional collaborative bodies, that spell out outcome and performance milestones expected and other accountability responsibilities and expectations of regional bodies.

The RNRM program has also been designed to impart to the JSC a role that borders on the democratic experimentalist concept of an administrative “destabilisation right” - a right to intervene, destabilise and disentrench collaborative efforts that evidenced chronic underperformance relevant to expectation, or other procedural defects. This is intended to create an opening for a fresh start under new arrangements that are prescribed in detail from above but are fashioned by stakeholders in response to a critique by an oversight agency.

This nascent “destabilisation right”, gives the JSC the power to intervene on evidence of underperformance or financial impropriety (gained through regional body monitoring and

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318 Bilateral Agreement NHT, n 242, s 71; Bilateral Agreement NAP, n 257, s 8.1.
319 Bilateral Agreement NHT, n 242, Attachment H, p82.
320 Bilateral Agreement NHT, n 242, s138.
321 Bilateral Agreement NHT, n 242, Attachment K, s 8.
322 Bilateral Agreement NHT, n 242, Attachment H, p 82.
323 Bilateral Agreement NHT, n 242, ss 71, 94, Attachment J, s 8.5; Bilateral Agreement NAP, n 257, s 8.1, 14.1.
324 Note one of two forms of destabilisation right is discussed here. For further see: Karkkainen, n 30, p 318-320.
325 Karkkainen, n 30, p 317.
326 Karkkainen, n 30, p 317.
327 Albeit within what would likely be considered a more prescriptive and government dominated regime than envisioned by democratic experimentalist; Karkkainen, n 30, p 317.
reporting) to stop funding the regional body, conduct an evaluation, critique accountability procedures, skills capacities of representatives or the arrangements of regional body membership and leave the details of the response to the regional body stakeholders, under ongoing monitoring from JSC.

To sum up then, RNRM’s design establish a number of novel but strict accountability arrangements that include setting broad outcomes and matters for target, government approval of regional plans, partnership agreements, destabilisation right, and self monitoring and reporting of collaborative groups within a performance accountability regime.

4.4.4 Summary

In summary, RNRM offers a unique example of NEG that departs significantly from often ineffective traditional regulatory approaches. It also seeks to rectify weaknesses in some not so traditional resource management approaches (such as NHT 1) to offer a more strategic, innovative and wide scale program that balances a decentralised and centralised approach to address some of the most intractable environmental and natural resource problems.

This approach is underpinned by the four key characteristics of NEG. However, there are distinct differences in the form these approaches take compared to both EIP and NEIP cases discussed above. In particular RNRM is focused on a much larger scale, deals with more complex environmental problems than either NEIP or EIP, involves direct investment of public funds; and follows a nested model of collaboration. It also relies much more than the other cases on strict, extensive and complex government frameworks and oversight to ensure accountability.

4.5 Conclusion

This chapter has examined how the case studies of this thesis embody the four approaches characteristic of “good” NEG. In doing so it has sought to lay the groundwork and necessary background for analysis in the subsequent chapters.

Acknowledging that the specific form of NEG’s broad approaches often vary between NEG experiments, the chapter drew on legislation, guidelines and policy documents to demonstrate that all three cases represent a significant departure from traditional approaches,

328 Cth/Qld, n 290, s 7; Bilateral Agreement NHT, n 242, s 137; Bilateral Agreement NAP, n 257, s 30.
329 The state government and JSC have a positive duty to ensure a regional body “maintains and provides proper financial accounts and detailed records for funds received in order to provide reports” and “has the necessary skills and capacity to manage the implementation of agreed components” and “fulfil the accountability responsibilities” of RNRM in its region; Bilateral Agreement NHT, n 242, ss 67, 68, 71, Attachment D p 56; Bilateral Agreement NAP, n 257, s 7.1(b).

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share similarities with comparative experiments internationally and most critically, embrace the central features of NEG, but do so in slightly different ways.

In terms of collaboration, all three emphasise long term cooperation, partnerships and collaboration, albeit ranging in form from a small group of localised non government actors, regulator and industry, to a medium size multi-agency and multi-stakeholder neighbourhood group, all the way to the much more complex nested model of RNRM.

All three cases also strongly emphasise participatory and deliberative aspirations that mirror broad themes of community empowerment, and participation of ordinary citizens in decision making over environmental issues.

The learning and adaptation aspirations of the cases vary widely. These include the reflexive process based approaches of EIP; the “passive” style of adaptive management embraced in the implementation methods of EIP, NEIP and RNRM collaborative groups; and the broader experimentalist style of systemic learning processes of both NEIP and RNRM. However as we saw, neither NEIP or RNRM come close to capturing the democratic experimentalist model in full - the NEIP emphasising shared learning and experiences between collaborations while RNRM emphasises adaptation of government policy determinations.

Finally, all three cases seek to ensure program accountability through a range of “new” accountability mechanisms and forms. Like many NEG approaches all adopt a performance based approach to accountability, while EIP also supplements this with a focus on process. Rather than a simple hierarchical principal/agent relationship, all three cases evidence multiple avenues and mechanisms for holding groups to account. Capitalising on the roles of private and non government actors, the cases emphasise professional and/or mutual accountability. Government oversight also plays a key role, and appears far stricter in RNRM than the other cases.

Having explicated the specific goals of the cases with respect to each of the defining features of “good” NEG, the next four chapters turn to consider whether and to what extent the cases achieve these goals of collaboration, participation and deliberation, learning and adaptation, and new forms of accountability. Consistent with the focus of the thesis on these conditions, and acknowledging there is often a difference between aspirations and mechanisms designed to achieve them, these chapters all investigate the institutional design of each case to identify the conditions and mechanisms that may impact on the achievement of these goals in practice.
Chapter 5: Collaboration – Exploring the Conditions for its Successful Formation

5.1 Introduction

Under what conditions can “good” NEG be achieved? This chapter begins to answer this question empirically with a focus on the first of its defining features, namely collaboration.

The primary task of many collaborative NEG processes is to form a multi-stakeholder collaborative body that develops a plan to guide subsequent implementation. This task is no small undertaking given purported “cooperation dilemmas” that suggest transaction costs and self-interested individuals will effectively stymie efforts to voluntarily cooperate to capture joint gains. Yet, despite these purported barriers, cooperation to address environmental problems is increasingly common – at least under certain conditions that both the NEG and other literatures have sought to identify. However there remains considerable debate as to what these conditions might be and very limited empirical research to support the various assertions as to how the emergence of successful collaboration can best be fostered. Some of the important issues yet to be resolved in the NEG literature include: What institutional design conditions best overcome transaction costs? What is the role and importance of trust in achieving successful collaboration? What is the nature and impact of consensus decision-rules common to collaboration?

3 Raymond, n 2 at 37.
4 See for example: Ostrom E, *Governing the Commons* (Cambridge UP, 1990); See generally discussion of relevant collaborative literature in chapter 2 and below in this chapter; Raymond, n 2 at 37.
8 Gaines, n 7 at 17.
9 Karkkainen, n 5 at 240, fn 116; See also Karkkainen, n 6 at 91; Coglianese, n 7.
This chapter provides insights into these and other issues by examining three case studies and their efforts to bring public and private stakeholders together to draft a plan.10

Following this introduction, the chapter’s analysis proceeds in three sections. Mindful that there is often a difference between a program’s aspiration for “collaboration” and the mechanisms designed to achieve it, section 5.2 examines the different legal and policy design conditions likely to impact on the emergence of collaboration.

Section 5.3 then examines whether and to what extent these or other contextual conditions contributed to the emergence of successful collaboration in practice. This involves exploring a range of different collaborative arrangements and settings.

The findings ultimately reveal that all three cases were able to foster collaboration, but with varying degrees of success. Drawing lessons from their comparative achievements, the chapter argues that a number of conditions which fall under five broad and interrelated “themes” appear to increase the likelihood of successful collaboration emerging.11 These themes include: the severity of environmental problems, cooperation inducing incentives (both negative and positive), structures for supporting and funding collaborations, consensus decision making, and in most, but not all cases, building trust. Section 5.4 takes stock of the findings and lays outs specific implications for the NEG literature.

Before embarking on this detailed analysis it is important to make clear the precise scope of the investigation. First, space precludes addressing all physical, community and institutional attributes that might impact on likelihood of collaboration.12 Instead this chapter focuses its attention on the institutional design specific to each of the case studies, and a limited number of contextual matters (eg. attributes of environmental problem).

Second, while there is some overlap between collaboration and the participatory and deliberative aspirations of NEG, for heuristic reasons, the present chapter is confined to an investigation of the effectiveness of the collaborative process, defined as where two or more stakeholders pool knowledge, understanding, and/or tangible resources, (e.g., information, money, labour etc), to solve a set of problems which neither can solve individually.13 For the purposes of this chapter, this definition is taken to exclude consideration of issues such as

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10 Accordingly the chapter does not focus on subsequent stages of the collaboration process such as (i) implementation; (ii) monitoring and enforcement; and (iii) adapting, reviewing and recommencing collaboration after the completion of the original agreement. These issues are more appropriately dealt with later in the thesis, especially in chapters 7 and 8.


representativeness of stakeholders and power sharing in decision-making (for further on these issues see chapter 6).14

5.2 Fostering the emergence of collaboration: the legal design of the cases

To investigate when and how stakeholders were able to come together to form a collaborative group and develop a plan, it is important that we first understand the institutional design conditions that are likely to impact on the emergence of successful collaboration. This section fulfils this purpose and commences by providing a general overview of design features before focusing in depth on some of the more important strategies and activities carried out by each case.

5.2.1 Overview of design features that support the formation of collaboration

Experience and theory suggest that there are few guarantees that collaboration will emerge, let alone be successful.15 Familiar problems of free riding, fear of future defection, and high transaction costs (i.e. the personal time, resources, and travel expenses associated with participating in the interactive process) may all stymie voluntary cooperation from providing collective goods.16 All three case studies confronted such difficulties, albeit in somewhat different guises.

In each case there were attractions to collaboration, not least that developing a collaborative may be cheaper than traditional regulation, and provide benefits for all concerned.17 For environmental groups and citizens, collaborations may contribute to solving environmental problems that are typically outside the scope of conventional regulation.18 For industry, cooperation may reduce the economic impact of addressing environmental problems, while for farmers or other economic interests it holds out the promise of greater flexibility and of reducing the threat of more stringent policies in the future.19

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14 While the issue of shared decision making power is often cited as an important feature of genuine collaborative partnerships (see for example Head B, “Participation or Co-governance? Challenges for Regional Natural Resource Management” in Eversole R and Martin J (eds), Participation and Governance in Regional Development (Ashgate, 2005) p 138; this issue is considered in the context of chapter 6’s discussion of deliberative decision making.
15 Heikkila and Gerlak, n 5 at 583-544.
16 Raymond, n 2 at 39; Heikkila and Gerlak, n 5 at 583-544; Margerum, n 7 at 137.
17 Raymond, n 2 at 39.
18 Raymond, n 2 at 39.
19 Raymond, n 2 at 39.

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However, actors across the cases may not see such benefits as outweighing their short term economic interests. Furthermore, the transaction costs of organising and negotiating a plan are likely to be high. Actors with divergent interests are expected to voluntarily form a group and engage in years of time-consuming negotiation and information exchange to agree on objectives and actions to improve environmental and natural resources issues. Such costs might be expected to block many if not all EIPs, NEIPs and RNRM from even getting off the ground.

However as a host of theories reveal, such cooperation dilemmas are neither inevitable nor necessarily fatal. For example, common pool resource and co-management scholarship has shown that under apposite conditions, typically small, user based groups can voluntarily provide collective goods. This is more likely to occur when environmental problems are sufficiently severe (or perceived to be severe) when parties see benefits in collaborating; when institutions grant autonomy to allow local collaboration; and/or when institutions provide funding to subsidise transaction costs.

Other theories, such as the social capital literature, suggest trust, reciprocity and networks can foster and make collective action easier. Similar ideas are also suggested in the “Advocacy Coalition Framework” (ACF), and alternative dispute resolution literatures, which claim that

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20 For example, the guidelines across the cases note: “Most EIPs generally take about 12 months to complete”, VEPA, Environment Improvement Plans – An Overview (Publication 938, VEPA, 2004) p 2; NEIPs note “that plan development has typically taken two years”, VEPA, Neighbourhood Environment Improvement Plans - Developing a Voluntary Proposal (Publication 846, VEPA, 2002) p 9; In RNRM most plans are expected to be substantially completed within 1 to 3 years of signing bilateral agreements, Bilateral Agreement between the Commonwealth of Australia and the State of Queensland To Deliver the Natural Heritage Trust, August 2004 (Cth, Qld), Attachment E National Guidelines For The Accreditation Of Integrated Catchment/Regional Natural Resource Management Plans, p 65 (hereafter “Bilateral Agreement NHT”); Margerum, n 7 at 137.

21 Raymond, n 2 at 39.

22 See for example, Libecap, G, Contracting for Property Rights (Cambridge UP, 1989), (on natural resource extraction); Robert Axelrod’s famous use of game theory to demonstrate that an iterative (rather than static) approach to games can lead to cooperation (rather than free riding) overtime - Axelrod R, The Evolution of Cooperation (Basic Books, 1984).

23 Ostrom, n 4.


28 The advocacy coalition framework focuses on policymaking among specialists and argues that actors from agencies, interest groups and so on may be grouped into “advocacy coalitions” whose members share a set of normative beliefs

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successful collaborative agreements are more likely to occur and be implemented where, *inter alia*, trust is built, and a consensus decision rule is followed. And wider contract and regulation theory has repeatedly shown that cooperation has a greater chance of success when “incentives” (eg. threat of direct regulatory action or monetary incentives) are fittingly applied.

Like many scholars in the NEG literature, the astute policy designers of the three programs appear to have been mindful of these insights, at least in broad terms. For example, at a general level the collaborative orientation of the programs provides a form of “autonomy” for local stakeholders by creating a space for local people and associated organisations to initiate and participate in collaboration. As discussed in chapter 4, the cases were also designed with an intention to address severe environmental issues that traditional regulatory approaches have been unable to resolve and for which many stakeholders have an established concern.

In addition to these broad matters, the cases have also been designed mindful of other conditions likely to increase the chances of successful collaboration. These include providing grant money and/or designing support structures to subsidise and reduce transaction costs, imposing positive and negative incentives to encourage collaboration, building trust and using consensus decision rules. The cases give different weight to these conditions and each program applies them in different ways. Accordingly a brief discussion is necessary to outline the contours of each of these design features, commencing with institutional conditions and perceptions of the world, acting largely in concert to pursue their common objective. These pre-existing shared beliefs are seen as difficult to alter, meaning actors from different coalitions are likely to perceive the same information in very different ways. However, broadly akin to alternative dispute resolution literature, the framework suggests mutually agreeable solutions can be reached under, *inter alia*, the guidance of a third party, by parties reasoning through their differences. For further see: Sabatier P and Jenkins-Smith H, *Policy Change and Learning: An Advocacy Coalition Approach* (Westview Press, 1993); Sabatier et al, n 26, p 189, 192, 198; Heikkila and Gerlak, n 5 at 587-588.


30 Both advocacy coalition framework and many in the ADR literature suggest that the development of trust is more difficult than social capital than literature would claim, because both start with a situation in which individuals are in a dispute, and use models of individuals that stress the role of perceptual filters and distrust; see Sabatier et al, n 26, p 192-198.

31 This consensus rule may vary; it may be a hard veto rule. Or alternatively, it may be based on BATNA (best alternative to a negotiated agreement) where dissatisfied stakeholders are free to pursue other alternatives. In general, stakeholders are more likely to reach consensus and negotiate seriously where alternatives to negotiation are relatively unattractive; Sabatier et al, n 26, p 196; Susskind et al, n 29; Susskind L, “Building Consensus” (1999) October/November *Boston Review* 22 at 22-23.


33 Olsson et al, n 26 at 84.

34 There are of course a number of other factors that may play an important role here, however for present purposes these strategies are the most pertinent and significant in each case as they relate to points of interest in the NEG literature discussed in chapter 2. Further, respondents confirmed that these factors were some of the most relevant matters for fostering the emergence of successful collaboration across the cases.
designed to subsidise transaction costs. The discussion also raises a number of questions about when and whether these conditions are likely to foster the emergence of successful collaboration.

### 5.2.2 Subsidising and reducing transaction costs

As noted above, transaction costs are seen to be a major constraint on collaboration in NEG.\(^\text{35}\) However, consistent with a number of suggestions in the NEG and wider literatures, the cases have been designed to employ mechanisms and conditions that absorb or decrease such costs.\(^\text{36}\) The specific design features vary between the cases but include incentives to encourage collaboration, and the provision of government resources to reduce transaction costs. These two features are discussed in turn below.

Central to the institutional design of both EIP and RNRM is the provision of incentives to reduce transaction costs.\(^\text{37}\) The design of RNRM, for example, can offer some “positive” incentives to induce stakeholder engagement. For example, dedicated funding given to regional bodies to support their organization, pay rent, hire staff and take action on natural resource issues may act as an important incentive for interested actors to volunteer to collaborate on regional boards and accordingly further their work in natural resource endeavours. Positive incentives are also applied in the EIP case to motivate environmental leaders to collaborate in an EIP under an Accredited Licencee Program.\(^\text{38}\) These incentives include reputation benefits and less prescriptive regulatory requirements (eg. reduced licence fees).\(^\text{39}\)

However, for the majority, the EIP program has been designed to harness “negative” incentives to encourage collaboration. For example, the EIP can draw on local community pressure as a spur to bring industry to the table to engage in affirmative collaboration.\(^\text{40}\) This pressure could include community legal challenges to industry development applications or local residents using the media to threaten industries “social licence”.\(^\text{41}\) The Victorian Environment Protection Authority (VEPA) using its regulatory powers to “compel” industry to

\(^{35}\) Dana D, “The new "Contractarian" Paradigm in Environmental Regulation” (2000) U. Ill. L. Rev. 35 at 54; Margerum, n 7 at 135, 137; Coglianese, n 7, p 106, 110; Wilson and Weltman, n 7 at 14, Gaines, n 7 at 17; Karkkainen, n 6 at 91.

\(^{36}\) Margerum, n 7 at 137.


\(^{38}\) See chapter 4 for an overview of EIPs in Accredited Licences; Environment Protection Act 1970 (Vic), s 26B(2)(c).

\(^{39}\) VEPA, Guidelines for the Preparation of Environment Improvement Plans (Publication 739, VEPA, 2002) p 1.

\(^{40}\) Karkkainen B, “Information -Forcing Regulation and Environmental Governance” in De Burca G and Scott J (eds), Law and New Governance in the EU and the US (Hart 2006) p 296; Karkkainen, n 37 at 989-990; Gunningham and Sinclair, n 32, p 163.


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collaborate may achieve similar incentives. Broadly akin to a penalty “default rule”, VEPA can invoke a threat of more stringent and costly licence conditions, audits (and potentially a subsequent prosecution), or a compulsory “section 31C EIP”. While these powers effectively allow VEPA to force industry to undertake a collaborative EIP, the “arm twisting” approach is seen to be a more desirable outcome because VEPA has learnt from its experience at Altona and elsewhere that where practicable, persuasion (albeit in “the shadow of the law”) is less costly and can achieve much better results than direct coercion.

In contrast to the EIP and RNRM cases, the NEIP has not been designed to expressly invoke any incentives. The NEIP is not directly underpinned by any regulatory rules that could be used as a credible threat to induce cooperation from reluctant parties. And collaborators are expected to use their own resources or identify external funding sources to perform works under the plan without any government investment to provide incentives to make meaningful commitments.

In lieu of such incentives, the NEIP appears to assume that: (i) potential partners who are interested, concerned or who have responsibility for environmental issues will voluntarily participate in the proposal and sign on to participate and perform works under the plan; and/or (ii) local stakeholders who initiate the NEIP or join the collaboration will have sufficient skills, resources or leverage themselves to encourage participation from potential partners. Whether this purely voluntary approach to collaboration is sufficiently sound to achieve successful collaboration is explored in the findings below.

Regardless of whether the cases utilise incentives or not, all three programs have been designed to reduce transaction costs by providing different forms of government support and/or funding.

The EIP program provides only minimal government support to collaborators, such as VEPA officers giving collaborators information about regulatory standards or acting as a broker

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42 Karkkainen, n 40 at 296, 298, 321; Karkkainen, n 5 at 241; Karkkainen, n 37 at 944.
43 See chapter 4; Environment Protection Act 1970 (Vic), s 31C; Gunningham and Sinclair n 32, p 162.
45 As one VEPA respondent plainly put it: “Actually there’s no penalties in the Act for not participating in it.” Interview 237, EPA.
47 In broad terms, the NEIP appears to be designed around the idea of parties taking a “leadership” role to convince others to collaborate. For a discussion on the role of leadership in fostering collaboration see for example John D, “Civic Environmentalism” in Durant R, Fiorino D and O’Leary R (eds), Environmental Governance Reconsidered (MIT, 2004) p 230-234; Rose C, “Property as Storytelling: perspectives from Game Theory, Narrative Theory, Feminist Theory” (1990) 2 Yale Journal of Law and the Humanities 37 at 48-53, 54-56; Freeman J, “Collaborative Governance In The Administrative State” 45 (1997) UCLA Law Review 1 at 31-32; Raymond, n 2 at 53; VEPA, n 46, p 5.
48 This is an important question for NEG theory as it provides a case to compare and respond to queries regarding just how much harsh default rules are responsible for driving collaborative processes toward successful resolutions; See Karkkainen, n 5 at 241.

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between industry and community. However the EIP design also ensures in-kind support is provided to the collaborative group by the better resourced industry partner. Indeed, most financial costs associated with meeting rooms, negotiators, minute taking and drafting the EIP plan are to be covered by industry, either voluntarily or as result of “incentives” such as VEPA “arm twisting”.

Akin to suggestions in the NEG literature, both the NEIP and RNRM programs have been designed to provide comparatively greater government funding and support for collaborators. This is understandable given the greater number of parties involved in both cases, as well as the greater costs associated with meeting the additional requirements of both programs that partners consult with neighborhood and regional communities on not only a plan, but also a “proposal” in NEIP, and Regional Investment Strategy (RIS) in RNRM.

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50 The EIP plan is to include: undertakings to comply or go beyond compliance with licences and regulations; emission and waste production standards; monitoring of compliance; audits and assessments; improvement project details including what needs to be done, how it will be done and by when; provision for upgrading of plant; assessment of new and emerging technology; emergency and contingency plans; enhanced response to community complaints; community relations, health and safety issues; and community reporting requirements on progress; VEPA, n 49, p 2.
51 VEPA, Guidelines for Running a Community Liaison Committee (Publication 740, VEPA, 2001) p 5.
53 In NEIP this proposal and planning process will generally involve meeting a number of broad steps, including the community and sponsor drawing a “neighbourhood boundary” around an issue; identifying where the problems are, and what the possible solutions may be; engaging and obtaining formal sign-on of so called NEIP “partners”; establishing a steering committee made up of key partners; conducting a process of community consultation; determining a “vision” for the neighbourhood; determining how the vision may be achieved through the efforts of the whole community; identifying the financial or other resources needed to fund the development of the NEIP plan; identifying the likely nature of involvement and resource commitments to be made by the partners; detailing the proposed process for developing the plan; developing the plan in consultation with the neighbourhood; developing processes to measure progress, milestones and review, including short and longer term indicators of progress toward goals; and ensuring that the process is open to all parts of the community; Environment Protection Act 1970 (Vic), s 19AH(1); VEPA, n 46, p 2-10; VEPA, A Guideline for Submitting a Voluntary Neighbourhood Environment Improvement Plan Proposal (Publication 847, VEPA, 2002) p 2-3.
54 Regional NRM plans are to meet set “accreditation criteria”, namely (i) cover the full range of natural resource management (NRM) issues; (ii) underpinned by scientific analysis of natural resource conditions, problems and priorities; (iii) have effective involvement of all key stakeholders in plan development and implementation; (iv) focus on addressing the underlying causes rather than symptoms of problems; (v) include strategies to implement agreed NRM policies to protect the natural resource base; (vi) demonstrate consistency with other planning processes and legislative requirements applicable to the region; (vii) set targets at the regional scale, consistent with the National Framework for NRM Standards and Targets (viii) identify strategic, prioritised and achievable actions to address the range of NRM issues and achieve the regional targets; and (ix) provide for continuous development, monitoring, review and improvement of the plan. The Regional Investment Strategy must contain information to inform investment decisions and be developed in consultation with key stakeholders; See Bilateral Agreement NHT, n 20, s 80-93, Attachment E; An Agreement between the Commonwealth of Australia and the State of Queensland for the Implementation of the Intergovernmental Agreement on a National Action Plan for Salinity and Water Quality, March 2001 (Cth and Qld), s 12.7 (hereafter “Bilateral Agreement: NAP”).
In the NEIP case, financial and in kind support includes the VEPA providing short-term “seed” funding for administration and organisation tasks. The NEIP has also been designed to harness local government (or some other appropriate government agency) as a “sponsor” who may reduce costs by providing or obtaining resources to support group operation. This role is similar to “sponsors” in “civic environmentalism” in the USA.

The support provided in the RNRM program includes: (i) a small rebate for regional body collaborators (eg. covering the costs of time and travel); (ii) “foundational” and “priority” project funding for the regional body to support the process of establishing regional bodies, consultation and drafting the plan; and (iii) in-kind support from government officers, such as information provision and guidance for the establishment and tasks of the multi stakeholder collaborative regional body.

Such support under RNRM’s nested model of collaboration can reduce transaction costs by creating opportunities for interaction that might otherwise require considerable time and resources. For example, a structured collaborative forum at the state level may reduce the time spent by agencies consulting each other about issues and actions. In addition, a nested regional structure where a regional body divides its region into smaller areas and links with lower level groups may reduce the regional body’s costs and time associated with collaborating across the region. Simultaneously, local level groups gain from this nested arrangement because they can interact at the regional scale with each other and with agencies in more a structured single forum rather than each seeking agency advice in an adhoc manner.

On the other hand, a nested model, with many levels, necessarily involves greater costs in cooperating than collaboration at a single local level. Indeed, some authors suggest a major challenge for nested models is trying to achieve collaboration between different agencies (such

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55 The precise amount of funding is unspecified, but in practice it appears to fall somewhere between $10 000 and $30 000.
56 VEPA, n 46, p 1-5, 7-10.
58 In practice this appears generally to range from $1000 to $5000 dollars per annum.
59 Regional bodies can apply for Foundational Funding to support the process of establishing a collaborative organisation and drafting an NRM plan. Priority Action Funding can also be accessed by regions to address pressing NRM issues prior to the accreditation and implementation of a regional NRM plan; Interim Financial Agreement to Deliver the Natural Heritage Trust Extension in Qld 27 June 2003 (Cth/Qld), s 51; Bilateral Agreement NHT, n 20, s 95; Bilateral Agreement NAP, n 54 ss 9, 24; Farrelly M, “Regionalisation of Environmental Management: a Case Study of the Natural Heritage Trust, South Australia” (2005) 43(4) Geographical Research 393 at 396.
60 See for example Bilateral Agreement NHT, n 20, ss 40-42, 83, 101.
61 Margerum, n 7 at 144.
62 Margerum, n 7 at 144.
64 Margerum, n 7 at 144-146.
65 Margerum, n 7 at 144-146.

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as state government agencies working together to assist with the delivery of RNRM) and
different levels of government (such as federal and state governments negotiating bilateral
agreements in RNRM). Different governments and agencies are notoriously unwilling to share
authority and funds and if their cooperation is not forthcoming the consequences may be
devastating for lower levels who depend on government for guidance and support.66 The extent
and impact of conflict or cooperation between different agencies and levels of government is
further explored later in the chapter.67

5.2.3 Building Trust

The benefits of building trust to solve collective action problems are asserted not only in
the social capital and ADR literatures, but also in many NEG theories.68 "Trust" has been
variously defined across these literatures, however for the purposes of this thesis it can be
understood to mean confidence that people will keep their promises, treat others fairly and show
some concern for the others' welfare.69 Such forms of trust are claimed to result in greater
cooperation, and a greater likelihood of agreement and implementation by partners.70

The architects of the three programs clearly agreed with this claim. Each case implicitly or
explicitly accepts that mistrust between stakeholders will be rife. Accordingly, all have been
designed to involve a range of "negotiation", "mediation", and "facilitation" processes in
collaborative meetings and consultations.71 The broad intention is that these processes and the
opportunities they afford for assisting parties to show respect, contribute their fair share and
iteratively demonstrate reciprocity,72 will ultimately "build trust"73 and "resolve conflict"74
among stakeholders in the development of their plans, or other outputs.75

66 Margerum, n 7 at 144-146, 149; Freeman and Farber, n 52 at 900-901; Ewing S, "Catchment Management
Arrangements" in Dovers S and Wild River S (eds), Managing Australia’s Environment (Federation Press, 2003) p
406; Farrelly, n 59 at 406; Paton S, Curtis A, McDonald G and Woods M, "Regional Natural Resource Management:
67 Head, n 14, p 145.
68 See for example Fung A and Wright E, “Thinking About Empowered Participatory Governance” in Fung A and
Wright E (eds), Deepening Democracy: Institutional Innovations in Empowered Participatory Governance (Verso,
2003) p 15; John, n 47, p 232, 235; Freeman, n 47 at 24; Sabatier et al, n 26, p 186, 189; Head B, “Governance” in
Saunders P and Walter H (eds), Ideas and Influence Social Science and Public Policy in Australia (UNSW Press,
2005) p 57.
69 Sabatier et al, n 26, p 187; Thomson and Perry, n 25 at 28.
70 Freeman and Farber, n 52 at 801.
71 VEPA, n 51, p 4; VEPA, n 46, p 3, 4; Bilateral Agreement NHT, n 20, s 121, Attachment E p 62-63; Cth and Qld,
Guidelines for community engagement by RNRM bodies (Cth/Qld, 2004) p 4-5; Council of Australian Governments
71 at 71-88-89.
73 As the EIP guidelines point out, the intent is for the first meeting(s) to be used to “build up trust” involving
“skillfully chaired” negotiations assisted by VEPA officers as brokers between the sides; VEPA, n 49, p 1, 2, 3-6;
VEPA, n 39 p 1, 2, 7; VEPA, n 51, p 1, 2, 4, 5. Similarly, the NEIP process is also intended to involve building
“better relationships...friendships and social networks”; VEPA, n 46, at 5-6.
Of course, as we saw in chapter 2, not everyone sees building trust as necessary, relevant or even beneficial to achieving successful collective action.\textsuperscript{76} Whether the programs are successful in building trust and the subsequent impact that has on the emergence of successful collaboration is accordingly an important issue that is examined in the findings below.

As the next section discusses, the cases' negotiation and mediation process also have another interrelated purpose besides building trust. That is, they also provide processes for decision-making that typically follow a "consensus" decision rule.

### 5.2.4 Consensus Decision Rules

Consensus decision rules are seen by many in the NEG literature as likely to lead to more successful collaboration. This is because consensus can improve understanding and agreement about causes and consequences of environmental issues and increase the likelihood of implementation and compliance (because the solutions developed respect people's rights and interests and have the support of parties).\textsuperscript{77}

Two out of the three cases appear to be explicitly designed with such benefits in mind. Indeed, both EIP and NEIP cases' guidelines require that decision-making should "be by consensus".\textsuperscript{78} In contrast, the RNRM case does not directly refer to "consensus". However, the program's overarching intention of "close partnerships and cooperation"\textsuperscript{79} and abovementioned focus on negotiation processes during consultation appears to emphasise decision making that pursues a very similar goal.\textsuperscript{80} For that reason, this chapter loosely groups RNRM's decision making processes under the broad notion of "consensus" decision making.

\begin{footnotesize}
\begin{enumerate}
\item Bilateral Agreement NHT, n 20, p 57.
\item Raymond, n 2 at 42; Olson, n 1, p 44, 49-50.
\item VEPA, n 49, p 1, 2, 3-6; VEPA, n 46, p 5.
\item NNRMT (National Natural Resource Management Taskforce) \textit{Managing Natural Resources in Australia for a Sustainable Future} (DAFF/NNRMT, 1999) p 13, 27.
\end{enumerate}
\end{footnotesize}
Having said that, there are many different decision rules that can fall under the concept of "consensus", including total unanimity, majority voting or otherwise. Unfortunately, the cases' guidelines do not explicitly define the precise decision rule that informs their understanding of consensus or cooperative decision making. As with other consensus-based processes, much may be left to parties and their negotiator, mediator or otherwise to define the precise decision rules for their separate situations.

However, at the very least, the specific requirements regarding who must formally endorse their plans suggest that in terms of this ultimate agreement, all three cases have been designed to employ a "consensus" decision rule that is not based on every party being given a "veto". Rather the form of "consensus" appears to be close to what Karkkainen defines a "mixed" consensus process.

Here government bodies - the VEPA in EIP and NEIP cases and the Joint Steering Committee (JSC) in RNRM - have an ultimate veto over each of the plans, proposals and investment strategies in their respective cases, and must formally approve them when they meet requisite requirements. Subject to this veto is the agreement by the other stakeholders on these documents. Even so, all cases require that other stakeholders "sign off" on their plans to confirm that they "support" targets and actions proposed in the plan and/or agree to fulfil their commitments.

In addition to this mixed process, some form of voting is likely to be evident in the decision making of regional bodies in RNRM, not least because they are required to be an incorporated body with directors who operate under a constitution.

These various consensus and cooperative decision rules raise some important issues. Indeed, as we saw in chapter 2, there are many ongoing disagreements about the nature and impacts of different "consensus" decision rules. One primary concern is whether they lead to groups focusing on the most tractable issues over the most important ("tractability") or produce lowest common denominator outcomes. The findings below accordingly return to consider these issues.

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81 For example, while some consensus techniques may require everyone to agree with the outcome, consensus can also be redefined as a majority decision if all the parties agree to that redefinition; O'Leary et al, n 29, p 330-335.
83 Karkkainen, n 5 at 240.
84 For EIP see: VEPA, n 39, p 2, 7, 11; For NEIP see: Environment Protection Act 1970 (Vic), ss 19AH, 19AI(1), (3)(b); VEPA, n 52; VEPA, n 46; For RNRM see for example: Bilateral Agreement, NHT, n 20, s 80-84.
86 Bilateral Agreement NHT, n 20, s 68(a); Bilateral Agreement NAP, n 54, s 7.1(a).
88 Coglianese, n 7, p 96, 106, 110; Karkkainen, n 6 at 91.

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5.2.5 Summary

This section has provided an overview of the conditions and strategies designed to try and achieve the emergence of successful collaboration. Overall, the cases appear to anticipate and deal with, in different ways, a number of recognised barriers to collaboration. The EIP and RNRM for example harness positive and negative incentives to compel reluctant actors to collaborate, while NEIP does not. Further, the NEIP and EIP expressly emphasise consensus decision rules to try and enhance likelihood of implementation, while RNRM seems less committed to such an approach. All the cases also seek to build trust among parties to make cooperation easier, but each provides different forms of information and funding support to parties to reduce transaction cost.

As we saw, some specific questions remain about these approaches, including the role and impact of trust, the likelihood of cooperation at higher levels in the nested collaborative model of RNRM, the likely success of NEIP’s purely voluntary collaboration and the impact of consensus decision rules on the success of collaboration. How these issues played out in practice is examined in the next section, followed by a discussion of the implications for the literature.

5.3 Fostering the Emergence of Successful Collaboration in Practice

This section examines in detail whether and to what extent the cases were able to foster the emergence of successful collaboration in practice. The findings presented below illustrate that diverse stakeholders in each case were able to overcome cooperation barriers to collaboratively develop a plan to address environmental and/or natural resource problems. However, as we will see, the path to cooperation was different in each case, and some routes were far more successful than others.

Success here is gauged using respondents’ opinions and analysis of data regarding whether the collaboration included relevant stakeholders (see Table 5.1 below), and whether these stakeholders were able to combine their capacity, resources and knowledge to develop a plan which contained significant objectives and commitments toward improving the environmental problem(s).
This analysis proceeds in three parts, each dedicated to analysing the emergence of collaboration in one of the case studies. It commences with the EIP program, before turning to NEIP and RNRM.

<table>
<thead>
<tr>
<th>EIP</th>
<th>NEIP</th>
<th>RNRM</th>
</tr>
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<tbody>
<tr>
<td>• Local residents.</td>
<td>• Those groups, businesses or people contributing to the environmental problems in your neighbourhood as well as those concerned about it and with the responsibility to act on it.</td>
<td></td>
</tr>
<tr>
<td>• Industry.</td>
<td></td>
<td>• Community membership, including production and conservation interests and relevant stakeholders including at minimum Indigenous interests, and local government.</td>
</tr>
<tr>
<td>• Government bodies (local/state).</td>
<td></td>
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</tr>
<tr>
<td>• Other interested groups (eg. environmental groups).</td>
<td></td>
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Table 5.1: Stakeholders Across the Three Case Studies.

5.3.1 Environment Improvement Plans – Collaboration without Trust and Collaboration with Little Cause

The VEPA is responsible for over 1000 licences in the state of Victoria, relatively few of which have embraced the collaborative approach embodied in the EIP approach. Although over the 15 odd years the EIP program has been in operation, the total numbers of EIPs has grown there are today only about 70 that were operational or being negotiated at the time of writing - some 7% of total licences. Nevertheless, even though these are a relatively small proportion of the total licenced population, these collaborations demonstrate that some stakeholders and industries have been able to overcome barriers to cooperation and to address environmental challenges in a collaborative manner.

Based on the analysis of the sub cases, the path to such collaboration tended to follow two distinct routes. The first was blazed by sub cases that involved “good” and “poor” industry performers. These sub cases were the most successful in overcoming collective action barriers, yet contrary to conventional wisdom (and much of the literature) this was achieved without building trust. The second route was followed by a minority of sub cases that involved “leading” industries and was far less successful in engaging stakeholders. This latter route

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92 VEPA, n 51, p 1-3, 4, 6; VEPA, n 49, p 3-4; VEPA, n 39, p 10.
93 VEPA, n 46, p 5, 8, 9.
94 Bilateral Agreement NHT, n 20, ss 67, 68(b), Attachment D p 56; Bilateral Agreement NAP, n 54, cl 7.1(b) and (f); Cth and Qld, n 71, p 3.
95 Estimate of total licences based on most recent published figures of VEPA licence numbers; VEPA, Annual Report 2002-2003 Compliance Report (Publication 919, VEPA, 2003) p 2; Raymond, n 2 at 45.
96 The only available statistics on the growth of EIPs was between period of 1997-1998 to 2001/2002 which annually grew as follows - 31 (97/98), 35 (98/99), 36 (99/00), 50 (00/01), 54 (01/02). Since this time they have risen to approximately 70 (based on statistics obtained from the EPA (May 2005) and interviews); VEPA, n 95, p 2.
97 Raymond, n 2 at 45.
98 Raymond, n 2 at 46, 47.
somewhat incongruously pursued collaboration in situations where environmental problems lacked any real severity: truly an example of “collaboration with little cause”. These two different routes are discussed and compared below.

The initial catalyst to the first set of collaborations was the occurrence of severe environmental problems (or at least problems perceived to be severe by residents whose amenity and/or health was affected). Broadly similar to the Altona experience discussed in chapter 4, the story for both “good” and “poor” performers was a familiar one: most industries had quite severe noise, odour, amenity or other pollution impacts on local residents. Residents’ attempts to approach industry were often stonewalled, while their complaints to VEPA and/or local government typically engendered only cumbersome, slow and/or ineffective responses.99 Table 5.2 below provides an overview and illustration of this experience using two of the sub cases, and defines the terms “good” and “poor” performers.

The primary challenge here was getting industry to come to the table to collaborate, and as we will see, negative incentives were used with considerable success to induce both good and poor industries to collaborate, although the precise nature of those incentives varied between the two groups.

“Good” industries tended to be particularly sensitive to their public image and brand name. Unsurprisingly, when frustrated local stakeholders began opposing industry expansion100 and drumming up bad publicity in the local media,101 they saw this assault on their social, economic and/or regulatory viability as an unacceptable cost and accordingly came to the table.102 As one VEPA respondent succinctly put it:

bad publicity is the best thing. Not a prosecution. Bad publicity is the turning point for a lot of these industry changes.103

While similar community pressure emerged in sub cases involving poor performers, this was typically not enough to tip the cost-benefit equation of these less reputation conscious industries. Amid the community furore, and after repeated VEPA investigations and notices, VEPA ratcheted up “regulatory threats”, warning industry that harsher licence conditions,
compulsory EIPs, and audits and prosecutions, could be imposed.\textsuperscript{104} The costs and consequences of these threats were sufficient to motivate most poor performers to engage in the collaborative process.\textsuperscript{105} As one VEPA officer generalised:

> there is still that arm-twisting in the background. The classic one would be: “Right, if you don’t agree with this we’ll just put it in your licence”. So there’s the easy way or the hard way.\textsuperscript{106}

However it is worthy of note that such arm-twisting was insufficient in a few sub cases where industry management and owners were largely antagonistic to good environmental practice.\textsuperscript{107} Instead the VEPA had to break out the handcuffs and force industry to collaborate via a court order\textsuperscript{108} or inserting EIP conditions into the licence (see Box 5.1 below for an example of one such sub case).\textsuperscript{109}

\begin{center}
\textbf{“LICENCED” COLLABORATION}
\end{center}

EIP sub case 7 involved a wood fibre manufacturing industry that had been performing poorly economically, which had made it “difficult to fund any environmental initiatives”. Furthermore, “the nature of the cultural background of the owner meant environmental performance was not an important aspect of the business” (Interview 174, Industry). The result was repeated noise and fibre emissions, much to the chagrin of neighbouring residents. After receiving numerous complaints from the community, the VEPA used threats of prosecution and suggested to industry that it try to organise a collaborative EIP process. Industry half heartedly agreed and for over 6 years met with an angry local community. However little came of such efforts. Various undertakings were made by industry to solve its noise impacts, but agreements frequently stalled and were ultimately never signed off on or actioned. According to industry, they generally lacked the resources or management commitment to earnestly engage in the process and keep their promises. It was ultimately only the VEPA’s inclusion of a condition in the enterprise’s licence that made the completion of a collaborative process and the negotiated targets legally binding, that resulted in the company taking the collaboration seriously and responding in a more effective manner to local community requests. As the VEPA officer involved noted: “when it was just voluntary nothing happened. Binding the company with a license amendment brings them to the table...since the inclusion of the [license] condition the industry is now getting somewhere. Before it was just ‘coming, going, crying, fighting’ - nothing was getting done! Now it’s getting

\textsuperscript{104} As one VEPA respondent put it “Of course in other times we have to really, by force or threaten to add licence conditions to ask them to improve their performance”, Interview 181, EPA; Another industry pointed out: “EPA really on your case...saying we’re not sure that you should have a licence to operate”, Interview 161, Industry.

\textsuperscript{105} Similar findings were made in Gunningham and Sinclair, n 32, chapter 8.

\textsuperscript{106} Interview 121, EPA.

\textsuperscript{107} Gunningham and Sinclair, n 32, p 162.

\textsuperscript{108} In sub case 8, after continuing odour pollution by the industry, the VEPA reportedly “saw red”. They prosecuted industry for a breach of licence and pollution offences. The court ordered that the company be placed on a good behaviour bond, a condition of which was to develop an Environment Improvement Plan in consultation with the local community; Interview 184, Industry.

\textsuperscript{109} See Box 5.1 above. I note also that a section 31C EIP was also reportedly used once to impose a compulsory EIP on an industry. As one respondent put it: “I remember vividly sending the fax off to [industry]. It was faxes in those days. “We are gazetting you [under section 31C]”. We just imagined the guy turning pink and purple and every other colour, because he wasn’t...they were just in denial and quite awful denial... in the end we got to a point where you know, they were “you give me the shits but I can see what you’re saying”...we then all wrote the EIP [local resident, VEP and industry] and that was the nature of that particular situation”. Interview 121, EPA.
Box 5.1: An Illustration of the Direct Application of Law to Generate Collaboration.

Having successfully brought industry to the table using negative incentives or direct force,110 there was unsurprisingly little trouble generating interest from already incensed local stakeholders: “people would turn up and were very irate, you know like you’d get 70 people at a meeting”.111 These stakeholders coalesced into groups of around 20 people or less that included different mixes:112 6 to 12 residents (and local environmental groups where they were present in the local area),113 industry representatives, 1 to 3 local governments and 1 to 4 government agencies.

While these stakeholders were not “representative” and inclusive of all interests in a democratic sense (for further see chapter 6), these sub cases nevertheless achieved considerable success in engaging a diverse mix of the main interests, a degree of success that contrasts markedly with the experience of “leading” environmental performers.

Indeed, collaboration in sub cases involving “leading” environmental performers (see Table 5.2 below for an illustration) was almost the mirror opposite of collaborations involving “good” and “poor” performers.114 In contrast to the theatrics of community pressure and VEPA brandishing its “stick”, leading industries were motivated to voluntarily initiate an EIP in order to secure an Accredited Licence and its reputation benefits.115 Logically, the exceptional environmental performance of these “leading” industries meant there were only very minor or highly infrequent environmental impacts on the local area.116 Without any “severe” problem, local stakeholders unsurprisingly identified few benefits in bearing the costs of collaborating.117

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110 These conditions were generally replicated across around 50 EIPs.
111 Interview 184, Industry.
112 Other interests that participated in a minority of cases included political parties, community groups, and other collaborative government bodies, such as catchment management authorities.
113 For further see chapter 6.
114 At the time of writing 21 leading companies had received an accredited licence.
115 Consistent with earlier research uptake of accredited licence was low, not least because positive inducements such as lower scrutiny and lower licence fees were insufficient incentives given time and cost involved in preparing an EIP and other documents. “We didn’t want to go down that community path...[and] 25% reduction in fees to us is not a big deal....the EIP process adds money that costs us...so the 25% is not why we did it...we did for reputation”, Interview 151, Industry.
116 As one respondent explained: “a small problem...they have got a slight odour problem and they’re conscious of noise, they’ve had to build mounds and that sort of thing”, Interview 15/62, Local Resident.
117 “Its a bit of a struggle here as well even with residential members because we are sitting in very dirty area, there is a lot of high risk activity occurring in [near by industries], when in comparison we are a much lower risk for them so we are down on their list of priorities, you know, they are more interested in the chemical complexes” Interview 151, Industry.
The result was obvious: "industry have major problems getting attendance at their committee meetings because they don’t annoy anyone". 118

Leading industries and VEPA accordingly had to invest considerable time and effort in identifying non-government actors to bring to the table. 119 This often involved VEPA drawing on its contacts with non-government actors in other EIP collaborations. While not directly affected, these actors were interested in the general environmental performance of industry and/or wanted to make a broader "public contribution". 120 Even so, the resulting collaborative group was a marginal collection of stakeholders at best, involving 3 non-government stakeholders, 1 local government body, and 4 state government agencies. 121 As two respondents put it: “It would be good to have more involvement from our neighbours”, 122 “I’ve got to admit, there’s three of us and that’s not too many”. 123

<table>
<thead>
<tr>
<th>Overview</th>
<th>Good Performer</th>
<th>Poor Performer</th>
<th>Leading Performer</th>
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</thead>
<tbody>
<tr>
<td><strong>Overview</strong></td>
<td>“Good” performing industries generally maintained better performance records under their VEPA licence (e.g. infrequent licence violations).</td>
<td>Poor performing industries often had persistent regulatory breaches, had been fined (or even prosecuted), and were under close scrutiny by VEPA for their environmental performance.</td>
<td>Leading industries had a really strong focus on the environment and from the VEPA’s perspective, these industries “more or less looked after themselves”.</td>
</tr>
<tr>
<td><strong>Context</strong></td>
<td>1 100 hectare site of sewage treatment plant near residential suburbs</td>
<td>4.9 hectare site of organic recycling/rendering</td>
<td>88 hectare site of car manufacturing industry in industrial,</td>
</tr>
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</table>

118 Interview 113, VEPA.
119 As one VEPA respondent explained: “the setting up of their EIP wasn’t from the community. It was more... we’d like you to help us, rather than, we want you to tell us what we’re doing wrong”, Interview 153, EPA.
120 Interview 161, Industry.
121 Interview 151, Industry.
122 Interview 151, Industry.
123 Interview 15/62, Local Resident.
124 As one respondent put it: “the EPA are tied down with the bureaucracy and the time it takes to take odour samples and get them tested and come back months had gone past” Interview 182, Local Resident.
125 Interview 153, EPA.
<table>
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<tr>
<th>Good Performer</th>
<th>Poor Performer</th>
<th>Leading Performer</th>
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<tbody>
<tr>
<td>and a 56 kilometre pipeline to ocean.</td>
<td>plant.</td>
<td>residential suburb</td>
</tr>
<tr>
<td>- Affected population included beach users and those closest to industry boundary.</td>
<td>- Affected population contained in three local government areas, within a 10 sq kilometre radius.</td>
<td>- Small affected area at immediate industry boundary.</td>
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**Key Cause and Problem**

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<tr>
<th>Good Performer</th>
<th>Poor Performer</th>
<th>Leading Performer</th>
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<tr>
<td>- Sewage treatment process, waste gas burning, effluent discharged into ocean.</td>
<td>- Rendering of meat products release extensive odour.</td>
<td>- Air emissions and noise from foundry and vehicle assembly, vehicle painting.</td>
</tr>
<tr>
<td>- Odour impacts on residents, declining water quality and beach conditions, health risks to beach users, declining marine ecology.</td>
<td>- Odour impact on residents, greenhouse gas, waste water, water, resource utilisation.</td>
<td>- Minor noise and odour impacts near immediate industry boundary, stormwater contamination, wastewater generation and water consumption.</td>
</tr>
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**History**

<table>
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<tr>
<th>Good Performer</th>
<th>Poor Performer</th>
<th>Leading Performer</th>
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<tbody>
<tr>
<td>- Established some distance from residences (1975) but urbanisation increases residential proximity near site and outfall.</td>
<td>- Established plant in isolated suburb (1960s).</td>
<td>- Industry established 1970s.</td>
</tr>
<tr>
<td>- Industry consults community near outfall and forms group which is informed of industry activities (1998-2002).</td>
<td>- Urbanisation and business growth near the factory (1960s-2000).</td>
<td>- Noise and odour events brought to industry's attention by people on their boundary (1990s onwards).</td>
</tr>
<tr>
<td>- VEPA grants Works Approval for upgrade to outfall (2002).</td>
<td>- Licence change requires enclose part of the plant (1998)</td>
<td>- EIP commenced by industry to obtain an accredited licence.</td>
</tr>
<tr>
<td>- Environmental Group unsuccessfully challenges approval, and ramps up pressure through media campaigns and lobbying politicians</td>
<td>- Industry fails to enclose plant (1998).</td>
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</table>
With both sets of sub cases having overcome the initial challenges of bringing stakeholders together (albeit with less success in “leading industry” sub cases) the next stage of the journey was rising to the challenge of developing a plan. As we will see, this process involved a number of steps including arranging support processes, building trust and consensus decision-making.

With few exceptions, it was reported across all sub cases that the EIP design provided adequate support to reduce the costs of those involved in collaboration. It was indeed rare for people to disengage during plan development due to excessive transactions costs. The small size of the affected area (on average a few square kilometres) certainly kept travel costs down for residents. VEPA officer support also provided useful assistance with communication between stakeholders. Perhaps most importantly, the incentives that had brought industry to the table were also effectively harnessed to compel them to cover the principal collaborative costs:

the EPA would say to [Industry], “you need to get an independent person and you need to pay for it, you need to have an independent location for the meetings and you need to pay for it, and by the way if the meetings is on at 6 o’clock at night and people are coming straight form work maybe you should put a bit of supper on…and they did.

The abovementioned support was vital during lengthy negotiations which took anywhere between 6 months and 2 years to agree to a plan. The experience of negotiating and agreeing to the plan was different for good and poor performers on the one hand and leading performers on the other.

Table 5.2: Three Examples of Typical EIP cases – “Good”, “Poor” and “Leading” Performers.126

<table>
<thead>
<tr>
<th>Good Performer</th>
<th>Poor Performer</th>
<th>Leading Performer</th>
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<tr>
<td>(2002).</td>
<td></td>
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<tr>
<td>• EIP commences.</td>
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Although there are 8 sub cases, for reasons of scope and practicability, only 3 illustrations have been provided here. However, each is broadly typical of, and corresponds to, the different contextual factors found across the 8 sub-cases.

Only two sub cases reported someone leaving the group. In one case this was due to their own personal circumstances rather than due to the EIP process itself. In another, it involved an environmental group who dropped out to pursue a more adversarial approach to the environmental problem (see chapter 6 for further).

While there was no firm demographics on who or how many people were affected, respondents’ estimates on the affected group size ranged from no more than 10 households in sub case 7, to much higher numbers (in the hundreds) from sub cases in populated suburbs of between 2000 and 10000 people.

“EPA helped in the earlier period regarding the [formation of the EIP group]”, Interview 111, Industry; “So we certainly work with the company but it’s generally as a first point of contact”, Interview 181, VEPA.

The exception being leading industries who generally took on this role themselves.

Interview 182, Community.

Cameron Holley

New Environmental Governance
In EIP sub cases involving poor and good performers, the historically adversarial behaviour of parties meant there was typically a high degree of mistrust and animosity between most parties. Despite repeated meetings and negotiations, such high degrees of mistrust were rarely broken down. "Shouting and screaming", a lot of anger and accusations of "lying" remained common. Local residents evidenced minimal trust in VEPA or local government, who they believed had not "represented them to the degree that they expected," while industries naturally remained wary of the regulator. Industries tended to reveal only the bare minimum of information, ensuring they were "tight lipped" in response to a mistrusting community. As one respondent explained:

the residents argued over every step of the way...because the relationship was so poor that nobody trusted each other. They argued over every single word. They spent hundreds and hundreds of hours drafting this document.

As this quote suggests, the failure to significantly improve trust and reciprocity augmented the transaction costs of negotiating, and lengthened the time it took to draft a plan. However, this was not fatal to the process, as the high benefits to be gained by local stakeholders and the background pressure on industry were sufficient incentives to keep these key parties at the table.

After some time, the parties agreed to a plan. The "mixed" decision rule designed by EIP sometimes involved VEPA exercising its veto to ensure minimum standards and processes were met, but generally the sub cases achieved "substantial" agreement among most of its stakeholders, including VEPA. Such "substantial" (as opposed to 100 %) agreement among

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132 These decision making processes are considered in more detail in chapter 6. Generally speaking, these processes sometimes involved strategic bargaining. However, as a result of assistance from mediators and others, more genuine negotiation processes emerged and each party came to understand the positions of the others.

133 Interview 112, Community.

134 "I didn't believe them for years and years and years, every night, they were telling lies and some of them have admitted that they have told lies...they were long and tiring, difficult meetings that we all absolutely hated going to, for years really", Interview 162, Community.

135 Interview 174, Industry.

136 Even in case of government owned industry the relationship between VEPA prosecutions and agency was still reported to be characterised as "enemies", "rivalries", Interview 121, EPA.

137 Interview 111, SCA.

138 Interview 184, Industry.

139 As respondents from a number of EIPs described it: it was "a long drawn out process", (Interview 173, Local Resident); "it took a long time...these meetings were very acrimonious, very acrimonious", (Interview 121, Industry); "the meetings went past midnight and there was lots of screaming matches because it was born out of dissatisfaction...it's been a long process", (Interview 161, Industry).

140 As one industry respondent explained, they felt compelled to continue to try and resolve the problem because: "the EPA were just about to put our lights out...we really hadn't take a lot of action until then...[but] that just jacked the whole thing up and obviously the community anger", Interview 184, Industry.

141 The VEPA reportedly did not formally exercise its veto power to override or stymie an entire plan per se, but used it to "make sure that what goes in the EIP actually reflected EPA's position", Interview 123, EPA.

142 "I think it's one of the things with any EIP's is really, coming to consensus around the priorities and in this one in particular it was painstakingly done to the point where I think we've got good acceptance and congruence" Interview 211, EPA.
stakeholders is common to many consensus processes in practice that accept that some outliers will exist.\textsuperscript{143} These parties may oppose a proposal but are nevertheless willing to “step aside” because while a specific issue or agreement does not serve their interests, it does not entirely harm them.\textsuperscript{144} Or stakeholders may be willing to forego some of their immediate goals on the understanding that these would be addressed more fully over the long term.\textsuperscript{145} This certainly appeared to be the case in EIP as one industry respondent explained:

\begin{quote}
I think one of the most important things we had to do is make them realise you couldn’t just do that overnight, it had to be a 5-6 year program to do it [over a number of EIP plans].\textsuperscript{146}
\end{quote}

Even though total agreement had not been obtained, the “consensus” orientation had reportedly provided a number of benefits to the collaborative endeavour. Respondents acknowledged they had achieved greater understanding and agreement on some environmental problems, particularly “the on ground issues in the local community”.\textsuperscript{147} The consensus rule also appeared to reduce the chances of parties defecting or undermining the plan’s implementation. For example, after reaching agreement local stakeholders generally stopped complaining to VEPA\textsuperscript{148} and gave industry “a moratorium on complaints” so they could get on with plan implementation.\textsuperscript{149} One respondent summed up these benefits:

\begin{quote}
It’s helped them see the relative merits of all these things and prioritised it. I think it’s one of the things with any EIP that is really good, coming to consensus around the priorities...we’ve got good acceptance and congruence, and I think that’s important because if you’ve got that agreement you can move forward.\textsuperscript{150}
\end{quote}

\textsuperscript{143} Innes, n 82 at fn 4.
\textsuperscript{144} As one respondent illustrated “in some instances it really wasn’t about working towards outcomes that were agreeable...some of the members who sign off don’t agree with all the targets and actions in there” Interview 141, Industry; Innes, n 82 at fn 4.
\textsuperscript{145} As another industry member explained regarding decision making on targets and actions to reduce it: “You know, they want to know what you’re going to do to reduce our impact...the plan is to significantly reduce it over the two-year EIP into the future, and it takes a little bit of debate and discussion for them to understand that - but typically they do. They say, “Okay, well, as long as you’re setting yourself up that at some stage you’re going to, you know, create a step change down”, Interview 142, Industry.
\textsuperscript{146} Interview 131, Industry.
\textsuperscript{147} Interview 121, Industry.
\textsuperscript{148} Certainly, in some EIPs there were community complaints that had occurred after occasional “once off” pollution events. This typically led the VEPA to use their regulatory powers to enforce the EIP. However in no cases had the EIP agreement been undermined.
\textsuperscript{149} Interview 173, Local Resident.
\textsuperscript{150} Interview 121, EPA.
Ultimately, collaborators suggested the collaboration had “really added value”\textsuperscript{151} and the plan for action had allowed them to “take some steps”\textsuperscript{152} likely to contribute to improving the environmental performance of industry. As one industry respondent summed up:

I think it’s a pretty good - it’s not efficient and it’s not conflict free, but it’s a good working group that has actually achieved a lot.\textsuperscript{153}

Turning to sub cases involving leading industries, the negotiation process here was much smoother because the absence of any severe or pressing environmental problem meant the stakeholders had less pre-existing animosity to each other and were able to quickly establish greater trust among collaborators. As one respondent explained, during these negotiations, acts of good faith such as VEPA and industry openly sharing information with community groups broke down barriers and built trust:

they came with the mind set that perhaps we weren’t as open but that broke down very quickly.... It was putting everything on the table ...Just [by] proving we were honest.\textsuperscript{154}

This honesty improved relationships, and enabled the group to work together in a more coordinated, timely and effective way. As one respondent explained: “Every member on the [EIP group] is very supportive”.\textsuperscript{155} Indeed, because of this fact these sub cases were able to reach agreement on a plan many months earlier than the majority of EIPs.

The improved relationships also led the group to achieve almost unanimous agreement on the plan by following decision rules of “substantial consensus”, checked by VEPA veto.\textsuperscript{156} While this rule appeared to have achieved greater agreement among parties regarding some minor local problems,\textsuperscript{157} its overall utility both in terms of enhancing chances of implementation and in contributing to the production of an effective plan appeared to be

\textsuperscript{151} “It was a collaborative effort between [Industry] and the community...we are engaging with some of our harshest critics, and we are meeting with them and they come in with a big bag of rocks and they will throw them at us and sometime its fair and sometimes its not fair, but you know it really adds value”, Interview 141, Industry.

\textsuperscript{152} Interview 173, Community.

\textsuperscript{153} Interview 161, Industry.

\textsuperscript{154} Interview 151, Industry.

\textsuperscript{155} Interview 151, Industry.

\textsuperscript{156} While one respondent noted one or two minor issues which they believed were not fully addressed under the EIP plan (eg. cigarette and general litter in the industry’s driveway), for the most part the stakeholders appeared to have all been in agreement on the EIP. This is hardly surprising given industry’s high environmental performance and minimal impact on the local area meant that: (i) there were few reasons for VEPA vetos; and (ii) most of the stakeholders interests and concerns were minimal and for the most part easily satisfied. As one respondent explained:” “We told the group what we were doing and they were happy to run along with it”, Interview 151, Industry.

\textsuperscript{157} As one respondent put it: “they might have strengthen up the project like foundry odour the main community issue”, Interview 151, Industry.
Indeed, the plan that was produced largely reiterated existing industry targets, projects and priorities for both local and broader issues which industry were already committed to under their pre-existing environmental management systems:

we already had a lot of our projects documented and set up in a way that worked with our ISO system...[so] we already had the projects anyway.159

Notably, this “business as usual” plan appeared more attributable to the fact there was no severe environmental problem to be addressed, rather than a flaw in the consensus decision rule per se. Indeed respondents noted the decision rule had allowed local stakeholders to effectively “push” industry to respond to their interests and agree to improve its impacts – it’s just that there weren’t that many gains that could be made:

whenever we suggest anything they’ve either tried it and failed, but they’ll try again, or they’ve taken on board and they get it done straight away.160

Indeed, what is interesting about the agreements reached by the “consensus” decision rule across all the EIP sub cases is the lack of evidence that these rules were responsible for producing pathologies such as tractability or lowest common denominator solutions.161 Across all sub cases, minimally acceptable outcomes or issues most amenable to agreement rarely appeared to taken preference over the most “important” issues.162 Pressure from community, VEPA and/or industry’s own internal management programs ensured stakeholders had agreed to address a full gamut of relevant and challenging issues.163 These included often large scale commitments to address highly controversial impacts of industry on local neighbourhoods (such as $80 million plant upgrades to reduce dust or noise), to more complex issues that were sometimes less important to local stakeholders but important to industry and VEPA, such as targets and actions to reduce water consumption by 29%, solid waste to landfill by 30%, prescribed waste by 15% and reduce greenhouse gas emissions by 35 %.164

158 “They could do without me. I’ve got to admit”, Interview 15/62, Local Resident.
159 Interview 151, Industry.
160 Interview 15/62, Local Resident.
162 Some respondents did report that there were “degrees or elements of compromise” that reduced the likely effectiveness of some agreed actions. For example Interview 141, Industry pointed out that some targets set through the process had at times “pandered” too much to stakeholders who were interested in lower priority, local issues. However such “pandering” appeared rare over the longer term, with all plans containing a mix of local and “higher priority” targets on issues such as greenhouse gas.
163 Coglianese, n 7, p 107-109; Leach et al, n 161 at 165.
164 I note however that chapter 7 raises questions about whether the targets set by poor performers regarding some of these issues were sufficiently ambitious.
To conclude this discussion of the EIP case, the above analysis suggests the EIP program followed two paths that overcame cooperation barriers and achieved collaboration, with varying degrees of success.\(^\text{165}\) Subtly these two distinct routes reveal that collaboration is contextual in nature, with success depending on the conditions of the situation in which the EIP institution is applied.

The first path evidenced "cooperation without trust" and was, somewhat counter intuitively, the more successful in overcoming collective action barriers.\(^\text{166}\) Certainly transaction costs were augmented by this lack of trust, but the findings suggested that the historically adversarial stakeholders were able to find ways to cooperate and reach what was considered a sound agreement.\(^\text{167}\) Key to supporting this process was the presence of a severe problem to engender stakeholders to cooperate; "negative" incentives (and even direct force of law) to compel industry to collaborate and make meaningful commitments; adequate in-kind support from VEPA officers and industry to reduce transaction costs; and consensus decision rules that improved agreement on issues, contributed to increased likelihood of implementation, and appeared to address the most important issues.\(^\text{168}\)

Trust was more evident, and made cooperation easier in the second route to collaboration, which was followed by a minority of sub cases involving leading industries. Even so, this collaboration was far less successful in engaging a diversity of stakeholders and producing an effective plan that went beyond "business as usual". Ultimately these weaknesses came back to the fact that this had been a process of collaboration with little cause: there was not a sufficiently "severe" problem to make collaboration worthwhile.

5.3.2 Neighbourhood Environment Improvement Plans: flawed design and limited success

In contrast to the EIP program, the NEIP addresses much more complex second generation problems across a larger area, and involving a greater number of stakeholders. Broadly consistent with collective action theory, there have been comparatively fewer attempts at NEIPs than EIPs: only 7 operational NEIP collaborations have arisen over its 7 year life, compared to 35 EIPs that were commenced over its first 7 years of operation.\(^\text{169}\) Nevertheless, the very existence of these 7 collaborative endeavours show that at least some stakeholders have begun

\(^\text{165}\) Raymond, n 2 at 46, 47.
\(^\text{166}\) Raymond, n 2 at 40-41, 54.
\(^\text{167}\) Raymond, n 2 at 40-41, 54.
\(^\text{168}\) Leach et al, n 161 at 665; Coglianese, n 7, p 107,110.
\(^\text{169}\) For the number of NEIPs see www.epa.vic.gov.au; Raymond, n 2 at 45.
to overcome the barriers to collective action to address neighborhood environmental challenges in a collaborative manner.\textsuperscript{170}

Based on the analysis of three of the most advanced NEIP collaborations, the path to collaboration in this program again followed two distinct routes. The first and most common route was the least successful. Here a diverse group of stakeholders were able to come together and agree on a plan. However its overall success was limited by a lack of incentives in the NEIP design, which prevented the group from engaging key stakeholders, or ensuring parties made meaningful commitments. The first part of this section details these mixed results through examining NEIP 1 and 2.

While these findings suggest the lack of incentives represented a significant flaw in the NEIP design, the final part of this section turns to consider NEIP 3, where the analysis shows that it was surprisingly able to achieve successful collaboration because of three conditions external to NEIP institution: small population size, high and direct stakes for local actors, and external funding.

With the introduction of the NEIP instrument in 2001, VEPA sought to "learn" about its new and untested instrument by selecting NEIP 1 and 2 as "pilot" cases\textsuperscript{171} from more than 70 expressions of interest.\textsuperscript{172} Not coincidentally, both these initial "test" cases were selected because they involved conditions favourable to collaboration, namely environmental problems perceived to be severe by a concerned local community.

NEIP 1 focuses on a highly degraded urban creek that had long been used as a drain and was polluted by diffuse sources, not least pollution from multiple industries and small and medium size enterprises (SMEs). NEIP 2 focused on the even more complex problem of developing a "sustainable township" in a diverse coastal environment threatened by a range of diffuse problems, including air pollution and habitat impacts from a local coal mine and power station, development pressure, and household and business resource use. Tables 5.3 and 5.4 at the end of this section provide further details on the context and history of both NEIPs.

Commencing the collaborative process, the local governments that had nominated their neighbourhoods as "pilot" cases took on the formal role of a "sponsor", and committed a small amount of resources to the NEIP endeavour.\textsuperscript{173} The sponsor also received short term "seed"

\textsuperscript{170} Raymond, n 2 at 45.
\textsuperscript{171} The third pilot is not the subject of this study because at the time of research it had yet to reach agreement on its plan.
\textsuperscript{172} VEPA, n 16, p 42.
\textsuperscript{173} As one respondent described their decision: "We thought yes it's going to be difficult, it's going to mean that we're going to have to put in more resources... [but] we see NEIP is a way forward with the potential for partnerships and working together", Interview 213, Local Government.
funding from the VEPA, and small funding contributions from other partners.\textsuperscript{174} This collective funding was used by the sponsor to employ a coordinator for the 2 to 3 years that it took to develop a proposal and plan.\textsuperscript{175} These coordinators were resoundingly seen to be an effective and vital means of overcoming the transaction costs associated with bringing parties together, bargaining and keeping stakeholders connected in the relatively small local neighbourhoods (20 square kilometres or less).\textsuperscript{176}

I think initially to get a project up and going and build momentum, you definitely need someone in a paid position...to build that initial enthusiasm, involvement, and commitment, get runs on the board.\textsuperscript{177}

With this coordinator support, local government and VEPA officers began engaging partners and consulting with the neighbourhood by holding initial meetings, multiple public workshops and conducting surveys.\textsuperscript{178} The pre-existing community concern about the environmental problems ensured relatively high participation at these meetings: between 100 and 200 people in each sub case.\textsuperscript{179} These meetings in turn led to some, but as discussed below not all,\textsuperscript{180} significant stakeholders engaging, including 1 to 4 industry collaborators, 5 to 7 government collaborators, 5 to 6 non government groups and 2 to 11 residents.

Having engaged a number of diverse stakeholders, the next stage was building trust among them. This was led by the local government, coordinator and VEPA. After many months of consultation and negotiation, respondents reported there was a marked improvement in trust, with “none of this us and them thing” anymore.\textsuperscript{181} This trust in turn enabled them to work

\textsuperscript{174} Approximately $30 000 and $20 000 was received from contributions in NEIP 1 and 2 respectively. NEIP 1 received funding from the VEPA as a result of an alternate penalty provision, while NEIP 2 received a once off grant from the VEPA. Additional funding was also received from 2 industry partners in the NEIP 1 and a Catchment Management Authority Partner in NEIP 2; Surf Coast Shire Council and Anglesea NEIP Partners, Anglesea Neighbourhood Environment Improvement Plan (Surf Coast Shire Council, 2004) p 28; Maribymong City Council and Stony Creek NEIP Partners, Stony Creek Neighbourhood Environment Improvement Plan (Maribymong City Council, 2004) p 17.

\textsuperscript{175} This was obviously a protracted process that created some frustration among stakeholders. As one respondent put it: “you look at it – 12 months or so to develop a proposal ... then 12 months before you’ve got a plan. It’s two years and a lot of people are – “oh God, you’re still banging on about this, what have you actually done?”; Interview 211, EPA.

\textsuperscript{176} This small area likely kept travel costs to a minimum.

\textsuperscript{177} Interview 221-1, Coordinator.

\textsuperscript{178} To illustrate, in NEIP 1, the coordinator, VEPA officer and local government officer conducted processes such as public forums and workshops (over 60 people attending these in total, including 15 industries), as well as sending out questionnaires to develop a shared community vision and objectives regarding the creek. NEIP 2 also ran a significant number of meetings and workshops, some 60 people turned up to one workshop alone. Maribymong City Council and Stony Creek NEIP Partners, n 174, p 16; Interview 222, Local Government.

\textsuperscript{179} In NEIP 1 approximately 100 people/businesses in total from a population of 11 000 attended consultation meetings. In NEIP 2, between 150 and 200 people attended similar events from a smaller population of 2 000.

\textsuperscript{180} See also chapter 6 discussing representation deficits.

\textsuperscript{181} As one respondent illustrated: [community and government] all get together and there’s none of this us and them thing...it’s just that we have managed to build those relationships ... I think without that, you’re always going to have that bit of cynicism and a bit of lack of trust” Interview 221-1, Community. Similar improvements in trust occurred between businesses and local stakeholders: “So those conversations are open rather than the
together strategically in a more coordinated and effective way to move beyond their previously fragmented responsibility and interests:

it’s making it a bit more effective and that’s been a really good outcome, even identifying, well, hey, we’re doing this. Let’s join up together\textsuperscript{182}

While these are all positive achievements, the findings suggested that there were significant limits to the success of the collaborations in terms of achieving improved environmental outcomes. Indeed, respondents pointed to a lack of “buy in” from key industry stakeholders who were some of the primary contributors to the local environmental problems.

This weakness was most dramatically illustrated in NEIP 1, where over 200 industries and SMEs lined the polluted creek and were a major source of its degradation. The sponsor and VEPA tried to engage industry through workshops and sending out 400 letters to industry managers. However only 15 industry members attended the workshops and not one response was received from the letters.\textsuperscript{183} The VEPA accordingly tried to use tacit regulatory pressure. However a lack of officer resources and limited leverage over SMEs restricted such pressure to only a few large, licensed industries.\textsuperscript{184} The result was a dismal number of industry interests signing on to the plan: 1 business representative group and 3 industries. Respondents were clear on the reason for this minimal engagement:

I don’t think the NEIP has the capacity to engage with industry. I think with industry, if they’re abusing the creek, then they will choose not to be engaged...the only way they will become engaged is through regulation.\textsuperscript{185}

The absence of sufficient incentives to engage industry not only stifled engagement, but also meant that those who had engaged had no motivation to share information or make anything other than tokenistic commitment.\textsuperscript{186} Indeed, none of the 4 industry interests made any commitment to improve environmental performance, and were essentially “free riders”:\textsuperscript{187}

they did attend some meetings but nothing’s actually happened with them. They haven’t formally committed to anything.\textsuperscript{188}

\begin{flushleft}
\text{[local business] for example just being totally hostile to the [community group] and seeing them as just a bunch of greenies. That conversation is more open so they are, I think, successes,\textsuperscript{182}; Interview, 213 Local Government.}
\text{\textsuperscript{182} Interview 211, EPA.}
\text{\textsuperscript{183} Maribyrnong City Council and Stony Creek NEIP Partners, n 174, p 17.}
\text{\textsuperscript{184} This involved encouraging industry to provide $3000 to the NEIP.}
\text{\textsuperscript{185} Interview 216, Industry/Business Association.}
\text{\textsuperscript{186} “I think that one of the issues with the NEIPs system is that...there’s nothing to force them to participate in that area”; Interview 212, Local community. Karkkainen, n 40, p 296.}
\text{\textsuperscript{187} In broad terms, industry displayed a form of free rider behaviour. That is, potentially gaining reputation benefits from collaborating to improve the creek, without making any significant contribution themselves. Indeed, industry made only the minimalist of commitments to help other partners develop a best practice stormwater management plan for goods and transport handling. Gunningham and Sinclair, n 32, p 150.}
\text{\textsuperscript{188} Interview 212, Local community.}
\end{flushleft}
Overall, many felt that without increased industry participation and commitment there were substantial limits on what NEIP 1 could achieve in the future in terms of improving the creek’s water quality.

The lack of incentives in the NEIP design also produced similar difficulties in NEIP 2. Although the sustainability agenda of this NEIP was wide in scope, the threats to the local air shed and habitat from the only major industry in town was still one of the primary identifiable impediments to the town’s “sustainability”. With only the one industry to contend with, the local government sponsor was able to successfully focus its efforts on persuading this industry to come to the table. However again, respondents reported the NEIP had not provided them with the necessary tools to encourage industry to take positive action, and only tokenistic commitments ensued. The collaboration and its likely success in improving sustainability of the town were accordingly seen to be weaker as a result:

I smile, I suppose, when you look at [Town] and you sort of say, okay, yeah, we want to be a sustainable, ecologically friendly town, and then you look out the back and you see this dirty rotten big mine...I don’t think we’ll have as much of a chance getting them to change their output. I think that’s a bit beyond the NEIP.

These limitations of NEIP 1 and 2 extended beyond the issue of industry partners. Some respondents raised concerns that even in the case of other government partners, the NEIP had insufficient incentives, particularly dedicated funding to encourage and enable government parties to make commitments that went significantly beyond “business as usual”:

there’s no central source of funding ... that meant that they committed to a lot less than they would’ve committed to...that money wasn’t there so they couldn’t agree to anything where they didn’t have it.

A failure to go beyond “business as usual” is a common criticism of many “consensus building” processes. However it is important to be clear that in NEIP it appeared to be more

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189 As the plan and proposal point out, the reason for commencing a NEIP in the town included “Concern about air quality: especially coal mine and its emissions” Surf Coast Shire Council and Anglesea NEIP Partners, Proposal to Develop a Neighbourhood Environment Improvement Plan (Surf Coast Shire Council, 2002) p 1; Surf Coast Shire Council and Anglesea NEIP Partners, n 174, p 12.
190 The sponsor was helped by the fact that the industry was a reputation conscious “good” performer. As the industry reported, it was in their self interest to maintain their public image and social licence by participating in the NEIP: “we try to participate very actively in the community that we operate in to give back to the community”, Interview 223, Industry.
191 The extent of industry’s contribution was to help with a workshop and participate in a town clean up day. Interview 223, Industry.
192 Interview 221, Local Resident.
193 “In some sense aspects of the NEIP, the approved plan, were written in a way that people just said what they were already doing or slightly improved, so they weren’t over committing”, Interview 213, Local Government.
194 Interview 212, Environmental Group.
195 Cameron Holley New Environmental Governance
the lack of incentives (a condition that is external to the consensus decision rule) and less the decision rule per se that caused this problem.

Indeed, while commitments from government parties may not have gone far enough in the immediate term, the decision rule used to agree on the plans typically emphasised “substantial” consensus among stakeholders,\(^{196}\) which appeared to ensure that government agencies had at least accounted for and sought to meet other parties’ interests over the longer term (i.e. over a number of plans). As one respondent illustrated, while budget limitations had prevented one agency from undertaking infrastructure works to restore the flow of the creek under the 5 year NEIP plan, the agency and stakeholders were able to reach an agreement on long term commitments to complete these works over a 30 to 40 year time frame. As one respondent put it “we’re prepared to be patient”.\(^{197}\)

Broadly akin to the EIP case, the consensus agreement in NEIP generally avoided the VEPA exercising its “veto” over the plan directly,\(^{198}\) but as the rule suggests, there was not total unanimity on the plan.\(^{199}\) Even so, the use of a consensus rule had reportedly led the parties to set objectives, targets and actions that focused on a full gamut of complex and important environmental issues,\(^{200}\) albeit severely hampered by lack of industry involvement. The decision rule had also reportedly increased the likelihood of implementation\(^{202}\) and assisted parties to improve their understanding and agreement on the nature of environmental problems, allowing them to create a new shared agenda. As one respondent put it:

> we’re clearer on our own areas of direct responsibility and shared responsibility and we have an improved understanding of the broader issues and the greater challenges.\(^{203}\)

In short, the consensus decision rule in NEIP 1 and 2 appeared to actually have a number of benefits for the success of the collaboration. However, as suggested above, the external design conditions within which this consensus rule was exercised appeared to have seriously undermined the chances of the plan delivering successful environmental improvements.

\(^{195}\) Coglianese, n 7, p 107-110.

\(^{196}\) Some decisions were also made by an agreement among a sub set of parties such as between a coordinator and officer who conducted a consultation process.

\(^{197}\) Interview 215, Local government.

\(^{198}\) However as we will see in chapter 6, VEPA indirectly used their position to dominate decisions.

\(^{199}\) “Sometimes there’s no consensus on things”, Interview 227, Local Resident.

\(^{200}\) “It was a complex problem and I guess in summary that’s why the NEIP for us was so good...we’ve got a plan which has both some short term, medium and long term goals...we’ve brought partners together and we’ve all moved forward”, Interview 213, Local Government.

\(^{201}\) Indeed in NEIP 2 some respondents believed the NEIP aimed extremely high: “my honest observation of the NEIP is it aims too high. The projects that they want to achieve are so big”, Interview 223, Industry.

\(^{202}\) “What’s relevant is that there’s consensus around what’s in it. That’s all that matters...to make it happen”. Interview 224, EPA.

\(^{203}\) Interview 213, Local Government.
However, this was not an inevitable outcome for all collaborations as the findings in NEIP 3 reveal below.

NEIP 3 commenced shortly after NEIPs 1 and 2 and was not a "pilot" case. Like NEIP 1 it also focused on a degraded creek under threat from diffuse sources of pollution, but NEIP 3 was located in a rural rather than urban community (see Table 5.5 below). The findings on the emergence of collaboration in this context corresponded closely with those in NEIP 1 and 2 on many issues, including the positive support role of the local government sponsor, effective seed funding, cooperation enhancing trust building and beneficial consensus decision rules. However in contrast to NEIP 1 and 2, NEIP 3 was far more successful in engaging and obtaining meaningful commitment from its “problem” stakeholders as well as other parties in collaboration. The findings indicated this was primarily due to three conditions.

First, stakeholders had a much greater stake in the environmental problem in NEIP 3 than in the other two sub cases. The polluted creek not only provided irrigation for local dairy and other farming industries, it was also the sole water supply for the population of 100 people in the catchment, including a rural township that had no waste water system. This water supply was not however treated and was below Australian standards for drinking water. While some residents suggested, they had “built up a bit of an immunity”, personal health concerns were evident, particularly for visitors to the town, with noted cases of tourists becoming sick from drinking the water. These events raised not only health concerns, but also economic issues by

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204 Short term "seed" funding (a $20 000 grant from the Victorian Catchment Management Council) was used by the local government sponsor to employ a coordinator. Combined with VEPA officer support, the coordinator had engaged a large number of parties and conducted extensive consultation within the neighbourhood. This involved public meetings, information days, giving out flyers, and surveys; Towong Shire Council and Partners of Little Snowy Creek NEIP, Little Snowy Creek Neighbourhood Environment Improvement Plan (Towong Shire Council, 2006) p 37-38.

205 As discussed below, NEIP 3 involved a smaller community that provided a much greater “base level” of trust and networks on which to build cooperation. As one respondent put it: “everyone single person knows every single person” and in “these small towns... they have so many bloody committees” (Interview 234, Local Government). Even so, developing trust and overcoming transaction costs was as vital to NEIP 3 as the other sub cases. Indeed, mistrust between the township and surrounding farmers in NEIP 3 was high: “It’s a sort of a ‘them and us’ because blame was laid on both as to the causes of declining water quality” (Interview 234 Local Government). However after negotiating, trust had noticeable improved, and so had cooperation. As one respondent commented: “It’s not as bad as it was, it is getting better, the communication and the cooperation [between farmers and town] I suppose you could say is getting better” Interview 232, Water Trust.

206 Consensus decision making in NEIP 3 followed similar decision rules to NEIP 1 and 2, although it occasionally used majority voting when participant numbers at meetings were quite large. As one respondent explained: “It’s more discussion than voting... everyone says “yeah”... [but] when I say consensus, you still might get the odd dissenting voice” (Interview 324, Local Government). Reportedly these approaches to consensus had improved stakeholders understanding of the creek’s pollution, and increased ownership and chances of implementation. As one respondent summed up: “Well the fact that you can get to a point where most of these players that were often fighting with each other through the process... actually agree on something, signed on to it, I mean that’s brilliant. That’s brilliant” (Interview 235, EPA).

207 As one respondent explained: “Sometimes people have come here and stayed at camping grounds, they’ve been a bit sick from the water... but I just think oh well, that’s their constitution... we’ve been drinking the water the whole time” Interview 236, Community Group.

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threatening tourism, stymieing future development\textsuperscript{208} and raising public liability issues both for the town and agencies with responsibility for public health.\textsuperscript{209}

Such direct health and economic stakes for local actors meant there was a much greater range of stakeholders that saw high benefits in engaging and committing to the collaboration than for either NEIP 2’s more diffuse threats to “sustainability” or the polluted creek in NEIP 1 which provided largely only amenity uses.\textsuperscript{210}

The second reason why NEIP 3 was able to achieve a more successful collaboration than NEIP 1 and 2 was the difference in population size. Within only around 100 people within the small catchment area, transaction costs were much lower than in the other sub cases, and engagement rates proportionally higher.\textsuperscript{211} This enabled sponsors to focus their resources to engage a larger proportion and mix of significant stakeholders (18 local residents/farmer representatives, 13 government and 3 non government groups, and 1 collaborative Landcare body).\textsuperscript{212} Notably these stakeholders included two thirds of the key “problem” stakeholders, namely the dairy farming industry.\textsuperscript{213}

The ability of this NEIP to engage these “problem” stakeholders arose largely from the third and final reasons for why NEIP 3 was the most successful NEIP collaboration: resources. Specifically, the town water supplies and the management of rural resources were both issues that fortuitously were the subject of significant external government funding.\textsuperscript{214} Unlike NEIP 1 and 2 where stakeholders had to rely on their own limited resources or small grant programs to fund their commitments,\textsuperscript{215} these external funding sources brought with them more than $700...
000 in investment over four years. This funding enabled partners to make significant commitments and to progress the plan towards development of wastewater and water supply systems, as well as to undertake waterway restoration projects. Perhaps most importantly this funding was used to provide incentives that encouraged local farmers to engage and contribute to on farm improvements. As one respondent pointed out, landholders were apparently motivated to collaborate because of these incentives:

they wanted all of their waterways fenced out, they wanted all the willows removed, they wanted it all reveged, and they saw that as being a real bonus, a real benefit, and they were very committed to that.216

While some commitments in NEIP 3 plan still depended on future cooperative decisions and resourcing,217 the above three conditions appeared to have ensured that this sub case achieved far greater success than NIEP 1 or 2.218

To conclude this discussion on NEIPs, at a general level the NEIP appears to have been far less successful than EIP in fostering the emergence of successful collaboration. Certainly the above analysis suggests that all NEIP sub cases were able to facilitate some diverse public and private stakeholders to come together for the first time to agree to a plan and make collective commitments to address significant environmental issues at neighbourhood level. Akin to the EIP sub cases involving poor and good performers, these achievements appeared attributable to the presence of a severe problem, sufficient subsidies for transaction costs (in this case through a “sponsor” and seed funding) and a consensus decision rule. However, the above analysis suggests trust building was seen to be more important in contributing to the success of NEIPs.

The overall success of most NEIPs was nevertheless qualified to the extent that the design of the NEIP lacked the capacity to engage and/or obtain commitment from key stakeholders, which severely constrained their potential to achieve significant environmental improvements.

Yet, despite these weaknesses the NEIP design clearly can “work” under the right conditions. Indeed, like the findings in EIP it was clear in NEIPs that collaboration was
contextual. Here, the findings in NEIP 3 suggested that NEIP collaborations are more likely to succeed in a small population with high stakes in an environmental issue, particularly where funding is (fortuitously) available to effectively fill the “incentive gap” left in the NEIP design.

<table>
<thead>
<tr>
<th>NEIP Sub Case 1</th>
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</thead>
<tbody>
<tr>
<td><strong>Context</strong></td>
</tr>
<tr>
<td>• Lower stormwater drainage catchment of urban creek approximately 20 sq km.</td>
</tr>
<tr>
<td>• Creek runs through residential and industrial areas, acts as industrial and stormwater drain, runs through 3 local government jurisdictions, and 3 state agency jurisdictions.</td>
</tr>
<tr>
<td>• Over 11000 residents live in the neighbourhood.</td>
</tr>
<tr>
<td><strong>Key Cause and Problem</strong></td>
</tr>
<tr>
<td>• Pollution incidents from industry, stormwater run off, littering and illegal dumping of waste, inappropriate vegetation management, transport and truck spills on roads, sewage leaks and illegal connections of waste discharges, run-off from washing cars and dog faeces in parks, urbanisation and development.</td>
</tr>
<tr>
<td>• Poor stream form, poor water quality, loss of habitat, loss of open space, species decline, erosion and sedimentation, decreased infiltration and filtering to the flow regime, pests.</td>
</tr>
<tr>
<td>• Complaints from the neighbourhood population, particularly from local environmental groups had long demonstrated community concern about the failure of ad hoc and typically uncoordinated regulation(^{219}) that had been at best ameliorative.(^ {220})</td>
</tr>
<tr>
<td><strong>Key stakeholders involved</strong></td>
</tr>
<tr>
<td>• Local residents, industries, VEPA, state government agencies, local government, environmental groups, industry associations, water authorities, museum, businesses.</td>
</tr>
<tr>
<td><strong>History and attempts to address the problem</strong></td>
</tr>
<tr>
<td>• Death of mangroves (1987).</td>
</tr>
<tr>
<td>• Local environmental group formed (1993).</td>
</tr>
<tr>
<td>• 18 prosecutions from industries and road spills (1993-2004).</td>
</tr>
<tr>
<td>• Responsible state agency rates creek as highly degraded, and does not invest resources to address problems (ongoing).</td>
</tr>
<tr>
<td>• Sponsor’s Open Space Plan identifies linear park along creek corridor as priority (1997).</td>
</tr>
<tr>
<td>• State Agency and local council develop Foreshore Strategic Plan (1998).</td>
</tr>
<tr>
<td>• Local environment group holds planting days (late 1990s).</td>
</tr>
<tr>
<td>• Sponsor develops Project Directions Plan to guide the implementation of works along the Creek open space corridor (1999).</td>
</tr>
<tr>
<td>• Local government storm water management plans emphasise creek problems and key water quality risks (1999-2000).</td>
</tr>
<tr>
<td>• Residents’ complaints about park litter and condition of creek (1990s/2000s).</td>
</tr>
<tr>
<td>• Government rates Creek as one of the poorest quality urban waterways within Victoria (2000).</td>
</tr>
<tr>
<td>• Red coloured water flows, death of eels, fish and birds (2001/2002).</td>
</tr>
<tr>
<td>• Council lose three appeals against developments abutting Stony Creek (2001-02).</td>
</tr>
</tbody>
</table>

\(^{219}\) As one respondent explained the buck passing that occurred between multiple agencies responsible for the creek, “Our community walks by this creek every day and they see the banks not maintained and weeds. Council maintains the parks around the area to a much higher standard and comes back to council and says why aren’t you maintaining it, so that’s not our responsibility and the State agency say well it’s not our park, we normally wouldn’t maintain a drain to the standard so it’s that kind of tension, trying to encourage them”; Interview 213, Local Government.

\(^{220}\) Maribyrnong City Council and Stony Creek NEIP Partners, n 174, p 3.
- Sponsor receives funds to address stormwater issues of Creek (2001/2002).
- Industry convicted of polluting Creek ordered to conduct one year baseline monitoring of creek (2002).
- Almost 200 reports of pollution being received by VEPA (2001-2003).
- NEIP commences.

Table 5.3: Background to the Emergence of Collaboration in NEIP 1.

<table>
<thead>
<tr>
<th>NEIP Sub Case 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Context</strong></td>
</tr>
<tr>
<td>• Coastal township aprox. 5 sq km including urban centre, beach front, estuary, creek and environmental reserves.</td>
</tr>
<tr>
<td>• Tourist area but also home to a population approximately 2000 extending to 10000 during tourist season.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Key Cause and Problem</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Tourism, development, industry air pollution and mining, woodfires, waste landfills, litter, sewage outfall, energy usage.</td>
</tr>
<tr>
<td>• Poor water quality, acidification of river, declining air quality, pressure on the coastal and marine environment, impact on the watertable, Loss of habitat and biodiversity values, increasing resource consumption.</td>
</tr>
<tr>
<td>• While these threats to “sustainability” could be reduced through ad hoc regulations, engineering or technological solutions, more gains could arguably be made through collaborative approaches that engage people, groups and businesses where they live and work to change their habits and behaviours.221</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Key stakeholders involved</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local residents, environmental and community groups, VEPA, industry, local government, state government agencies, water authorities, waste management authorities, catchment management authority, tourism associations, school.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>History and attempts to address the problem</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local environmental group formed (1960s).</td>
</tr>
<tr>
<td>• Local Coast Action group formed (1995).</td>
</tr>
<tr>
<td>• Local government Conservation Plan engages local groups in identifying actions (1996).</td>
</tr>
<tr>
<td>• Formation of power state and coal mine Community Consultation Network (2001).</td>
</tr>
<tr>
<td>• Ongoing increase in town population, loss of vegetation, and decline in kangaroo populations.</td>
</tr>
<tr>
<td>• Tourism increases periodically augmenting population 5 fold (ongoing).</td>
</tr>
<tr>
<td>• Complaints to VEPA about local creek pollution (2001/02).</td>
</tr>
<tr>
<td>• Sponsor pilots eco-footprint program.</td>
</tr>
<tr>
<td>• Sponsor conducts community capacity building initiative (2001).</td>
</tr>
<tr>
<td>• Swinburne University research indicates high level of concern about environmental issues and over half of respondents acknowledge there is an “active community” (2001).</td>
</tr>
<tr>
<td>• NEIP commences.</td>
</tr>
</tbody>
</table>

Table 5.4: Background to the Emergence of Collaboration in NEIP 2.

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221 Surf Coast Shire Council and Anglesea NEIP Partners, n 174, p 13-14.

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<table>
<thead>
<tr>
<th>NEIP Sub Case 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Context</strong></td>
</tr>
<tr>
<td>• Catchment of rural creek approx. 22 sq km.</td>
</tr>
<tr>
<td>• Flows through rural town and agricultural land, provides sole water supply to population and is used for agricultural irrigation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Key Cause and Problem</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Township wastewater and agricultural activity (effluent discharge, run-off), competing water usage, bank erosion, lack of native riparian vegetation, no water treatment facility septic tank and grey water leakage from the town, campers and anglers.</td>
</tr>
<tr>
<td>• Poor stream health, elevated nutrient and pathogen loads within the waterway, poor water quality (unsuitable for human consumption), water shortages.</td>
</tr>
<tr>
<td>• This problem had long been overlooked by traditional regulatory institutions and was subject of significant concern from the community. 222</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Key stakeholders involved</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local residents, farmers, catchment management authorities, local government, water authorise, state government agencies, businesses, (tourism farmers )VEPA, community associations, water trust, landcare groups.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>History and attempts to address the problem</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• No public water treatment or waste water treatment facility (ongoing)</td>
</tr>
<tr>
<td>• Committee of local residents sets up Water Trust to supply town with water (1970s).</td>
</tr>
<tr>
<td>• More than a dozen cases and complaints of visitors or new arrivals to town becoming sick (gastroenteritis) from creek (historically - 2003).</td>
</tr>
<tr>
<td>• Resident, state government agencies, local government and water authority discuss public health issues (1999).</td>
</tr>
<tr>
<td>• Ongoing willow and woody weed infestations, declining fish populations, low or restricted flows, black sludge and mud covering the bottom of the creek, deteriorating water quality.</td>
</tr>
<tr>
<td>• Complaints registered with agencies, but no government follow-up to issue (1999-2002).</td>
</tr>
<tr>
<td>• Department of Human Services issue Boil Water Advice (1999 - ongoing).</td>
</tr>
<tr>
<td>• Water Trust committee ceases because public liability risk and inability to obtain insurance but a few individuals continue the water supply services (2002 onwards).</td>
</tr>
<tr>
<td>• Meetings between catchment management association (CMA), VEPA, local government to discuss options to address problems (2002).</td>
</tr>
<tr>
<td>• Planning scheme restricts development due to inability to retain wastewater on site (2003/4).</td>
</tr>
<tr>
<td>• VEPA, CMA and local government and other state agencies survey and meet with community (2002-2003).</td>
</tr>
<tr>
<td>• NEIP commences.</td>
</tr>
</tbody>
</table>

Table 5.5: Background to the Emergence of Collaboration in NEIP 3. 223

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222 A study conducted in 2002 interviewing residents in the area found that “there was a large majority agreement among farmers and township residents alike that the creek has been deteriorating since the 1980s” Towong Shire Council and Partners of Little Snowy Creek NEIP, Eskdale-Little Snowy Creek Neighbourhood E1P Proposal (Towong Shire Council, 2005).

223 Towong Shire Council and Partners of Little Snowy Creek NEIP, n 204; Surf Coast Shire Council and Anglesea NEIP Partners, n 174; Maribymong City Council and Stony Creek NEIP Partners, n 174.

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5.3.3 RNRM – the challenges of nested arrangements

Collaboration in RNRM is slightly different to EIP and NEIP, as its nested model requires cooperation at more than one institutional level. That is, collaboration must occur between (i) federal and state governments to negotiate bilateral agreements; (ii) state government agencies to support RNRM delivery; and (iii) local and regional stakeholders across 15 different regions to negotiate and cooperatively agree to a plan and investment strategy.

Based on the findings in the RNRM case study, stakeholders achieved substantial cooperation at all of these levels. However at each level, problems were reported. These included drawn out conflicts between federal and state governments; agency “turf wars” at the state level; vague guidance and insufficient support for regional bodies; and difficulties achieving consensus and trust between regional community and government.

Some of these problems were interrelated, and none were immediately fatal to the collaborative arrangements. However they all diminished the overall success of the collaborative arrangements that emerged. The discussion below outlines in broad terms the steps taken to achieve these collaborative RNRM arrangements and highlights at each stage the achievements and shortcomings of the collaborative endeavour.

The primary issue for RNRM’s nested approach was state and federal government agreeing to bilaterals to provide the strategic framework for the state’s RNRM. Consistent with suspicions of some RNRM commentators and NEG authors, conflict rather than cooperation was evident in some of the very first steps in the RNRM nested model. Here, transactions costs of negotiating bilateral agreements were extremely high, with problematic, lengthy, and repeatedly stalled negotiations. This was particularly the case regarding the more expansive NHT 2 bilateral (NAP being limited to only 4 “priority” regions in Queensland). Indeed, following announcements that NHT and NAP would be implemented together the NAP agreement was reached relatively quickly in 2002 but negotiations continued on the NHT agreement until 2004. A number of factors appeared to contribute to these difficulties. First, respondents pointed to state/federal conflicts and lack of trust historically entrenched in a federal system:

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224 Head, n 14, p 144.
225 See Margerum, n 7 at 149; Paton et al, n 66.
226 As one respondent noted “they couldn’t even get NHT contract signed between the fed and state gov” (Interview 1210, Science).
228 This was in part because NAP was developed through the Council of Australia Governments, which involves both state and federal governments. In contrast, NHT was predominantly a federal program.
you know what the states are like they are always paranoid about the feds..."If its federal driven it must be crap, those bastards, they are just pushing us around".229

Second, some respondents suggested the federal government had wrongly assumed that the state would see resource benefits arising from the collaboration with the federal government. However the magnitude of federal resources was reportedly too small to motivate meaningful state cooperation. As one respondent put it:

[the federal government] think they’ve so much money to run this [RNRM] that the state will click and dance. Well it started to click and dance and then it decided well no, get nicked ...there’s not enough money...so you had a failed system to start off with.230

This conflict not only weakened the very foundation of RNRM’s collaborative process, but as discussed below also reduced the overall success of the RNRM collaboration by creating delays in funding support and fostering uncertain guidance for lower regional levels.

Simultaneously contributing to these problems was an ongoing conflict at the Queensland government level. Akin to “turf warfare” among administrative departments that has been a noted problem in earlier NEG experiments,231 state agencies reportedly struggled to find agreement regarding their collective approach to RNRM. While some agencies with direct responsibility for RNRM reportedly wished to pursue a collaborative232 and “whole of government”233 approach, others were resistant to sharing their power, leading to a “disintegrated government system”234 and a number of independent reviews of the system.235 As one respondent put it, this uncertainty and conflict: “was a tragedy because...the whole of government solidarity sort of fell apart”.236

While these conflicts were going on, the governments pressed ahead and rolled out RNRM at the regional level, operating under the NAP bilateral and interim NHT arrangements.237 In some respects, government officers appeared quite successful at assisting regional stakeholders to cooperate. Building on pre-existing groups238 and following numerous meetings with regional community, government officers facilitated a number of the main interested stakeholders to

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229 Interview 334, Regional Body.
230 Interview 3210, Science.
231 Ewing, n 66, p 406.
232 “They need partnerships to actually operate”, Interview 334, Regional Body.
233 Interview 334, Regional Body.
234 Interview 334, Regional Body.
235 See for example Zammit C, Head B, Miles R and McDonald G, A Review of the NRM arrangements in Queensland (DNRM, 2004).
236 Interview 334, Regional Body.
237 Interview 342-1, Subregional Body.
238 For further see Head and Ryan, n 227, p 16-17.

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form a collaborative regional body. These included 5 sub regional collaborative group members (catchment management/landcare groups), 2 science interests, 2 indigenous interests, 2 local government members and 4 non-voting government advisors.

Why did these stakeholders want to collaborate? At the broadest level, stakeholders were interested in participating in the collaborative group because they were concerned about the region’s severe natural resource problems. Indeed, as Table 5.6 illustrates, since the 1990s, community concern and involvement in catchment or Landcare groups had sought to manage the diverse natural resources that were reportedly threatened and degraded by a range of competing and interconnected intensive resource uses such as grazing, cane farming and urban development. Unsurprisingly, the 5 existing sub regional groups were thus some of the most motivated stakeholders to seek membership on the regional body. Furthermore, for some of these groups, obtaining and/or controlling government funding also acted as an important incentive for seeking membership on collaborative regional body. As one respondent put it: “they nominated these people to make sure that they got some money for their organisations”.

Although valid questions exist about the inclusiveness and balance of interests on the regional body (discussed further in chapter 6), the membership of the sub regional bodies had gone some way toward bringing a diverse mix of key stakeholders into the regional collaboration, including Landcare, local government, environmental and agricultural interests. Furthermore, one particularly beneficial feature of the sub regional groups’ involvement was that the regional body had essentially developed a “nested” approach that took account of the geographical spread of catchments in the large region.

That is, the region was divided into 5 sub regions that corresponded to each subregional group on the regional body. This structure ensured that at least some existing sub regional groups were not forgotten or overlooked in the shift to regional arrangements (which some emerging RNRM research has shown was a noted problem in other regions).

This nested arrangement also appeared to help reduced transaction costs in ways broadly consistent with hypothesis in the literature. For example, because the regional body contained

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239 Indeed, natural resources were the primary source of livelihood in the region - 96% of the regional land use was cattle grazing, and tourism was the major employer. BDTNRM, Burdekin Dry Tropics Natural Resource Management Plan 2005-2010 (BDTNRM, 2005) p 29-33.
240 BDTNRM, n 239, p 1, 8, 29, 30.
241 Interview 341, Regional Body Officer.
243 Other regions in Queensland adopted different approaches and structures, and as some researchers have noted (eg. Whelan and Oliver, n 80) many faced significant degrees of conflict between existing sub regional and other community groups in the regional establishment process. However, it appeared in this sub case that as the regional body had embraced a number of existing sub regional groups, such conflict had been reduced. Indeed, subregional bodies generally suggested it was a successful “bottom up” process; Interview 342, Subregional Body; BDTNRM, n 239, p 8; Gilbey, n 242.
244 Margerum, n 7.

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government advisors and interacted with agency staff, it was able to provide a structured forum that reduced costs of feeding government guidance down to individual subregional groups to assist with their consultation process.\textsuperscript{245} Simultaneously, dividing the workload among these groups reduced the time and resources spent by the regional body in consulting with the wider region.

Indeed, the “foundational funding” obtained by the regional body was partly devolved to the subregional bodies to hire coordinators.\textsuperscript{246} As in NEIPs, these coordinators were seen to be vital in assisting subregional groups to overcome some of the transaction costs of consulting and bargaining regarding critical NRM assets, targets, actions and prioritising in each subregion.\textsuperscript{247} While the specific form of subregional consultation and negotiation varied, the coordinator typically assisted the group to complete targeted consultation, workshops and public notice and comments procedures with the catchment’s community, industry groups and local governments.\textsuperscript{248}

This consultation fed up to the coordinating regional body, where the remaining foundational funding was reportedly vital to enabling the body to rent an office and employ support planning staff, including a consultant to complete the RIS.\textsuperscript{249} The body also conducted its own regionally focused consultation process, conducting a 2 day regional forum attended by 60 people that integrated the issues and targets identified across the five sub-regions into a regionally-based structure.\textsuperscript{250}

\textsuperscript{245} For example, the regional body’s staff and government advisors were able to develop a standardised template to assist subregional groups with their processes of consulting to set measurable and time bound targets. This template ensured that the correct information was supplied and that targets could be compared across subregions; BDTNRM, n 239, p 187.

\textsuperscript{246} 8 coordinators were hired in total, three of which had technical skills in biodiversity, water quality and coastal and marine issues and were outsourced to provide broad technical support across the regional area; BDTNRM, Annual Report 2004-2005 (BDTNRM, 2005) p 15; Gilbey, n 242.

\textsuperscript{247} “Our coordinator makes sure information is disseminated properly... coordinators are needed because farmers or landholders, they don’t know how to connect” Interview 342, Subregional Body.

\textsuperscript{248} For example one subregional body followed this process: “the coordinator and the technical support officer...complete[d] targeted consultation with community, industry groups and local government throughout the [subregion]. Community consultation was held over three days in [8 towns]. Interviews were held at the [Shire Council]. Correspondence was sent to key stakeholders... River Trust, 2 Water Boards, Shire Council, Landcare Association, Environmental Protection Agency, Department of Natural Resources and Mines, Department of Primary Industries, Queensland Parks and Wildlife Service, CANEGROWERS, Pest and Productivity Boards, Mango Growers Association, Pacific Reef Fisheries, Irrigators Committee, Catchment Committee, CSIRO, Tourism Association and 2 Chambers of Commerce...Prioritisation workshops were held by the sub-committees in [2 towns]...The steering committee, the coordinator and the technical support officer then grouped the similar issues and reworked issues to reduce the total number of issues...Initially over 200 issues were submitted through these community, stakeholder and natural resource management plan steering committee consultations...steering sub-committees, along with the Co-ordinator and relevant Board staff involved in the community consultations reviewed the entire list of issues...The issues list was placed on the [Region’s] InfoBase and disseminated to general [subregional body] members and then prioritised by the natural resource management plan steering sub-committees”. BDTNRM, n 239, p 185-187.

\textsuperscript{249} BDTNRM, n 239, p 197.

\textsuperscript{250} BDTNRM, n 239, p 65, 185-196.
These were all positive achievements in the development of plan and strategy. However the overall success of collaboration at the regional level was limited by a number of issues. First, because of the ongoing bickering over the overarching bilateral agreements, government guidance intended to support the regional body was often vague and constantly changing.\textsuperscript{251} As one government advisor to the regional body explained:

the regional bodies have been evolving at the same time as the infrastructure has been... The administrative arrangements the guidelines... we haven't necessarily provided them with the framework or the support to be able to achieve what we want them to achieve.\textsuperscript{252}

This did little to reduce transaction costs, and may have even augmented them as regional bodies continually had to adapt and readapt to changing requirements.\textsuperscript{253} Furthermore, the findings indicated this lack of firm guidance may have been detrimental to the overall success of the process, with regional bodies often failing to connect effectively with key stakeholders.\textsuperscript{254} As one respondent reflected:

we have got some major coal and gold mines in the area. Not one of the mining industries has even been talked to.\textsuperscript{255}

The second issue that undermined the success of regional collaboration were reported delays and insufficiencies in government funding to mitigate transaction costs. These delays were created by the ongoing disagreement between federal and state governments, which subsequently increased, rather than decreased, the time it took to complete the plan and made it more difficult to engage local stakeholders. As one respondent explained:

I see the [Queensland] - [Federal] crunch as incredibly negative. It's stopped us getting funding when we needed our funding...and then that flows through to the community, through the committee to the community, so there is all this negative stuff that comes out at friction at the top end.\textsuperscript{256}

\textsuperscript{251} See also Farrelly, n 59 at 399.
\textsuperscript{252} Interview 327, Government Agency.
\textsuperscript{253} For example, requirements for regional body organisational structures reportedly changed from a focus of establishing public good organisations to forming companies; Interview 327, Government Agency.
\textsuperscript{254} Interview 327, Government Agency.
\textsuperscript{255} Interview 341, Regional Body.
\textsuperscript{256} Interview 342, Subregional Group.
Augmenting these difficulties were reported insufficiencies in the foundational funding. As one respondent frankly stated: “the biggest deficiency is that it is hopelessly under resourced.”

Even with volunteers putting in “thousands of hours”, the funding had not sufficiently equipped the sub regional groups to overcome transaction costs and cooperative barriers that arose in the extremely large geographic region (almost 130 000 square kilometres). Indeed, respondents reported they lacked the time and resources to engage with a range of peak industry bodies who were reportedly wary of new regional bodies and saw them as “a threat” to their influence over rural issues. More problematic were reports that the body had failed to “tap into all of the farming structures” in the region, particularly average farmers as opposed to those who were already involved in existing sub regional Landcare or catchment bodies. As one respondent put it:

we have had a group of most probably 30 land holders, commercial beef property people have been involved fairly heavily in doing all this consultation process for the planning, but the majority haven’t engaged.

These vital stakeholders had not engaged in the regional collaborative process for a number of reasons. These included “cynicism” about government programs; anger that on-ground funding had largely ceased while RNRM plans were being developed; and most prominently, the fact that some farmers had to drive some “many hours” to attend meetings.

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257 Interview 337, Local Government.
258 Interview 342, Subregional Group.
259 As one respondent explained: “they did see them as a threat, we’re talking in code here, but the idea was that when these regional bodies emerged they’d be, kind of have some persuasive influence over the assignment of resources at the regional level. That’s not the case, so there was a fear in the mind of these industry groups that may be perceived to be stacked in a particular way, whether a green persuasion or not, and they’d be calling the shots at a regional level” Interview 323, State Agency.
260 Interview 314, Industry Body.
261 For example coordinators and subregional groups were working with farmers on projects – however the general view was that these farmers were “leaders” as opposed to “average punters”.
262 Interview 344, Subregional Body.
263 As one respondent put it: “Part of the problem with these arrangements... is they’re so... governments both state and federal, [Program A] in Qld was one example: it becomes something that they do and deliver in a budget cycle and then the funding dries up and then they don’t do it again. Then it goes away and it comes back re-badged with the same people, who three months ago were delivering [Program A] to you, are all now standing on your farm saying “I have got [Program B], it’s the new best thing”, so growers get a little bit tired of 2 year, three year funding cycles. The money dries up and goes away, its rebadged as something else, so its actually been quite difficult to get some of the growers past the cynicism, and us as well, in some respects and say the regional arrangements are around, how long are they actually around for? And how much effort in some respects do you actually put in to try and work and get these long term?”, Interview 311, Industry Body.
264 For example, on respondent pointed out: “I don’t think the task the regional bodies have had to do particularly in Queensland, for the last 2 years hasn’t really given them much of a leg up in the communities view. For two years they have just been planning, planning, planning and there is no money being channelled down except through different...we have had one regionally competitive bid, a Landcare program, but the NHT they (the farmers) had just
This lack of engagement from key stakeholders appears likely to have reduced the overall success of the collaborative process and the effectiveness of the plan that was produced.

However those that did engage were at least able to agree to a plan and a RIS. According to respondents, the repeat interactions and negotiations to develop these documents (while far from conflict free) had helped build stronger relationships and reduce mistrust, which made reaching agreement much easier. As one science respondent reflected on the experience after a number of negotiated meetings with farmers, local government and peak industry bodies:

"you know when you have some sort of break in the log jam...there was just a level of honesty about presentations by all sides that got it away from the hostility."

Having built trust over time, how did the parties reach agreement on the plan and RIS? Although the RNRM legislative design did not definitely emphasise consensus decision making, it was reported that in practice the planning process had sought to use the ongoing consultation and negotiation processes as a way "to work towards consensus." What is different about this consensus focus in RNRM compared to the other two cases was that RNRM was not so much about a relatively defined group of stakeholders following a consensus decision rule to agree to a plan, but more a multiplicity of sub regional, regional, and other decision making forums that were designed to contribute to some form of overall regional consensus.

For example, in one sub region alone a facilitated workshop of sub regional stakeholders reached agreement on issues for the sub region, while a select group of these stakeholders then agreed on the priority of these issues and decided which would have targets set for them. This was followed by smaller technical teams agreeing to targets for each of the priority issues. Finally, a regional forum involving regional and sub regional stakeholders reached agreement...
on which of the targets had regional value, which was then followed by planning staff and regional body negotiating with government agencies and other key industry stakeholders to draft and agree to a plan.272

As one may expect, these different processes threw up a host of different decision rules, ranging from “substantial” agreement among subregional group stakeholders;273 majority voting (both in sub regions and the regional body)274 and agreement by a small representative group of stakeholders275 or by a technical advisory team276. As with NEIP and EIP, unanimous agreement in any forum appeared to be rare, with particular disagreements regarding scientific information and targets.277

Given the multiple and interconnected decision forums, untangling the precise impacts of each of these different decision rules was beyond the scope of this thesis. However, what was clear from a regional body perspective was that these processes had involved “decision making that promoted mutual education” and “increased knowledge of resource issues”.278 Respondents also reported that reaching “consensus” agreement had reportedly helped increase the chances of implementation from regional and local stakeholders who had signed onto the plan:279

getting sign off on the plan is the big thing. As I say I think we have done that ...they have at least signed off to a set of targets and aspirations that hopefully we are all going to achieve.280

However for some respondents, whatever consensus had been achieved at the regional level had been significantly undermined by the “mixed” decision process and the JSC’s subsequent exercise of its veto over the plan to ensure that the plan accorded with existing law and program requirements. As one respondent put it:

from our point of view, we said “No. From a government point of view, as the funder of the groups, you’ve got to address these issues”.281

272 BDTNRM, n 239, p 68-69, 187-190.
273 BDTNRM, n 239, p 193.
274 BDTNRM, n 239, p 193.
275 As one respondent explained it was “difficult in this type of compromise situation” for all stakeholders to get all of their views and the outcomes they were looking for”, Interview 323, State government; BDTNRM, n 239, p 188.
276 BDTNRM, n 239, p 190.
277 A number of respondents recounted the lack of “scientific consensus” on acceptable levels of river load reductions into the ocean; Interview 341,Regional Body; Interview 334, Regional Body.
278 As one respondent explained, a key part of this mutual education and increased knowledge had been decision making processes that sought to find agreement between “science” and local knowledge of key stakeholders: “science is not going to solve our problems, what we need is on ground people to have an input’ you know...[so we] set up a subcommittee of rural people who if the science had a bright idea they’d run it past us to see what we thought about it”, Interview 342, Subregional Body; BDTNRM, n 239, p 49.
279 “its their plans, their targets ...we sat there and we workshoped the growers with the work...it creates ownership if the plan sits there and these targets if they know they helped write them they understand why we are achieving or why we driving for targets, and they can achieve them, then they are more likely to actually engage in it” Interview311, Industry Body.
280 Interview 237, Local Government.

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The findings suggested this veto had the potential to undermine the agreement and ownership achieved at the regional level, and the increased chances of implementation that come with it. As one respondent described how they felt about government’s actions: “Your opinion is irrelevant basically or that’s the way it seems”.282 However a redeeming feature of government veto and oversight of the program, at least according to some stakeholders, was that it ensured regional groups had set targets and actions for issues that were important, rather than simply creating tradeoffs between agricultural and environmental interests:

if we were to hold a meeting here of local community people in the region and you go in with a blank sheet of paper, I don’t think that is all together helpful. You end up with such compromise… it is lowest common denominator outcome…that means no outcome quite often. So you need to have some broader policy guidance as to how that might be applied.283

Indeed it was clear that the plan contained some ambitious targets.284 These ranged from soil issues (eg. by 2024, achieve a 10% improvement in soil health in extensive and intensive agricultural areas) to biodiversity issues (eg. by 2015, ensure 90% of all threatened flora and fauna species in the region will be represented in conservation reserves or under voluntary conservation agreements) to coastal and marine issues (by 2025 connectivity between and within fresh water and marine ecosystems will be restored).285

To sum up the above discussion, RNRM has been successful in facilitating federal, state and a range of regional non government stakeholders to come together to produce a new nested set of collaborative arrangements. Broadly similar to elements of some EIP and NEIPs, the findings suggested that vital to these achievements were severe natural resource problems and monetary incentives to engender interest from key regional stakeholders, government support (albeit insufficient) to reduce transaction costs, trust building and a broad consensus orientation to regional decision making, albeit one perhaps undermined by government veto.286

However like the NEIP case the success of RNRM is qualified to the extent that it faced a host of difficulties in engaging key stakeholders to input into the plan. These difficulties arose

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281 Interview 323, Government Agency.
282 Interview 242, Subregional Body.
283 Interview 328, Government Agency.
284 As discussed in chapter 7, some respondents questioned the general validity of RNRM targets, however this weakness was not seen to arise from the decision rule itself.
285 BDTNRM, n 239.
286 As one respondent summed up: “I think this regional approach is as I say the best thing we got at the moment, as I see it everybody supports it, then it comes to how do you deliver a good NRM outcome through this type of structure. I think the idea of having a regional plan is a good one with time bound targets measurable time bound and measurable with an investment strategy, all that is very rationale”, Interview 337, Local Government.

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because of problems at different institutional levels. While nested arrangements appeared to have some benefits in reducing transaction costs across such a large region, consistent with fears of some authors, conflict and uncertainty at higher levels not only created unstable foundation to the RNRM program but also delayed financial support and reduced effective guidance from government to regional bodies. These problems, along with insufficiencies in funding, hindered regional stakeholders’ attempts to engage key stakeholders. Notably, many of these problems are consistent with those documented within regional arrangements in other states.\(^2\text{87}\)

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<tr>
<td><strong>Context</strong></td>
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<td>- Region approximately 133,432 sq km, population approximately 190,000 (2004).</td>
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<td>- Area contains one main river, 5 sub-catchments and three main bioregions, continental islands, densely populated coastal areas, but sparsely populated inland.</td>
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<td>- Region contains mining, grazing, forestry, manufacturing, tourism, industry, Traditional Owner land uses, fishing, urban, irrigation, sugar cane, horticulture.</td>
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<tr>
<td><strong>Key Cause and Problem</strong></td>
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<td>- Causes of problems include: excessive grazing, tree clearing and irrigation, fragmentation and degradation of native vegetation, unsustainable development, declining rural population, and increasing urbanisation.</td>
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<tr>
<td>- Problems include: land degradation, water quality degradation, degradation and eutrophication of coastal and inner reef environments, salinity, native vegetation degradation, loss of biodiversity, soil degradation, pest plants and animals, unsustainable development, loss of soil productivity, local and regional extinct species, endangered, increase in rare and vulnerable species and vegetation.</td>
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<td>- While respondents confirmed that not all members of the region shared a concern with improving or contributing to NRM solutions, “community based NRM. planning” was “a significant feature” of the region since 1990s.(^2\text{88})</td>
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<td>- Further, these problems had not been adequately addressed by early institutional arrangements, including some of the more immediate predecessors to RNRM such as NHT 1 and integrated catchment management. As one respondent reflected: the NHT 1 experiment...it was a very very inefficient use of money in the sense of strategic application of dollars to fix big problems... [Queensland] had been supporting this ICM type concept for years...Very very very under resourced so no real impact, and basically treated within government as a bit of a joke”.(^2\text{89})</td>
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<tr>
<td><strong>Key stakeholders</strong></td>
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<td>- Local residents, farmers, environmental groups, industry associations, local government, state government agencies, federal government agencies, land care groups, science bodies, traditional owners, catchment management groups.</td>
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<td><strong>History and attempts to address the problem</strong></td>
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<td>- National Landcare Program (1989) a community-based alliance between landholders, environmentalists and state and federal governments.</td>
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<td>- Qld Integrated Catchment Management creates voluntary catchment groups that develop catchment management strategies (1990/91).</td>
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<td>- Various state government based NRM programs, e.g. Water Act 2000.</td>
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<td>- Also, government (under EPA) in cooperation with industry groups, developed 6</td>
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\(^2\text{87}\) Paton et al, n 66; Farrelly, n 59.  
\(^2\text{88}\) BDTBNRM, n 239, p 8.  
\(^2\text{89}\) Interview 334, Regional Body.  

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codes of practice, and best management practice including COMPASS (ongoing).

• The Natural Heritage Trust Act 1997 set up the Natural Heritage Trust of Australia Reserve from a $1.35 billion partial sale of Telstra using partnership agreement between federal and state governments (1997-2001).
• Catchment management groups, land care groups etc received funding under NHT for on ground works and produced a range of strategies.
• NAP proposed and NHT Mid Term Review points to need for more strategic regional approach.

Table 5.6: Background to the Emergence of Collaboration in RNRM. 290

5.4 Discussion and conclusions

This chapter has examined the conditions that fostered the emergence of successful collaboration. Focusing on the experience of “tripartite”, “neighbourhood” and “nested” collaborative models, it has provided a range of insights into under-researched questions and debates in the literature. 291

Although collective action barriers ostensibly remain a “theoretical thorn in the side” of NEG, 292 the above analysis suggests that under the right conditions a more sanguine view of collaboration is justified. Consistent with growing empirical evidence, 293 the very existence of collaboration across the cases suggest that all three cases effectively removed much of the metaphorical thorn by designing institutions to target favourable conditions and utilise mechanisms to reduce these barriers. 294

This basic finding suggests that it is oversimplification to rely on tragedy of the commons and cooperation dilemmas to write off all or even most NEG cooperative solutions as theoretically impossible. 295 Having said that, most of the collaboration processes examined here were far from easy. All were time and resource intensive and extended for many years, some expended extensive resources to try and engage reluctant participants (such as NEIPs), while others involved taxing conflict (such as EIPs and government levels of RNRM). Consistent with suggestions in the broader NEG literature, collaborative experiments like the three case studies appear unlikely to speed up the policy process and may expend considerable government and non government resources. 296

290 BDTNRM, n 239.
291 Heikkila and Gerlak, n 5 at 584; Karkkainen, n 5 at 242.
293 See for example: Heikkila and Gerlak, n 5; Raymond, n 2, Lubell, n 12.
294 Karkkainen, n 5 at 229.
The findings also revealed varying degrees of success between collaborative processes. At a broad level, the EIP program appeared more successful than the other two cases, with most EIP collaboratives engaging a majority of key stakeholders that subsequently developed a plan, which took substantial steps toward resolving local environmental issues. Of course, such success appears partly attributable to the fact that EIP faces comparatively “simple” point source pollution problems, and involves few key parties making direct commitments. In the NEIP and RNRM cases, where problems are more complex and involve many more stakeholders, the most successful collaboration appeared to be NEIP 3, which emerged in relatively unusual circumstances involving an extremely small population, high stakes for local actors in a severe environmental problem and fortuitous external funding.

These general conclusions may appear to support sceptics’ arguments, based largely on theory, that successful collaboration in NEG is at best limited to narrowly constrained or unique circumstances, like a small community closely tied to environmental conditions evident in NEIP 3, or less complex settings involving fewer parties such as EIPs.

However such a conclusion would arguably place too little weight on the quite significant achievements made by RNRM and the other NEIP sub cases that at the very least suggest the very real potential for success, albeit under more appositely designed institutions (discussed further below). Moreover it would incorrectly overlook the relative failure in the EIP sub case involving leading industries.

An arguably better conclusion to draw from the relative success of the cases is that collaboration is highly contingent and contextual: success or failure is dependent on the specific circumstances to which institutions are applied. What then can we learn from the cases about the conditions that foster the emergence of successful collaboration? Certainly, one must accept that contextuality means any conclusion on a specific condition cannot be said to be predictive of success per se. Even so, insights drawn from the findings across the diversity of contexts

297 Along with the EIP’s capacity to harness negative incentives to engage industry.
298 Obviously the other features of NEIP design also had an important role to play.
300 Gaines, n 7 at 17; See also comments in Karkkainen B, “ ‘New Governance’ In Legal Thought And In The World: Some Splitting As Antidote To Overzealous Lumping” (2004) 89 Minnesota Law Review 471 at 476-477.
301 Of course this is not to suggest that situations like EIP will easily achieve successful collaboration either. As we saw some EIPs were more successful than others.
302 Indeed, we should be mindful here of research in more extensive common pool resource settings which suggest that although collaboration is often more viable in relatively small, simple and isolated settings, research suggests successful collaboration can be achieved in larger resource systems and the numbers of appropriators does not affect the likelihood of collective action; see Schlager, n 24, p 162-163; John, n 47, p 236-237.
303 Schlager, n 24, p 164, 169.
304 Margerum, n 11 at 154.

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and institutional arrangements of the three programs do point to some key conditions that would appear to increase the likelihood of successful collaboration emerging.305

These conditions fall under five main themes: the severity of environmental problems, incentives (both negative and positive), structures for subsidising transaction costs, consensus decision-making, and trust. As will be apparent, all of these themes broadly resonate with existing hypotheses and claims in the NEG or wider literature about matters that can increase the likelihood and success of collaboration. However for each, the findings provide some important empirical based lessons for NEG theory and for policy makers.

Commencing with the issue of problem severity, most cases dealt with problems perceived to be severe by key stakeholders, be it odours from an industry, degraded urban creek, or degraded natural resources. In all cases such severity had created concern among such stakeholders, which appeared central to their willingness to collaborate. In harmony with these findings, a lack of problem severity in some EIP sub cases resulted in only marginal groups that produced few gains.306

Consistent with suggestions in the literature,307 the relatively common sense lesson here is that successful collaboration is more likely to emerge where problems are relatively severe (or perceived to be severe), not least because it is in these circumstances that parties are most likely to see a tangible benefit in collaborating.308 From a policy perspective, the findings in the EIP sub case involving leading industries also strongly suggest that if environmental problems are of very modest dimensions or negligible there may in fact be few returns from collaborative initiatives.309

The findings also provided insights as to whether, to what extent and in what circumstances the use of incentives (both negative and positive) increase the likelihood of successful collaboration.310 It is widely acknowledged in regulatory literature that the strategic use of government funding and/or authority (or even harnessing pressure from third parties)311 can be an effective spur to cooperation and affirmative self regulatory behaviour.312 However the application of these conditions in recent NEG developments has received much less empirical scrutiny.313

305 Margerum, n 11 at 154.
306 Sabatier et al, n 26, p 181.
308 Heikkila and Gerlak, n 5 at 586; Lubell et al, n 12 at 148.
309 Cannon, n 299 at 408.
310 Karkkainen, n 5 at 241.
312 Karkkainen, n 40, p 296; Karkkainen, n 5 at 229.
313 The main focus on such conditions has come in the form of regulatory penalty defaults in the USA context; Karkkainen n 40; Karkkainen, n 3; Wondolleck J and Yaffee S, Making Collaboration Work Lessons from Innovation in Natural Resource Management (Island Press, 2000) p 240-241; Freeman and Farber, n 52 at 903.
As we saw from the NEIP program, at least some NEG policy designers appear to expect successful collaboration to emerge without the use of government authority or funding incentives. However, based on the analysis above this appeared to be an over-optimistic and deeply flawed assumption with most NEIP initiatives struggling to engage and/or obtain meaningful commitment from a host of stakeholders. This conclusion was strongly reinforced by the findings in NEIP 3 whose surprising success depended in part on the fortuitous availability of funding incentives.\textsuperscript{314} The obvious implication from these findings is that appositely designed incentives are vital to the chances of achieving successful collaboration.\textsuperscript{315} However, this begs the question, what should these incentives look like and when will they be most effective at fostering successful collaboration?

First, the findings in EIP confirmed the common claim that social and economic pressure from non-government stakeholders can act as an effective cooperation inducing incentive, at least where large reputation conscious corporations or stakeholders are involved.\textsuperscript{316} However as we also saw, in both EIP and in NEIP cases, there appeared to be very real limits to third parties’ capacities to pressure industry or other stakeholders who place little credence on high profile or public image.

Much may accordingly depend on NEG institutions effectively utilizing government authority or funding to induce cooperation. Consistent with some suggestions in the literature, the findings in RNRM and NEIP 3 revealed government funding can act as an incentive for some groups to collaborate and make meaningful commitments.\textsuperscript{317} Such funding incentives would appear to be particularly vital in NEG experiments like NEIP 1 where SMEs were a significant cause of the problem but did not require a licence (which makes regulatory threats difficult).\textsuperscript{318}

Of course, as the findings in EIP confirmed, where there is sufficient leverage over regulated parties, background regulatory pressure is likely to be central to shift the cost benefit calculations of reluctant stakeholders to bring them to the table to collaborate seriously.\textsuperscript{319} As a range of NEG authors have aptly argued in the USA context, such arm twisting need not be

\begin{itemize}
  \item \textsuperscript{314} Certainly, the high severity of the problem and the small population were also important to NEIP 3 success and should not be overlooked as important conditions. However without the buckets of funding it appears unlikely that as many farmers would have come to the table or that partners would have made as many commitments.
  \item \textsuperscript{315} Lubell, n 77 at 565.
  \item \textsuperscript{317} Karkkainen, n 5 at 229; Margenau, n 11 at 156.
  \item \textsuperscript{318} SMEs may also possess unique characteristics that create considerable internal and external barriers to environmental improvement. Funding may be used to substantially raise or lower the benefits or costs incurred by SMEs in their current management practices. For further discussion on optimal regulatory approaches for SMEs see Gunningham and Sinclair, n 32, Ch 2; Watson K, “The New Regulatory Challenge: Designing Optimal Environmental Regulation for Small to Medium Sized Enterprises” (2005) 22 EPLJ 350 at 352, 356-364.
  \item \textsuperscript{319} Karkkainen, n 5 at 229.
\end{itemize}
limited to private regulated parties, but can also seek to harness agencies, state or local governments through an appropriately designed penalty default rule.320

Interestingly, the findings in the EIP case suggest that the “shadow of the law” may not, however, always be sufficiently menacing to compel the most recalcitrant actors to collaborate. Instead direct legal compulsion may need to be used. This finding reveals a somewhat unique and rarely discussed point: law can be brought into the foreground as a credible and direct tool to enhance the likelihood of successful collaboration. Of course the use of such direct compulsion on a wide scale may likely be subject to resistance and may produce less efficient results.321 However in some instances it appears to play an important role in achieving successful collaboration.

In addition to incentives, the above analysis also shed some light on arrangements to subsidise the transaction costs of collaboration. Many authors in the literature have suggested that designing institutions to provide sufficient support to collaborators is vital to reducing transaction costs and to increasing the chances of successful collaboration.322 The findings in this chapter add strong empirical support to these claims.323 However simply suggesting that support is needed to contribute to the emergence of successful collaboration is a little imprecise. Were there more specific lessons from the findings?

One lesson from the NEIP and RNRM cases that adds support to other empirical research in the literature is that funding, often coupled with government officer support, is vital to reducing transaction costs and increasing the chances of successful collaboration emerging.324 Based on NEIP experience, such monetary support could often be quite modest, such as small grants to employ a coordinator. However comparison between NEIP and RNRM, where insufficiencies in funding were reported, suggests that when dealing with more stakeholders and larger areas, funding and grants may need to be significantly more substantial.325

A second insight into support arrangements arose from the NEIP case and the role of their “sponsors”. John’s theory of civic environmentalism in the USA suggests outside “sponsors” such as agency managers or elected officials can facilitate funding and information to support the collaborative process and ensure its success.326 As the findings in NEIP revealed, this general strategy of “sponsorship” appears replicable to a wider range of bodies such as local

320 Karkkainen, n 40 p 310-311, 314; Freeman and Farber, n 52 at 903.
322 See for example, John D and Mlay M, n 52, p 362-363; John, n 47, p 230-242; Sabatier et al, n 26 p 181.
323 Sabatier et al, n 26 p 181.
325 Of course obtaining sufficient funding is a well-recognised constraint in many environmental and natural resource programs, however the findings in RNRM confirm that without it, the success of collaboration is likely to be limited; Farrelly, n 59 at 402; Head, n 14 at 145.

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government, who themselves appeared quite successful in providing funding or in kind support to significantly reduce transaction costs of collaborative processes.\textsuperscript{327}

The findings in EIP sub cases suggest a third way of reducing transaction costs. Here, the incentives that had induced industry to collaborate were typically sufficient to make them shoulder most of the organisational costs of collaboration.\textsuperscript{328} The implication is that NEG experiments may be able to design institutions that target a single well resourced actor or actors with harsh default sanctions or significant economic incentives to successfully induce them to bear the majority of the costs associated with collaboration.\textsuperscript{329}

The findings also shed some light on the capacity of nested structures to reduce transaction costs. Consistent with some authors’ claims, the regional nested structure appeared capable of mitigating transaction costs by tapping into pre-existing sub regional bodies to divide and conquer collaborative tasks at lower levels, while their representatives on the regional body were able to interact and receive guidance in a structured way from government advisors.\textsuperscript{330} However as the findings revealed, such guidance was often ineffective and uncertain, and funding support was often delayed. These problems arose because of government’s desire to “get on” with the program, despite failing to fully overcome the resistance of agencies and governments to willingly share power.\textsuperscript{331}

These findings provide empirical support for the hypothesis that cooperation at these higher levels poses one of the greatest challenges to the effectiveness of nested collaborative models and their potential to reduce transaction costs.\textsuperscript{332} At a more practical level, the implication for policy makers is that rather than trying to develop collaboration at multiple institutional levels all at once, the success of nested models may depend on proceeding in a more staged approach.

The findings also provided insights into the issue of consensus decision rules. According to many authors, consensus decision rules are vital to finding new areas of agreement and enhancing chances of implementation. In general, the findings in this chapter largely confirmed these facts. The findings from EIP and NEIP suggested that their “mixed” form of consensus rule had often assisted in improving understanding of and reaching agreement on the nature of...
environmental and resource problem, and had increased the likelihood of implementation. Broadly similar findings appeared to arise from RNRM's various decision making rules orientated toward producing a regional consensus - with the exception that government veto may have the potential to undermine ownership and commitment to implementation.

Across all three cases the term consensus admittedly meant many things to many people and different forms of "mixed" consensus rules were involved. While empirical research has shown that some NEG experiments have followed decision rules based on unanimity and vetos, the findings here resonate more with research in the watershed context that point to consensus being achieved through substantial agreement, voting or agreement being reached among a sub set of stakeholders.

The findings did reveal that the agreements reached through these different rules were often ineffective or went little beyond "business as usual". However this appeared to arise from factors external to the rule itself, and none of the decision rules appeared to directly lead to claimed pathologies of lowest common denominator outcomes or "tractability". It may be true that some forms of consensus rules (e.g. veto based decision rules in NEG) may give rise to such problems, but the findings in this chapter suggest that generalized claims that all consensus approaches will lead to these problems, are not empirically defensible. Arguably more precision may be needed in how the term consensus is used, if NEG scholars are to have meaningful debates about the merits of consensus rules.

The final insight provided by the chapter relate to the role of trust. Many in the NEG and wider social capital literatures claim or assume that building trust will make it easier for stakeholders to cooperate and achieve successful collaboration. The findings in NEIP, RNRM and the few EIP sub cases that involved leading industries appeared consistent with these claims. However, the findings in the majority of EIP sub cases revealed a more nuanced take on the issue of trust. Resonating with a handful of empirical studies in other NEG experiments that suggest complex agreements can be reached and successful collaboration achieved in the

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333 Margerum, n 11 at 158.
335 Wondolleck and Yaffee, n 313, p 105-106; Cogliiense, n 7.
336 Leach et al, n 161 at 661.
337 "Substantial" consensus (most prominent in NEIP and EIP) appeared closely aligned to Innes work on consensus building processes; Innes, n 82 at 7; Karkkainen, n 5 at 240; O'Malley and Janetos, n 87 at 574.
338 Cogliiense, n 7, p 96, 106, 110; Karkkainen, n 6 at 91.
339 See discussions of this issue in O'Malley and Janetos, n 87 at 11-12 Leach, n 334 at 574; Karkkainen, n 6 at 91; Karkkainen, n 5 at fn 16; Innes, n 82 at 7.
341 See for example Stewart J and Jones G Renegotiating the Environment (Federation Press, 2003) p 128-129; Fung and Wright, n 68, p 15; John, n 47, p 232, 235.

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absence of trust, the findings in EIP suggest trust can be largely irrelevant to successful collective action.

Why was trust seen to be important to success of some collaborations but not others? One possible explanation is that most EIP sub cases started from a very low base of trust created by adversarial relationships involving legal action, complaints to the media, and stubborn industry behaviour. Starting from such a low base, stakeholders' motivation to solve the pressing problem may have simply taken precedence over the huge challenges of building trust – stakeholders essentially were willing to take a form of “calculated risk” and forge an agreement, despite distrust, to try and resolve the problem. While mistrust and conflict was readily evident in the other cases (including community complaints to government agencies in NEIPs) they did not evidence the kind of entrenched anger and adversarial behaviour focused on a single industry “culprit” by the “victim” residents and VEPA “police”.

The implication here for the literature is that trust operates differently in different contexts, and at least in some, may be largely irrelevant to successful collaboration. At present, empirical research, including the findings in this study, have presented different explanations for this finding, including issues such as the age of collaboration, which did not appear to explain the findings here. While these findings suggest a more nuanced theory of trust and collaboration warrants attention, further research is clearly needed to determine when trust is a relevant factor. Depending on the conclusions drawn, the implication for policy makers may be that in many situations NEG experiments may be able to spend less time and energy seeking to build trust between parties and instead focus more on designing incentives and institutional mechanisms that make cooperation and reaching agreement the rational choice for otherwise adversarial and disorganized stakeholders.

To conclude, the findings in this chapter highlight the realities of collaboration in NEG institutions. This chapter has suggested a host of conditions under which successful collaboration in NEG appears more likely to emerge and accordingly contribute to “good”

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344 Leach and Sabatier, n 76, p 249.
345 Lubell et al, n 342, p 277.
346 Leach and Sabatier, n 76.
347 Lubell et al, n 342, p 277.
348 Raymond, n 2 at 54.
349 Bonnell and Kootz, n 62 at 164.
NEG.\textsuperscript{350} As suggested above, adhering to the conditions does not assure success, but the analysis suggests it will improve the likelihood of effective organisations being developed.\textsuperscript{351} Necessarily, these conclusions are tentative and further research is necessary to investigate a broader range of variables and confirm the extent to which the findings described above have a wider application.\textsuperscript{352}

Understanding the conditions that support the emergence of these collaborative institutions, however, is just an initial step in the process of analysing collaboration in NEG.\textsuperscript{353} For collaboration to fulfill its role as a feature of “good” NEG, groups must have the capacity to monitor and adjust their progress, implement actions and continue to hold the group together to operate effectively. These are issues taken up in chapter 7 and 8. For now, the next chapter turns to a closely related but distinct feature of “good” NEG - participatory and deliberative aspirations - to take a more detailed look at precisely which non government actors participated and were represented in these programs and the opportunities they had to meaningfully engage and input into deliberative decision making.


\textsuperscript{351} Margerum, n 11 at 164.

\textsuperscript{352} Raymond, n 2 at 54.

\textsuperscript{353} Heikkila and Gerlak, n 5 at 606-607.
Chapter 6: Participatory and Deliberative Aspirations
The Challenges Confronting High Ideals

6.1 Introduction

Having gleaned some empirical insights into the conditions under which NEG can achieve the emergence of successful collaboration in chapter 5, this chapter turns to the second of the defining features of “good” NEG, namely participation and deliberation.

Although NEG aspires to a more participatory and deliberative approach to governance, there are many seriously under-researched questions and gaps in the literature. For example: who participates in NEG?1 If there are gaps in representation why is this so?2 How much opportunity do citizens and/or other non-governmental stakeholders have to contribute in meaningful ways to decisions?3 What are the forms, sources and impacts of countervailing powers in the distinctive structure and politics of NEG?4

This chapter provides insights into these issues through an examination of the three case studies. Its investigation is guided by the third of the 5 sub-research questions: what conditions foster meaningful participation and deliberation in NEG?

Following this introduction, the analysis proceeds in three sections. Mindful that there is often extensive variation in the extent and nature of participation and deliberation in various NEG initiatives, section 6.2 takes a close look at these issues for each case study. The discussion begins by exploring for each program exactly which non-government actors are to be included and/or represented to fulfil the cases’ respective participatory aspirations. The features of the cases’ legislative and policy framework that may impact on participation are also evaluated. The section continues by describing the nature of deliberative process prescribed by

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4 The term countervailing power is used to describe a variety of mechanisms (such as public interest groups) that reduce, and perhaps even neutralize, the power advantages of ordinarily powerful actors; Fung A and Wright E, “Countervailing Power in Empowered Participatory Governance” in Fung A and Wright E (eds), Deepening Democracy: Institutional Innovations in Empowered Participatory Governance (Verso, 2003) p 260, 286; Shane P, “Review Essay Turning GOLD into EPG: Lessons from Low-Tech Democratic Experimentalism for Electronic Rulemaking and Other Ventures in Cyberdemocracy Reviewing Archon Fung And Erik Olin Wright, Eds., Deepening Democracy: Institutional Innovations In Empowered Participatory Governance (Verso, 2003)” (2005) 1(1) I/S: A Journal Of Law And Policy 147 at 154-155.
each program and considers how the design of each case may counter potential problems such as power imbalances between parties.

Section 6.3 then turns to evaluate the successes and limitations of the three NEG cases in meeting these objectives in practice. It commences by taking a snapshot of representative patterns across the cases\(^5\) to investigate when, whether and how inclusive and representative participation was achieved. The findings resonate with strands of the NEG literature that raise doubts as to whether “open door” participation, government support and prescribed membership requirements can successfully secure meaningful participation in the face of the demands of volunteerism and the relative stakes actors have in participating. These findings, and a range of other empirical insights relating to the representation of “ordinary citizens” lead the chapter to suggest some modifications to the conditions for achieving inclusive and representative institutions. The findings also point to the potential limits of local environmental interest groups as countervailing powers and suggest that continuing imbalances in knowledge and power will often enable government agencies and industries to skew decision-making toward their own agendas. The chapter concludes in section 6.4 by summarising these and other implications of my findings.

Before commencing the analysis, a few words about the focus of this chapter are necessary. There is some overlap between the issues discussed here and the previous examination of collaboration in chapter 5. Nonetheless, what separates the two chapters is the questions they emphasise.\(^6\) The previous chapter examined the case studies and provided insights into what made collaborations successful in coming together to formulate a plan. In contrast, this chapter looks at the case studies through a different set of lenses to focus on and examine moral and democratic issues such as “fair decision making”, inclusiveness and “representativeness”.\(^7\)

### 6.2 What kinds of “participation” and “deliberation” do the cases pursue?

As we saw in chapter 4, the EIP, NEIP and RNRM programs all share broad participatory and deliberative aspirations to deepen the ways in which non governmental actors influence the environmental problems and policies that affect their lives.\(^8\) However, as with many NEG

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\(^5\) See chapter 3 for the precise period of research and investigation into each case study.


\(^7\) Trachtenberg and Focht, n 6, p 53.


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initiatives, fulfilling these aspirations involve the cases imposing procedural criteria\(^9\) that require non-government participation to be inclusive and representative, and for decision making to adhere to conditions laid out by deliberative ideals.

There are both similarities and variations in the specific nature of these criteria across NEG experiments,\(^{10}\) and the case studies are no exception. This section accordingly clarifies the procedural criteria of inclusiveness, representation, and decision-making applied in the cases. By doing so it provides the necessary background for the empirical investigation of whether “meaningful” participation and deliberation was or was not achieved in the 3 case studies. In addition, this section evaluates the relevant features of the cases’ legal framework in order to facilitate an examination of the institutional conditions that impacted on the attainment of the participatory and deliberative aspirations in practice.

### 6.2.1 Participation - inclusiveness and representation

#### 6.2.1.1 Inclusiveness

The criterion of inclusiveness relates to the issue of who is eligible to participate\(^{11}\) and like most NEG approaches, all three cases define this to be all non-governmental actors who are “affected”.\(^{12}\) Of course this begs the question: who is “affected”? Akin to NEG theories that emphasise local\(^{13}\) and/or place based\(^{14}\) approaches, all three cases primarily define the “affected” actors in terms of general or specific geographic demos (e.g. local community in EIP;\(^{15}\) a neighbourhood in NEIP; regional community in RNRM). However, none of the three cases expressly exclude the possibility of “affected participants” being defined so as to extend to those who live outside the geographic demos.\(^{16}\) For example, as detailed in Table 6.1 below, the cases note that participants may include “people who may have an interest or be potentially affected” such as NGOs (EIP), those who may “work and play” in the neighbourhood (NEIP) or “relevant stakeholders” (RNRM).

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\(^9\) While the procedural requirements discussed here are far from the only structural representation available, it has the considerable virtue of highlighting a central concern in the NEG literature while facilitating discussion of case-specific arrangements.

\(^{10}\) Moore S, “Regional Delivery of Natural Resource Management in Australia: Is it Democratic and Does it Matter?” in Eversole R and Martin J (eds), Participation and Governance in Regional Development (Ashgate, 2005) p 127.


\(^{13}\) Fung and Wright, n 8, p 16, 18.


\(^{15}\) While the EIP case does not set a formal geographic boundary like the other two cases, the guidelines contain an emphasis on the local “affected” community surrounding the industry.

\(^{16}\) See for example Moore, n 10, p 127-128.
The cases have been designed to place few restrictions on which of these “affected” non-government actors can be included as participants. While RNRM cases do impose a skills requirement on participants that may restrict which “affected” actors are included (discussed further below), for the most part the cases aim for openness and equality in participation. For example, as Table 6.1 illustrates below, the EIP program is to involve forums for selecting participants that are “open”; the NEIP process is to remain “open to all parts of the community”; and the RNRM program is to use a system of selecting participants that is “transparent, open to all who wish to nominate and to be impartial”. This openness appears generally consistent with many NEG theories, and ideally would allow participants from any affected group or person, including the socially disadvantaged, and “ordinary citizens”. Indeed the cases’ aspirations for “community empowerment” discussed in chapter 4 suggest that mobilising “average” citizens is vital to meaningful participation. Moreover, the openness of the cases expressly seeks to include affected green and conservation interests, which may not only provide a voice for future generations and nature, but could potentially act as a form of countervailing power. In doing so, they may reduce, and perhaps even neutralize, the power-advantages of ordinarily powerful actors such as industry and thus yield the benefits of democratic governance.

6.2.1.2 Representativeness

The second procedural criterion - “representativeness” - intersects with the first and is employed in the cases to try and overcome the fact that differences in power and capacity will often mean that not everyone who is affected may or can participate.

Although some NEG scholars emphasise the importance of ensuring that represented interests are “precisely” balanced (such as in proportion to their numbers in the population) this does not appear to be the central focus in these cases. It is at best unclear from the case study data precisely how this balance is to be struck. It is also unclear what proportion of representatives are aimed for across the three cases, which are either silent on representative numbers (NEIP), provide vague statements such as “majority community” representation.
(RNRM) or detail guiding numbers but suggest the group remain open to any number of representatives (EIP) (see Table 6.1).

Even so the design of the cases appears to aspire to some form of descriptive representation - non-government representatives ideally reflecting divisions, perspectives and interests of those who are affected. This is evidenced in requirements for representation to "reflect the demographic", include the "range of different community interests and perspectives" (EIP), "capture and represent the views", a "cross section of the community", (NEIP) and “majority community membership”, “balance” in conservation and production interests and “relevant” stakeholders (RNRM). Such statements appear to suggest an intention for at least some rough “balance” in numbers, perspectives and divisions of affected interests in these areas (the exception being the need for majority “community” membership in RNRM).

As well as this ambiguity regarding the precise “balance” of descriptive representation, there is also some uncertainty as to the cases’ aims with respect to representation in principal-agent representation. Certainly this form of representation does not appear to be central to any of the programs, with none emphasising any formal mechanism (such as elections) for creating an accountable relationship between participants and stakeholders from the demos. Nevertheless, the cases may aim for some degree of informal relationship with participants maintaining active communication with those they “represent” (eg. interest group representative and members of the group; “ordinary people” and their demos). As illustrated in Table 6.1, this is implied in the use of the terms “representatives of”, “attend on behalf” (EIP), “representatives from” “represent the views” (NEIP), “representing the” and “representation by” (RNRM).

This ambiguity regarding representativeness in the three cases may in part relate to the fact that obtaining “true” representation is a very lofty ideal, and perhaps the cases’ participatory objective is best seen as just that – an ambitious target (rather than a rigid one) which participants will come as close to as possible, but will never reach.

6.2.1.3 Achieve inclusive and representative ideals - impact of legislative design

26 Parkinson, n 23, p 30.
28 Parkinson, n 23.
29 Indeed, the EIP seems to admit as much, noting that “a truly representative group is not possible” VEPA, Environment Improvement Plans – An Overview (Publication 938, VEPA, 2004) p 3.
To achieve these inclusion and representation criteria, each case has been designed to depend heavily on processes where participants voluntarily self-select to participate.\(^30\)

Such an approach is broadly consistent with many NEG experiments\(^31\) (see chapter 2). However doubts persist in the literature about whether this approach can achieve inclusiveness or relevant representativeness. This is primarily because, like processes of voluntary collaboration (see Chapter 5), exactly who volunteers to participate can be influenced or skewed by time and costs of participating and preconditions such as how severe the environmental problem is and the stake actors may have in it.\(^32\)

Time and costs of participating may be a particularly significant barrier to achieving inclusive and appropriately representative participation for the three cases studies because they all place extremely heavy reliance on the skills and resources of those who will volunteer. For example, all three cases expect volunteers to attend regular collaborative meetings, as well as develop and negotiate complex plans and documents, followed by ongoing monitoring and implementation. The demands in NEIP and RNRM appear particularly taxing as volunteers in both cases are expected to contribute to wider consultation with their neighbourhood and regional communities\(^33\) as well as contribute to drafting two complex planning documents\(^34\) (as opposed to the EIP which only requires one plan to be developed).\(^35\)

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\(^{30}\) For NEIPs, participants must volunteer to commence a NEIP and initial organisers must ensure processes are open to all. The EIP similarly relies on individuals to volunteer on the back of their own interests and suggests industry should be open to new participants who wish to volunteer. RNRM requires representatives to self nominate via processes that is “transparent, open to all who wish to nominate, impartial and conducted in a way which has broad community support and confidence”; VEPA, Guidelines for the Preparation of Environment Improvement Plans (Publication 739, VEPA, 2002), p 10; VEPA, Guidelines for Running Community Liaison Committees (Publication 740,VEPA, 2001) p 4; Bilateral Agreement NHT, n 30, (Cth, Qld), Attachment D “Key considerations underpinning the designation of regional bodies” p 56 (hereafter “Bilateral Agreement NHT”).


\(^{32}\) For example, as some NEG scholars argue, participation by “average” citizens as opposed to already active groups or associations is far more likely where ordinary citizens have a high “stake” in a environmental issue and/or the costs and demands of participating are minimal; Abers R, “Reflections On What Makes Empowered Participatory Governance Happen” in Fung A and Wright E (eds), Deepening Democracy (Verso Press, 2003) at 207; Fung, n 31 at 342.

\(^{33}\) In NEIPs, collaborative groups are to conduct a process of community consultation, ensuring there is ample opportunity for participation; VEPA, Neighbourhood Environment Improvement Plans - Developing a Voluntary Proposal (Publication 846, VEPA, 2002) p 4-6. In the RNRM program the body is to consult with Local governments; State and Commonwealth agencies; Indigenous communities; key industry, environmental and community development groups; relevant natural resource management community groups; and the relevant academic/scientific community (Bilateral Agreement NHT, n 30, Attachment F, p 74-75).

\(^{34}\) NEIPs impose requirements for both the development of a proposal and a plan, that must meet a number of requirements including: the community and sponsor drawing a “neighbourhood boundary” around an issue; identifying where the problems are, and what the possible solutions may be; engaging and obtaining formal sign-on of so called NEIP “partners”, such as business and community groups, and government agencies; establishing a steering committee made-up of key partners; and determining a “vision” for it; determining how the vision may be achieved through the efforts of the whole community; identifying the financial or other resources needed to fund the development of the NEIP plan; identifying the likely nature of involvement and resource commitments to be made by the partners; detailing the proposed process for developing the plan; and ensuring that the process is open to all parts of the community. The RNRM case imposes requirements for the regional body to develop a plan and a Regional Investment Strategy. The plan must cover the full range of NRM issues; be underpinned by scientific analysis of natural resource conditions, problems and priorities; have effective involvement of all key stakeholders in plan development; VEPA, Guidelines for Running Community Liaison Committees (Publication 740,VEPA, 2001) p 4; Bilateral Agreement NHT, n 30, Attachment D “Key considerations underpinning the designation of regional bodies” p 56 (hereafter “Bilateral Agreement NHT”).
Unlike EIP and NEIP cases, the RNRM case also makes the capacity of participants to fulfil program requirements a relevant consideration in whether they can be represented. This arises through a state government power to “designate” a regional body as suitable for the RNRM program, which essentially gives it the capacity to appoint representatives, albeit in consultation with the regional community.\(^{36}\) While RNRM does not specify any specific skill required of a representative per se, it does suggest representation selections should not compromise merit, and that the representatives as a whole must have the capacities and skills to meet the regional program requirements (ie. advance the overarching objectives of the program and fulfil the accountability responsibilities).\(^{37}\)

These skill and time demands in RNRM, as well as those of the other cases, may of course be reduced via (i) sharing tasks among the collaborators; (ii) government assistance such as technical information; (iii) government funding for the regional body and small rebates to participants to cover travel costs in RNRM;\(^{38}\) or (iv) the short term seed funding provided during plan development in NEIP (see Chapter 5).\(^{39}\)

However in the event that such support is insufficient to adequately offset the time and resource burdens of the cases, the three programs have been designed to establish a range of “procedural check” conditions to try and resolve potential representation deficits that may consequently arise. Akin to recommendations in NEG literature,\(^{40}\) both the EIP\(^{41}\) and NEIP\(^{42}\) development and implementation; focus on addressing the underlying causes rather than symptoms of problems; include strategies to implement agreed NRM policies to protect the natural resource; demonstrate consistency with other planning processes and legislative requirements applicable to the region; set targets at the regional scale; identify strategic, prioritised and achievable actions to address the range of NRM issues and achieve the regional targets: this includes an evaluation of the wider social, economic and environmental impacts of such actions, and of any actions needed to address such impacts; and provide for continuous development, monitoring, review and improvement of the plan. If the plan is accredited a Regional Investment Strategy must also be developed by the Regional Body, in consultation with government, community and key stakeholders; VEPA, n 33, p 4-6; Environment Protection Act 1970 (Vic), s 19AI(3); Bilateral Agreement NHT, n 30 s 87, Attachment E, p 59-60.

\(^{35}\) In the EIP program, the plan must include a number of minimum processes, namely: undertakings to comply or go beyond compliance with licences and regulations; emission and waste production standards; monitoring of compliance; audits and assessments; improvement project details including what needs to be done, how it will be done and by when; provision for upgrading of plant; assessment of new and emerging technology; emergency and contingency plans; enhanced response to community complaints; community relations, health and safety issues; and community reporting requirements on progress; VEPA, n 29 at 2; VEPA, Guidelines for Running Community Liaison Committees (Publication 740,VEPA, 2001) p 5.

\(^{36}\) An Agreement between the Commonwealth of Australia and the State of Queensland for the Implementation of the Intergovernmental Agreement on a National Action Plan for Salinity and Water Quality, March 2001 (Cth and Qld), ss 7.1(f),(g); Bilateral Agreement NHT, n 30, ss 67, 68(b), 71, Attachment D p 56 (hereafter Bilateral Agreement NAP); Head B, “Participation or Co-governance? Challenges for Regional Natural Resource Management” in Eversole R and Martin J (eds), Participation and Governance in Regional Development (Ashgate, 2005) p 145.

\(^{37}\) Bilateral Agreement NAP, n 36 See also Bilateral Agreement NAP, n 36, s 7.1(f) (g); Bilateral Agreement NHT, n 30, ss 67, 68(b), 71, Attachment D p 56.

\(^{38}\) Bilateral Agreement NHT, n 30, s 95; Bilateral Agreement NAP, n 36, s 9, 24.

\(^{39}\) VEPA, n 29, p 1, 3, 5; VEPA, Guidelines for the Preparation of Environment Improvement Plans (Publication 739, VEPA, 2002) p 10; VEPA, n 33, p 9; Bilateral Agreement NHT, s 101.

\(^{40}\) See for example: Karkkainen, n 3 at 236-237, Cohen and Sabel, n 12 at 332-334.

\(^{41}\) In EIPs, the guidelines suggest industry should ensure “membership always reflects the range of different community interests and perspectives”; VEPA, n 35, p 6; VEPA, n 29, p 3.

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programs' have been designed to impose procedural requirements on key organisers of the collaborative group that require them to seek out representatives (eg. publicly advertising meetings). Both cases also rely on VEPA officers to enforce these requirements and, consistent with Freeman and other NEG authors' recommendations, directly assist the group to ensure representativeness (eg. contact parties directly to see if they would be interested in volunteering).

Similar to EIP or NEIPs, the RNRM approach also relies on government oversight, and akin to the precepts of some democratic experimentalists, makes funding for the collaborative group activities conditional on the group meeting its representation requirements.

As outlined in chapter 2, a range of doubts remain regarding whether these types of "procedural check" conditions applied across the cases are sufficiently sound to secure representativeness, and I return to consider these issues in section 6.3 below.

### 6.2.2 Deliberative decision making

#### 6.2.2.1 Negotiation processes

In addition to criteria of inclusiveness and representativeness of participation, criteria of decision-making are also relevant. Like many NEG processes, all three cases involve ongoing processes of decision-making (some taking months or years just to develop a plan, before many subsequent years of adaptive implementation). As such, the deliberative criteria of the cases are taken to be an overarching goal for the many decision-making processes that occur throughout their operation.

Both the EIP and NEIP cases' design emphasise processes of "negotiation", "mediation" and similar forms of deliberative and cooperative and consensus based decision-making (see

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42 Initial NEIP organisers are required to ensure the NEIP includes "groups, businesses or people contributing to the environmental problems...as well as those concerned about it and with the responsibility to act on"; VEPA, n 33, p 5, 9.
43 The VEPA agency has responsibility for endorsing and approving the respective plans developed by the collaborative groups. This role and power effectively give the VEPA both an ongoing opportunity, and a final check on whether these procedural arrangements are followed and met; VEPA, A Guideline for Submitting a Voluntary Neighbourhood Environment Improvement Plan Proposal (Publication 847, VEPA, 2002), p 5-6; Environment Protection Act 1970 (Vic), s 19AI(1); VEPA, n 39, p 2.
45 VEPA, n 43 p 3; VEPA, n 29, p 3.
46 Bilateral Agreement NHT, n 30, s 68(b), (c); Bilateral Agreement NAP, n 36, s 7.1(b).
47 Cohen and Sabel, n 12 at 332-334.
48 Bilateral Agreement NHT, n 30, Attachment D p 56.
In the RNRM case, the fact that regional bodies are required to be incorporated means their decision-making will often be governed by their own constitution. This is likely to involve some form of discussion and deliberation over issues, underpinned by agreement through voting. Even so, the RNRM program emphasises broadly cooperative decision making, particularly during consultation processes to develop the plan, that will involve "facilitated negotiation" and "negotiations with community, industry, private sector and philanthropic organisations" (see Table 6.2).

The specific procedures and criteria of these deliberative processes in the cases are not spelled out in the legislation or guidelines. However the general intentions of the cases to "empower communities" and references in the guidelines that emphasise clear communication without jargon, shared decisions and fairness (see table 6.2) appear to suggest that the cases share with NEG theories an aim to avoid adversarial, zero sum strategic negotiation and foster a process that allows government and non governmental stakeholders to give their free (i.e., non coerced) and informed consent to some form of feasible agreement(s), typically through sharing information, and conducting fair and reasoned debate as "rough equals".

**6.2.2.2 Achieve fair and reasoned negotiation - legislative design**

While the cases may aspire to these deliberative ideals, a major challenge and criticism of such processes is that they will be undermined by the reality of power and capacity imbalances among decision makers (see chapter 2).

The designs of the cases were clearly alert to such issues. Indeed, to level power imbalances created by differences in technical knowledge and skills, the frameworks establish government support (office assistance and in RNRM government funding) to assist non-
governmental representatives to gain scientific, legal or other technical information. The role of government officer support is particularly emphasised in EIP program where VEPA officers may act as independent brokers to support the local residents negotiating with the better resourced and knowledgeable industry representatives.\(^{59}\) The EIP framework also contains other “power balancing” features recognised in the NEG literature, including harsh “default” style sanctions invoking the VEPA’s legal power and community pressure that may pressure industry to negotiate genuinely and reveal information (see the discussion in Chapter 5).\(^{60}\) Whether these conditions are sufficient to prevent industry advancing collective decisions that unreasonably favour their interests is investigated in detail below.

In addition to the above, the design of the three cases raises questions\(^{61}\) about the potential for government actors to unreasonably dominate decision making.\(^{62}\) To some extent these have been recognised and addressed. For example, VEPA officers and government officers of the RNRM Regional Coordination Group are entrusted to assist, but not unfairly use their knowledge of technical or regulatory issues to dominate non government actors in negotiations.\(^{63}\) Nevertheless there are many ways in which government actors might dominate or unduly influence the decision-making process. For example, the VEPA and RNRM Joint Steering Committee in the cases have formal “vetos” over plans (and in RNRM directly controlled not only how regional boundaries were established but also subsequent funding).\(^{64}\) While these powers may be vital for issues such as accountability, they may also operate to give a number of government actors an opportunity to exercise both direct or indirect control over key decision making stages. In addition, the requirement in NEIPs for a governmental body to “sponsor” NEIP,\(^{65}\) and the fact that they typically receive “seed” funding designed to assist the group in the early stages of operation (see Chapter 5), also places the “sponsor” in a privileged position from which they potentially could dominate non governmental actors.\(^{66}\)

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\(^{59}\) VEPA, n 29 p 5; VEPA, n 35, p 4.
\(^{60}\) Fung and Wright, n 8, p 23.
\(^{63}\) VEPA, n 39, p 11; Environment Protection Act 1970 (Vic), ss 19AH(2), 19AI(2); Bilateral Agreement NHT, n 30, s 80-81, 89; Bilateral Agreement NAP, n 36, ss 7, 12.
\(^{64}\) Environment Protection Act 1970 (Vic), ss 19AH(2), 19AI(2); Bilateral Agreement NHT, n 30, s 69, 71, 80-81, 89; Bilateral Agreement NAP, n 36, s 7, 12; Karkkainen, n 62 at 240.
\(^{65}\) I note that such sponsor may however aid community members in the NEIP process by providing added technical expertise and resources; VEPA, n 33.
\(^{66}\) John, n 18, p 239.
Whether the sponsor and other key government officials use such opportunities to advance their agencies interests and outcomes, and/or substitute their decision for the group, are examined in full in the next section that explores the experience of the cases in practice.67

6.2.3 Summary

In summary, this section has explored the relevant procedural criteria of the cases designed to contribute to the achievement of their participatory and deliberative aspirations. As we have seen, all cases aspire to participation that is open, equal, involves a degree of principal agent representation and strikes a rough balance between affected non government actors that come primarily from inside (but also outside) a geographically defined demo. Furthermore, all three cases appear likely to embrace deliberative criteria for decision making that pursues fair and reasoned debate among “rough equals” to reach some form of feasible agreement.68 As pointed out, these criteria share a number of commonalities with those identified elsewhere in the NEG literature.

Despite pursuing these various aspirations, there are many questions about whether all elements of the legal framework can be expected to further the criteria of inclusiveness, representation, and deliberation. Among other things, the heavy time and resource demands imposed by the cases and the privileging of government actors appear likely to create tensions with these objectives and their successful implementation. How these tensions play out in practice is considered in the next section, which turns to discuss the findings and commences with the issue of participation.

68 Fung and Wright, n 8, p 23.

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EIP
• EIP group should include the "affected community", in the "local area".
• Group numbers are flexible but workable sizes include: 5 to 6 "community"; 2 to 3 industry; 2 government (local/State); and 2 to 3 "other interested groups".
• Forums should be "open", and industry "welcomes approaches by the community".
• Descriptive representation should:
  o "ideally reflect the demographic of the community" including "as much resident participation as possible".
  o include "different community interests and perspectives" including "community interest groups" and "NGOs".
• Principal agent representation:
  o "some residents will attend on behalf of others" and "report back".
  o "representatives of interest groups and NGO representatives".

NEIP
• NEIP group will include "the people who live, work and play" in neighbourhood and "those groups, businesses or people contributing to the environmental problems in your neighbourhood as well as those concerned about it and with the responsibility to act on it".
• Group numbers flexible, and should remain "open to all parts of the community".
• Descriptive representation in the group should:
  o "capture and represent the views of the community".
  o involve the participation of a broad range of people in the neighbourhood, including "individuals and households, industry and business organisations, local green groups, state and local government agencies, green peak bodies, professional associations, and financial institutions."
• Principal agent representation should involve "representation from a cross [section] of the community".

RNRM
• RNRM group should include "community membership" from the prescribed region and "relevant stakeholders".
• The process of representation should be "transparent, open to all who wish to nominate, impartial".
• Descriptive representation in the group should:
  o include "a majority community membership, balancing production and conservation interests", and "relevant stakeholders" including at minimum "Indigenous interests, and local government, without compromising merit".
  o as a group, have the adequate skills and capacity to "advance the overarching objectives...and fulfil the accountability responsibilities" and "facilitate the development of a draft NRM plan that meets the agreed accreditation criteria".
• Principal Agent representation in the group should include "representation by relevant stakeholders".

Table 6.1: Illustrative Quotes from Guidelines Regarding Criteria of Inclusiveness and Representation.

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69 VEPA, n 35, p 1-3, 4, 6; VEPA, n 29 p 3-4; VEPA Publication 739 "Guidelines for the preparation of an environment improvement plan" June 2002 at 10
70 VEPA, n 33, p 5, 8, 9.
71 VEPA, n 20, p 8. Although the quote from the second reading speech above suggests "community" includes "residents, industry and local government", at other times "community" is juxtaposed with "industry and local government". See for example VEPA, Annual Report 2003-2004 Community and Environment Report (Publication 962, VEPA, 2004) p 10.
72 Bilateral Agreement NHT, n 30, s 67, 68(b), Attachment D p 56; Clause 16 IANAP; Bilateral Agreement NAP, n 36, s 7.1(b) and (f); http://www.nrm.gov.au/about-regions/index.html; Cwth and Qld Government, Guidelines for Community Engagement by RNRM bodies (2004) at 3.

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- Clear and comprehensive information sharing, particularly from industry, who will ideally be "open and honest" and "work to make technical information more easily understood" so that community and EPA can make fully informed decisions.
- Decision making through "negotiation" and "consensus" or some other agreed "decision making procedure" regarding both procedural (e.g. who will chair meetings, who will take minutes, where meetings will be held, dealing with disputes etc) and substantive issues (e.g. objectives and targets, defining the order of proceedings).  

<table>
<thead>
<tr>
<th>EIP</th>
<th>NEIP</th>
<th>RNRM</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Clear and comprehensive information sharing, particularly from industry, who will ideally be &quot;open and honest&quot; and &quot;work to make technical information more easily understood&quot; so that community and EPA can make fully informed decisions.</td>
<td>• Discussion (including in proposal and plan consultation processes) that makes decisions through &quot;negotiation&quot;, &quot;mediation&quot; and &quot;consensus&quot; on both substantive and procedural issues (e.g. achieving &quot;shared aims and objectives&quot; shared vision and issues definition, and determining places to meet, group facilitation etc).</td>
<td>• Decision making in incorporated regional bodies governed by their constitution, but the aim is to achieve &quot;cooperative partnerships between communities, industry and all levels of government&quot;.</td>
</tr>
</tbody>
</table>
| • Decision making through "negotiation" and "consensus" or some other agreed "decision making procedure" regarding both procedural (e.g. who will chair meetings, who will take minutes, where meetings will be held, dealing with disputes etc) and substantive issues (e.g. objectives and targets, defining the order of proceedings). | • Conducting “full community consultation and engagement” in proposal and plan development, ideally gaining “an accurate representation of the needs, aspirations and values of the diverse people and groups in the neighbourhood”, ensuring “a full public process to develop a shared vision and scope”, thus “confirm[ing] community wishes”. | • Discussion (including in plan consultation processes) that makes substantive and procedural decisions through “negotiation”, “facilitation”, “resolving conflict”, including “effective participation by all key stakeholders” where the “general public and stakeholders [are] provided with adequate opportunities to participate in defining the problems, setting the region’s vision and targets... developing solutions”.

Table 6.2: Illustrative Quotes from Guidelines Regarding Deliberative Criteria.

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73 VEPA, n 35, p 4-5; VEPA, n 29 p 3-4; VEPA, Ten steps to successful community/industry consultation (Publication 520, VEPA, 1996) pp 1-2.

74 VEPA, n 33, p 4-6; VEPA, p n 43, p 6; Environment Protection Act 1970 (Vic) s19AI(3)(d).


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6.3 Participation and Deliberation in Practice – EIP, NEIP and RNRM

6.3.1 Participation – include and represent all affected interests

This section investigates the degree to which the cases achieved their overarching aim of including and representing all affected interests of non governmental actors. More specifically, this involves considering whether the cases were able to achieve a requisite degree of equality, roughly balanced interests and perspectives, as well as some degree of informal principal agent relationships.76

This analysis proceeds in three parts. The first provides a context as to the nature of the actual non-government representation across the cases, and the patterns of representation in a descriptive sense. The second, examines when or how these patterns arose. Finally, the issue of representation in a principal agent sense is considered, along with a discussion of a sub case that bucked wider trends in representation patterns.

6.3.1.1 Representation patterns across the cases – inclusion, equality and rough balance of interests?

The findings across the cases revealed that non government actors and stakeholders were collectively the largest group of participants in the programs (see Figures 6.1 to 6.6 in Appendix 2 that provide an overview of representatives in each of the cases, and the actual numbers for each sub case respectively). It is somewhat unsurprising then that respondents from all three cases reported that with one exception,77 represented non government interests had gone a long way towards including a variety of relevant perspectives and knowledge to advance a goal of problem solving. Nevertheless, many respondents’ reported a lack of genuine inclusiveness and representativeness of these non governmental stakeholders across nearly all of the cases. To illustrate, respondents from each case generalised:

• “it’s not a representative [EIP] group by any means”;78

• “as a [NEIP] group we’re never a representative sample”;79 and

• “it’s hard to get a balanced representation” in RNRM.80

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77 This exception was the lack of industry participation in NEIP sub case 1. For further see chapter 5.
78 Interview 121, EPA.
79 Interview 221, Coordinator.
80 Interview 321, Government Agency.

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Many respondents pointed to the stark under-representation of green and conservation interests across all three cases. This included having no specific environmental representative on the regional RNRM body, of the 8 EIP sub cases and 1 NEIP sub cases. An under representation of environmental interests on regional bodies was also reported across the State, and those interests that were represented in EIP and NEIP occupied approximately 6% and 3% of membership across those cases as a whole (see Figures 6.1, 6.3, 6.5).

Consistent with scholars’ hypotheses regarding environmental groups in NEG, the environmental interest groups that were represented were local environmental groups either “home-grown” in the area or local factions of state and national environmental groups (see Table 6.3 below for overview of the characteristics of the groups).

<table>
<thead>
<tr>
<th>Group Type</th>
<th>General Overview of Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Home Grown”</td>
<td>• Set up in 2000, their mission is “to protect our ocean ecosystem and establish sustainable water management practices”.</td>
</tr>
<tr>
<td></td>
<td>• Run a number of major campaigns to implement a National Ocean Outfall Closure Strategy.</td>
</tr>
<tr>
<td>“Home Grown”</td>
<td>• Set up in 1991. The aim of the group is to protect the local beach.</td>
</tr>
<tr>
<td></td>
<td>• History of protests and legal action regarding decision about outfalls, shipping and local development of land.</td>
</tr>
<tr>
<td>Local faction of state group</td>
<td>• State group is “dedicated to the future of the Australian flora and fauna.</td>
</tr>
<tr>
<td></td>
<td>• Aims to promote the appreciation, study, conservation and management of Indigenous flora and fauna through research and advocacy.</td>
</tr>
<tr>
<td>Local faction of state group</td>
<td>• Established 1901. Dedicated to the conservation, study and enjoyment of Australia’s native birds and their habitats.</td>
</tr>
<tr>
<td></td>
<td>• “Premier advocacy body for the conservation of birds”.</td>
</tr>
<tr>
<td>Local faction of state group</td>
<td>• Dedicated to “the protection and enjoyment of Australia’s oceans, waves and beaches for all people through Conservation, Advocacy and Education”.</td>
</tr>
<tr>
<td></td>
<td>• Activities include monitoring beach condition, education, and advocacy activities regarding the sustainable management and use of the coastal zone.</td>
</tr>
</tbody>
</table>

81 I note that the membership of sub regional bodies contained environmental interests. However, as discussed below, their numbers were usually small, and other interests outweighed them.
84 Fung and Wright, n 4, p 282-283.
85 http://cleanocean.org/.
86 Community Liaison committee Newsletter, Autumn 2006, EIP 2.

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<table>
<thead>
<tr>
<th><strong>&quot;Home Grown&quot;</strong></th>
<th><strong>Objectives include: “Promote and encourage the protection, rehabilitation and enhancement of the wetland area for the benefit of Indigenous flora and fauna”.</strong> 90</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Local faction of state group</strong></td>
<td>• Founded 1800s. 91 State group describes itself as “a vigorous and practical advocate of conservation and the study of natural history to this day”. 92 • Local branch has a history of public battles, actively lobbying authorities, and conducting media campaigns. 93</td>
</tr>
<tr>
<td><strong>&quot;Home Grown&quot;</strong></td>
<td>• Founded in late 1960s. 94 The group is dedicated to protecting Indigenous flora and fauna, They play an active educational role, and have made policy recommendations to government. 95</td>
</tr>
<tr>
<td><strong>&quot;Home Grown&quot;</strong></td>
<td>• Formed 1993. Group aims to “raise the profile of the creek” and “advocating for the protection of the Creek and its catchment”. • History of legal challenges and lobbying councils and agencies. 96</td>
</tr>
</tbody>
</table>

Table 6.3: Overview of Environmental Interest Group Membership in Cases. 97

A second deficiency in inclusiveness and representation was a noted lack of equality in representatives. While there was no hard data relating to inequalities stemming from income or education, respondents did point to a range of affected, but typically socially disadvantaged interests that lacked representation. 98 For example, 99 in EIP and NEIP sub cases involving significant numbers of affected migrant populations 100 the findings indicated migrants lacked any direct representation. 101 According to research by Oliver and Whelan, 102 Indigenous Australians were also under represented in RNRM across Queensland (see Figure 6.5), however

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91 http://home.vicnet.net.au/~fncv/.
92 http://home.vicnet.net.au/~fncv/.
93 Interview 131, Industry; Interview 132, EPA; Interview 133, Local resident.
97 I note that one environmental group was present in both an EIP and NEIP sub case.
98 I note that there was little reliable and detailed demographic data of the newly defined local, neighbourhood and regional demos. As the EIP, NEIP and RNRM demos are defined by participants or government, they rarely mapped onto traditional political jurisdictions from which independent demographic data was usually compiled. While there was some rough statistical data available for the areas, they were rarely sufficiently detailed regarding issues such as age, income, and gender from which to draw conclusions.
99 Across all three cases the number of women represented was proportionally smaller than men, however there were no hard opinions as to why this was this case. Women made up approximately one third of representatives in EIP sub cases, less than one third of the membership in RNRM case, and less than half across the NEIP sub cases. The findings in RNRM appear roughly consistent with the findings across Queensland, where one-fifth of regional bodies’ members were women; Whelan J and Oliver P, The Place, Limits and Practice of Collaboration: Lessons from Case Studies in Community Participation in Natural Resource Management (CRC for Coastal Zone, Estuary and Waterway Management, 2005) p 31-32.
100 Interview 211, EPA. In NEIP sub case 1 migrant population comprised almost 20% of local population, including 7% Vietnamese, 6% of Greek and 5% Italian; Maribyrnong City Council and Stony Creek NEIP Partners, Stony Creek Neighbourhood Environment Improvement Plan (Maribyrnong City Council, 2004) p 86.
101 Interview 182, Local Resident.
102 Whelan and Oliver, n 99, p 31-32.
in the specific RNRM sub case Indigenous interests were considered to be adequately represented by 2 Indigenous individuals on the board (See Figure 6.6).

A third and final representation deficiency related to the desire to obtain a “rough balance” of all affected interests from both within and outside of their respective geographic demos. With the exception of all but a handful of EIP sub cases that involved leading industries (discussed below), all three cases reportedly lacked any significant representation from outside their immediate local geographic area. This included state and national environmental groups (as mentioned above), regular visitors to the area such as recreationalists/tourists in NEIP, and in RNRM case urban interests or consumers of agricultural products.

In the EIP case, most sub cases involving good and poorer performing industries lacked representation of local residents and groups that lived slightly further away from the industry but reportedly experienced its “periodic” impacts (eg. occasional noise or odour events). This led some respondents to suggest that representatives constituted only a limited number of “views” and “values” of known affected interests, despite attempts to obtain a greater range:

you got to wonder whether they represent the negative aspects of the community, ‘cos they don’t...we had people sitting on the sidelines sniping a bit at some of the things we weren’t doing but they weren’t prepared to put their hand up.

While a higher level of involvement in these EIPs had been attained from the local demos, respondents still questioned whether theses actors were representative. Those that participated frequently included retired individuals and technically trained people with an interest in the

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103 Others potential interests not mentioned by respondents but recognised in the literature may have included people with an interest in how public funding was being spent, or concerns with biodiversity or cross boundary issues; Moore, n 10, p 128.
104 For example in NEIP 2 a significant portion of people regularly used the township as a “weekender” or holiday destination. This tourism had been a particular cause of the environmental issues in the township. The NEIP group had tried to engage with tourists, however at the time of research they had not been able to gain a formal representative on the NEIP: “Yeah, we try and talk tourists around to what's going on...our big challenge is going to be when the tourists come down, because they haven't had the education that the locals have had.” Interview 212, Local Resident.
105 For example, one respondent explained “it is not really engaged with the urban communities at all”; Interview 338, Local Government.
106 In a minority of sub cases, interested actors and groups from outside the local area had some involvement in the EIP, however even then such participation had often been minimal and intermittent; Interview 174, Industry.
107 Interview 173, Local Resident (noting “There’s a few live out there past us. They go over the overpass, so as you go over the top they got the window down on the car. They’ll get the formaldehyde come through the window. They know the smell of formaldehyde because they work at the hospital, so you can’t deny the fact. They say we smelt it but they don’t want to get involved... A lot of people don’t want to go to meetings all the time.”).
108 Interview 131, Industry.
109 “Not a representative group by any means. It’s a group of interested people”; Interview 121, EPA.
110 Interview 15/62, Local Resident noting: “we still don’t get people coming and joining up and we’re all older, we’re all old now”.

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industry or pollution issues. As such, they were rarely considered to reflect the wider demographic of the local affected community.

Despite these shortcomings, a positive finding in the EIP case was that most cases (see below for the exceptions) had significant success in gaining participation by "ordinary citizens". Indeed, the majority of EIP sub cases reached near the recommended number of 5 community/resident representatives (see Figure 6.2). Most of these residents had no previous connection to organised community groups or any previous influence over decision-making regarding industry environmental performance. As one resident put it, prior to the EIP:

the residents had no idea at all about any EPA regulations, noise limits or the right boundaries...we just used to ring the EPA

These findings can be contrasted to NEIP sub cases 1 and 2. Here, in addition to a failure in NEIP 1 to obtain sufficient representation of industry stakeholders (as discussed in detail in Chapter 5), non-government representatives tended to be limited to the "usual suspects". These were local residents and other participants who were already active and networked around the environmental issue at stake. Further, they were not seen to be typical of the communities from which they came, and far from representing a desired "cross section" of the community or "ordinary citizens". As one NEIP participant put it:

[The NEIP] has been preaching very much to the converted. The engagement has been very much among the people who were already involved in a lot of similar activities.

Similar "usual suspects" were evident in some EIP sub cases involving leading industries. In these sub cases, there was generally a noticeable gap in representation from ordinary citizens, local residents and industry "neighbours". Accordingly in an effort to bolster group numbers, these industries had often engaged experienced and interested representatives from other EIP

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111 "They are all ex engineers who have all worked in the industry and they still want to play trains you know...they are interested in how the industry is going and they provide input into how things work"; Interview 132, EPA.
112 "One of the things is the demographics of the community reps....Most of them are all retired people...so we tend to have older people...[they're] not going to give us a good view of a cross-section of the neighbourhood as such"; Interview 161, Industry.
113 Interview 112, Local Resident.
114 For further discussion of the term "usual suspects" see: Taylor M, Public Policy in the Community (Palgrave, 2003) p 133; Parkinson, n 23, p 57.
115 "Most of the people who were actively involved in the development of the NEIP are people who have an interest through other established community groups", Interview 215, Local Government; Taylor, n 114 p 133; Parkinson, n 23, p 57.
116 Interview, Industry from: Environment and Natural Resources Committee, Inquiry into Sustainable Communities (Department of Sustainability and Environment, 2005) p 124.
117 "It would be good to have more involvement of our neighbours, we have tried hard to get the people across the road involved but we have struggled with that"; Interview 151, Industry.
groups that lived some distance from the industry. As one respondent described these representatives, they were “semi-professional [EIP group] members...they’re actually not [local] residents”.

A pattern not unlike these EIPs and the 2 NEIP sub cases was evident in RNRM. In this case, “ordinary citizens” such as urban residents or “average” farmers from the region did not appear to be specifically represented on the RNRM body. Rather, representation was dominated by existing subregional catchment management groups (CMA groups) and land care groups that were already active and networked around natural resource management issues and had previous input into NRM decision making. These stakeholders comprised almost half of the requisite “community” membership (see Figure 6.6). According to empirical research by Oliver and Whelan, this trend appeared consistent across many other regional bodies in Queensland (see Figure 6.5).

While the regional body had successfully obtained representation of scientific interests, respondents reported that the body had otherwise failed to meet its requirement for balanced representation of stakeholder’s interests. This included reported gaps in representation of affected mining and tourism interests on the regional body, a lack of specific representation of all affected Landcare or CMA groups, and a dominance of production interests in subregional group membership. As one respondent put it:

If you look at the make up of the regional board I see such a strong lobby from agriculture and pastoral industry.

Contrary to these findings in RNRM, EIP and NEIP sub cases 1 and 2, respondents in NEIP sub case 3 reported that largely equitable and “balanced” representation from affected non

118 “The community members we have got are very experienced because of their involvement with the [other EIP groups]” Interview 151, Industry.
119 Interview 161, Industry.
120 That is, those people with no affiliation to groups or previous connection with natural resource management (NRM) issues.
121 Whelan and Oliver, n 99, p 31-32.
122 “There is some real gaps there in tourism”, Interview 341, Regional Body. Somewhat perversely, the tourism industry appeared to be a major stakeholder in the RNRM case and employed the most people within the region. Indeed, the Gross Value of Production (GVP) for tourism was $640 million, which exceeded the GVP of sugar, horticulture and beef combined for the region; BDTNRM, Burdekin Dry Tropics Natural Resource Management Plan 2005-2010 (BDTNRM, 2005) p 34; Access Economics, Measuring The Economic & Financial Value Of The Great Barrier Reef Marine Park Report For Great Barrier Reef Marine Park Authority (Access Economics, 2005) at II.
123 “What they didn’t realise is, they had a group come forward, say [Subregional Group A]...[Subregional Group A] is not representative of all the NRM groups in the subregion, not at all” Interview 341, Regional Body.
124 While the Landcare and CMA groups that comprised the subregional bodies were arguably at the vanguard of NRM, their membership tended to be dominated by industry/primary producers rather than urban or conservation interests. For example, the networking of a typical subregional group in the case study included, inter alia, 3 local citizens, 4 environmental/water groups, 3 Indigenous groups, 4 local farming members, 1 tourism industry body, but 27 farming/fishing/agricultural industry representatives. As such, these groups were considered to tend toward representing the interests of industry, over other interests. See similar discussion in: Whelan and Oliver, n 99, p 31-32.
125 Interview 341, Regional Body.
government stakeholders and a cross section of the neighbourhood community had been obtained (save for environmental interests groups as noted above). According to respondents, affected interests in urban areas and rural areas were represented largely equally, while representatives from key central businesses, community groups and other collaborations had also been obtained. While some of the local resident representatives were considered by some to be “the outspoken people” about the environmental problem, many were ordinary citizens who had not previously been active or had any influence over relevant decision making on the issue.

Overall, the experience of the three cases generally corroborate concerns in NEG literature that representation in collaborative groups is rarely inclusive of all affected interests. Further as appeared in many cases, the findings suggest NEG may compound social inequalities, and often fell back on the same people and groups that were already involved in decision-making. At the same time, at least some cases bucked these trends, such as NEIP sub case 3 where respondents were largely satisfied with the representative structure, or the EIP case, which appeared better equipped in involving ordinary citizens. What we can learn from the conditions that created both these exceptions and the general weaknesses in representation is examined in the following section.

6.3.1.2 Explanations for representation patterns

Based on the findings, it was a range of interrelated and overlapping factors that contributed to the various patterns of representation across the cases. One of the factors, for example, was the leverage and incentives available to gain industry representation in EIPs and NEIP 1 (see chapter 5 for further information). A second issue (raised by only a few respondents) related to how the cases’ emphasis on local, neighbourhood and regional scales could be used to preclude relevant interests from outside these areas. However, it was a range of

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126 This is not to suggest that perfect or ideal representation had been achieved. Indeed some respondents questioned whether local citizens saw themselves as “representing the community” (Interview 231, CMA). However compared to the other cases and sub cases assessed in this thesis, respondents were far more positive about representative structures and pointed to very few gaps in representation in NEIP 3.

127 Interview 235, EPA.

128 Interview 231, CMA.

129 Interview 235, EPA.

130 Steinzor, n 49 at page 22 of “pdf’.


132 For example, in one atypical EIP sub case, an industry respondent recalled how, for a number of years, the local focus of the EIP had been used to exclude certain interested members of the community from participating: “There was initially a radius put around that plant and anyone inside that radius was invited to attend, I think that original radius would rule out <Community member A> who lives quite a considerable distance away…we don’t see any real problem with him being on the committee, but the previous management did”. This practice was subsequently abolished following a change in Industry management. Interview 171, Industry.
other factors discussed in detail below which appeared to be more influential causes of the exclusion of interests. I consider these factors, first, in relation to representation of environmental groups, before turning to discuss “ordinary citizen” representation, equality and descriptive representation across the cases and the (limited) impact of government checks and support to try and secure adequate representation.

Consistent with the expectations of some NEG scholars, the under-representation of potential “countervailing power” environmental interest groups reportedly arose due to either their absence from “local” demos and/or their adversarial cognitive frames.\textsuperscript{133} Unorganised and absent environmental interests were particularly challenging in rural areas such as NEIP sub case 3 and the RNRM case. As one government respondent explained:

[Regional Body] can’t get a greenie on their committee because no one will stand up and say I’m a greenie and so they have a void there\textsuperscript{134}

Other respondents from EIP\textsuperscript{135} and RNRM also suggested the under-representation of localised and state environmental groups arose from their adversarial nature and their “deeply entrenched attitudes and belief systems”:

some of the [environmental groups] have made the strategic decision not to engage in the process because they feel that they’d have more value staying outside of that regional NRM delivery and continuing to criticise and advocate and agitate on the outside of the process.\textsuperscript{136}

Turning to other representation issues, many patterns arose from specific preconditions such as how pressing the environmental problem was and the stake local actors’ had in it. Indeed, as discussed below the higher rates of participation of “ordinary citizens” in EIP and NEIP 3 sub case appeared in part to result from the urgency of the problem and the high stakes these non-government participants had in the problem.\textsuperscript{137}

As we saw in chapter 5, both poor and ‘good’ (as distinct from leading) industry performers in EIPs typically had a significant adverse impact on the local area, such as noise events or odour releases. Ordinary citizens living near industry were understandably attracted to

\textsuperscript{133} Fung and Wright, n 4, p 283.
\textsuperscript{134} Interview 321, Government Agency.
\textsuperscript{135} In one EIP sub case for example, a number of state, national and even international environmental interest groups had regularly and repeatedly targeted the industry through the media, protests and legal action regarding its greenhouse pollution. As one group put it: “[The National Environmental Interest Group] has been working with other environmental groups for over two years to try and stop [this Industry]”. As one national newspaper reported “Four activists chained themselves to [machinery] while dozens more staged a protest outside [Industry]”; (Lahey K “Activists target ‘dirty’ coal plant” The Australian August 11, 2005; http://www.wwf.org.au/articles/feature34/) As is evident, their stance was primarily adversarial - wanting to close down and “stop” the industry - which unsurprisingly meant they had little interest in seeking to be represented on an EIP group to collaborate with industry.
\textsuperscript{136} Interview 318, Environmental Group.
\textsuperscript{137} Abers, n 32; Fung, n 31 at 342-343, 352.
participating in EIP as it provided an avenue for them to try and resolve industry’s direct impacts on their daily lives. The motivations and passion for local residents to resolve such impacts is evident in the following anecdote from one industry respondent:

We called a public meeting to discuss the issue. About 50 local residents showed up...at the meeting we were given the rounds of the kitchen. The focus was on the past. Many of the residents had been round here before the company, they gave us a potted history of the business, and they vented their spleen on the company’s past and the problems. We were big brother and they didn’t trust us.

In contrast, “leading” industries often had a negligible impact on the local area, giving affected neighbours little motivation to participate in the EIP. This accordingly left the door open for the “usual suspects” to make up the numbers.

In the NEIP case, high stakes for ordinary residents were present in sub case 3 where the personal health and/or income of average residents and farmers was impacted upon by an increasingly degraded water supply. Indeed, residents had a particularly high stake in this issue because the risk of tourists getting sick threatened the town’s income from tourism and raised public liability issues (as discussed in chapter 5).

In contrast, the environmental issues addressed in the other two NEIP sub cases (a creek which largely served as a stormwater drain for urban and industrialised suburbs, and the broad issue of sustainable coastal township) were considered comparatively less important to most “ordinary people”.

“Ordinary” urban consumers from within and outside the region in the RNRM program appeared to be underrepresented for similar reasons. Indeed, the stakes of urban consumers in natural resource problems remain largely diffuse, not least because the RNRM program is predominantly focused on rural problems such as salinity and biodiversity.

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138 Fung, n 31 at 359.
139 Interview 111, Industry.
140 “It’s a bit of a struggle here as well even with residential members as well because we are sitting in very dirty area there is a lot of high risk activity occurring in the area, [Industry] in comparison is a much lower risk for them so we are down on their list of priorities you know they are more interested in the chemical complexes”, Interview 151, Industry.
141 As discussed in Chapter 5, in both these cases there was certainly community concern about these issues (eg. community complaints in NEIP 1 about spills in the creek were common, and residents in the NEIP 2 were found to be particularly environmentally aware). However, concerns about the appearance of a local creek, or that people in the town acted “unsustainably”, are comparatively less important to most “ordinary people” than exposure to poor air quality and amenity on a daily basis, or the chance of getting sick from drinking water from their household tap.
142 “We have people with and underlying concern about sustainability, but they’re not outraged about it...relatively speaking it’s a fantastic environment here so it’s like “what’s the problem?”, Interview 224, Government Agency; “I don’t think you necessarily have that group of concerned residents. Yeah, I mean, a little concerned, but not that concerned”, Interview 211, EPA.
143 In addition, while natural resources are degraded, they are not yet so spoiled as to give most ordinary consumers of agricultural products any major stake in acting to protect the environment. Indeed, according to some respondents, people from urban areas were unlikely to even come into direct contact with such issues in their daily lives: “80% of...
It is also possible that the under-representation of average farmers in the RNRM program is attributable to a similar lack of "stake". Indeed, for many farmers (but certainly not all), unless their short term economic interests are impacted they are unlikely to identify an immediate stake in what are typically longer-term NRM issues addressed under the RNRM program. Even so, as explained below, the lack of "ordinary" farmer representation appeared to be more attributable to other factors.\(^\text{146}\)

Indeed, echoing the fears of some NEG commentators,\(^\text{147}\) the time and skill burdens imposed by all three cases (even with government support and funding) was widely reported as a primary impediment to both obtaining greater participation from "ordinary" citizens and farmers, as well as more equality and balance in representation from both inside and outside the local area.\(^\text{148}\)

In older EIP cases, a number of respondents reported that over the long term operation of the EIP group, the ongoing time and costs of participating had been too much for some participants, leading to a reduction in participation numbers and thus the cross section of interests currently represented in the group.\(^\text{149}\) In younger EIPs, respondents generally did not report EIP transactions costs to be overly onerous per se (see chapter 5). Instead, a common but similar explanation\(^\text{150}\) for the lack of more balanced representation of interests and local residents was citizen apathy: "I can't be bothered".\(^\text{151}\)

While such apathy may have also been a problem in NEIP, respondents regularly blamed the time and cost demands imposed by NEIP, which were notably much more onerous than the EIP: "it's a big time commitment for individuals to put in...it's a big ask".\(^\text{152}\) The fact that participants in the cases saw the commitments required to participate in a NEIP as a bigger
barrier than participation in an EIP may explain why the EIP’s primary weakness was gaining more balanced representation, while many NEIPs struggled to secure participation from ordinary citizens at all.

Respondents from both NEIP and EIP also saw skills and time commitments as a particular barrier for migrants because they “didn’t have the language skills” to participate in the process and were “probably just trying to survive and get their heads round being in a new country…they don’t have time for [the NEIP].”

Time demands were similarly reported as too much for ordinary farmers: “it’s hard to get the real honest toilers to sit on these things because they’re too busy earning a quid”. Indeed, although the RNRM program provided a small rebate to representatives to offset what are often significant time and travel costs, this was seen as largely incommensurate with demands and tasks expected of representatives. Other respondents also suggested the responsibilities and skills associated with RNRM may have also prevented ordinary farmers from volunteering to participate. As one respondent reflected:

the [RNRM] process involves a lot more strategic, strategic planning…that is sort of difficult for people who are particularly sort of say practical cane farmers, if they can’t resolve something over a cup of tea that night, well move on, better do something else you know.

Ideally mitigating most of these apparent impediments were government “checks” and support mechanisms. Some respondents certainly saw these as useful for seeking out and encouraging broader representation. For example, government funding was used to overcome barriers to Indigenous representation in the RNRM case.

Although one can speculate why Indigenous interests remained under represented across regional bodies in Queensland, the data from my one case study revealed little hard evidence

153 As the plan notes, they still need to engage “Migrant Groups…including Vietnamese, a major ethnic group” in the area; Maribyrnong City Council and Stony Creek NEIP Partners, n 100, p 12, 20.
154 Interview 182, Local Resident.
155 Interview 211, EPA.
156 Interview 321, Government Agency.
157 All but one receiving less than $5000 per annum, with one receiving less than $20 000 per annum; BDTNRM, Annual Report Financial Statements (BDTNRM, 2005) p 12.
158 Indeed, the positions were described as “not very well paid”; Interview 3210, Science.
159 Interview 332, Local Government.
160 Government funding was used to develop “a structure [for] enabling improved Traditional Owner involvement”. This included securing two Traditional Owner Directors on the body and the formation of a Regional Traditional Owner Management Group to advise the regional body. The regional body was also “the first in Queensland to employ a full-time permanent Aboriginal Land Management Facilitator to liaise with Traditional Owners”; Traditional Custodians of Country in the Burdekin Dry Tropics Region, A Caring for Country Plan (BDTNRM, 2005) p 1, 6; BDTNRM, Annual Report 2004-2005 (BDTNRM, 2005) p 15-16.
161 Some speculative reasons may include that supportive funding was not applied for, or was received in lower amounts in other regions (compared to the RNRM case, which is one of the largest regions and better funded groups)

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on the issue. Whatever the reasons were, one cannot avoid the conclusion that these and the other representation inadequacies discussed above were not adequately resolved by government oversight and government in each case did not view such representation deficits as a reason for withholding support or delaying implementation. Indeed, despite the deficits in inclusiveness and representation across the cases, the VEPA approved all plans in EIPs and NEIPs and the Queensland government designated and provided funding to all regional bodies.163

Certainly government agencies in RNRM recognised the need and importance of ensuring adequate representation, and on all accounts they had held multiple forums throughout the RNRM region to select representatives that had the necessary “skills” and were supported by the community.164 However they felt there were distinct limits to their role of ensuring requisite balance and inclusiveness if certain interests were too unorganised, not present in the region or did not agree to volunteer:

[Its] very hard to manage at a regional level ... You could be selected but you can refuse. The point I would make is that in some cases it's hard.165

This problem certainly appeared to explain the absence of tourism interests who were seen to be such a “poorly organised, poorly structured industry” that appropriate representatives either could not be identified or had failed to come forward.

Similar impediments were identified regarding government officers' assistance and procedural requirements in EIP and NEIP cases. For example, despite industry and collaborative group attempts to try and improve representation, the time, resource and skill demands ultimately constrained who volunteered.167 As one respondent described their failed efforts to expand the interests represented on their group:

in Queensland). Or it may relate to contextual issues, such as the nature and level of organisation of Indigenous interests across different regions.

162 Bilateral Agreement NHT, n 30, s 68(b), (c); Bilateral Agreement NAP, n 36, s 7.1(b).


165 Interview 321, Government Agency.

166 Interview 338, Local Government.

167 Another respondent from the oldest EIP pointed out “contacting the community is something I feel we’ve failed in because we still don’t get people coming and joining up”, Interview 15/62, Local Resident.

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we were only able to get back the members we had in the first place really with one additional one so that hasn’t been as successful as it should have been.  

VEPA officer assistance and the efforts of local government sponsors in NEIP 1 and 2 also had limited impact in terms of broadening representativeness. In particular, VEPA support appeared to actually reinforce overrepresentation of usual suspects as officers tended to rely on existing networks to select participants they already knew:  

the EPA, actually specifically making the phone calls to people, “How would you like to be involved”, because I guess the EPA had a lot of contact, industry contacts, and also residents that we knew had an interest in the creek and that sort of thing... sitting down and saying, right, who do we want to be involved.

A similar trend was evident in the EIP sub cases involving leading industries where VEPA was most heavily relied upon across the EIP cases to fill significant gaps in representation. Here, VEPA officers connected industry with the semi professional EIP participants known to them through other EIP processes.  

Taken as a whole, the key implication of the above findings is that government imposed membership conditions, procedural requirements and/or officer assistance ultimately took a back seat to the very issues they were meant to overcome, namely imbalances caused by different personal stakes in problems and/or the time, skills and resource demands of volunteering. While these government mechanisms may encourage and achieve some limited improvement in representativeness, both government and/or collaborative groups ultimately settled to do the best with what they got.

Before I turn to consider explanations for representation in NEIP sub case 3 and principal agent representation, one final interesting finding is worth mentioning about RNRM representation patterns. That is, the significant control over and access to government funding associated with membership on the regional body was reported to be a powerful incentive for subregional CMAs to secure representation (see chapter 5). This appeared to be because these

168 Interview 131, Industry.
169 In NEIP sub case 1, the local government organiser also attempted to survey and meet with the local migrant populations at numerous public meetings, however this process was regarded as a failure with an extremely minimal turn out; Maribyrnong City Council and Stony Creek NEIP Partners, n 100, p 12 and 20.
170 To illustrate an EIP case, one EPA officer commented how membership was determined: “Well it’s just selection and identifying through what those people know about their community networks, about people who might have an interest”, Interview 121, EPA.
171 Interview 211, EPA.
172 These findings are similar to Taylor, n 114, p 133.
173 Tushnet, n 131, p 170; Farber, n 49 at 24.
"usual suspects" were commonly dependent on government or outside funding for their survival (rent and staff) and their activities.\textsuperscript{174} As one respondent put it:

A lot of them were in there to lobby to make sure that those organisations got money.\textsuperscript{175}

6.3.2 NEIP sub case 3 and principal-agent representation

With the exception of environmental interests, the findings indicated that NEIP sub case 3 had achieved a largely balanced representation from affected non government stakeholders as well as a cross section of the neighbourhood community. One reason for this was the above mentioned high stake local residents had in resolving the local environmental problem. However other factors also played an important role.

In particular, NEIP sub case 3 had an extremely small affected population (approximately 100 people) that reportedly reduced the potential range of "affected interests". This made it comparatively easy to achieve relatively balanced descriptive representation in the face of time, skills and resource demands of the NEIP. Indeed, respondents suggested it had been relatively straightforward to identify and include not only those already known to VEPA, but also those that were missing, and how they should be balanced. As one officer reported: "we can go through every single person and I can tell you where they stood on [the NEIP issues]."\textsuperscript{176}

Of course this is not to claim that NEIP 3 had flawlessly and wholly met the idealised criteria for representation and captured all intimate interests and views of the 100 people affected in the area. However, when compared to the experience of the other cases discussed above, NEIP 3 had achieved considerable success in including and representing key affected urban and rural interests in the sub case, as well as incorporating a cross section of the views of many affected "average" farmers,\textsuperscript{177} ordinary citizens and businesses.

The small size of the NEIP 3 population had also allowed government organisers to bolster this descriptive representation through establishing a credible and low cost principal agent representation system. This involved holding an initial town public meeting that reportedly

\begin{itemize}
  \item \textsuperscript{175} Interview 341, Regional Body.
  \item \textsuperscript{176} Interview 231, CMA.
  \item \textsuperscript{177} This included farmers who were wary of government agencies and the NEIP program. As they reported they participated to: "keep an eye on it to see what's going on", Interview 233, Farmer.
\end{itemize}
included nearly the entire affected population. At the meeting an initial 6 of the total 18 local residents were nominated and elected as formal representatives (see Figure 6.4). 178

Respondents suggested that those representatives who had been elected were happy with their role as a representative 179 and that they (and even many other local resident representatives) had maintained largely “good communication”180 with non-participants.181 This was naturally because of the extremely small size of the community, which meant representatives could rely on existing community networks, open meetings and public notices (in the only “general store” in town) to generate quite effective and wide reaching two way communication. As one NEIP 1 respondent reflected on the difference between their NEIP and NEIP sub case 3:

the other country ones, you’ve got a lot more of that connected community already...which is why I think that the country ones are probably better - you’ve already got that community feel and things already established. So in the city it’s more difficult.182

In contrast to NEIP sub case 3, there was no evidence of formal election of representatives from their interest sectors or demos across the other cases.183 Even so, it is important to ask whether there was any evidence of informal relationships, such as volunteers, or appointed participants maintaining active communication with those they “represent”.184

While practicalities prevented a full exploration of all informal principal-agent relationships,185 the findings did reveal some modest insights into a selection of these relationships. First, most (but not all)186 representatives from organised groups (eg. community, environmental and sub regional CMA and land care groups) were reported to have maintained relatively effective communication and accountability with their membership.187 However,

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178 Interview 231, CMA.
179 As one interviewee responded to the question “Do you see yourselves as representing the rest of the people in the community?”: “Yeah I do yes most definitely, especially the town...I don’t have a problem with that” Interview 232, Local Resident.
180 Interview 235, EPA.
181 However, at least one respondent questioned whether all of the community were really interested in the NEIP: “So all of the community is aware of the NEIP. I would imagine that some of them wouldn’t give a rats though” Interview 231, CMA.
182 Interview 211, EPA.
183 As one government respondents from RNRM put it: “They’re not elected so they have no accountability.” Interview 321, Government Agency.
185 Without directly speaking to non-participating members the thesis could not discern whether such informal channels of communication and accountability were always operative or effective.
186 There were some doubts about whether all subregional CMAs in RNRM had communicated effectively with their membership: “you got a committed few people on the management committee...they are not always truly representative of the membership”, Interview 341, Regional Body.
187 In NEIPs for example, interest group respondents noted that representatives were “out talking” with their “own groups”, Interview 221, Coordinator.
informal principal agent relationships between individual local residents and people in the wider demos were reportedly much more uncommon. This appeared to be attributable to both the practical cost and time limitations of an individual’s capacity to maintain active communication with the wider community and the fact that most participants were often reluctant to take on a representative role. Indeed, nearly all local residents who had volunteered in EIPs and the usual suspect residents in NEIP 1 and 2 reportedly did not “take any particular responsibility and accountability back to anywhere else”. Certainly some residents were there to “try and help the neighbourhood”, but for the most part representatives appeared to have participated as individuals. As one VEPA respondent explained: “[they] say I am representing my own view, not everybody else”.

While these findings are perhaps predictable, it does at least provide one modest, but valuable, empirical insight by pointing to what appears to be, in these NEG conditions, the very real limits of individual citizens taking on a role as an informal and accountable representative of those who do not directly participate in NEG.

Having considered the nature of both descriptive and accountable representation, and explanations for these patterns in the above sections, the next section turns to consider the second objective of the cases relating to deliberation.

### 6.3.3 Deliberative decision making processes

This section focuses on deliberation objectives of the cases and examines the extent to which non governmental stakeholders who were represented or participated in decision making processes were able to do so effectively, and as “rough equals” to reach feasible agreement. The investigation of these matters proceeds in two parts. First, I investigate decision-making

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188 The obvious exception was NEIP 3 as discussed above.
189 A small minority of residents did report that they at least talked to a few other residents in the local area, however this appeared to be quite limited contact, such as bumping into someone in the street. For example on Community respondent noted: “A couple of years ago I was walking to get the paper or walking the dog or something, someone would pull me up and say what was the smell last night or what was the noise and things like that”, Interview 162, Local Resident.
189 As one resident noted: “we’re signing the EIP for ourselves not for the other community members” Interview 112, Local Resident.
191 “They keep pointing that out – we’re not community representatives, we’re representatives from the community”, Interview 161, Industry.
192 Interview 221, Local Resident.
193 Interview 181, EPA.
194 Mansbridge, n 76, p 194.
195 Sturm, n 55, p 331.
196 Consistent with the cases’ intentions, negotiation and decision-making was an ongoing process that ranged from many months to many years. The findings below are accordingly based on respondents’ comments and generalisations regarding the general flavour of these various decision-making processes, rather than specific analysis of the formal procedure of decision making at any one forum or meeting.
processes in both NEIP and RNRM cases, followed by the EIP case. I then turn to examine the issue and impact of countervailing powers on the deliberative negotiation processes. Notably the findings below are based on respondents’ comments and generalisations regarding the general flavour of the various decision making processes that occurred during planning and over the life of the case, rather than specific analysis of the formal procedure of decision making at any one forum or meeting.

6.3.3.1 Differences in power and capacity among decision makers

Decision making in NEIP and RNRM

Despite the impressive deliberative achievements described in Box 6.1, the findings suggested that fair and equitable deliberative processes were difficult to achieve in practice in both NEIP and RNRM.

Respondents in both NEIP and RNRM suggested that their various decision making processes had at times involved some conflict (as we saw in Chapter 5), and self interested bargaining between parties.197 However, most respondents reported that decision making forums had predominantly been characterised by degrees of non-adversarial, problem solving negotiation and/or mediation processes. In NEIPs, community forums, and meetings between representatives were reported to have involved “lots of talking over the issues”,198 and “significant negotiations”.199 Based on the available data, these negotiations, over time, were characterised less by simple strategic argument from preconceived positions and more by participants discussing, reasoning, sharing information and ultimately adjusting their positions to “agree on something”.200 As one respondent reflected on the various negotiations and meetings that occurred to develop their plan:

all of us now understand a bit more about where everyone else is…they’d say
“Let’s think about this, what do people want to see? Let’s see if we can do that”…they sat down around the table and up on the whiteboard, talking through the issues, they narrowed it and said what do you think.201

Similarly in RNRM, respondents variously pointed to forums, discussions and workshops that

197 For example one government agency in NEIP pointed out: “our involvement was very much managing the expectations of the various stakeholders so it’s consistent with what we would be doing into the future”; Interview 214, Government.
198 Interview 212, Local Resident.
199 Interview 213, Local Government.
200 Interview 235, EPA; Thomas, n 148, p 159.
201 Interview 211, EPA.
202 Interview 341, Regional Body; Interview 327, Government Agency.
203 BDTNRM, n 122, p 197.
204 Interview 331, Science.
205 Interview 331, Science.

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involved both subregional and regional level “negotiating with the property owners”, 202 “negotiation between community sectors, stakeholders and individuals”203 and “negotiated solutions” among different sectors in the region.204 As one science respondent described their experience with negotiating overarching regional targets with agriculture and industry:

the meeting that happened I reckon sorted this out, well no meeting actually formalised it...industry said yeah we are willing to admit that there are things that can be improved, so we got away from “you are wrong you are wrong” situation to one of well “what can we do”.205

Box 6.1: Illustrations of Positive Achievements in Deliberation in the NEIP and RNRM Cases.

Some respondents in the cases certainly suggested that the negotiation processes had sometimes been undermined by a power imbalance 206 between different types of nongovernmental representatives.207 However a more dominant concern and theme in respondents’ comments related to problems arising from power imbalances between the non-governmental and governmental representatives.

In this context, it is important to remember that both RNRM and NEIP were about combining government priorities and community priorities.208 Further, as the above findings indicated, non-governmental stakeholders reportedly were able to input into decision making in various ways and impact on decisions.

Nevertheless, respondents in both the NEIP and RNRM cases reported that government agencies often tended to dominate the negotiation and decision making process in ways that marginalised discussion of non-governmental interests, promoted government programs, and/or simply overrode decisions without discussion, which ultimately undermined the genuineness of non-governmental consent and their “empowerment”. Echoing the reservations of some NEG authors, this domination arose from two overlapping sources.209

First, the technical knowledge and skills of government officers who participated in the process often overwhelmed most (but as discussed below not all) non-governmental stakeholders in decision making. This was most frequently raised in the NEIP sub cases, where non-governmental stakeholders asked to reflect on the decision making, consultation and plan

206 Sturm, n 55, p 331.
207 For example, one respondent in RNRM suggested that the overrepresentation of agricultural and primary industry interests on the regional body might have influenced the consultation process during plan development (Interview 341, Regional Body).
208 Interview 235, EPA.
209 Steinzor, n 49 fn 41, page 9 of “pdf”; Head, n 61 at 31; Lawrence and Cheshire, n 61, p 7.

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writing process described it as “mainly a place of agencies”, experts and “people who were used to doing that sort of thing as part of their job”. The result was that “it all became a bit high brow” for non-governmental respondents, who, while they could express their point of view, felt that they couldn’t “drive” the decision making and instead were “sitting back and watching the process”.

There were few similar concerns of such “technical” dominance in the RNRM case, most likely because regional bodies had been better supported with government investment to conduct their own science research and form a technical advisory panel to assist them in their decision making.

The more prevalent concern in RNRM arose from the Regional Coordination Group and Joint Steering Committee utilising other institutional opportunities to dominate decision making. These groups reportedly played an important “policing role” that entailed ensuring groups met standards and procedures set in NRM legal framework, and approved plans accordingly. However, the findings indicated that government had used these powers to override a number of decisions made by regional groups (in consultation with the regional community) without providing them with any reasoning, opportunity for fair negotiation or cooperative discussion. As one respondent put it:

some of the [plans and targets] have been really good but then it gets down to the point that these targets are written, and its something the group and the community agrees with, it goes to the JSC and the Cwth say that’s not good enough, crosses it out, rewrites it, signs the plan off and sends it back.

Similar problems arose in NEIPs regarding both local government sponsors and the VEPA who had privileged institutional and decision making positions in the NEIP process. Indeed, on all accounts the VEPA and local government used this power to “drive” the NEIP planning and proposal process and dominate issues. As one officer commented:

210 Interview 221, Local Resident.
211 Government agencies confirmed as much: “[The community] saw us as being the experts and we had the ideas...I think they had difficulty seeing how they could make a contribution”, Interview 231, CMA.
212 Interview 227, Local Resident.
213 Interview 227, Local Resident.
214 Interview 221, Local Resident.
215 Technical Advisory Panel comprised members from the biophysical and socioeconomic sciences from a range of academic, research institutions, government and non-government organizations. BDTNRM, n 122, p 12, 185-190, 196; Lawrence G, “Promoting Sustainable Development: the Question of Governance” Plenary Address XI World Congress of Rural Sociology, Trondheim Norway, 25-30 July 2004 at 8.
216 Interview 3211, Government Agency.
217 Interview 311, Industry Body.
218 They “chaired and ran the meetings and really drove the agenda”, Interview 231, CMA.
219 For example officers conducting consultation process reportedly “got [the community’s] opinion on things rather than active participation. It was more that traditional, let’s just give people a whole heap of objectives and get a feel for what they think of it.” Interview 211, EPA.
it was driven by myself, [VEPA and another local government officer]... and all of the meetings and all the agendas and topics were really driven by us.220

Further, the fact that government bodies controlled “seed” funding in NEIP meant that the coordinator they employed to assist with the consultation and plan drafting process was also often less than “independent”, and acted as another officer of government that often “push[ed] the community into something they didn’t necessarily want”.221

Decision making in EIP

There was a similar potential for government to dominate decision-making in the EIP case. However, respondents suggested this was extremely rare. One possible reason for this appeared to be that unlike the NEIP or RNRM case where government agencies either commit to take actions and integrate their organisation’s goals and programs with non governmental stakeholders (NEIP) or invest significant public funding (RNRM), in EIP the VEPA has a much lower “organisational” stake in the program: investing no direct funds beyond officer attendance at meetings, making no direct commitments themselves to take actions other than existing responsibilities to monitor industry and attend the collaboration. Furthermore, as I discuss in the next chapter on accountability, the VEPA took a minimal role in holding groups accountable for substantive targets. As such they rarely sought to intervene in negotiations regarding targets.222

The findings in the EIP case instead resonated with a different line of concern in the literature regarding power imbalances between industry and non governmental actors. As we saw in chapter 5 the various processes of decision-making were reported to have involved high conflict in the majority of sub cases (see chapter 5). Strategic bargaining was also evident. For example, in many EIP sub cases involving good and poor performers,223 some local residents continued to argue for their passionate and pre-established position of shutting industry down.224

However, in general the process for most local residents and other stakeholders had involved relatively fair and genuine negotiation to reach agreement on how to address local issues, such as noise, amenity, odour and dust impacts. As the following anecdote from one industry illustrates, this process involved reason giving, debate and discussion:

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220 Interview 221, Coordinator.
221 The result was that “solutions [were] coming by the coordinator rather than the community” Interview 237, EPA.
222 Interview 141, Industry.
223 Strategic bargaining was less common in EIP sub cases involving leading industries. Here, the higher levels of trust and lack of conflict appeared to foster a relatively effective negotiation process; Interview 151, Industry.
224 As one respondent explained: “There were a few early on that wanted the site shut down. We told them that wasn’t possible, but a few still want us to close.” Interview 111, Industry; Another pointed out: “some of the community members still see the EIP as an opportunity to close the industry down” Interview 141, Industry.

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if we couldn’t do something the community wanted we would agree to understand with them and say look we are listening to you, but right now this is what we are facing and we would explain our rationale for our decision making, we wouldn’t say “No! We don’t want to!”.

Further, these processes of negotiation resulted in residents and industry adjusting their pre-established positions based on the insights and new information they gained through the negotiation:

my line is now “run the place and run it properly”. You know, it’s about change...I understand their point of view now...7-8 years ago I wanted to close them down.

These findings may appear surprising given that the discussion in chapter 5 suggested that in many cases industries blatantly abused their power over information by telling “lies” about the nature and extent of their pollution impacts. However the reasons successful negotiation on local issues was achieved against these odds included at least three conditions noted in the new governance literature for balancing such power disparities.

First, echoing some NEG authors, respondents suggested that most negotiation processes were underpinned by “power balancing” mechanisms including background rules, court orders, and subtler forms of VEPA persuasion and threats to reputation and social license. These ensured that industry, at the very least, had been induced to come to the table, disclose some information and negotiate.

Second, echoing recommendations in the dispute resolution and deliberation literatures, VEPA, local government or a hired mediator, reportedly assisted parties to reach a decision. These “neutrals” were considered particularly vital in EIP sub cases characterised by high severity problems and conflict. A minority of respondents raised concerns regarding the neutrality of professional mediators where they had been hired by industry. However, on the whole these and other types of mediators were still considered to be “very important”.

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225 Interview 141, Industry.
226 Interview 111, Industry.
227 Fung and Wright, n 8, p 23.
229 These conditions did not apply to all sub cases. For example, negative incentives for industry to participate were largely relevant to sub cases involving poor and good performers, rather than ones involving leading industries. However, as discussed below negotiation processes were generally effective in the latter sub cases due to significantly lower degrees of conflict.
230 Karkkainen, n 228, p 296.
232 Interview 182, Local Resident.
233 Interview 162, Local Resident.
“effective”\textsuperscript{234} and vital to “control the debate”\textsuperscript{235} and allow representatives to “negotiate the high level objectives”.\textsuperscript{236}

In those EIP sub cases involving lower severity problems and less conflict, “impartial” mediators were rare. Indeed, as we saw in chapter 5, industries in these cases tended to be more reputation conscious, “very open and transparent”,\textsuperscript{237} and built trust quickly with non governmental actors. Under these conditions, non-governmental stakeholders and VEPA reportedly agreed to allow industry representatives to chair the meetings and suggested they were “very fair”\textsuperscript{238} and called “a spade a spade even to [their] own staff”.\textsuperscript{239}

Third, the risk of such industry chairs, or less than “neutral” hired mediators, to act in a biased manner was reportedly checked by the presence of a VEPA officer. Indeed, consistent with expectations of some authors, this final condition was reported to ensure a degree of fairness to the process in both types of EIP sub cases.\textsuperscript{240} As one industry respondent explained, they saw the VEPA officer’s presence as:

\begin{quote}
Mak[ing] sure that we’re consulting and that we’re being reasonable and listening and where opportunities for improvement are available that we take those on board.\textsuperscript{241}
\end{quote}

These three elements were reported to have resulted in local residents being able to genuinely participate in decision making, setting and consenting to targets, and shaping substantive agendas on local pollution issues such as noise, amenity, odour and dust.\textsuperscript{242}

However, the findings suggested that such conditions for balancing power were not always effective in fostering fair negotiation processes. For instance, when it came to broader and more technical issues such as greenhouse gas and waste water, industry appeared to often dominate decision making and overpower non governmental actors’ decision making capacities.\textsuperscript{243}

In addition to the issues regarding countervailing powers raised below, three main reasons appeared to explain this occurrence. First, even though “power balancing” mechanisms encouraged industry to reveal information to non-governmental actors about these technical
issues, non-governmental stakeholders who were interested in such issues commonly reported\textsuperscript{244} that such information was “too technical for us to say what to do”.\textsuperscript{243} VEPA officers confirmed this fact, suggesting: “with technical details and the actual actions and improvements, the community has a very minor input”.\textsuperscript{246}

Respondents also reported that a second reason why industry tended to dominate the decision-making process was that they either consciously or unconsciously exploited their knowledge advantage. Indeed, consistent with some authors’ fears\textsuperscript{247} one industry respondent suggested they could dazzle and placate local residents easily enough by using technical information and setting targets that were largely in the industry’s interest. As they implied: “if you get out ahead of them, then they’ll just sit there and listen”.\textsuperscript{248} Such direct intent to manipulate appeared rare, and capture certainly appeared to be the exception rather than the rule (see chapter 7). Even so, most industry respondents did admit that they made the majority of decisions in the EIP on technical issues, with either cursory or no input from local residents. As one industry put it “to be candid I would say most of the time about 85-90% is generally prepared by us”.\textsuperscript{249}

Of course it is not entirely surprising that industry would make a greater contribution to technical decisions about its own performance and operations than residents or other non-governmental actors who know nothing about industry itself. However, most respondents felt that industry tended to assert their targets and actions on these broader environmental issues without much genuine discussion or negotiation. As one VEPA officer described their perception of the decision-making process regarding such technical issues:

> when [the industry] would come in and they’d give a presentation on each part of it, like biosolids or effluent needs, there wasn’t a great deal of discussion - so then it would go into the EIP.\textsuperscript{250}

The final reason that industry was able to exploit their technical knowledge advantage in their favour echoes concerns such as those expressed by NEG commentator Steinzor.\textsuperscript{251} That is, government officers were “overwhelmed” or too passive in their role of evaluating technical

\textsuperscript{244} There was a minority of respondents who suggested local residents were able to question leading industries about setting targets on some broader issues, however in general this appeared to be rare and limited in impact; Interview 211, EPA.

\textsuperscript{245} Interview 162, Local Resident; Another respondent pointed out: “They use words that you don’t understand and that’s where you get caught”; Interview 173, Local Resident.

\textsuperscript{246} Interview 181, EPA.

\textsuperscript{247} Farber, n 49 at 24.

\textsuperscript{248} Interview 184, Industry.

\textsuperscript{249} Interview 131, Industry.

\textsuperscript{250} Interview, 123, EPA; Similar forms of dominance are discussed in: Fung A, Empowered Participation Reinventing Urban Democracy (Princeton UP, 2004) p 25.

\textsuperscript{251} Steinzor, n 49, page 19 of “pdf”; See also Fung and Wright, n 4, p 265.
issues at stake than acting in the public interest (an issue I return to discuss in the accountability chapter). Indeed, some VEPA officers characterised their role as little more than to “sit there and watch and let the parties sort it out between them”. Further, they reportedly provided little of the needed and expected technical support (see above section 6.4), nor training to improve the capacity of non governmental stakeholders to meaningfully participate in the process. As one local resident lamented:

the majority of time it’s the company that formulates what they can rectify and what can be put on the EIP to be done. Now this is where I think EPA should come in and say hey what about having a look at that area down there but they haven’t done that.  

Given these power imbalances in EIP decision-making, as well as problems raised in RNRM and NEIP, I want to now turn to consider the extent and impact of the countervailing power role played by environmental interest groups that were present in 2 NEIP sub cases and 3 EIP sub cases.

6.3.3.2 Environmental interest groups as countervailing powers

Comparative findings between these few sub cases involving countervailing powers suggest that consistent with Fung and Wright’s expectations “home grown” or local factions of state environmental groups possessed some of the necessary organisational competencies to collaborate in a countervailing role. To illustrate, across the 3 EIP sub cases, local adversarial groups concerned with nature conservation were reported to be able to directly engage with and push industry on certain technical and bigger picture “environmental issues” such as biodiversity, the impacts of sewage on oceans or impacts on the local fauna and flora. As one EPA officer from EIP sub case 3 explained:

[the environmental groups] provide guidance to the [industry] about how to select the species and that type of thing, biodiversity is another one... So they do drive the company.

Although the dominance of industrial or development interest was of less concern in the NEIP sub cases, local environmental interest group were still heralded as a key non governmental stakeholder who could engage more directly with government agencies on environmental issues, rather than “sit back” as local residents had done. For example, as one VEPA officer illustrated:

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252 Interview 113, EPA. Steinzor, n 49, page 19 of "pdf"; Fung and Wright, n 4, p 265.
253 Interview 162, Local Resident.
254 Fung and Wright, n 4, p 266, 284.
255 Interview 132, EPA.
the [government] organisations would put themselves forward, saying, "yes, we can do this"...and during that, you'd have [environmental group] going "well, how about this, can you do this?".  

However, the findings suggest that this countervailing power role was limited in two respects. First, echoing the concerns of some authors, some groups did not always appear to have the skills or "vision" to represent the "full" public interest, and tended to "countervail" predominantly on technical issues close to the group's heart, as opposed to the full range of technical issues or speaking for "the environment" more generally. As one respondent put it:

sometimes these groups can be fairly single-issue focused and, as long as they're part of the environment, is doing all right, bugger the rest, if you know what I mean.

The second and overlapping limiting feature on the countervailing role of these groups was that the collaborative nature of the NEG process appeared to limit the "advocacy" or "outsider" role for environmental issues (eg. public awareness campaigns, protests). Although the findings are limited to the extent that there was insufficient data on the experience of all environmental interest groups in the sub cases, at least some groups reported becoming frustrated and excluded themselves altogether from the collaboration to pursue an advocacy role outside the group. At the time of my research they had returned to the group to try collaborating again. Others continued to participate but pointed out:

The advocacy role, you've almost got to be confronting people. The NEIP plan is not about confrontation; it is more about co-operation between the groups. You tend to lose that edge to you as a group. It is a very fine line to actually tread. We should try to be more active in the NEIP process itself,

256 Interview 211, EPA.
258 "The [local environmental groups]...all lovely people, fairly parochial but that's their role in life " Interview 214, Government Agency.
259 Interview 123, EPA.
260 Sturm, n 55, p 331.
261 As one respondent put it: "it got to a point where [the environmental interest group] used to come to some of these neighbourhood meetings and it was very acrimonious, very acrimonious. They play the man, not the ball as a tactic...[they] wouldn't speak to anybody at [the industry] and I'd be trying to again mediate saying to both [industry] and [the environmental interest group], for goodness sake get your head out of the trenches and just realise that you've probably got more in common than not...eventually they excluded themselves from this process"; Interview 121, EPA.
262 Even in RNRM case similar reflections were made by state level representatives about the difficulties faced by the few environmental groups that were represented in regional groups: "the conservation groups are straggling because its difficult to get their views through"; Interview 324, State Government Agency.

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probably more advocating than just what we've been doing...I think we need to have a stronger view outside the NEIP as an advocate group.  

As the quote above suggests, even though collaboration may constrain the advocacy role, some groups were clearly aware of this challenge and were reflexively thinking about or actively trying to resolve the two approaches. It may be that as collaboration proceeds, groups develop greater capacity to synthesise their dual roles. Exploring this issue should be an important priority for future research. Nevertheless, based on the available findings it appears that while groups can perform countervailing power roles, the extent and success of these roles may be constrained by local groups in limited skills or political vision and/or their capacity to “walk the fine line” of collaborating and advocating.

Arguably a far more pressing weakness across the cases is the sheer absence of any form of countervailing power (no matter how limited). The question that accordingly needs to be asked is “what others forms or ways of mobilising countervailing powers may be available?” In this regard, the findings in the RNRM case pointed to the development of what appeared to be a promising and somewhat novel structure for mobilising countervailing powers.

This structure initially emerged at the Queensland state level in 2002 in the form of “Regional Groups Collective” (RGC). The RGC is a collaborative organisation comprised primarily of the chairs of each regional body in Queensland. It operates at the state, as opposed to the regional scale, and thus created a new “higher” level institutional organisation in RNRM’s nested governance arrangements. The reason this organisation was created included giving regional bodies “a joint voice”, however, it also provided “communication networks at a state level with key stakeholder organisations” in RNRM.

This networking provided the opportunity for state based sources of countervailing powers to enter RNRM. In particular, because RCG was “removed” from collaborative regional decision making (i.e. environmental groups were free to work with it without becoming a formal member of a collaborative group), and operated at the state level, the barriers of scale

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263 Interview 218, Environmental Interest Group.
265 While novel in its design, the structure discussed below appears to resonate with the broad vision of national environmental organisations working to ensure a deeply participatory local process as discussed in Sabel C, Fung A and Karkkainen B, “Beyond Backyard Environmentalism” (1999) October/November Boston Review 1 at 12.
267 Interview 341, Regional Body.
268 Indeed the RCG is to act on behalf of the regional bodies across the state and conduct “advocacy on issues of common interest to Regional Bodies at a state level”; Interview 349, Regional Group Collective; Queensland Regional Natural Resource Management Groups Collective, Strategy http://www.regionalgroupscollective.com.au/01_cms/details.asp?k_id=29 viewed 30 May 2008.
mismatches and adversarial framings that had prevented state groups from participating in RNRM were side stepped.

RGC accordingly was able to link with state based environmental groups which had not participated in regional decision-making.\textsuperscript{269} Using a government grant obtained through the RNRM program to support the RCG and more importantly the public environmental group (which are notoriously under resourced),\textsuperscript{270} the two bodies used the funding and their respective networks and knowledge to improve engagement of environment interest groups at lower regional levels of collaboration, taking on something of a capacity builder role for countervailing powers.\textsuperscript{271} This included flying environmental interest groups into regions to act as “proxy” representatives on regional bodies that lacked environmental representative. As the environmental group reported:

they’ve got people from the [city] flying into the [regional area] to engage with the [regional body]. We’ve got people from [environmental interest group in regional A] going into [regional group C] to engage there as well.\textsuperscript{272}

At the time of research, the data remained limited in terms of how successful or sustainable these attempts to improve environmental representation had been, or whether RGC had opened up other ways for state groups to be involved in RNRM. However, at the very least the above structure provides a demonstration of the kinds of avenues that may provide opportunities for greater environmental voice in NEG processes. Based on the above, the key elements to this support structure for countervailing powers were (i) a nested collaboration approach, with levels that provided different avenues for different environmental groups to determine the scale and nature of their participation; and (ii) availability of government funding to support under funded groups.

6.4 Summary and implications

This chapter has examined the conditions under which NEG can achieve meaningful participation and deliberation. It did this by examining the experience of non-governmental actors involved in the three case studies and revealed a range of insights into these under researched but vital processes for achieving “good” NEG.\textsuperscript{273}

\textsuperscript{269} Interview 318, Environmental Group.

\textsuperscript{270} “So [we’re] skating on very thin ice in regard to it’s financial viability, so we’re busily trying to get out there with the begging hat, begging bowl in a sense.” Interview 318, Environmental Group.

\textsuperscript{271} Margenum, n 266 at 141.

\textsuperscript{272} Interview 318, Environmental Interest Group.

\textsuperscript{273} Collaborative Democracy Network, n 1 at 169; Karkkainen, n 3 at 239; Karkkainen, n 1, p 222-223.
Taken as a whole, the above analysis suggests that in all but rare cases, there are very substantial difficulties in fully satisfying the participatory and deliberative aspirations of NEG. These relate in particular to the challenges of negotiated decision making and achieving "balanced" representation and inclusiveness of affected actors within (but also outside) a geographically defined demo.

Resonating with recent empirical research in other NEG contexts, the investigation identified deficits in all cases regarding inclusiveness and representativeness, and pointed to the potential for NEG to largely disenfranchise environmental interest group stakeholders. Among these gaps, NEIP sub case 3 and the majority of EIP sub cases were the only NEG examples where "ordinary" citizens were mobilised to such an extent as to approximate an "empowered community" as conceived by NEG theorisation. Even so, it was only in the rare example of the NEIP 3 sub case that these citizens were considered to have achieved a degree of balanced representation. Furthermore, more powerful interests often stymied the opportunities for those who did participate (and even those who were consulted) to input into decisions. The EIP case appeared to give non-government stakeholders opportunities to meaningfully engage in decision making on issues that impacted upon them. However, their impact and influence over broader environmental issues appeared to be constrained by inevitably more powerful industry. NEIP and RNRM case also evidenced the tendencies of government to constrain opportunities for meaningful non-government input.

Critics of NEG and doubters of its participatory and deliberative aspirations might conclude from the above that their concerns are well founded. However, it does not necessarily follow that the three cases were completely undemocratic in their processes, entirely lacking in significant participation or wholly subject to the whim of the most powerful.

On the contrary, it is important to remember that inclusive, representative and deliberative criteria are ideals that may never be fully realised in practice. All three cases did include representation from a wide array of affected individuals, non-government organisations, and

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276 McCloskey, n 257; Koontz T and Thomas C, "What Do We Know and Need to Know About the Environmental Outcomes of Collaborative Management" (2006) December Public Administration Review 111 at 113.

277 Fung and Wright, n 8; Collaborative Democracy Network, n 1 at 168.


private interests. Further, the deficits in the array of interests and/or underprivileged/marginalised stakeholders did not appear to arise from calculated efforts to exclude them.\textsuperscript{280} Indeed, the opposite appeared to be the case.\textsuperscript{281} Organisers and government officers all sought to include wider representation, but failed primarily due to matters of prior institutional design and/or other capricious factors beyond their control.\textsuperscript{282} Moreover, although negotiations and decision-making were often disproportionately shaped by more powerful interests, non-government respondents in EIP, NEIP and RNRM were still able to input their views and impact on actions to resolve pertinent environmental problems.

Most importantly, the weaknesses identified above do not imply that NEG’s desires for enhancing participation and deliberation more generally are necessarily a sham or somehow inherently flawed per se. Rather, the above findings serve to raise questions about how far the mechanisms and conditions for enhancing meaningful participation and deliberation might be reshaped so as to further contribute to achieving “good” NEG. Some suggestions for “reshaping” these conditions are outlined below, commencing with the issue of participation.

In broad terms, the findings are consistent with the limited empirical research so far conducted on the issues of participation and inclusiveness. This suggests that “open door” policies are unlikely to be sufficient in themselves to even loosely approximate the representative ideal\textsuperscript{283} and that the deficits of this approach are not adequately resolved by government support, oversight and imposed procedural requirements. Indeed, the findings suggested that in all but the most exceptional circumstances,\textsuperscript{284} these conditions were ultimately beholden to (i) the urgency of the problem and the stake people had in it; and (ii) the time, resource and skills burdens imposed by the NEG program.

The key implication here is the importance of designing and contextualizing mobilization efforts to account for both the nature and impacts of the environmental issue and the relevant socio demographic characteristics of desired participants.\textsuperscript{285} For example, the findings suggest that time and skill demands act as significant impediment to representation from ordinary people, marginalised populations and other affected groups. What may be needed then is appropriate training, language support and/or funding (eg. rebates more commensurate with time and skill demands) to reduce these barriers and impart the necessary foundational

\textsuperscript{280} Parkinson also points to the need for them to be sufficiently stable; Parkinson, n 23, p 25.
\textsuperscript{281} Lubell et al, n 279, p 281-282.
\textsuperscript{282} Lubell et al, n 279, p 281-282.
\textsuperscript{284} That is, where affected interests are extremely small and have high stakes in the problem (e.g. NEIP 3).
\textsuperscript{285} Marshall and Jones, n 283 at 733; Fung, n 31 at 342.
capacities. These inferences resonate with similar suggestions made by other NEG authors.\footnote{Taylor M and Warburton D, “Legitimacy and the Role of UK Third Sector Organizations in the Policy Process” (2003) 14(3) International Journal of Voluntary and Nonprofit Organizations 321 at 331; Bidwell and Ryan, n 283 at 840; Fung and Wright, n 8, p 29; Thomas, n 148, p 166.} Notably, such funding support may be vital if NEG experiments expect citizens to act as informal accountable “representatives” of non-participants.\footnote{Taylor M, Wilson M, Purdue D and Wilde P, Changing Neighbourhoods: Lessons from the JRF Neighbourhood Program (Policy Press, 2007) p 29; Strum, n 55, p 331; Mansbridge, n 76, p 194} As we saw, the findings suggest individual citizens, as opposed to groups, are unlikely to have the capacity or desire to fulfil a principal agent representation role.

Furnishing NEG with funding, however, introduces complicating factors.\footnote{Taylor, n 114, p i85.} Among other dangers, the findings in RNRM cases revealed that adequately reimbursing volunteers might not be sufficient to overcome representation deficits. Indeed, confirming Taylor’s work in the UK, the RNRM findings suggest that such a strategy may do more to reward “usual suspect groups” than to encourage new and more representative participants.\footnote{Taylor, n 114, p 185.} The findings caution theories and experiments that advocate additional funding, suggesting it will serve to further skew representation.\footnote{Cohen and Sabel, n 12 at 335.}

Where interests are diffuse (such as in RNRM and the other NEIP sub cases) the findings also suggested there may be a need for institutions and efforts to link people’s everyday concerns with the environmental and natural resource issues being addressed.\footnote{Abers, n 32, p 207.} This may involve ongoing and extensive “educational programs” or other community events that cater to affected citizens within and/or outside the local area such as suggested by Abers\footnote{Abers, n 32, p 207.} and Marshall and Jones.\footnote{Marshall and Jones, n 283 at 733-734.} Without these features, the findings reveal that NEG participation may well be confined to “usual suspects”, rather than achieving popular participatory governance.\footnote{Abel and Stephan, n 275 at 625.} In short, most citizens at a local level will be unlikely to have a greater voice, and those people who are already active on the issue will continue to be the major political players.\footnote{Sturm, n 55, p 331.}

Turning to decision making, all three cases found evidence of deliberative negotiation, albeit sometimes lapsing into strategic bargaining.\footnote{Whelan and Oliver, n 82 at 133. See more generally: Steinzor, n 49 at fn 41, page 9 of “pdf”; Head, n 61 at 31; Lawrence and Cheshire, n 61, p 7.} However, the findings in the NEIP and RNRM cases suggest governmental agencies may often dominate decision-making processes. As in some other NEG studies\footnote{Whelan and Oliver, n 82 at 133. See more generally: Steinzor, n 49 at fn 41, page 9 of “pdf”; Head, n 61 at 31; Lawrence and Cheshire, n 61, p 7.} this occurred because of an imbalance in skills and capacities
and/or opportunities to control decision-making afforded by the legal framework. How far governments are willing or even capable of assuming the supportive and empowering role expected of them by NEG experiments is an open question.\(^{298}\) Certainly in the present study, power was at times abused by government to undermine genuine input of non-governmental stakeholders in decision-making.\(^{299}\) This was most common where government had a veto power over decisions, citizens receive no funding for technical research/knowledge, and the government had a high "stake" in the issue (i.e. agencies made significant public investment in the program and/or undertook to implement actions and policies).

Of course, in such cases, government is often endowed with veto powers for vital accountability purposes (as we will see in chapter 7). However, from the perspective of this chapter, alternative institutional designs and mechanisms for ensuring such accountability may be needed if government is to be disabused of the notion that it simply knows best (as in RNRM) or to otherwise avoid tendencies for it to indirectly exploit its "trump card" (as in NEIP) and thus allow non-governmental actors to achieve meaningful input into decision making. Analysing what these structures may be is beyond the scope of this chapter, but the tendency for government to dominate decision-making revealed by the study does highlight this issue as a priority for future research.\(^{300}\)

The findings also imply the importance of designing other mechanisms canvassed in the NEG literature to enhance the meaningful input of non-governmental stakeholders. For example, provision of education and training in deliberation and problem solving may improve both government and non-government actors' adherence to ideals of negotiation.\(^{301}\) Funding and technical support, such as provided in RNRM, may also play an important role in avoiding government officers dazzling the uninitiated.\(^{302}\) As the experience of "civic environmentalism" in the United States also suggests, opportunities for non-governmental actors to input into decision making may be more likely to arise under conditions where decision making is centred around a more "independent" person who represents no particular substantive interest (as opposed to a local government sponsor whose stake in the issues that were being dealt with lead him to dominate NEIP decision making).\(^{303}\) Finally, countervailing power structures may also provide a promising way to help balance power disparities (I return to summarise these below).

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\(^{298}\) Defilippis et al, n 62 at 684; Abers, n 32, p 200-201.

\(^{299}\) Head, n 36, p 148-149; Head, n 61 at 31; Paton S, Curtis A, McDonald G and Woods M, "Regional Natural resource Management: Is It Sustainable" (2004) 11 Australasian Journal of Environmental Management 259 at 263; Whelan and Oliver, n 82 at 133

\(^{300}\) Leach, n 2 at 108.

\(^{301}\) Fung, n 250, p 26.

\(^{302}\) Fung, n 250, p 25; Steinzor, n 49 at fn 41, page 9 of "pdf".

Beyond this, the findings in the EIP case partially confirmed suggestions in the literature that the use of mediators, agency assistance, and mechanisms such as VEPA and community pressure can effectively balance power differences which are sufficient for the purposes of negotiation.\(^{304}\) However, while these conditions were effective for local issues, when knowledge and capacity differences between non-governmental stakeholders and industry were amplified (i.e. more technical issues), the findings suggested that industry was able to exploit their technical knowledge and capacity to dominate decision making and overwhelm government officers.\(^{305}\) Indeed, where knowledge imbalances are large (e.g. between industry and local resident) then fair deliberative decision-making may require conditions such as funding for technical assistance, training in deliberation (as discussed above), and effective countervailing power.\(^{306}\)

In terms of the latter, the findings provide empirical support for a range of conjectures made in the NEG literature regarding environmental interest group participation. First, it was clear that national or state located groups are typically adverse to or incapable of collaboration at local levels.\(^{307}\) Second, local or local factions of environmental groups were more inclined than state/national groups to participate in NEG,\(^{308}\) and were found to have played a countervailing role on a number of issues, offsetting the dominance of both industry and government.

However, echoing the concerns of other authors,\(^{309}\) and empirical research in watersheds in the USA,\(^{310}\) the findings also revealed that local groups were widely underrepresented across the cases, either because they were absent in locales or possessed cognitive frames incompatible with collaboration.\(^{311}\) Further, the countervailing role of these groups was constrained by a narrow political vision and/or by the challenges of synthesising a collaborative and advocacy role, suggesting there may be limits to the capacity of local environmental groups to act as a countervailing power.\(^{312}\)

As to how the lack of countervailing power (at both local and state level) might best be mitigated, the RGC example within the RNRM study suggested two key factors. First, nested collaborative organization operating at multiple scales appeared to provide more opportunities for engaging state based environmental groups that were typically mismatched with NEG in

\(^{304}\) Farber, n 49 at 24; Steinzor, n 49 at fn 97 page 18 of “pdf”.

\(^{305}\) Farber, n 49 at 24; Steinzor, n 49 at fn 97 page 18 of “pdf”.

\(^{306}\) Fung and Wright, n 4 p 265; Steinzor, n 49 at page 19 of “pdf”.

\(^{307}\) Fung and Wright, n 4, p 280-282.

\(^{308}\) Fung and Wright, n 4, p 284.

\(^{309}\) Defilippis et al, n 62 at 684; Farber, n 257, p 75. Seidenfeld, n 83 at 477; McCloskey, n 257.

\(^{310}\) Leach, n 2 at 108.

\(^{311}\) Karkkainen, n 83 at 962-963; Fung and Wright, n 4, p 283-284.

\(^{312}\) Karkkainen, n 83 at 962-963; Fung and Wright, n 4, p 283-284.
scale and framing. As we saw, this engagement at higher levels can also have benefits for mobilising countervailing powers at lower levels. However for this to occur, the second key factor appeared vital, that is, government funding. This was needed to support an under resourced environmental group to both enhance their involvement and to actively engage other local groups in collaborative forums. These two key elements resonate with those aspects of the NEG literature that suggest (i) nested structures may improve representation of environmental or other groups in collaboration; and (ii) funding is important to assisting cash strapped environmental groups to participate in NEG.

To conclude, this chapter has identified and elaborated the challenges NEG experiments confront in pursuing the ideal of participatory and deliberative governance. It has critically examined a range of mechanisms that many in the NEG literature suggest might lead to “good” NEG and approximate a participatory and deliberative ideal. Departing from some of these proposals, its analysis suggests that there are a number of key conditions that, individually or in combination, might best be used to mitigate, if not overcome these participatory and deliberative challenges.

However, what this chapter hasn’t done is examine the consequences of the identified deficits in participatory representation and deliberation, both of which have the potential to undermine the public interest and result in underperformance. This is part of the task of the following chapter, which along with examining “learning and adaptation”, assesses the efficacy of “new” forms of accountability that have been designed to prevent such defects across the cases.

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313 Margerum, n 266, at 148.
314 Margerum, n 266 at 145.
315 Farber, n 257 at 75.
316 Samuelson et al, n 274, p166.
Chapter 7: Accountability and Learning

7.1 Introduction

This chapter continues the empirical investigation of the question: under what conditions can “good” NEG be achieved. It focuses on two characteristics of good NEG: “new” forms of accountability and learning and adaptation.

Accountability itself is one of those concepts that is hard for anyone to be against. It is intended to prevent the abuse of public authority, ensure that public resources are used appropriately, and secure performance expectations of governance endeavours.

Accountability in NEG tends to emphasise flexible rules and deference to the discretion of agencies and non-government actors. This is commonly played out within two broad regimes, namely process and performance based approaches. Process approaches involve management-based systems where industry is given responsibility for adhering to a plan to limit regulated harms. Performance-based approaches give regulated actors discretion to determine how best to achieve prescribed results, rather than following processes or implementing prescribed actions or technologies.

Some authors suggest there is significant potential for rent seeking behaviour, unprincipled deal making and capture under NEG process or performance based approaches. Others claim NEG in fact offers new opportunities for accountability to be secured and even enhanced through replacing or supplementing traditional accountability controls with a range of “new” forms and mechanisms of accountability, such as “mutual” accountability between

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   943 at 961.
4 May, n 2 at 8.
5 May, n 2 at 8.
6 See for example discussions of these concerns in Steinzor R, “Reinventing Environmental Regulation: the
   Dangerous Journey from Command to Self-control” (1998) 22 Harv. Envtl. L. Rev. 103 at 141-43; Farber D,
   Rev. 61 at 74; Dana D, “The New "Contractarian" Paradigm in Environmental Regulation” (2000) U. Ill. L. Rev. 35
   at 52-57; Fung A and Wright E, “Thinking About Empowered Participatory Governance” in Fung A and Wright E
   (eds), Deepening Democracy: Institutional Innovations in Empowered Participatory Governance (Verso, 2003) p 21-22,
   36-37; Markell D, “Slack” in the Administrative State and its Implications For Governance: the Issue of
   Accountability” (2005) 84 Or. L. Rev. 1 at 56-57; Doremus H, “Adaptive Management, the Endangered Species Act,
   and the Institutional Challenges of "New Age" Environmental Protection” (2001) 41 Washburn L.J. 50 at 52, 88;
   Karkkainen, n 3 at 963.

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collaborators and “professional” accountability of industries. This chapter examines the operation of these “new” forms and approaches to accountability in practice.

In addition to focusing on accountability, this chapter also focuses on learning and adaptation (“learning”). Learning approaches vary between NEG experiments. Some emphasise “process based” learning - establishing management frameworks to guide and encourage industries to undertake self-reflective thinking and learning about their environmental impacts. So-called “passive” adaptive management is also common to NEG, which involves heightened monitoring of key indicators and subsequent adjustments to policies in light of what is learned. Finally, some experiments utilise “systemic” learning, which is designed to share information between adaptive collaborative groups and agencies, diffusing innovation and facilitating the continual adaptation of policy.

Regardless of the approach, learning is vital for equipping NEG to manage and respond to the inevitability of change and the complex and dynamic nature of environmental problems. Accordingly, this chapter examines the challenge of implementing effective learning in practice.

One may of course ask why this chapter has paired accountability and learning as the focus of inquiry? At a general level, the answer is that these two issues are broadly interrelated. They often depend on the same monitoring processes to produce information vital for both holding

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3 For convenience the term “learning” will be used to refer to learning and adaptation throughout this chapter.
7 Orts, n 10 at 1238.
actors to account and to inform learning. They also can share a subtler interrelationship. The provisional decision making associated with leaning necessarily requires traditionally strict accountability controls to be relaxed in order to provide greater flexibility and room for revision as new information comes to hand. While the “new” forms and approaches to accountability discussed above seek to ensure sufficient flexibility for learning, they must do so while simultaneously exerting sufficient control to secure accountability.

As intertwined and distinct features of “good” NEG in their own right, there has been little research into the existence and operation of accountability, learning and adaptation in practice. Under researched questions include: how effective are NEG experiments at monitoring and what impact does that have for both accountability and learning? How effective are “new” approaches and forms of accountability at preventing perverse outcomes without unduly constraining the flexibility that is essential for learning and the successful performance of NEG? How, and to what extent, can local experiments be linked and central monitoring conducted successfully to foster effective systemic learning?

This chapter provides insights into these and other questions by examining three case studies in the following three sections. First, section 7.2 begins by taking a close look at the legislation and guidelines of the three cases to evaluate how each case was specifically designed...
to achieve accountability and learning. Section 7.3 then analyses how effective both the accountability mechanisms and learning approaches were in practice.

While the findings from each case throw up a range of different issues, all three programs reveal shortfalls in their different approaches to learning and accountability, the latter in particular giving rise to potential capture, unprincipled deal making and rent seeking. Drawing from the comparative findings, the chapter’s analysis leads it to identify a number of insights for achieving effective learning and accountability. These insights fall into 5 main groupings, namely (i) establishing effective monitoring processes; (ii) setting overarching performance goals; (iii) fostering effective professional and mutual accountability; (iv) assisting or encouraging actors to implement process and adaptive learning approaches; and (iv) designing systemic learning structures. These lessons for the NEG literature are summed up in Part 7.4.

Before commencing this analysis a few words are needed to clarify the scope of this chapter. While concerned with issues of accountability and learning, properly examining these broad, complex and multifaceted concepts for each program would require a far more expansive study than the present one. This is particularly the case with issues of accountability as it would have been impractical to empirically investigate the full gamut of plausible accountability mechanisms and relationships within the scope of this thesis. Accordingly, the chapter does not evaluate whether each case evidenced a suitable degree of “accountability” per se. Rather its analysis is limited to evaluating the effectiveness of some specific forms and mechanisms of accountability, most prominently professional accountability, mutual accountability and upwards accountability of collaborative groups to agencies.

### 7.2 Designing “new” forms of accountability and learning

In order to facilitate an analysis of whether and how the cases were able to foster accountability and learning, this section examines the relevant features of the cases’ legal design that may impact on accountability and learning in practice. It proceeds in two main parts. The first focuses on accountability. It commences with a general overview of the cases’ approach to and “new” forms of accountability, before focusing on some of the more specific design aspects of performance based accountability. The second part turns to focus on the cases’ varied approaches to learning.

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25 For example, this chapter does not investigate accountability structures that relate to political, administrative, financial and legal accountability of government agencies. Nor does it examine transparency issues relating to collaborative groups.

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7.2.1 Accountability

7.2.1.1 Overview of accountability mechanisms

Astute to the risks of capture and rent seeking, the cases have been designed in different ways to secure accountability. All tend to relax rigid and traditional bureaucratic controls in favour of more flexible standards, discretion,\(^\text{26}\) and “new” forms of accountability.\(^\text{27}\) As we saw in chapter 4, these include mutual accountability between the collaborators, professional accountability of industry, and different forms of government oversight.

These various forms of accountability focus on relationships between different sets of actors, for example professional accountability relationships are derived from “internalised” sources based on professional norms, while mutual accountability relates to checks and balances arising between individual collaborators. These relationships can also focus on different aspects of conduct.\(^\text{28}\) For example, actors may be held to account for economic values. This is evident in RNRM where regional bodies are accountable to the Joint Steering Committee (JSC) for financial probity. Accountability may also relate to social values like fairness and effectiveness.\(^\text{29}\) For example, industries in EIP may be held to account by local residents for successfully reducing local pollution impacts.

For the purposes of this chapter, it is useful to think of these various accountability relationships and foci as falling within two broad “groupings” of accountability.\(^\text{30}\) The first grouping consists of accountability relationships regarding rules.\(^\text{31}\) A key issue here is the appropriateness and fairness of the rules developed, such as whether targets or management systems developed avoided capture by private interests.\(^\text{32}\)

The second “grouping” of accountability relationships is concerned with the implementation of the rules.\(^\text{33}\) A central concern here is ensuring actors comply with implementation requirements or are held accountable for non-compliance so that governance ends are achieved.\(^\text{34}\)

\(^{26}\) Of course agencies already had significant discretion under traditional command and control approaches regarding the appropriate enforcement response; Markell, n 6 at fn 239.

\(^{27}\) Freeman, n 3; May, n 2 at 23.


\(^{29}\) For further see Bovens, n 1 at 454-460; Scott, n 28 at 40-43; May, n 2 at 11-12; Fisher E, “The European Union in the Age of Accountability” 2004 (24) Oxford Journal of Legal Studies 495 at 501-503; Posner, n 3, p 524.

\(^{30}\) May, n 2 at 11-12.

\(^{31}\) May, n 2 at 11.

\(^{32}\) May, n 2 at 11-12.

\(^{33}\) May, n 2 at 11-12.

\(^{34}\) May, n 2 at 11-12.
An important distinction between how these two groupings of accountability relationships are applied in the cases relates to their focus on process and/or performance based approaches to governing. Although all three cases emphasise performance based approaches, the EIP case is the only one to include an overlapping "process based" regime. An overview of the basic accountability relationships for each case are summarised in Table 7.1 below.

Broadly speaking, the EIP process based approach is underpinned by a prescription of minimal environmental management processes (e.g. audits and assessments of performance, setting environmental objectives and actions, and monitoring of compliance). Industry is to develop a management system in accordance with these processes, employing their professional expertise in designing the system. Industry is also accountable upwards to the VEPA who are to ensure the contents of the plan is fair and appropriate.

Industry is required to adhere to the management system and periodically evaluate and report on its implementation to the VEPA. Horizontal accountability relationships between industry and independent environmental auditors are also used to evaluate the effectiveness of the management system. Industry is to make necessary changes based on the auditor's report, but the VEPA has ultimate responsibility to ensure industry implement the plan.

As a number of authors have pointed out, the difficulty with focusing on accountability for processes rather than environmental outcomes is that adherence to the process may not always guarantee results. There is a danger that industries will simply go through the motions, set tokenistic goals and pay lip service to the process, ultimately failing to engender any real improvements in environmental performance.

However in contrast to other process based systems such as ISO 14001, the EIP has been expressly designed to combat this weakness by employing a complementary performance based regime that seeks to ensure environmental targets and outcomes are identified and achieved. The difference between this approach and the overlapping process based approach in EIP is its emphasis on outcomes rather than processes.

Along with the EIP, the other two cases also follow a performance based approach. The first "grouping" of accountability here involves setting performance targets. The three cases all

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37 Scott, n 28 at 43.
38 VEPA, Guidelines for the Preparation of Environment Improvement Plans (Publication 739, VEPA, 2002) at 10.
39 VEPA, n 38, p 9-10.
40 Fiorino, n 10, p 415.
41 Gunningham and Sinclair, n 10, p 180.
42 Gunningham and Sinclair, n 10, p 170.

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require collaborations to set measurable targets to achieve minimum performance outcomes. Collaborators are horizontally accountable to each other, and vertically accountable to government agencies with oversight of the targets (the VEPA in EIP and NEIP and the JSC in RNRM) who are to ensure standards are fair and appropriate.

Having developed targets, collaborative groups are then required to adhere to them and monitor, evaluate and report on their progress. This can involve monitoring actual implementation of actions designed to achieve performance standards, as well as monitoring the impact of these actions and whether they are achieving the intended targets and outcomes. Again, collaborators may hold each other to account for their performance, using shaming or peer pressure if compliance is not forthcoming. The collaborative is also accountable to the overarching government agency, which can intervene to address non-compliance.

As discussed in chapter 4, in the EIP program, underperformance can lead to VEPA threatening to amend industry’s licence and/or pursue regulatory sanctions. In NEIP, the program has been designed to utilise an as yet untested contractual mechanism, which involves the NEIP plan being gazetted by the VEPA, making the voluntary actions signed on by the partners binding at law and thus subject to consequences if the plan is breached. Finally, in RNRM, problems in regional body expenditure or achievement of targets is to be addressed by the JSC utilising an administrative “destabilisation right”. This gives the JSC the power to intervene on evidence of underperformance or financial impropriety to conduct an evaluation, critique procedures, skills and capacities of representatives or membership structure of the body. It is then left to the regional body to respond to the critique and improve its performance, subject to ongoing reports to JSC on improvements.

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43 Wondolleck and Yaffee, n 7, p 240; Karkkainen, n 3 at 993-997.
44 Of course there are other “forums” to which actors may be held accountable (e.g. collaborators representing a non-government group may be accountable to the wider group members) however for the purposes of this chapter’s research the two most important forums include collaborators themselves, and government agencies.
45 May, n 2 at 10-11.
46 Gunningham and Sinclair, n 10, p 180.
47 While this mechanism remains untested, the intention appears to be that a failure to fulfill the terms of the plan will constitute a breach of law, ideally giving VEPA something of a “whip hand” to discipline actors and ensure accountability for implementation and performance. Environment Protection Act 1970 (Vic), s 19AI(4) Karkkainen B, “Information-Forcing Regulation and Environmental Governance” in De Burca G and Scott J (eds), Law and New Governance in the EU and the US (Hart, 2006) p 316-317.
48 While there are multiple government agencies and ministerial bodies that have a role in overseeing aspects of the program, the JSC has the most direct accountability relationship to regional body. This relationship exists pursuant to a “partnership agreement” between regional body and government; see Bilateral Agreement between the Commonwealth of Australia and the State of Queensland To Deliver the Natural Heritage Trust, August 2004 (Cth, Qld), ss 69, 71, 94, Attachment J, 8.5 (hereafter Bilateral Agreement NHT); An Agreement between the Commonwealth of Australia and the State of Queensland for the Implementation of the Intergovernmental Agreement on a National Action Plan for Salinity and Water Quality, March 2001 (Cth and Qld), ss 8.1, 14.1 (here after Bilateral Agreement NAP).
49 For a discussion of its operation and relevant section numbers in Bilateral Agreements see the discussion of accountability mechanisms in RNRM in chapter 4. For a general discussion on destabilisation rights see Karkkainen, n 47, p 317-320.

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<table>
<thead>
<tr>
<th>Accountability grouping</th>
<th>EIP – Process and Performance</th>
<th>NEIP Performance</th>
<th>RNRM Performance</th>
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</table>
| Accountability for rules and standards | **Process:**  
  o guidelines set minimum processes to be followed (e.g. audits and assessments; assessment of new and emerging technology etc).  
  o Professional accountability of industry to develop management system in accordance with guidelines.  
  o VEPA determine adequacy of plan. | **Legislated outcome to be achieved:**  
  “improve the quality of the local environment”.  
  **Measurable targets to meet this outcome are to be set** (e.g. improved water or air quality, improvements in levels of biodiversity, reduction in pollution).  
  **Mutual accountability between collaborators to ensure standards are fair and apposite.**  
  **VEPA retain ultimate approval over targets.** | **Guidelines identify eight national outcomes to be achieved** (e.g. ecosystem services and functions are maintained or rehabilitated; the impact of salinity on land and water resources is minimized, avoided or reduced).  
  **Guidelines identify 10 minimum sets of matters (e.g. soil condition, land salinity) for which measurable long and medium term targets for improvements in resource conditions are to be set (X hectares of specific native vegetation type within region at year Y. maintained or regenerated)**  
  **Measurable targets for shorter term management action targets designed to progress towards resource condition targets are to be set against 3 matters (e.g. improved land and water management practices adopted, critical assets identified and protected).**  
  **Resource condition targets are to be informed by nationally agreed indicators of resource conditions and these indicators are to be used to measure the result of management practices.**  
  **Regional body and stakeholders mutually accountable to each other to ensure standards are adequate.**  
  **JSC retain ultimate approval over targets.** |
| **Performance:**  
  o Guidelines identify outcome to be achieved is “improve environmental performance”.  
  o Measurable targets are to be set that include complying and going “beyond-compliance” with licences and regulations.  
  o Targets can be stated as outright change (e.g. Ensure no offensive odours are discharged beyond the boundaries of the premises) or as a percentage (Reduce the volume of sludge wastes by 20 per cent within the next two years).  
  o Mutual accountability between collaborators to check standards are fair and apposite.  
  o VEPA retain ultimate approval over targets. | | |

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Accountability grouping | EIP – Process and Performance | NEIP Performance | RNRM Performance
---|---|---|---
Accountability in the implementation of Provisions | • Process:  
  o Industry to follow processes, and be monitored and evaluated by independent auditors to determine whether plan has been adequately implemented and is operating properly to manage environmental performance.  
  o VEPA and industry ensure new system redesigned appositely. | • Collaborative group is to monitor, evaluate and report on adherence to performance targets and compliance with actions under the plan.  
  • Mutual accountability between collaborators to hold each other to account.  
  • VEPA ensure compliance of group to implementation of actions and adherence to performance targets. | • Regional bodies to conduct and coordinate monitoring, evaluation and reporting to government regarding:  
  o in the short term, progress against management action targets, outputs, and finances.  
  o over the longer term, changes in resource conditions.  
  • Regional body representatives to hold each other to account on performance.  
  • JSC controls investment and ensures regional bodies’ financial probity and performance.

Table 7.1: Overview of Accountability Relationships in the EIP, NEIP and RNRM Cases.\(^51\)

While the features of performance accountability are broadly similar across the cases, the next section takes a closer look at the design of each case to illustrate some subtle (but important) differences that may impact on the effectiveness of performance accountability in each program.\(^52\)

### 7.2.2 Designing accountability for performance

#### 7.2.2.1 Setting performance targets

Fundamental to all three cases’ performance based approach is setting targets which collaborative efforts must adhere to. In an attempt to protect the public interest and ensure the standards set by groups are fair and credible, legislatures “bound” the decision space of collaborative groups and agencies. That is, targets are required to be consistent with relevant

\(^{51}\) May, n 2 at 13.  
\(^{52}\) May, n 2.
environmental quality standards, must be set for specified matters, and must contribute to an overarching outcome(s). The difficulty legislatures face in this process is striking the right balance between specificity and generality. Overgeneralisation of outcomes could effectively allow them to be ignored and invite abuse, such as unprincipled deal making or capture by industry. In contrast, too much specificity may impede creativity, stymie flexible revision of targets and marginalise local context.

For the present cases, it is the risks associated with overgeneralisation that are of most significance. This is particularly so in NEIP and EIP where legislated outcomes are extremely broad. EIPs must “improve environmental performance” and set measurable targets. NEIPs are required to “improve the quality of local neighbourhood environment” and set measurable improvement targets for the issue at hand.

Neither case provides any further detail on outcomes or matters for target, nor do they recommend any indicators to be used in measuring specific issues. In contrast, the RNRM program offers a significantly greater level of specificity than either NEIP or EIP. For example, rather than setting an overarching goal to “improve the quality of the regional environment” the program details 8 national outcomes to be achieved, specifies specific natural resource and management action matters for targets and recommends indicators to guide the setting of measurable targets (see Table 7.1 above and chapter 4).
Whether and to what extent these different degrees of generality in overarching goals are successful in bounding decision making by agencies and collaborative groups to avoid “abuse” is an issue that is returned to below.62

A second barrier the cases may face in setting appropriate performance targets relates to the technical and financial challenges of monitoring environmental conditions to collect sufficient data to actually set targets.63 Some authors suggest that the costs and technical skills needed to gather data on baseline environmental conditions may overwhelm the resources and capacities of groups and even governments, leading to gaps in information needed to measure progress and hold groups accountable for achieving results.64

Seemingly aware of these challenges, the cases have all been designed to utilise different incentives or provide support to overcome cost and technical deficiencies in these monitoring tasks.

The EIP program is the only case which did not provide any direct support for data collection.65 This is understandable66 given monitoring requirements under industries’ regulatory licences ensure extensive existing data records of point source pollution releases.67 There will of course be environmental issues for which existing data may not exist,68 however in these situations the program’s capacity to harness community pressure or VEPA regulatory powers may be effectively utilised to “compel”69 and encourage industry to undertake the costs and burdens of baseline data collection.70

In contrast to EIP program, the NEIP and RNRM programs have been designed to provide collaboratives with more extensive support in the form of available government data on environmental conditions,71 as well as varying degrees of funding (RNRM providing

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62 Karkkainen, n 3 at 979; Dana, n 6; Markell, n 6 at 56-57.
64 Steinzor, n 19 at page 15-16 of “pdf”; Steinzor, n 63; Gaines, n 19 at 16; Ewing, n 19, p 408.
65 VEPA, n 38, p 7.
66 Of course, in most cases industry is only measuring their pollution releases. It would be far more complicated if, for example, industry was expected to measure the changes in environmental conditions brought about by their pollution releases.
67 This is due to “assessment and monitoring” requirements under existing industry licences; VEPA, n 38, p 9.
68 Similarly, some negotiated targets may be more complex, such as managing with biodiversity in wetlands established by industry another example in the case studies concerned the impact of ocean outfall on aquatic ocean environment.
69 This is all the more so in the sub cases involving the most recalcitrant industries which have been compelled under law to complete an EIP as the whole EIP process forming apart of the industry’s licence.
70 See generally discussion in chapter 5. This has been spelled out aptly by Karkkainen, n 3 at 993-997; Karkkainen, n 47, p 310-314. Others emphasise similar although less developed concepts. See Wondolleck and Yaffee, n 7, p 240; Karkkainen; Freeman, n 7 at 666; Lobel at 452.
71 State agencies may often have ongoing statutory responsibilities or partnerships with other stakeholders for monitoring; Cth and Qld, n 61; In NEIP this involves “EPA may be able to offer expertise in areas such as scientific monitoring and assessment, environmental auditing” VEPA, n 50, p 9. In RNRM this involves data such as National Land and Water Resources Audit (see for example http://www.nlwra.gov.au/). Other information support may include State of Environment reporting (see http://www.environment.gov.au/soe/index.html); Bilateral Agreement

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comparatively more than NEIP)\textsuperscript{72} for additional monitoring and data collection. Such support is vital given the significant costs and technical challenges associated with setting performance targets for these complex, multifaceted and dynamic environmental and natural resource issues.

Notably, the RNRM case has also been designed to approve regional plans without all baseline data and targets being set, provided there are commitments to rigorous monitoring over the first few years of RNRM to collect missing data.\textsuperscript{73} The findings below return to examine the extent to which the support mechanisms are sufficient for the cases to set credible performance standards.

\subsection*{7.2.2.2 Monitoring implementation and progress against targets}

Beyond setting targets, achieving effective accountability for performance also depends on collaborative groups conducting ongoing monitoring, evaluation and reporting on their progress against targets and their implementation of projects and outputs.

The design of each case imposes quite different monitoring, evaluation and reporting demands on groups.

The billions of dollars invested in the RNRM program have led policy designers to impose strict monitoring and reporting requirements on collaborative groups.\textsuperscript{74} Regional bodies must develop a monitoring and evaluation strategy to gauge their performance.\textsuperscript{75} They receive funding and in kind government support (eg. agency monitoring of resource conditions) to assist

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\textsuperscript{72} In NEIP this involves "seed" funding, leaving it to collaborators to use their own resource or identify external resources such as government grants to support "data collection and analysis, and technical support and advice" likely to be needed to set baselines for measurable targets; VEPA, n 50 p 9. In RNRM foundational funding is provided for planning and data collection; \textit{Interim Financial Agreement to Deliver the Natural Heritage Trust Extension in Qld 27 June 2003} (Cth/Qld), s 51.

\textsuperscript{73} As the guidelines in RNRM point out, many regions will not be in a position to set natural resource condition targets at the time their regional plans are put forward for accreditation. To address this situation, for accreditation, a regional plan will need to contain, inter alia, a commitment to the early establishment of monitoring systems to collect/analyse baseline and trend information, to enable setting of resource condition targets see also \textit{Bilateral Agreement NHT}, n 48, Attachment E \textit{National Guidelines for the Accreditation of Integrated Catchment/Regional Natural Resource Management Plans}, p 65; Doremus, n 6 at 72.

\textsuperscript{74} These arrangements are established under national frameworks (see for example NRMMC (Natural Resource Management Ministerial Council), \textit{National Framework for Natural Resource Management (NRM) Standards and Targets} (NRMMC, 2002) \texttt{www.nrm.gov.au} viewed 10 March 2008; NRMMC, \textit{National Natural Resource Management Monitoring and Evaluation Framework} (NRMMC, 2002) \texttt{www.nrm.gov.au} viewed 10 March 2008), a draft state monitoring and reporting strategies (Cth and Qld, n 61) and contractual "partnership agreements" between government and regional body. There may also be additional accountability mechanisms and legal responsibilities for incorporated regional bodies, including discharging reporting and financial accountability requirements under relevant corporate law \textit{Corporations Act 2001} (Cth); see \textit{Bilateral Agreement NHT}, n 48, ss 68, 69, 71, 94, 134, 135; \textit{Bilateral Agreement NAP} n 48, ss 7.1, 8.1, 14.1, 30.

\textsuperscript{75} \textit{Bilateral Agreement NHT}, n 48, Attachment E \textit{National Guidelines for the Accreditation of Integrated Catchment/Regional Natural Resource Management Plans}, p 68.

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with monitoring, evaluation and “upwards” reporting to the JSC.\textsuperscript{76} Such reporting occurs on a quarterly,\textsuperscript{77} six-monthly and an annual basis regarding progress against management action milestones, their outputs, the use of government investment\textsuperscript{78} as well as ongoing monitoring of changes in environmental conditions on which to judge progress against targets.\textsuperscript{79} Data is aggregated at state and national levels for ministers and public reports and informs regional,\textsuperscript{80} as well as state and national level evaluation processes.\textsuperscript{81}

As some NEG scholars have queried, these palpably onerous requirements may in fact hamper the intended flexible, community-oriented nature of regional bodies.\textsuperscript{82} Whether this is the case in practice is explored below.

In stark contrast to the prescriptive tasks of RNRM, the NEIP and EIP program imposes very few prescriptions on collaboratives. Rather, both programs expect collaboratives or industry to develop their own processes for monitoring, evaluation\textsuperscript{83} and reporting,\textsuperscript{84} subject to the approval of the VEPA.\textsuperscript{85}

Notably, although neither program offers funding or assistance to collaboratives, the EIP program is intended to harness community or VEPA pressure to persuade or compel industry to bear the ongoing monitoring and reporting costs.\textsuperscript{86} In contrast, the NEIP program expects groups to meet their own costs or find external funding. Whether NEIP groups have sufficient resources themselves to achieve successful monitoring is examined in the findings below.

7.2.2.3 Summary

To sum up this discussion, the programs involve two broad groupings of accountability relationships – accountability for setting standards and targets, and accountability for implementation of rules. The EIP program is the only case to employ a process based approach,
however, all three programs emphasise accountability for performance. As we have seen, significant questions remain about the effectiveness of both approaches, including risks of industry paying "lip service" to management systems; potential capture or unprincipled deal making pursuant to generalised performance outcomes; and the costs and demands of monitoring both baseline data and implementation. These issues are returned to in the findings below. For present purposes, the next section turns to briefly evaluate the legislative design relating to learning.

7.2.3 Learning and Adaptation

As we saw in chapter 4, the cases' learning aspirations vary widely from "passive" adaptive management, reflexive process based approaches and "experimentalist" styles of systemic learning. The design of the cases with respect to each of these approaches is briefly discussed below. A number of questions are also raised regarding when and whether the design is supportive of the learning approach.

The "passive" adaptive management approach employed by all three cases involves collaborative groups developing processes to monitor and evaluate activities and make subsequent adjustments in light of what may be learned. This is to be an ongoing process. It is also to occur formally as a part of required plan review at the end of each plan implementation. However at the time of research only the 15 year old EIP case contains sub cases which have so far carried out such reviews.

For all three cases, adaptive management may utilise local knowledge of collaborators as well as the baseline data and ongoing monitoring and evaluation process central to performance accountability discussed above. As such, adaptive management processes, particularly in NEIP and RNRM may face similar challenges in meeting costly monitoring of baselines data and implementation.

Overlapping with adaptive management approaches of the three programs, are two additional forms of learning.

In the EIP program, a process-based approach to learning is to be employed. Here industry's design of and adherence to a minimum set of processes (eg. identifying impacts and...
risks, setting of objects and targets and measurement techniques to ensure that they are reached) is intended to influence industry attitudes and create a framework for better environmental organisation. For the purposes of learning, these processes ideally will stimulate industry to conduct a systematic search within the organization for environmental impacts that fall outside of current regulation, encourage system self-correction and a commitment to continuous improvement.\textsuperscript{91}

A different form of learning goal is evident in the NEIP and RNRM cases where both cases aspire to “systemic learning”.\textsuperscript{92} In NEIP this involves VEPA and groups sharing information and innovations between collaborations to create more effective and efficient collaborative problem solving.\textsuperscript{93} Despite such a laudable aspiration, however, there appears to be a significant “gap” between this vision and the legislative and policy processes designed to implement it. Indeed, beyond stating the goal of sharing learning,\textsuperscript{94} the guidelines and legislation somewhat surprisingly establish no formal procedures or processes to facilitate or require collaborative groups or VEPA to share learning between neighbourhoods. Whether this “gap” between “vision” and implementation mechanisms is detrimental to the success of systemic learning is examined in the findings below.

Notably, much greater detail is offered in RNRM’s approach to systemic learning, which is focused on assessing the appropriateness, effectiveness and efficiency of the program in the achievement of its objectives, and adapting the program accordingly to improving design or delivery.\textsuperscript{95} This would involve regional bodies conducting ongoing monitoring, evaluation and reporting, as well as higher levels of government following established evaluation management procedures for periodic reviews and evaluations at “key decision points” throughout the life of the program.\textsuperscript{96}

To sum up this brief discussion on learning, the cases different approaches to learning vary in their focus and also in detail of legislative arrangements designed to support them. Questions were raised regarding monitoring processes in adaptive management and whether NEIP can implement a goal of sharing learning without any legislated processes to facilitate action. These and other issues are explored in the following section that turns to examine how the learning and accountability arrangements played out in practice.

\textsuperscript{91} Gunningham and Sinclair, n 10, p 180; Fiorino, n 10, p 415.
\textsuperscript{92} Karkkainen, n 12 at 243.
\textsuperscript{93} Fung and Wright, n 6, p 25; VEPA, n 50, p 4, 6.
\textsuperscript{94} VEPA, n 50. See generally chapter 4.
\textsuperscript{96} Cth and Qld, n 61, s 7.2.2.
7.3 Accountability and learning in practice - findings

This section examines whether, and to what extent, the cases' approach to accountability and learning were effective in practice. This investigation proceeds in three parts, examining EIP, NEIP and RNRM respectively. For each case the discussion is divided into two sections, accountability and learning. Notably, as both the NEIP and RNRM cases are at a much earlier stage in their development than EIP, the findings in these two programs are necessarily more tentative.

In analysing whether effective “new” forms of accountability were achieved, the focus is on whether accountability mechanisms prevented the abuse of authority, ensured that public resources were used appropriately (where relevant), and/or secured reasonable environmental performance expectations. In terms of effective learning, the investigation judges whether relevant actors gathered (and where relevant dispersed) sufficient information, analysed it and then made relevant adjustments to their behaviour.

7.3.1 EIP – Accountability and learning

7.3.1.1 Accountability - achievements and limitations in a process and performance based regime

At the core of accountability in the EIP program is the complementary interaction of “new” accountability mechanisms in both process and performance based approaches. The findings indicated that agency oversight, as well as mutual and professional accountability employed in EIP were effective in addressing some, but not all risks of capture and tokenism. These findings are outlined below, focusing first on accountability for process then performance. While these two approaches overlap, for heuristic purposes they are treated separately below.

Commencing with EIP’s process based approach, accountability arrangements were reported to have been largely effective. While questions are raised below about the adequacy of systems designed by poor performers, most leading and good performers adequately discharged their professional accountability responsibilities to develop reportedly adequate management systems. As one VEPA officer explained, these industries often developed their

97 May, n 2 at 11.
98 Sturm, n 14, p 327.
100 May, n 2.
101 Indeed, respondents suggested poor performers often required close VEPA scrutiny to try and ensure adequate systems were developed. As one VEPA officer explained: “we have quite a strong role helping them develop it”, Interview 181, EPA.
EIP by drawing on their own accredited management systems (eg. ISO 14001), which gave VEPA added “satisfaction...[and] some comfort that the EIP [was] adequate.”

Auditors also monitored subsequent EIP implementation, ensuring either that industries followed adequate processes or that recommendations were made when they weren’t. As one industry explained:

[We get] reviewed by an EPA approved auditor and then take on board his comments, modify the program and once he is happy with it we then forward it onto the EPA and put that into our system.

For all industries, these “checks” on their management system, combined with their own professional judgement in designing them, had ensured subsequent improvement in local impacts. Further, for good and leading firms, the process approach had assisted industry to achieve improvements in environmental performance on broader impacts such as carbon emissions and natural gas usage.

However, when it came to poor performers, professional judgement “went out the window” when designing processes to manage broader environmental issues. Indeed, deliberate subterfuge by industry saw both the VEPA and auditors reportedly struggle to address these management system shortcomings. As one respondent described:

industry were trying very hard to have enough items on the EIP plan to make it look like a really good plan ... they did some very minor things and... sort of passed it off as a plan...sometimes the form overcomes the substance.

Such shams are a common complaint levelled at process-based systems, even accredited ones. However, it is somewhat surprising that such tokenism was able to occur in EIP given that it had expressly been designed to address this weakness through a complementary performance based accountability regime.

Why had some aspects of laggards’ environmental performance sometimes slipped through the performance accountability net? And was the accountability regime able to sufficiently address other defects in performance? The following paragraphs turn to answer these questions.

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102 "We had ISO [and] I think that gave us our framework so the EIP really slotted in there", Interview 151, Industry; “the EIP is generally borne out of the Environmental Management System... The EMS is certified”, Interview 132, EPA.
103 Interview 132 EPA. The respondent further described the VEPA’s role as follows: “Well the EPA actually signs off on the EIP so we have to approve the EIP so that end we’ll review the EIP...we’ve got our guidelines there and we’ll tick off the various items of the EIP to see that it satisfies that”, Interview 132, EPA.
104 “The EIP obviously needs an audit program in there and the audit program is generally signed off by an EPA approved auditor. So that’s another area that provides us with some certainty”, Interview 132, EPA.
105 Interview 131-2, Industry
106 May, n 2 at 22.
107 Interview 15/62, Local resident.
108 See Fiorino, n 10, p 413-416.
At the core of successful performance accountability approach is setting credible targets against which performance is judged. As expected, the costs and technical skills associated with collecting baseline data to set targets posed few problems in EIPs. Ample data was either available under existing licence monitoring requirements, or had been collected via hired consultants or newly installed monitoring devices as a result of pressure on industry from VEPA and local residents.

The accountability arrangements had also been able to avoid industry dominating local performance targets. Certainly some of the respondents warned that local non government interests were vulnerable to capture by industry, however this appeared to be more the exception than the rule. Indeed, even after long term collaborative involvement, individual collaborators had reportedly maintained their independence from industry. As one respondent put it:

we work with them so there's a friendly enough relationship, but they'll turn hostile like that [clicks fingers] if they've got good reason.

This independence ensured non government collaborators were effective in a “mutual accountability” role, and had helped secure appropriate and measurable local environmental targets. Testament to this fact was noted improvements in local environmental conditions across all EIPs. As one local resident summed up:

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109 One industry installed ambient monitoring and load control devices for problematic emissions in their local area; Interview 141, Industry.
110 The exception here was leading performers who had often sought to monitor local environmental problems without pressure from the community.
111 As one respondent explained: “So it was a combination of EPA taking a bit more action...The community being quite noisy and vociferous about it...and the company board rep on these meetings...he could see that the company needed some outside help to understand how to solve the problem, he got a couple of different consultants...these people really had free run of the plant and worked with their engineering people”, Interview 182, Local Resident. As another explained: There had been a definite build up of emotion from local residents regarding noise levels... so we have worked very hard at reducing noise. A noise consultant does surveys...and out of that comes priorities for addressing noise issues”, Interview 111, Industry.
112 “Your local mum and dads, they are probably more interested about industry being maintained in the area...that are actually pro-industry”, Interview 132, EPA.
113 Indeed, respondents across all three cases reported that it was more common for local collaborators and local government to want to improve industry performance rather than protect local “jobs” or economic welfare. Interview 111, Local Resident; Interview 141, Industry; Interview 15/62, Local Resident; Interview 174, Industry.
114 One respondent reflected on a long standing EIP reflected on a original participant “he’s been fighting them for years...and he was a welcome member of the [EIP group]”, Interview 133, Local Resident.
115 Interview 161, Industry.
116 As discussed in chapter 6, to do so they were often assisted by mediators and VEPA officers.
117 For example: “Industry is conscious of noise, they’ve built mounds and, you know, things have improved...and they’ve got some of the smells”, Interview, 15/62, Local Resident; “All the big problems for the community basically have been fixed. The smells, noises things like that have basically been fixed...there hasn’t been much that hasn’t worked.... you wouldn’t know [industry] were here half the time now” Interview 162, Local Resident; “[Odour] really came down”, Interview 184, Industry; Even in sub cases still implementing their first plan, respondents were cautiously optimistic of improved performance on local issues. For example: “I think there’s less noise. I think there

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We go to meetings and whinge and complain... and we got what we wanted as the complaints about noise got ironed out.\textsuperscript{118}

When it came to setting environmental performance targets relating to industry’s impacts on the wider environment,\textsuperscript{119} the findings indicated much more mixed results.

On the one hand, it appeared atypical for good and leading performers to try to “capture” and distort the process.\textsuperscript{120} Indeed even with what is argued below to be a significant shortfall in both mutual accountability and VEPA oversight, respondents reported that the performance targets like those illustrated in Box 7.1 below\textsuperscript{121} had gone significantly beyond compliance for these industries. Based on the findings, this was due to industries’ existing professional judgement and norms, including their commitment to environmental performance,\textsuperscript{122} identified costs/reputation benefits, and as elaborated in learning section below, a drive for continuous improvement fostered by the process based approach to learning.\textsuperscript{123}

In EIP sub cases involving leading and good performers, industries set the following objectives relating to issues not covered by their licence or that went beyond licence standards:

- keeping stack So2 emissions at levels 10% lower than licensed requirements,
- over 5 years reduce gas, electricity and water usage each by 10% with achievement to target reviewed and if targets are exceeded, a further 2% reduction is applied to maintain continuous improvement
- retain secondary effluent treated during storms that occur less than once in 50 years (as opposed to licence requirements of once every 10 to 20 years storms).
- reduce benzene and butadiene emissions by 10% and 25% respectively over three years
- achieve 50% reduction of landfill use by 2003 compared to 1997
- achieve 20% water recycling of its total effluent production
- reduce our greenhouse gas emissions by 35% by 2006

Box 7.1: Example of Objectives that Go Beyond Compliance.

\textsuperscript{118} Interview 112, Local Resident.
\textsuperscript{119} These were typically given more focus in later iterations of plans as local issues were progressively resolved.
\textsuperscript{120} Only one or two respondents suggested performance targets had sometimes erred on the side of industry’s economic interest, with few positive externalities for environment.
\textsuperscript{121} Although there was no available independent, hard data available on which to judge the “appropriateness” of the targets set, the interviews with VEPA, local resident and industry stakeholders suggested many of these targets had gone considerably beyond licence requirements; see also Gunningham and Sinclair, n 10, p 168.
\textsuperscript{122} For leading performers, most of these targets had been rolled into EIP from existing environmental management systems or corporate plans: “we had a lot of projects already...we already knew what we were doing”; Interview 151, Industry. In terms of good performers, most of these industries were reputation conscious and environmental management had long been an important part of their business. As one VEPA respondent described their EIP, “it’s just an outlet for communicating what they have done anyway”; Interview 113, EPA.
\textsuperscript{123} As one VEPA officer pointed out regarding process based approach: “its good for companies...it helps them think about how they can improve by focusing on process rather than outcomes... and once companies start on the path of improvement they realise there are business benefits”; Interview 181, EPA.
Unlike either leading or good performers, poor performers typically lacked commitment to environmental management and, as noted above, had not readily embraced opportunities to improve overall environmental performance under the process based approach.\textsuperscript{124} The result was manifest inadequacies in broader environmental performance targets - setting tokenistic objectives that rarely went much beyond compliance. As one VEPA respondent explained:

> the company gives a long list of EIP items...but it is very weak in terms of environmental improvements, most are just house keeping items.\textsuperscript{125}

Although the VEPA and collaborators had sometimes identified these weaknesses, the findings suggested their capacity to actually take action to resolve such defects was severely limited.\textsuperscript{126} Indeed, nearly all non government collaborators had either a noted indifference to broader environmental issues\textsuperscript{127} or lacked technical knowledge to play an effective mutual accountability role to push industry to set higher targets on these issues.\textsuperscript{128} As one VEPA respondent put it:

> there’s no one really who’s got the strategic big picture... from that point of view I didn’t think anybody in the [collaboration] has really made much of an impact...[industry] stayed very much in control over the process.\textsuperscript{129}

The VEPA also reportedly had “underplayed their accountability hand” and failed to address tokenism by poor performers.\textsuperscript{130} While a few respondents suggested this was attributable to long term dealings between VEPA and industry,\textsuperscript{131} blatant agency “capture” appeared rare. As a number of respondents pointed out, VEPA officers undertook their role with sincere intention to protect the environment and there was almost always a “regulator - industry tension”\textsuperscript{132} in EIP process.\textsuperscript{133}

\textsuperscript{124} As one respondent put it: “environment was not such an important aspect of the business... I don’t think there was the commitment to improve the situation”, Interview 174, Industry.

\textsuperscript{125} Interview 181, EPA.

\textsuperscript{126} May, n 2 at 17.

\textsuperscript{127} As one local resident explained: “It’s just the dirty ones...If they’re not noisy, they don’t stink and they don’t cause a nuisance and don’t have any effect on our lifestyle, they’re not a problem”, Interview 173, Industry.

\textsuperscript{128} See discussion in chapter 6, noting that industry had typically been able to determine majority of targets on broader environmental issues.

\textsuperscript{129} Interview 123, EPA.

\textsuperscript{130} May, n 2 at 17, Doremus, n 6 at 61.

\textsuperscript{131} For example: “For the EPA, their client is the offending industry and they’re the ones that are being looked after. Not the environment, not the people that live in the environment” Interview 173, Local Resident.

\textsuperscript{132} Interview 121, Industry.

\textsuperscript{133} As one respondent pointed out “the regulator wouldn’t be doing its job if it didn’t say those things or require those things...it’s advocated for the environment here”. Interview 121, Industry; As another respondent put it:

> “Our role is to make sure what the company is committed to accords with what the VEPA expects of them” Interview 123, EPA; Doremus, n 6 at 61.
The real difficulty appeared to arise from the overly general performance requirement that had afforded very broad discretion to VEPA officers to assess the matters for target and the extent they should go beyond compliance.

The VEPA did not appear to have the capacity to exercise this discretion effectively. Certainly VEPA officers had tried to ensure that where there were obvious opportunities for improvement, industry implemented them. However officers appeared to lack detailed knowledge of the many technical issues associated with each individual industry operation. This made it difficult to meaningfully direct each industry on relevant target setting. As one representative from a poor performer noted:

Unfortunately you don’t get VEPA people who try to impose, what you tend to get is people who don’t know a lot and are not helpful because they can’t help you because they don’t have a knowledge base and all they do is just refer to the book.

This tendency to refer to “the book” saw officer’s stick to their “traditional role” of enforcing minimum legislative standards and focus less on the issues and magnitude of “beyond” compliance targets. As one respondent lamented:

it would be great if the EPA was saying we want it too look like this or have you considered this...but I think that the EPA trusts the licence process supports what the regional priorities are.

Indeed, as a range of respondents confirmed, VEPA representatives typically took a “backseat”, “caretaker”, and “passive,” role when it came to setting beyond compliance targets on broader environmental issues. While one could argue that this “hands off” approach was in fact a conscious effort to ensure sufficient flexibility, innovation and learning, the unfortunate result appeared to be a subtle form of “capture” where poor performers were

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134 Interview 142, Industry.
135 One VEPA officer was responsible for approximately 10 different industries, ranging from a car manufacture, a rendering plant to a plastics manufacturer; Doremus, n 6 at 82.
136 As one VEPA officer explained, they tended to act as a check on the process, and play less of a role in holding the groups accountable for substantive targets: “[I] sit there and watch and let the parties sort it out between them, and throw in a comment from our perspective now and then, but its more “let them go to it”, Interview 113, EPA.
137 Interview 184, Industry.
138 Interview 141, Industry.
139 Interview 181, EPA.
140 Interview 113, EPA.
141 Interview 131, Industry.
142 As one industry respondent explained: I mean, when it’s come to approval they’ve had a couple of minor suggestions about the looks of graphs and a few words here and there but they’re not really there driving it”, Interview 142, Industry.

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essentially free to manipulate beyond compliance targets. This fact was confirmed by strong opinions from both local residents and industries that VEPA should and could have done more:

with the EPA, they could be proactive in formulating EIP’s. What it’s left to mainly is the company and the residents.143

Putting to one side these difficulties, the findings indicated the program’s “new” forms of accountability were far more successful in ensuring all industries achieved targets and were held accountable for non compliance.144

Vital to this success was the fact that all industries had reportedly carried out effective monitoring and reporting processes in a “very open”145 manner and provided “quite detailed” information146 on their performance against targets.147 While these responsibilities added costs to industry,148 they had been able to reduce these burdens by drawing on pre-existing monitoring and reporting processes.149

According to respondents, industry had credibly and willingly discharged its monitoring responsibilities because the validity of its data was potentially subject to scrutiny by the VEPA and/or local collaborators.150 If industry could not show whether and for what reasons targets were or were not being achieved, subsequent pressure would be forthcoming.

Indeed, both VEPA and non government collaborators were reportedly effective in holding industry to account in the event of non compliance.151 As one industry respondent reflected, in the event of default, local collaborators could bring significant pressure to bear on industry:

143 Interview 162, Local Resident.
144 May, n 2 at 12.
145 Interview 133, Resident.
146 As one respondent described the process: “We have a [EIP meeting] every two months which focuses on the EIP, in the meantime we update the progress to each of those items that was in the EIP, each of the projects listed in the EIP to update where we are at and present those to the meeting, usually it would take 15 minutes out of the meeting, to track progress a couple of questions, we only look at the changes that have moved between, we highlight those in red, this is what has changed from one to the other”, Interview 151, Industry.
147 Interview 132 EPA; Interview 133, Local resident; Wondolleck and Yaffee, n 7, p 241.
148 “They put a fair bit of resources into holding these meetings, into having the staff to collate all the information, to look at the EMS and pull out the relevant bits that need to be investigated or viewed further in terms of trying to get the action items up and I think it’s a pretty amazing process actually”, Interview 132, EPA.
149 This was evident in different planning periods (eg. 1, 2 or 3 year length plans) and monitoring and evaluation cycles across sub cases. These were reportedly adapted to suit individual environmental monitoring and management systems, business reporting cycles, and corporate monitoring and reporting. For example one industry commented how their earlier EIPs had been based on 3 year plans, but with change in business profitability they had come back to focus on 1 year EIP plans: “we actually bought them back to only going to put what we can do the next year as part of the business planning cycle. I guess that’s come around from the business underlying factor that we’ve had for a few years of financial survival, where we’ve got to get the business refinanced”, Interview 161, Industry.
150 “The company’s open, from my point of view it’s transparent because we get on the ground there a bit and have a look around and see what’s going on and see that it does translate down onto the ground what’s [reported] on paper”, Interview 132, EPA.
151 Bovens, n 1 at 450. Karkkainen, n 47, p 317.
the consequences of not achieving that target...you know you are audited very very heavily by the community...so there is an accountability.\textsuperscript{152}

VEPA supervision was also vital to ensuring overall compliance with targets, particularly in cases involving poor performers, where community pressure per se had less of an impact on these typically less reputation conscious companies. In these sub cases, ensuring even basic compliance with minimal targets required the VEPA to "keep a close eye" on industry,\textsuperscript{153} threatening or carrying out licence changes or other enforcement. As one VEPA respondent illustrated regarding a poor performer:

They were in denial...They've committed $5million plus [over two EIPs]...and it hasn't worked...The community meanwhile is trying to be patient...so we've actually changed the licence, amended the licence and had severe discussions with them.\textsuperscript{154}

To sum up the discussion of accountability in EIPs, the above investigation revealed some considerable success, but also some key limitations of NEG's "new" forms and mechanisms of accountability. Industry's professional judgement often accorded with established norms of environmental management such as ISO 14001, and auditors and VEPA oversight were largely successful in ensuring accountability for processes. A combination of mutual accountability and VEPA oversight ensured industry set adequate targets on local issues and were held accountable for overall performance. Real or implied community and VEPA pressure had also been vital to industry successfully meeting the costs and technical challenges of gathering baseline data and carrying out ongoing monitoring.

However, this success was limited by significant shortfalls in accountability mechanisms, which gave rise to a subtle form of capture by poor performers on broader environmental issues. The findings suggested this was attributable in part to highly general legislated goals and extensive VEPA discretion, as well as shortfalls in professional accountability\textsuperscript{155} and oversight of process based approach by the VEPA (even with advice from auditors). Mutual accountability was also ineffective in ensuring adequate performance targets were set due to a mismatch between environmental issue and the knowledge and interests of non government participants.

Having examined EIP accountability regime, the next section turns to consider interrelated issue of learning.

\textsuperscript{152} Interview 141, Industry.
\textsuperscript{153} Interview 181, EPA.
\textsuperscript{154} Interview 121, EPA.
\textsuperscript{155} May, n 2 at 21.
7.3.1.2 Learning – success and limitations of process based learning and adaptive management

The EIP case was designed to employ two forms of learning - a processed based approach and a “passive” style of adaptive management. The findings indicated that process based approach and adaptive management can successfully provide a useful approach to learning, however as we will see below, both appear to have some limitations. While the two approaches overlap, for heuristic purposes they are treated sequentially and separately below.

When it came to good performers, the findings indicated that a process based approach had provided a structure that had improved industries’ capacity to detect and develop solutions to environmental problems in a more strategic and reflexive manner. Indeed, respondents suggested the EIP processes had allowed industry to become more sensitised to its environmental impact, and to the risks to its social and regulatory licences. This in turn impressed upon it the “business case” for continual learning about their impacts and subsequent environmental improvement. As one respondent put it:

it helps [industry] think about how they can improve by focusing on process rather than outcomes…and once companies start on the path of improvement they realise there are business benefits…from an environmental perspective but also from a financial perspective.

In addition, their long term participation in the EIP process, with the requisite search for environmental aspects, target setting, planning, priority-setting and risk analysis that it entailed, had reportedly served to improve their self regulatory capacities. This enabled them to better learn about the effectiveness of their environmental management systems and refine and adapt internal approaches. According to one industry representative:

internally within the industry [EIPs] just make you think so laterally and so broad about the way your business needs to be performing in the future from a social and environmental point of view … I am thinking about things that are going to bite us in 6 or 7 years times if we don’t start acting on them now.

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156 This finding corresponds to Gunningham and Sinclair, n 10, p 177.
157 This finding corresponds to Gunningham and Sinclair, n 10, p 177.
158 Interview 181, EPA.
159 Holley and Gunningham, n 10.
160 Holley and Gunningham, n 10.
161 Holley and Gunningham, n 10.
162 Interview 141, Industry.

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Notably, these EIP achievements appeared to be far more limited in sub cases involving leader performers. This was, however, not because of some inherent failure in process based learning, but because these industries were already following existing "reflexive" environmental management systems, and had "slotted" their EIP into them.\(^{163}\)

More significantly, the process based approach to learning was reportedly ineffective when it came to poor performers. Certainly, some of these industries recognised the benefits of the management system.\(^{164}\) However their general lack of commitment to environmental improvement reportedly translated into a strong reluctance to embrace a goal of learning and continuous environmental improvement. As one poor performer put it: "environment was not such an important aspect of the business... I don't think there was the commitment to improve the situation".\(^{165}\)

To some extent, industry’s commitment to process based framework and environmental improvement appeared to have been influenced through external VEPA or community pressure. As we saw above in the accountability section, such pressure had motivated all industries to follow processes to identify local environmental impacts, develop credible performance targets and implement new management response to these local impacts.

However when it came to looking at broader environmental impacts, the absence of any meaningful pressure from VEPA or local residents on broader environmental issues meant these already reluctant industries simply went through the motions to meet the process requirements - basically remaining unchanged by the experience.\(^{166}\)

In short, consistent with findings in other contexts,\(^{167}\) process based regulation appears a valuable tool for learning only when it is placed in the "right hands",\(^{168}\) or there is sufficient pressure or incentive\(^{169}\) to ensure commitment to its precepts.\(^{170}\)

\(^{163}\) However leading performers did recognise the process based approach had made positive albeit limited contributions, such as integrating their management systems to better achieve environmental outcomes. As they explained: "so [in the second and third EIP] we didn’t have two programs running side by side with overlaps between the two... it meant we could actually capture, monitor and report more combined in our operation rather than having two different systems"; Interview 131, Industry.

\(^{164}\) For example: "The EIP process puts things on the agenda ... it requires you to identify objectives and targets and so forth so the EIP is good for making sure that improvement initiatives are identified and remain on the radar so it gives you a structure in which to improve your environmental performance" Interview 174, Industry.

\(^{165}\) Interview 174, Industry; "Look I think the site had a lot of management problems, there was management issues to back here that didn’t help and then there was a whole lot of things, there was the markets, the management issues, yeah", Interview 184, Industry.

\(^{166}\) Gunningham and Sinclair, n 10, p 166.

\(^{167}\) See generally discussions in Fiorino, n 10, p 415-416.

\(^{168}\) Holley and Gunningham, n 10.


\(^{170}\) Holley and Gunningham, n 10.

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Turning to the overlapping approach of adaptive management, although doubts are raised in chapter 8 about the ability of EIP program to sustain effective adaptive management over the longer term, for the most part collaboratives appeared to have been relatively successful in adapting plans in response to information.

Informal monitoring by local residents reportedly assisted industry to re-evaluate the actions taken to reduce local impacts. In addition to using local knowledge of residents, the collaborative group also drew on industry’s monitoring data to collectively evaluate the success of strategies, and develop new plans of action where they were failing. This included a detailed review at the completion of each plan where groups “looked at the bigger picture” to determine whether the EIP is achieving what the group wanted it to achieve and subsequently redrafting a new plan. In between such formal evaluations the groups also conducted a variety of successful collaborative evaluations and adaptations. Some illustrations of adaptive management in practice are detailed in Box 7.2 below.

Despite this success, there was little evidence of collaborative group engaging in “adaptive management” processes beyond local issues. This is arguably unsurprising given that the groups were predominantly comprised of local stakeholders who tended to lack the capacity or willingness to engage with broader issues.

Illustration 1
Two years ago we were having a number of incidents...So our environmental impact had hardly changed, but we were having a string of these little things and they just got on the radar and the EIP group just said “we’re concerned with the number of these things and as it goes, the more incidents you have sooner or later you have a big one, so ideally you want to have none”. So they raised this with us, we’re really concerned and we want to know what’s going to be done. So out of that we volunteered to do a full review of all the incidents we’d had on this site, going back over a number of years and out of that came - we identified some specific trends and it looks like we’re having more of this particular type of thing, so it helped us to identify where we needed to focus... two or three of the group were involved and sat in on all the discussions and part of the feedback to the whole group and everything...there were a number of improvement opportunities which were identified and implemented as a result of that, ...there was about 14 items on that list. Some were soft culture stuff and some were real field items, but there were a number of new items that were identified and that actually added some re-emphasis to some existing ones and they’ve been implemented and they’ve resulted in less impact and less incidents. So it’s a real example of them raising their concern, getting involved in a process that leads to some outcomes which then reduced the impact - it closes the loop –

Illustration 2
One respondent described the ongoing learning process of one industry which had significant impacts of odour on the local area: “Industry invested heavily in concrete batts, plastic conduits out of odour sources into these biofilters and found that they can’t get the bits to join properly so odour vapours leaking out and now putting stainless steel pipes in...they had tried to solve some of the problem and they invested in what they called an RTO, which was “something or other Thermal Oxidise”. It was a gas fired thing and it

171 “The factory will say ...we fixed up this fan or replaced the conveyor belt that was squeaking....and then they get our complaints on it ...and then they say righto, well we’ll try to fix that and so at our next meeting they say yeah we fixed that.”; Interview 173, Local Community.

172 Interview 151, Industry.

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was going to solve the problem – collect as many odours gases as they could and wack it into this thing. And they described that to us. Do you think this will ever work?... Turned out after a year or two of trying that the gas burners were clogged up by the fat so the damn thing never worked... They had consultants and thing to try and make it work and it took a long time to work out that this wasn’t going to be the solution....And after a couple of years of trying with this thing they found it didn’t work. ... the EPA’s solution when they got me involved in it was what we need to do is put a big shed around all this, suck up the air and burn it or treat it and that was what they were trying to do so they agreed that they would try and enclose much of their operations – which they did spend a bit of money on it too – but there is a lot of hydrogen sulphide in there apparently, gets up the top with a bit of moisture and causes corrosion so just recently they have had to replace the roof of this relatively new thing....So they are now doing that so they are learning a lot through the process.”

Box 7.2: Illustrations of group review and adaptation in the EIP case.173

In summary, the EIP program appeared to have achieved some success in fostering effective learning. Industry and local residents monitoring had informed an effective adaptive management process for local impacts of industry. Process-based strategies had also successfully provided a framework for many enterprises to identify and think through new solutions to environmental problems, stimulating reflective management, and continual processes of adaptation and environmental improvement.

However, it was far less clear that process-based approach was effective in circumstances where industry have little commitment to achieving environmental improvement – as with poor performers. While external pressure appeared to help foster such commitment for local issues, weaknesses in collaborator and VEPA oversight meant laggards lacked the incentive to further engage. Adaptive management also appeared limited to local issues because collaborators’ lacked knowledge and interest in the broader environmental impacts of industry.

7.3.2 NEIP - accountability and learning

7.3.2.1 Imprecise targets and inept monitoring – the failings of new forms of accountability

Despite some limitations, the “new” accountability mechanisms in EIP were able to achieve a considerable degree of success in securing effective performance. In contrast, the experience of the NEIP evidenced imprecise target setting and inept monitoring that appeared likely to undermine effective accountability for performance.

As we will see, these weaknesses did not appear to arise from malevolence per se, but were attributable to a shortfall in VEPA oversight and insufficient support and resources for monitoring and data collection. The discussion below flushes out these flaws by first

173 Interview 161, Industry.
174 See Parker, n 169, p 275-288.
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considering accountability for setting targets, before turning to consider accountability for implementation. Notably, much of the analysis draws on NEIP 1 and 2, as at the time of research they were the only sub cases to have progressed substantially into implementation.

The primary task in any performance based regime is setting performance targets. Like the EIP program, the NEIP face risks of empowered economic or other interests capturing agendas. However this was less of a problem in NEIP than EIP because most NEIP collaboratives did not have specific “industry” interests actively engaged in decision-making processes. Furthermore, respondents suggested that the participation of multiple government agencies with responsibilities for the environment, including the VEPA, had ensured that targets set by the group respected “broader regional wide context” and accounted for wider environment priorities, planning schemes and other existing laws.

Despite avoiding any evident distortion by industry interests, the performance targets set by collaboratives and approved by the VEPA were extremely vague. As illustrated in Box 7.3 below, many targets aimed to achieve an “improvement” in a stated environmental quality variable, but few provide any direct quantifiable measures regarding the level of improvement to be realised.

A sympathetic reading of these targets would suggest the collaboratives were striving to achieve as much “improvement” in the given environmental conditions as humanly possible. However, a more critical stance may raise questions about the possibility of “unprincipled deal making” among collaborators to try and avoided any significant improvements. Certainly groups could achieve the most minimal of improvements to environmental quality and still formally claim to have met their respective targets.

Only time will tell if the reality lies at the optimistic or pessimistic extreme, or somewhere in-between. Regardless, the significant scope for negligible environmental improvements is arguably a worrying possibility, at least in terms of ensuring accountability for reasonable levels of environmental performance.

175 Perhaps the greatest risk was in NEIP 3 were a number of farmers were represented on committee. However here, as one respondent illustrated, risks of capture had been averted by mutual accountability between partners: “some things that started becoming very apparent as far as E. coli levels were concerned. People started pointing fingers and it perhaps created a little angst amongst one or two rural landholders...and blow me down...they asked VEPA “How can we do things better?”” Interview 231, CMA. For further on industry involvement in NEIP see chapter 5.

176 Dana, n 6 at 54; Thomas, n 15, p 163.

177 While there are many different social and environmental targets, for the purposes of this chapter the focus is placed on arguably the most significant and ultimate measure of performance, targets relating to environmental performance.

According to respondents, the reason such nebulous targets were set included a lack of relevant data to inform measurable targets (discussed further below) and a break down in VEPA’s accountability responsibilities.

Akin to the findings in the EIP program, the sweeping legislative statements regarding expected outcomes in the NEIP program had left significant discretion to VEPA officers on the nature and magnitude of performance targets. While this is not inherently a problem per se, the findings suggested the VEPA lacked internal direction or technical capacity to exercise their discretion effectively and identify what targets should contain, and the extent of improvement that should be expected.\textsuperscript{181} As one VEPA officer reported:

> there weren’t really detailed guidelines of what you needed to include. ...[so] you want to improve water quality, but how are we going to measure that? That in itself posed certain problems.\textsuperscript{182}

**Box 7.3: NEIP Vision, Targets and Objectives.**

\textsuperscript{181} In part, this was a reflection that NEIP 1 and 2 were pilot cases and VEPA was still learning about the NEIP. However similar problems have persisted in later EIPs, such as NEIP 3 where targets (although showing slightly greater specificity) still evidenced a high level of generality, without directly quantifiable improvements.

\textsuperscript{182} Interview 211, EPA.

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An overlapping cause of imprecision in performance targets was manifest gaps in baseline data. Certainly, the VEPA and other well resourced agency collaborators had tried to assist collaborative groups by providing very limited available monitoring data and/or facilitating modest short term grants to support additional monitoring. This ranged from $40 000 to complete baseline water quality monitoring (NEIP 1), funding for a water monitoring kit and training for local non government volunteers (NEIP 3) and funding and in kind support for “VEPA ecofootprint calculators” to measure towns’ ecofootprint (NEIP 2).\(^{183}\)

However, respondents reported that this support and funding was insufficient. For example, the eco-footprint calculators in NEIP 2 were reportedly underfunded and contained underdeveloped “metrics”\(^{184}\) that led the group to shelve the tool and fall back on extremely imprecise estimates of the town’s ecofootprint.\(^{185}\) Similarly a lack of technical skills of volunteer monitors\(^{186}\) and inadequate funding in NEIP’s 1 and 3 lead to scientifically questionable measurements and significant gaps in water quality data collected. As one NEIP 1 respondent put it:

> we were doing some base line monitoring [but] there was a bit of a stuff-up on that ...we need[ed] some more sophisticated systems... the issue was the cost of collecting that data and how we're going to do that.\(^{187}\)

As will be apparent, without the existence of credible or complete baseline data, it is virtually impossible to realistically achieve accountability for performance and judge whether progress toward even vague targets is being made.\(^{188}\)

Surprisingly, even some years after having their NEIP approved, collaborators had neither taken steps to try and improve baseline data, nor set up or conducted any monitoring of environmental indicators to try and judge whether progress was being made against what limited baseline data had been generated.

Certainly all three sub cases had developed monitoring frameworks (see Box 7.4 below). However these processes appeared to fall short at the implementation stage due to a lack of

\(^{183}\) Notably no attempt was made to measure “natural ecological values” in NEIP 2.


\(^{185}\) “We were using the EPA’s eco foot print calculator. And again it was another example of one of X’s awesome ideas that just weren’t resourced properly, so the foot print calculator that we were waiting for just took forever to arrive. So we kept saying to people we’ve got this rough model that we can calculate the foot print and what we’d like to do is we’d like to look at your behaviour and see how that influences your foot print and then we’ll say if you change your behaviour it’ll reduce your foot print. And we were waiting for this model from the EPA to arrive [but it didn’t]” Interview 224, EPA.

\(^{186}\) “[We] never wanted to put too much emphasis on the use of that data to say too much... so there’s a hell of a lot of variables and we’re only doing it as a [volunteer] level”, Interview 234, Local government.

\(^{187}\) Interview 215, Local government.

\(^{188}\) Doremus, n 6 at 62.

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funding and technical capacity - a damning finding for a program premised on accountability for performance.\textsuperscript{189} As one respondent explained:

I don’t think that we’ve come up yet with a system that we think is sustainable in terms of the cost of getting that data with the access and measurability and us being able to interpret and use it... I would accept that as a bit of a criticism.\textsuperscript{190}

- NEIP 1 for example required, annual reporting to the VEPA and a meeting every three months between collaborators. This meeting was to involve a formal “progress review” that consisted of “an evaluation of compliance and an evaluation of effectiveness”. Compliance would relate to how well partners have achieved what was stated in the Neighbourhood EIP, within the timeframes set in the Plan, and in cases where actions have not been completed, establish why this is the case and decide on what action should be taken to make sure that the action(s) do happen to ensure accountability. Effectiveness meanwhile was to “assess whether the approaches taken to achieve the aims and visions were the most appropriate and effective ones or whether other alternative approaches are preferable”. This effectiveness assessment was to be informed by an ongoing water quality monitoring program to reflect trends in water quality. This progress review was to inform a “partial review” where results and recommendations were to be made on updating the plan and then incorporated into the NEIP to improve its capacity to achieve the outcomes the partners seek.\textsuperscript{191}

- NEIP 2 developed a Monitoring, Evaluation and Learning (MEL) framework to direct "the collection of evidence about program activities participation, intermediate and final outcomes". This framework was to be implemented at the completion of each project “to assess the effectiveness of the NEIP” and track changes in longer term sustainability. At a yearly evaluation this evidence is to be reflected upon, to inform a planning session for the following year to bring about “continuous improvement” and adaptation. Reporting to VEPA was to be through meetings and/or periodic reports.\textsuperscript{192}

- NEIP 3 required project partners to report to a steering collaborative group every 6 months on the progress of actions so that “the progress of the NEIP can be tracked in all its stages and emerging problems can be detected early”. Monthly data on water quality was also to be collected by a volunteer group. This would be supported by annual review of project milestones and targets with subsequent adjustments if necessary. Reporting to VEPA occurred through a VEPA officer using internal agency reporting procedures.\textsuperscript{193}

Box 7.4: Monitoring and Evaluation Approaches of NEIP Sub Cases.

\textsuperscript{189} Even in NEIP 3 where community monitoring of water quality had continued, there were ominous signs of volunteer burnout with monitors dropping from 10 people to 2 people during the research period. This led one respondent to speculate that the monitoring group “may well fold”, Interview 234, Local government.
\textsuperscript{190} Interview 215, Local Government.
\textsuperscript{191} Maribyrnong City Council and Stony Creek NEIP Partners, Stony Creek Neighbourhood Environment Improvement Plan (Maribyrnong City Council, 2004) p 77-78; Interview 215, Local government.
\textsuperscript{192} Surf Coast Shire Council and Anglesea NEIP Partners, Anglesea Neighbourhood Environment Improvement Plan (Surf Coast Shire Council, 2004) p 35-36; Interview 225, EPA.
\textsuperscript{193} Towong Shire Council and Partners of Little Snowy Creek NEIP, Little Snowy Creek Neighbourhood Environment Improvement Plan (Towong Shire Council, 2006) p 42; As VEPA respondent explained in NEIP 3: “it will get written into my performance assessment to say how is the Eskdale NEIP going? Progress needs to be made on the Eskdale NEIP will be in my performance plans so that’s more or less how it’ll happen”; Interview 237, EPA.
Until more effective monitoring mechanisms are developed, outputs remained the primary “indicator” of performance in NEIP.\textsuperscript{194} However even monitoring outputs and implementation appeared to face significant difficulties in NEIP.\textsuperscript{195}

While key collaborators such as NEIP “sponsors” provided in kind administrative support and had obtained a few short term grants,\textsuperscript{196} in general the groups relied on their own resources to monitor implementation.\textsuperscript{197}

However on all accounts, respondents suggested these resources were insufficient to implement formal monitoring and reporting on implementation. Indeed, collaborators’ “monitoring” and reporting of compliance was generally verbal and informal\textsuperscript{198} or conducted “behind the scenes”.\textsuperscript{199} As one NEIP 1 respondent pointed out:


there’s a kind of a policing/monitoring role that is important, that’s part of the nature of the NEIP, but that slipped without funding.\textsuperscript{200}

Unsurprisingly, with little formal monitoring, holding collaborators and the collaborative group accountable for implementation and outputs was difficult at best.\textsuperscript{201}

The result was that many (but not all) collaborators in NEIP 1 failed to deliver actions and outputs “on time”.\textsuperscript{202} Similarly in NEIP 2, accountabilities for implementing the plan had reportedly “got a bit lost”,\textsuperscript{203} and the collaborators themselves were beginning to drift away from some of the formal actions and objectives of the plan.\textsuperscript{204}

\textsuperscript{194} Interview 237, EPA; Markell, n 6 at 62.
\textsuperscript{195} The analysis that follows draws primarily on NEIP 1 and 2 as at the time of research they had progressed sufficiently into implementation. In contrast, NEIP 3 had only just begun implementation when the research was being conducted.
\textsuperscript{196} When grants had been obtained by a specific collaborative partner (usually an agency), the partner themselves took on formal monitoring and reporting duties to the funding body and on all accounts had discharged these responsibilities adequately. However such monitoring and evaluation did not appear to flow back to the group; Interview 218, Local government.
\textsuperscript{197} “Seed” funding that had originally supported NEIP operations “dried up” upon approval of the plan.
\textsuperscript{198} “There’s a requirement for a review process in there and we are meeting on a 2 monthly basis but the level of reporting back by the various partners whether they be agencies or community groups is very much verbal at the meeting and I think it needs to be more robust”, Interview 214, Government Agency.
\textsuperscript{199} As one respondent pointed out in NEIP 2, “evaluating doesn’t really occur” (Interview 227, Local resident). The unfunded coordinator reportedly was continuing to collate information on group participation rates and activities, however they rarely attended meetings; Interview 228, Local government.
\textsuperscript{200} Interview 215, Local Government.
\textsuperscript{201} Reporting to VEPA also naturally suffered. In NEIP 1, for example, the group missed an entire year of reporting “because [they] didn’t have the resources” (Interview 215, Local government). In NEIP 2 respondents suggested reporting had also “peeled off” (Interview 228, Local government); Bovens, n 1 at 450. Karkkainen n 47, p 317.
\textsuperscript{202} Of course some partners may have had valid reasons for non compliance, however respondents suggested that mostly partners had simply let time lines slip: “The initial plan had a lot of outcomes, a lot of date lines of targets to be met. That fell by the wayside a bit. Some of the targets were pretty far in the future, but a lot were supposed to be done in the first couple of years after NEIP and they weren’t really actually done”; Interview 218, Environmental Interest Group.
\textsuperscript{203} Interview 228, Local Government.
\textsuperscript{204} If such changes were occurring in accordance with an “adaptive management” approach they may be entirely justifiable. However as explained in more detail below adaptive management appeared to be rare - rather the group

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they're supposed to be implementing their plan now but it's like they haven't even looked at the plan.\textsuperscript{205}

It is important to be clear that there was no evidence of deliberate collusion to hide this underperformance - many in fact expressed a desire for a better monitoring and reporting system.\textsuperscript{206} For collaborators, their inability to address these defects appeared attributable to the fact that the verbal and informal process of monitoring each other's behaviour was insufficient to "catch out" collaborators who were skilled at "hiding" behind their words.

One may however rightly wonder why the VEPA had not tried to take a more active role in encouraging partners to remain accountable to their commitments. In part, the VEPA officers appeared to want to avoid too much control over the group in the first few years of implementation of the 5 year and 3 year plan of NEIP 1 and 2 respectively. Furthermore, the VEPA may well have held back from trying to persuade parties to keep to the commitments because they were aware the NEIP had been designed so that specific parties could ultimately be held accountable for performing their actions at the end of the plan under the contractual NEIP mechanism.\textsuperscript{207}

Notably, recent short term grants to NEIP 1 and 2 appeared likely to turn around abysmal monitoring of implementation and reduce the likelihood that such enforcement would be needed. While NEIP 2 had only just received the grant at time of research, NEIP 1 had applied their grant earlier to hire a coordinator, who had in turn implemented a new monitoring protocol, developed and distributed a formal register of actions and produced a report for the VEPA. This appeared to provide partners\textsuperscript{208} with information they needed to shame and exert pressure on under performers. As one respondent described:

Things are starting to happen now....the coordinator has spent the last six months now just chasing up what previously hadn't been done and what each partner was supposed to do. ...they have re-initiated that process.\textsuperscript{209}

\textsuperscript{205} Interview 241, EPA.

\textsuperscript{206} Interview 214, Government Agency. Further, many partners had actually continued to implement actions, particularly government agencies.

\textsuperscript{207} "I guess the power that the NEIP does have is it's a statutory EPA document so I guess we see as being a responsible authority that we need to be seen to be keeping our end of the bargain ... So there's a degree of statutory obligation to ensure that we do it"; Interview 214, State Government.

\textsuperscript{208} "So that was one of the first things the coordinator did. Was just to update that and report back to VEPA"; Interview 215, Local Government.

\textsuperscript{209} Interview 218, Environmental Group.

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To summarise the above discussion, while it is still in the early stages of the NEIP program,\footnote{While the signs from funding are positive, only time will tell whether this funding will be sufficient to ensure the partners complete their actions under the current plan. Indeed, as the grant itself is short term, the groups’ capacity to ensure long term accountability appears questionable in light of the findings in this chapter.} the findings suggest it has laid quite ineffective and unstable foundations for ensuring the program will be able to hold collaborations accountable for performance in the future.

Although risks of capture evident in the EIP program were avoided, the NEIP faced a raft of other challenges that were attributable to two broad weaknesses. Akin to the EIP program, the first weakness arose from broad performance requirements, and the fact that the VEPA lacked the guidance or knowledge to meaningfully exercise their associated discretion to ensure appropriate targets. Second, in contrast to the EIP program, the findings revealed that complex second generation problems posed significant and costly monitoring demands. As we saw, these demands were not sufficiently met in the NEIP program, with resulting weaknesses in baseline data collection, and monitoring of environmental indicators and implementation. Without this data and monitoring, it was commonly difficult for collaborators to fulfill mutual accountability roles or for agencies to ensure even basic accountability for implementation, let alone hold groups accountable for environmental results.

7.3.2.2 Learning – failure to implement adaptive management and systematic learning

Learning in the NEIP program takes two forms, namely a passive form of adaptive management and an overlapping form of “systemic learning” that aspires to spread learning and information between different NEIP collaborations. While it is still early days, the findings suggest that neither learning approach had been successful, nor was it likely to be successful in the future without significant changes to the NEIP program.

Regarding adaptive management, there had been at best, very modest attempts at learning that had relied on partners’ perceptions of what had or had not been working,\footnote{For example: “they looked at sort of what they learnt as a group and what they’d have done differently, all those sorts of things...[but] they didn’t do evaluation and assessment formally and monitoring” Interview 225, EPA.} whether improvements to local environment were occurring and whether behaviour should be adapted in response.\footnote{Karkkainen, n 3 at 952-953.} As one respondent illustrated:
issues that come up as part of the meetings...we’ve noticed that there’s a problem here; how about you go check it out or what other things can we do.^[213]

However, as the above discussion revealed, a lack of funding produced ineffective monitoring processes, particularly regarding baseline environmental conditions and ongoing progress against targets. This effectively prevents the generation of detailed and meaningful data on which to base robust attempts to learn and adapt behaviour.^[214]

A further constraint on adaptive capacities of groups related to the nature of external funding obtained by the group to fund projects. Here, respondents suggested that the monitoring requirements for the short term government grants were typically focused on the requirements of the funding body, and provided little opportunity for the groups themselves to monitor, test by results, and learn adaptively from their experience. As one respondent explained:

> there isn’t a single funding opportunity at the moment where they go, ‘Here is $20K to roll out a project and here is $5K more to do monitoring and evaluation for it after you finish’... there’s no monitoring and evaluation cycle.^[215]

Turning to systemic learning, there was no evidence that even the most basic learnings and experiences of collaboratives had been diffused among NEIP groups. Certainly, early NEIPs had been encouraged by VEPA to adopt “sharing learning” as a primarily objective. A common statement of this goal was as follows:

> [the NEIP] is to use what has been learnt from the process to develop the potential for other Neighbourhood EIPs to assist in the management of other urban waterway corridors.^[216]

However, respondents reported that VEPA officers had not provided any direct guidance or support to the group to assist them in meeting such goals. As the following comments from one respondent explained, the result was predictable:^[217]

> there’s never been any sort of communication between groups or between any of us with other groups...I don’t think the EPA actually knew how to

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^[213] Interview 213; Local government.
^[215] Interview 222, Local government.
^[216] Maribyrnong City Council and Stony Creek NEIP Partners, n 191, p 25; In NEIP 2 the plan notes: “The knowledge, skills, strategies and tools that are applied and developed as a part of this project need to be captured and shared for the benefit of other communities”, Surf Coast Shire Council and Anglesea NEIP Partners, n 192, p14.
^[217] When collaborators were asked about it, they responded: “Yeah we probably should do that” Interview 215, Local government.
support these groups in terms of building the capacity of these groups or providing strategies for these groups to fulfil their needs.\footnote{218}

Like the collaborative groups, the VEPA had also failed to hold up its end of the systemic learning bargain, sidestepping any “information pooling” role, and making no attempt to monitor or feed lessons back to collaboratives. As one VEPA respondent put it: “[Learning] is not going on at the moment”.\footnote{219} Another noted:

[the VEPA] sort of left us to our own devices. They haven’t run a monitoring and evaluation program to see how we went and what works and what didn’t.\footnote{220}

The above weaknesses were arguably attributable to the abovementioned “gap” between the vision of sharing learning and the lack of mechanisms to implement it in practice. According to respondents, one source of this “gap” between vision and practice appeared to be that policy designers and VEPA officers who were charged with developing institutional mechanisms and carrying them out in practice were embedded in an old culture - being a “regulator” - and were unsure how to step into a new role that involved facilitating learning. As one VEPA respondent explained:

EPA is so confused about its role in NEIPs… traditionally we were regulator a stick waving role and now we’re much more touchy feely, but when it comes down to it I think we’re plain scared to leave that regulation role behind because that’s what we see as giving us strength.\footnote{221}

As the above quotes suggest, VEPA was “self aware” and acknowledged the challenges it faced in changing its culture to better support NEIP aspirations such as systemic learning. Indeed, at the time of research the VEPA had begun to try and change its culture and better support NEIPs through re-training staff, hiring “community development” officers and providing greater funding to groups to assist with implementation and sharing lessons between NEIPs.\footnote{222} Whether these changes will lead to improved systemic learning over time is unclear, however it does suggest that change is occurring.

To summarise the above discussion, the experience of the early years of the NEIP suggest that both systemic learning and adaptive management have so far evidenced little success. The findings regarding adaptive management revealed that anaemic learning processes are likely to arise where there is insufficient funding specifically designated to support groups in data

\footnote{218 Interview 225, EPA.}
\footnote{219 Interview 237, EPA.}
\footnote{220 Interview 222, Local government.}
\footnote{221 Interview 241, EPA.}
\footnote{222 Indeed, both grants to in NEIP 1 and 2 noted above are intended in part to contribute to improved learning between groups.}
collection and monitoring and evaluation processes. The analysis of systemic learning added support to these claims, and pointed to the very real challenges that policy makers and regulatory agencies face in implementing new approaches to learning.

7.3.3 RNRM Accountability and learning

7.3.3.1 Accountability – success and limitations of performance based accountability in natural resource management

Unlike either the NEIP and EIP programs, the RNRM program emphasises financial accountability, as well as accountability for performance. The findings indicated that most aspects of these accountability mechanisms were effective, at least compared to the experience of EIP or NEIP. Performance targets appeared to avoid distortions from “industry” stakeholders. Furthermore, although the collection of baseline data and ongoing monitoring of environmental indicators evidenced some shortcomings, the program appeared to have taken far more significant steps towards establishing effective monitoring than the NEIP program, and had resolved evident “rent seeking” at the regional body level. Despite this general success, the findings revealed that effective accountability mechanisms in RNRM may have come at a price. According to respondents monitoring and reporting obligations were too onerous, and likely to turn the supposedly flexible, community based regional bodies into bureaucracies. The discussion below outlines these findings, commencing with setting performance targets.

The setting of resource condition and management action targets in RNRM was guided by a regional body that contained predominantly primary producer interests. While this created significant risk of distortion, respondents reported government oversight had largely addressed such defects. As one JSC respondent explained, they had used their veto over targets set by the group (see Table 7.2 below) to ensure they were consistent with existing laws and maintained credible environmental standards:

The plan would say...“change the vegetation management act,” and we’d say “why did you waste the ink that is not a decision that is appropriate to this group.”

Most respondents suggested the JSC had ensured targets were appropriate, measurable and quantifiable. As another JSC respondent explained, this success was partly attributable to the specificity in RNRM frameworks regarding expected outcomes and matters for target, which

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223 One respondents also suggested effective targets arose from having scientific interests on regional bodies, and the wider community consultation process; Interview 323, State Government.
224 Interview 323, Government Agency.

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appeared to ensure the JSC had a relatively clear picture of the issues to be measured and magnitude of targets expected:

the regional bodies planning is largely operational...all the decision making will be taken in the government framework, veg management, water planning, for example: there’s no discretion.²²⁵

<table>
<thead>
<tr>
<th>Illustration of resource condition targets</th>
<th>Illustration of management action target</th>
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<tbody>
<tr>
<td>• By 2024, achieve a 10% improvement in soil health in extensive and intensive agricultural areas.</td>
<td>• By 2010, 75% of landholders in cropping areas are implementing farm management systems.</td>
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<tr>
<td>• By 2024, the conservation of naturally occurring aquatic organisms and ecological values of 80% of priority, permanent, natural waterholes will be ensured.</td>
<td>• By 2010, facilitate the development of a regional (surface and ground) water management organisation.</td>
</tr>
<tr>
<td>• By 2012, the health and diversity of 75% of the mapped key groundwater dependent ecosystems (eg springs, wetlands, wonky holes) is stable.</td>
<td>• By 2010, 1 000 000ha of land is managed for nature conservation purposes under voluntary management agreements</td>
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<tr>
<td>• By 2020, 40% of landscapes in poor biodiversity condition, focusing on endangered and of concern regional ecosystems and riparian areas are rehabilitated to a good biodiversity condition.</td>
<td>• By 2010, complete state agency pest management planning.</td>
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<tr>
<td>• By 2015, ensure 90% of all threatened flora and fauna species in the region will be represented in conservation reserves or under voluntary conservation agreements.</td>
<td>• By 2008, assess the impact of climate change on the region.</td>
</tr>
<tr>
<td>• By 2020, CO2 and other greenhouse gas emissions in the regional air shed are reduced by 5% from 1990 levels.</td>
<td>• By 2008, a strategic plan for the removal of impediments (either by complete removal of modification to structures) between marine and freshwater environments will be completed for the BDT regions.</td>
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Table 7.2: Illustration of Resource Condition and Management Action Targets in RNRM.

Successful target setting was also attributable to quite significant baseline data and monitoring mechanisms established by the RNRM program. Vital here was the provision of existing environmental monitoring data from state government agencies,²²⁶ as well as quite

²²⁵ Interview 321, Government Agency.
²²⁶ As one state government member confirmed: “We assist by providing actual information or data, we provide science support or undertake science projects on their behalf” Interview 3211, Government Advisor.
extensive funding made available to the regional body to seek scientific advice and conduct multiple studies on regional resource conditions, as well as social and economic issues.

This is not to suggest that this support had been used to overcome all technical constraints and scientific uncertainties characteristic of such a complex ecosystem management system. Like many NEG experiments, RNRM operated on “best available science”, a fact that led some to question the scientific appropriateness of some targets.

A number of other problems were also apparent. These included insufficiencies in funding for monitoring. As one respondent simply put it: “we really need a lot more resources than we’ve got.” State agencies also reportedly prevented access to some of their data. As one respondent pointed out:

> the agencies had done a lot of work...but you know they were keeping it, they had decided they had the intellectual property on it so it wasn’t going out to bodies.

These problems contributed to a number of gaps in baseline data, preventing targets being set for issues such as dry land salinity, terrestrial weeds, acidity, biodiversity in flora and fauna, wetlands and hydraulic links, ground water and water bodies, coastal condition and water quality.

Of course, the RNRM program had anticipated gaps in data. Much will accordingly hang on whether commitments to fill these gaps are funded by the government and successfully implemented by the regional body over the next few years.

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227 The funding had been used in part to form a “technical advisory panel”, comprising biophysical and socio-economic scientists, which provided useful scientific advice on targets; BDTNRM, *Burdekin Dry Tropics Natural Resource Management Plan 2005-2010* (BDTNRM, 2005) p 32.
228 See generally reports contained in BDTNRM, n 227.
229 As one government respondent put it: “the reality is that in NRM there are huge information gaps and we have done lots of really good science work” Interview 323, Government Agency.
230 Interview 341, Regional Body.
231 For example, some respondents raised concerns about links made between management action targets and resource conditions outcomes (Interview 311, Peak industry body), while others raised questions about the monitoring and “hydrological models” associated with load based end of river targets (Interview 341, Regional Body). See also the general concerns raised regarding science underpinning RNRM targets in Watts M, *Getting on Track?* (Australian Conservation Foundation, 2004) p 36-37.
233 Interview 315, Peak Industry Body.
In addition to filling baseline gaps, an equally important task for delivering accountability in RNRM is ongoing environmental monitoring of indicators to enable progress to be judged against resource condition targets.\textsuperscript{235}

The findings suggest regional body and state agencies had made some significant progress in developing long term data capture processes, including obtaining satellite imagery of the region, implementing drilling programs and building-in monitoring components to projects.\textsuperscript{236} However, the findings indicated that such ongoing monitoring was likely to face two key difficulties. First, respondents suggested there was a lack of coordination in ongoing monitoring by agencies. As one respondent explained regarding water monitoring:

one of the problems I suppose is there are so many different agencies doing so many different things. There is no commonality, or no communication you know bringing them together.\textsuperscript{237}

The second challenge related to funding. Available funding was seen by many to simply be too small and too “short term”, for regional bodies to sustain long term monitoring and implementation responsibilities to ultimately achieve their targets (for further see chapter 8).\textsuperscript{238} Without further funding or improved coordination, these barriers to monitoring may reduce the capacity of government and public to be able to judge whether they are getting good value for expenditure and whether progress is being made toward national outcomes.\textsuperscript{239}

Compared to setting and measuring progress against performance targets, the RNRM program appeared to face fewer problems in monitoring financial activity, outputs and adherence to management action milestones. The effectiveness of this monitoring process is best illustrated by exploring how these monitoring processes successfully facilitated the JSC to step in and rectify emerging rent seeking behaviour at the regional body level.

Two unique factors appeared to give rise to the problem of rent seeking in the case study. The first was the regional bodies’ “nested” structure. As we saw in chapter 5, this nested structure involved giving majority membership to 5 sub regional groups. While this structure was useful for planning, when it came to the regional body managing the roll out of government investment to implement the plan, it gave rise to potential conflicts of interests. As one

\textsuperscript{235} BDTNRM, n 227, p 146.
\textsuperscript{236} Interview 334, Regional Body; Interview 341, Regional Body. See for example http://www.burdekindyrptropics.org.au/gisweb/gis_web/.
\textsuperscript{237} Interview 342, Subregional Body.
\textsuperscript{238} As one respondent explained “in theory there should have been considerably investment into these regional bodies, its really quite a tiny investment...it is really “vegemite” [spread too thinly]” Interview 3210, Science.
\textsuperscript{239} Interview 3215, Government Agency.
respondent explained, this was because the sub regional bodies were potential recipients of the funding that their representatives on the regional body controlled:

when it came to actually roll out and receiving the money and making the decision you all of a sudden had a structure that was full of conflict of interest... [because] the board of directors consists of 99% of potential providers of services to the organisation.240

Compounding this problem was the fact that many of the subregional representatives had not only sought representation on the body to obtain “money” for their groups,241 but they often lacked the knowledge or training for managing an incorporated body.242 This appeared to stymie any mutual accountability between partners and reportedly created “incompetence at a board level”.243

The result was governance and management problems regarding the use of public funds, sparking concerns of “rent seeking” behaviour. As one respondent explained:

out of the funding available they decided to fund a [capacity building project] for each of their organisations ...but that was the funding that was supposed to be used for setting up the roll out of the plan.244

Fortunately, the regional body had received sufficient funding to complete administration tasks and hire staff to meet monitoring and reporting expectations on finances and implementation.245 This monitoring in turn alerted the JSC to the above problems, and it accordingly exercised its “destabilisation right” to initiate a review of governance and operational arrangements.246

This involved government officers working with regional body directors and staff to identify a range of potential improvements, setting out 23 general recommendations and a number of actions to be addressed by the participants.247 As one respondent explained:

so that review actually pointed out the need to change the focus, structure and the composition of the board... and put in place some policies.248

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240 Interview 341, Regional Body; this problem appears to resonate with concerns raised in Paton et al, n 14 at 265.
241 See chapter 5 and 6.
242 As one respondent explained, “the 5 subregional bodies and other organizations [had] nominate[d] people on the board regardless of qualifications or their background their ability to govern...there was plan and they had written a regional investment strategy, but no-body had thought how they actually were going to roll the money out or the structures or the system they may needed to actually do that”, Interview 341, Regional Body.
243 As the respondent explained: “drawing from the community is a really good thing but you need people who know how to sit on a board. And once you start getting out of cities and large regional areas. The capacity for someone to not carry their individual hats onto a board, so you have incompetence at a board level””, Interview 3210, Science.
244 Notably there was no deliberate misappropriation of funding. Interview 341, Regional Body.
245 This was supported by government based Regional Coordinating Group and Regional Body Advisors who reported that they kept the JSC informed on whether “projects were being implemented, conducted successfully/not successful and whether there were problems.” Interview 3211, Government Agency.
246 The review was conducted early in 2005, and the government also conducted a program of Business Improvement Reviews of Regional Bodies in late 2005.

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The precise details of the new structure, composition and policies were largely left to the regional body. However the JSC retained the ongoing right to review the changes as they were made over time.249

At the time of writing, the regional body had successfully responded to many of these recommendations.250 Although there was a degree of disappointment from some sub regional group members about the changes that had occurred, most remained actively engaged and continued with the process, but with greater awareness about issues such as conflict of interest.251 As the following comment from one subregional group illustrates:

I sat on the board the other day and I thought I can't think for [subregional group] anymore...you can't push our own barrow you know.252

Despite successfully preventing rent seeking, there was at least one downside253 to RNRM's accountability arrangements. That is, respondents suggested accountability requirements were "smothering"254 regional bodies, imposing excessive "red tape"255 and onerous obligations with negative impacts upon adaptive management processes (discussed further below).256 As one respondent put it: "its just quite a burden, you're just sticking that bureaucratic stuff into a really small organisation that doesn't have the capacity."257

Many respondents suggested such bureaucratic monitoring and reporting, combined with tight government controls over investment decisions, had left regional bodies "over governed"

248 Interview 341, Regional Body
249 Karkkainen, n 11 at 68.
250 Among other things, a new CEO and staff were appointed, along with new membership of the board including an independent chairperson, and the completion of corporate governance training. There were also commitments made to rewrite the body’s constitution to change the structure of the board and to develop various governance and business plans (eg. corporate strategic plan). BDTNRM, Annual Report 2004-2005 (BDTNRM, 2005) p 7, 9; Interview 341, Regional Body; BDTNRM, Business Plan (BDTNRM, 2007) p 3, 15.
251 What is also notable about the success of this process was that government intervention via the "destabilisation" right did not appear to have created resistance or thwarted the necessary openness and engagement for accountability and devolved collaboration problem solving to work; Sturm, n 14, p 333.
252 Interview 342-1, Subregional Body 1.
253 A small minority of respondents also pointed to a second accountability concern relating to the use of public resources. As one respondent put it: "I think there has been considerable devolution of responsibilities from state government to [regional groups] to pick up works...they have been taken advantage of in that regime I would say, there is cost shifting associated with that", Interview 3210, CSIRO. Based on the data in this study it was difficult to determine the extent and magnitude of this cost-shifting problem, however recent studies have raised this as an issue in RNRM. See Paton et al, n 14 at 261, 263; Keogh et al, n 232, p 60; Posner, n 3, p 529.
254 Interview 349, Regional Groups Collective.
255 To be clear, respondents believed accountability in RNRM was important. As one respondent explained: "everyone sees the value...it's not your money, you have to be accountable for it" Interview 349, Regional Group Collective.
256 Beyond regional bodies operations themselves, the monitoring and reporting requirements for individual projects were also considered far too onerous for partner implementers on the ground. As one respondent pointed, applications for funding were often extremely difficult and the reporting burdensome: "I have noticed with any of the applications that come through they seem to keep getting incredibly hard...I understand why you have to go through more and more hoops ...[but] the way the applications read its like the people are out to rip off all the grant systems which I don't, don't think they are"; Interview 345, Subregional Group.
257 Interview 349, Regional Groups Collective.

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by government. The risk here was that too much government control was beginning to morph regional bodies into the very government bureaucracies that these supposedly flexible and participatory organisations were designed to replace. As one respondent summed up:

It’s getting to the stage now where the board was starting to look as if it’s just another state department and if that is going to be the case we may as well not wasted all our money.

To conclude the above discussion, accountability mechanisms in RNRM appeared to avoid many of the problems that plagued the other case studies. The RNRM program appeared to secure credible, measurable targets free from blatant industry dominance. This was achieved in part because of the greater level of specificity in performance expectation and outcomes that had assisted JSC to effectively exercise its discretion. Furthermore, dedicated funding and state government monitoring ensured regional bodies had greater success than NEIP in seeking scientific advice, collecting baseline data and conducting ongoing monitoring of indicators, milestones, finances and outputs. Moreover, the RNRM program had been able to successfully intervene to ensure regional bodies complied with their responsibilities and were held accountable via destabilisation rights for rent seeking behaviour.

Such success must however be weighed against the identified challenges faced by RNRM. Uncertainties remain about the scientific basis of targets. Indeed, holding bodies accountable for delivery of results is likely to face difficulties in the future if evident gaps in baseline data, and uncoordinated or inadequately funded long term monitoring processes are not resolved in the immediate future. Shortfalls in mutual accountability were also evident, in part because of mutual interest of regional body members and a lack of necessary knowledge and skills to check rent seeking tendencies. Moreover, distinct from both NEIP and EIP programs, the RNRM program appeared to be overly obsessed with tight accountability controls, which the findings suggested may stymie the unique contribution of regional bodies, and as discussed in the next section, marginalise their learning processes.

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258 Interview 313, Peak Industry Body.
259 Lawrence, n 23 at 13; May, n 2 at 23.
260 Lawrence G and Cheshire L, “Managing Nature: The Promises and Problems of Regional Environmental Governance in Australia” Plenary Address at the Ecopolitics XV Conference Environmental Governance: Transforming Regions and Localities, Macquarie University, Sydney 12-14, November 2004 at 9; Lawrence, n 23 at 13.
261 Interview 342, Subregional Body.
262 Of course issues remain with the fact that monitoring and reporting processes that underpinned the destabilisation right were too onerous and, as discussed below, had a negative impact on effective learning.
263 Lawrence and Cheshire, n 260 at 9.
7.3.3.2 Learning – adaptive management and systemic learning

The learning aspirations of the RNRM program were two fold: “passive” adaptive management at regional body level, which is overlayed with a form of systemic learning at the program level. These two approaches to learning are discussed in turn below. As we will see, adaptive management at the regional body level appears likely to face more difficulties in getting off the ground and being carried out effectively than systemic learning. However, the findings also indicated that systemic learning in RNRM could have been improved if the program had aspired to share experiences between regional bodies.

Although at an early stage, the RNRM program appeared to have laid some important foundations for implementing adaptive management process, at least compared to the NEIP program. As discussed above, significant levels of funding provided to the regional body, along with government monitoring, had both ensured at least some baseline data had been collected and some longer term monitoring infrastructure had been put into place. These elements should assist regional bodies to gather data on ongoing implementation, conduct evaluations regarding the suitability and achievement of regional targets, and thus facilitate adaptations as needed.\(^{264}\)

However the findings suggest that regional bodies may also face a number of significant hurdles that may limit the achievement of effective adaptive management. Some of these have already been pointed out above regarding RNRM monitoring processes. For example, gaps in baseline data, and lack of coordination and funding threaten to weaken the availability and adequacy of data vital to bodies’ determining the effectiveness and appropriateness of actions and when adaptations need to be made.\(^{265}\)

A second hurdle raised by respondents regarding adaptive management was that many of the environmental monitoring processes established were designed to monitor environmental conditions at a regional level for regional resource condition targets. This means the data being produced was not always considered suitable to facilitating effective adaptive management regarding more localised environmental changes. As one respondent put it:

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\text{the plans put in monitoring points that are well down stream of farms, they are [regional] catchment scale... if we are going to get continuous improvement we need something that is giving us feedback...because all this catchment planning, basin planning is too broad scale.}\(^{266}\)
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A third and final hurdle to achieving adaptive management related to the capacity of regional bodies to actually act as effective adaptive managers.\(^{267}\) Certainly, the RNRM program

\(^{264}\) Cth and Qld, n 61.
\(^{265}\) Ewing, n 19, p 408.
\(^{266}\) Interview 314, Peak Industry Body
\(^{267}\) It is worth noting that because the case study involved such a large region, the members of the regional body (and even their subregional group’s members) are unlikely to have the capacity to constantly bring all the necessary Cameron Holley New Environmental Governance
had taken some important steps to ensure bodies were equipped with necessary skills and data, including training regional body staff in monitoring processes. However the regional body appeared to be making slow progress in implementing procedures necessary for the body to follow an adaptive approach. Not least, they were well over a year behind in developing (let alone implementing) a formal monitoring and evaluation strategy that was to guide learning and adaptation.

The capacity of the body to perform adaptive management also appeared to be constrained because of an overemphasis on financial accountability and management action milestones. These requirements appeared to overwhelm regional groups resources and capacity and skewed time and effort in these directions, reducing opportunities for them to operate as effective and adaptive natural resource management organisations. As one respondent put it:

you are constantly under review and how can you do your business if you are constantly writing your reports for the “feds”...so that’s a shame.

Turning to systemic learning, at the time of writing the first scheduled program evaluation had taken place. Following procedures laid out in overarching frameworks, government bodies had engaged consultants and set the scope, objectives and terms of reference for 6 comprehensive national evaluations.

Many of these evaluations brought to light a number of successes, but also areas for improvement, including issues raised in this chapter regarding baseline data gaps, and overly onerous accountability requirements. The as yet unanswered question is whether having identified these weaknesses, the government will agree to improve program delivery. The government has recently committed to a “new phase” of the program for 2008 – 2013, which suggests some promise for change; however at the time of writing the precise details had yet to be released.

Despite conducting comprehensive reviews of the program, many respondents were critical of the program’s failure to actually aspire to sharing learning and experiences between regional

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"local" knowledge to the table regarding relevant environmental conditions. However, formal reviews of the plan every 5 – 7 years involving multiple regional stakeholders may go some way to filling this gap.

The regional body had also begun to develop a database to provide a central source of data.

In draft form at the time of writing; see http://www.burdekindrytropics.org.au/initiatives/com.html

Rather, all regional “monitoring and evaluation...has been in the form of quarterly performance and financial reports”, Interview 341, Regional body; BDTNRM, Annual report 2004-2005 (BDTNRM, 2005) p 7, 9.

Interview 313, Peak Industry Body.


Cth and Qld, n 61, s 7.1-7.3.


bodies. The fact that there were 56 regions across Australia with bodies that varied in age and experience suggests there was significant opportunity for sharing different processes, structures, and the various challenges and lessons learned by each to improve the overall effectiveness of program. As one respondent explained:

> lot of these kind of groups are just working in a vacuum and it [would be] really helpful for them to hear what other people are doing.

With no formal information sharing, the Regional Group Collective (RGC) in Queensland had taken matters into their own hands. The RGC was comprised of representatives of each regional body in Queensland and was underpinned by government funding directed by regional bodies to hire staff and an office for the RGC. Utilising these resources, the body provided a forum at the state level for “regional bodies to share what they're doing”, and learn and build capacities to face their many similar challenges. As one respondent explained:

> the groups are so diverse and the regions so diverse, so you get a lot of good ideas...I was looking for position description for some positions and just sent message through to the collective and I pull in ideas, when I was reviewing the constitution.

As the above quote suggests, the information sharing facilitated by RGC was largely practical, and far more limited than say democratic experimentalist vision of sharing of standards, targets and measures to achieve them. However, at a minimum, the RGC embodies at least a nascent form of information sharing that appeared comparatively more effective than relying on government agency efforts such as in NEIPs.

To summarise the above discussion, adaptive management and systemic learning both appear to be underpinned by some promising foundations. In contrast to the NEIP program, RNRM funding and government support appeared to have positioned regional groups with comparatively greater access to necessary information for learning processes. Further, the form of systemic learning in RNRM involving policy review and adaptation was also implemented.

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276 There had been some national seminars and other events organised that allowed regional bodies to share information and experience (eg. National Monitoring and Evaluation Symposium for Natural Resource Management held in Hobart, Tasmania 30 August to 1 September, 2005); Head, n 14, p 146.
277 Paton et al, n 14, p 262.
278 Interview 349, Regional Group Collective.
279 See also Chapter 6.
280 Interview 349, Regional Group Collective.
281 Interview 341, Regional Body.
282 Karkkainen et al, n 12 at 691.
more successfully than NEIP’s attempts to share learning among collaboratives, in part because of the presence of formal procedures to guide agencies in these tasks.283

Despite this comparative successes, RNRM appeared likely to face a number of bumps on the road to achieving effective adaptive management. These include gaps in baseline data due to insufficient funding, inadequacies in monitoring at multiple scales, and lack of capacity at regional body level to conduct adaptive management tasks. The findings also suggested that systemic learning aspirations lacked what many respondents suggested were vital information sharing goals. To fill this void the RGC structure appeared to offer some promise, at least compared to the comparable attempts by VEPA in the NEIP program.

7.4 Discussion and Conclusions

This chapter investigated the conditions that fostered effective “new” forms of accountability and learning in practice. Its analysis of three cases studies has provided a number of insights into the operation of accountability284 and learning mechanisms in practice.285

Some findings were necessarily more provisional than others and/or focused on approaches and mechanisms unique to each case. For example, the findings in EIP touched on accountability and learning in process and performance based approaches, pointing to the risk of laggards paying “lip service” to processes and pursuing tokenistic targets.286 The NEIP findings reflected on systemic learning, revealing what the chapter termed a “vision deficit”. Insufficiencies in funding and support for NEIP collaborative groups were also found to have undermined effective monitoring of performance. Meanwhile, the findings in the RNRM program evidenced far more effective monitoring and accountability mechanisms, however the program appeared to have imposed quite onerous controls, threatening flexibility and learning at regional body level.

Despite these variations, at a broad level there were a number of common issues and problems raised across the cases relating to “new” forms of accountability and learning.

Regarding accountability, the findings spoke to concerns in the literature that “new” forms and approaches to accountability in NEG create significant risks of agency capture, unprincipled deal making and rent seeking.287 While the chapter did not seek to determine whether some

283 Ewing, n 19, p 407.
284 Weber, n 7 at 454; Fung and Wright, n 6, p 37; Karkkainen, n 12 at 237; Sturm, n 14, p 331-334.
285 Head, n 14, p 146; Karkkainen, n 12 at 243; Paton et al, n 14 at 262; Fung and Wright, n 6, p 32.
286 See Fiorino, n 10.
287 Doremus, n 6; Karkkainen, n 3 at 961; Posner, n 3, p 529; Steinzor, n 19.

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level of “perfect accountability” was achieved in each case, it was clear from the findings that there was one or more shortfalls in accountability that had exposed each program to such risks. Certainly, all cases appeared to conform with existing legal baselines, however overly generalised performance standards, and shortfalls in agency oversight, mutual and/or professional accountability were all found to have left the door open to risks of capture and unprincipled deal making, undermining environmental outcomes likely to be achieved in both EIP and NEIP. Similarly, the findings in RNRM pointed to a failure in mutual accountability that saw regional bodies pursue rent seeking behaviour. However as we saw, RNRM was able to successfully address this weakness through an accountability regime that had provided greater specificity in expected performance outcomes, and imposed stricter monitoring and reporting requirements.

At a broad level, these findings may be seen to support claims that NEG is prone to capture or unscrupulous behaviour by private interests and suggests that more, rather than less formal accountability safeguards are needed in NEG, including heightened scrutiny such as in RNRM, less deference to discretion and more precise statutes to guarantee accountability.

Yet, as the findings in RNRM warned, the risk with stricter controls is the potential to undermine the creativity and flexibility that is essential to successfully address diverse localised problems. Given this, it is arguably better to view the findings as reinforcing the widely recognised difficulties faced by any governance regime in balancing sufficient accountability controls (to ensure consistency) with sufficient discretion (to promote flexibility and innovation). In other words, the findings reinforce to scholars and practitioners the need to design accountability mechanisms to address what appear to be very real risks of capture and other distortions in NEG, but suggest that they do so with an awareness of the trade-off between accountability and arriving at and implementing creative agreements in a provisional and adaptive manner.

Regarding learning, this chapter has reflected on and provided insights into three broad approaches to learning: process based learning, passive adaptive management and attempts at

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288 Freeman and Farber, n 7 at 908.
289 See McCloskey, n 56; Farber, n 6 at 74; Koontz and Thomas, n 56, at 113; Karkkainen, n 3 at 961.
290 Freeman, n 3 at 94.
291 In view of similar experiences in UK and elsewhere, it is of little surprise that the program with the most funding – RNRM – also imposed the strictest upwards performance and financial monitoring and reporting requirements on collaboration. Taylor M, Public Policy in the Community (Palgrave, 2003) p 229; Head B, “Governance” in Saunders P and Walter H (eds), Ideas and Influence Social Science and Public Policy in Australia (UNSW Press, 2005) p 58.
292 Wondolleck and Yaffee, n 7, p 241; Freeman, n 3 at 93; Steinzor, n 19, page 15 of “pdf”.
293 May, n 2 at 23; Freeman, n 23 at 1871-1872, 1874; Head, n 23 at 31; Freeman, n 3 at 96; Wondolleck and Yaffee, n 7, p 235-237.
294 Freeman, n 23 at 1871.
systemic learning. In its own way, each learning approach appeared to achieve only limited success.

Process based learning in EIP appeared effective only when it was placed in the hands of industries with a commitment to environmental outcomes. The “passive” adaptive management approach pursued across the cases appeared effective in some circumstances, with collaborators across the cases using their local knowledge and/or available monitoring data to identify shortcomings and assess alternatives to reach feasible approaches that worked. However the approach generally fell short of complete success due to either (i) a lack of capacity by collaborators such as local residents in EIP who failed to engage with broader environmental issues; and/or (ii) insufficient funding and support for data collection and ongoing monitoring such as in NEIP and RNRM. Finally, systemic learning approaches appeared effective in RNRM, while NEIP evidenced a complete failure by government and collaborations to pool and share information.

Seen at a broad level, these approaches all failed because those charged with learning lacked the capacity or incentives to gather, analyse and act on information about practice. These findings bolster claims that scholars and practitioners need to acknowledge that the capacity for learning is not a given, and that NEG accordingly must ensure appropriate incentives, capacity building and support is built into programs to ensure effective learning is achieved.

Given these general conclusions regarding accountability and learning, were there any specific lessons from the findings about the conditions likely to assist in skillfully balancing controls with discretion, or designing apposite incentives and capacity building for the purposes of learning?

Based on the above analysis, a number of lessons can be identified that fall under 5 main themes. Some of these themes relate exclusively to learning or accountability and others relate to both. The first theme relates to both learning and accountability, namely designing effective monitoring processes. For accountability specifically, two primary themes raised by the cases relate to (i) setting overarching legislative goals; and (ii) achieving effective professional and mutual accountability. The final two themes relate to learning, namely (i) assisting or encouraging actors to effectively implement process and adaptive learning approaches, and (ii)

295 Sturm, n 14, p 326.
296 Sturm, n 14, p 327.
297 Sturm, n 14, p 327.
298 Sturm, n 14, p 327.
299 May, n 2 at 23-24.
designing systemic learning structures. For each of these issues, the findings provide some important empirical based lessons for NEG theory and for policy makers.

First in terms of monitoring, the NEG literature has raised many questions about the conditions under which collaborative groups will best conduct necessary monitoring vital to both learning and performance based accountability. Based on the above analysis, NEG experiments that focus on point source pollution like EIP appear to face fewer direct monitoring challenges, not least because the environmental problems are “simpler” and industries will often have well established monitoring processes under traditional regulatory regimes.

In contrast, the challenges of monitoring understandably appeared much greater in NEG experiments like NEIP and RNRM that focused on complex and diffuse environmental issues. Relevant data on these multifaceted and dynamic problems was scarce. Even with varying degrees of support, both cases evidenced significant gaps in baseline monitoring, ineffective or limited ongoing monitoring of environment conditions, and in the NEIP case, weak monitoring of outputs. These findings are generally consistent with other NEG research, which suggests in similar ecosystem focused experiments monitoring is often weak, and can have negative impact on securing effective accountability and learning.

Based on the above discussion, a number of conditions appear likely to improve the chances of successful monitoring. At the broadest level, there is clearly a need for policy makers to give earnest attention to improving the extent and effectiveness of basic environmental monitoring in order to better support NEG experiments. As the difficulties in coordination, relevancy and access to monitoring data in RNRM revealed, it is vital that there is clarity on why data is collected, who will and is collecting it and who must have access to it.

A second insight into conditions supportive of effective monitoring was revealed in the EIP program. As we saw, the program’s capacity to harness community and VEPA pressure on industry was useful for encouraging effective monitoring. This resonates with suggestions in the

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300 Collaborative Democracy Network, n 21 at 169; Head, n 14, p 145; Thomas, n 15, p 154; Fung and Wright, n 6, p 31-32; Sturm, n 14, p 328; Dovers, n 21, p 522-523.
301 Fung and Wright, n 6, p 31-32; Gaines, n 19 at 16; Sturm, n 14, p 333.
302 Of course this will vary depending on what is being monitored. The EIP was focused on point source emissions, not ambient conditions which would be far more complex.
303 Dovers, n 21, p 521.
305 Dovers, n 21, p 522.

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literature that negative incentives such as “penalty default” style rules can be used to great effect to ensure appropriate monitoring.307

Third, and finally, as some have pointed out in the literature, in the absence of specific incentives, support and funding will be needed for collaborative groups if they are to fulfil monitoring of environmental conditions and implementation.308 Without sufficient funding, NEG experiments risk abject breakdowns in monitoring processes as evidenced in the NEIP program, or at best are left with significant gaps to fill as evidenced in RNRM.

Turning to the second set of lessons, the findings shed some light on the challenges of securing accountability in performance based experiments by setting overarching outcome expectations. Many in the literature suggest legislating the outcomes to be achieved by collaborative groups (as opposed to preordaining solutions to be followed) can protect public interest, while imparting discretion needed to develop innovative and tailored solutions to environmental problems.309 However, consistent with the concerns of other authors, the findings in EIP and NEIP demonstrated that overly general outcomes (i.e. “improve local neighbourhood environment”) create very real risks of “abuse” by collaborators, industry and overworked or inexperienced government officers.310

One general rule of thumb for overcoming this problem suggested by the findings is that legislatures avoid broad sweeping statements such as evidenced in EIP and NEIP and instead specify as clearly as possible the outcomes expected - an approach which appeared to contribute to a more successful target setting process in RNRM.311

Alternatively, legislatures could simply choose to live with such broad statements, but instead ensure that additional accountability mechanisms and checks exist on the final decision approved by an agency like the VEPA. As some authors have argued, this may involve appropriately designed ex post citizen’s lawsuits, or independent scientific review of decisions.312

A more extensive reform suggested in the literature for improving outcome specificity while retaining sufficient flexibility would be for NEG experiments to adopt a form of systemic learning structure. This would involve various collaboratives functioning as information gathering mechanisms to inform processes of benchmarking, and the periodic overhaul of

307 Karkkainen, n 3 at 996.
308 Thomas, n 15, p 167-169; Ewing, n 19, p 408.
309 Freeman, n 3 at 94; Wondolleck and Yaffee, n 7; Dana, n 6 at 53-54.
310 Dana, n 6 at 53-54; Freeman, n 3 at 94; Wondolleck and Yaffee, n 7.
311 See similar suggestion by Wondolleck and Yaffee, n 7, p 241.
312 Dana, n 6 at 55-56; see also Manring, n 36 at 78; Freeman, n 3 at 92; Karkkainen, n 3, Wondolleck and Yaffee, n 7, p 241.
acceptable outcomes and targets. For example, instances of tokenism in the EIP program would arguably have been less if targets set by comparable industries had been pooled and benchmarked, leading the VEPA to periodically refine and specify minimal “beyond compliance” targets. Indeed, such a process would likely have provided greater guidance and information for VEPA officers who otherwise appeared to lack the time, knowledge or skills to know what level of environmental improvement was or was not capable of achievement by industries, and subsequently bring poorer performers into line with others. The difficulty however with this approach is that such information gathering structures may pose significant problems for agencies, as discussed further below.

Beyond setting overarching performance goals, the findings also provide some insights into conditions for effective professional and mutual accountability. Of course, few NEG experiments are likely to rely solely on either professional or mutual accountability per se. Even so, given their increasingly central role in NEG, and the evident weaknesses revealed in the findings, it is useful to explore some of the conditions that may be supportive of these forms of accountability.

Professional accountability was most prominent in industries’ design of management frameworks in the EIP program. Here, the professional expertise of most industries appeared capable of successfully designing and implementing adequate management systems. However shortfalls in professional accountability were identified with poor performers, who appeared to purposefully deceive others and often flout their responsibilities.

The implication here is the need for NEG programs to compensate for such “bad apples” by enhancing a sense of “professional accountability”. As some authors have suggested, this may involve either education programs or increasing the economic or regulatory consequences for failing to meet particular norms or codes of practice. To some extent, the latter approach was evident in the EIP case where process and performance based systems operated together in unison. Here, social and regulatory consequences for failing to deliver improvements in local environment outcomes were effective in ensuring industry designed and implemented systems to improve their management of local environmental impacts. However, as we saw, without effective pressure from local residents or government on broader environmental issues, the professional accountability of poor performers slipped into tokenism.

313 Freeman, n 3 at 93; Karkkainen, n 3; Karkkainen et al, n 12.
315 May, n 2 at 13.
316 May, n 2 at 24.
317 May, n 2 at 24.
318 May, n 2 at 24.

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Turning to mutual accountability, many in the literature suggest that mutual accountability between multiple actors can ensure environmental considerations are not neglected in target setting and that actors achieve effective implementation. This appeared to be confirmed in the EIP program, at least to the extent that local residents appeared capable of ensuring local environmental considerations were not neglected in industry targets and ensuring that industry was accountable for their achievement.

It was, however, more common for the findings to reveal significant shortfalls in mutual accountability, with public and private actors failing to enforce compliance or ensure opposite targets were set.

As we saw in EIP, local resident and local environmental interest groups appeared to lack technical knowledge and capacity to meaningfully engage with the full range of broader environmental issues, leaving targets open to industry domination. In NEIP, inadequate technical skills and inadequacies in funding for monitoring and administrative assistance appeared to effectively blunt mutual accountability and allow some partners to fall behind in implementation. In RNRM the findings also suggested problems of mutual interest and a lack of technical skills and training on corporate governance had reduced the capacity of regional body members to prevent rent seeking behaviour.

The key implication here is that effective mutual accountability is only likely to be achieved where mutual interest can be subverted and monitoring and technical capacities secured. One way of achieving this may be to ensure collaborations contain representation from non local environmental interests, who may be more likely to question the kind of self interested behaviour evident in RNRM and/or bring greater skills and capacities to the table to input into non local issues in experiments like EIP.

Alternatively, training and information provision may help to improve capacity of local stakeholders to deal with complex issues. Basic core funding to support effective monitoring

322 However as discussed in chapter 6, this may be a difficult task in itself.
324 Even with perfect support, the findings suggest mutual accountability in some circumstances may sometimes also need to be supported by other forms of accountability if formal authority or salient pressure is lacking. As we saw in EIP without agency support there may be little citizens can do to a truly recalcitrant industry to pressure them and shame them into compliance. This finding points to the importance of designing new forms of accountability structures with such issues in mind, ensuring such potential gaps in accountability relationships and authority are covered.

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and reporting is also needed to impart basic capacities and avoid weaknesses in mutual accountability like those experienced in NEIP.\textsuperscript{325}

Turning to the issue of learning, at a broad level the findings raised the need to assist or encourage actors to fulfil process based learning and adaptive management.\textsuperscript{326}

Commencing with process based learning, the key implication raised by the findings was that its success depended on industry’s commitment to environmental improvements.\textsuperscript{327} Policy makers accordingly need to compensate for inevitable “bad apples” like poor performers in EIP through designing sufficient incentives to both drive these actors to improve environmental performance and/or ensure their commitment to using and following the process.\textsuperscript{328}

Turning to passive adaptive management, there were a number of conditions suggested by the findings that may lead to more effective adaptive management processes. Data gaps and limited or partial monitoring mechanisms evidenced in NEIP and RNRM for example, suggest that adaptive approaches are unlikely to be effective without relevant funding for and effective coordination of monitoring.\textsuperscript{329} The findings in the EIP case also suggest the importance of ensuring training or sufficient representation from actors capable of engaging with broader environmental issues to foster more complete processes of adaptive management. Finally, as we saw in RNRM, NEG experiments may need to reduce onerous accountability obligations so as not to divert the group’s time and capacity away from acting as adaptive managers.

Finally, the above analysis also provided insights into forms of systemic learning. At present, the implementation of systemic learning aspirations have remained largely unexplored in NEG.\textsuperscript{330} The few that have been examined have largely been disappointments in practice and the findings in the NEIP case were no exception.\textsuperscript{331} Indeed, NEIP evidences what we can think of as a “vision gap” that has occurred in the translation process from a vision of sharing learning and adaptive programs through institutional mechanisms to practice.\textsuperscript{332} An important source of this gap was that those who were charged with developing implementation mechanisms were embedded in a culture of how things were done that arose out of an older set of understandings.

\textsuperscript{325} Acar and Robertson, n 320 at 336-341.
\textsuperscript{326} See discussions in Thomas, n 15, p 153-154; Sturm, n 14, p 327,328.
\textsuperscript{327} Fiorino, n 10, p 413-416.
\textsuperscript{328} Fiorino, n 10, p 413-416.
\textsuperscript{329} Thomas, n 15, p 167- 169; Freeman and Farber, n 7 at 889.
\textsuperscript{330} Collaborative Democracy Network, n 21 at 169; Head, n 14, p 145; Fung and Wright, n 6, p 31-32; Sturm, n 14, p 328.
\textsuperscript{332} Gunningham N, Holley C and Shearing C, “Neighbourhood Environment Improvement Plans: Community empowerment, voluntary collaboration and legislative design” (2007) 24(2) Environmental and Planning Law Journal 125
and visions.333 This led to NEIP legislation that lacked formal procedures for fostering its vision and VEPA officers who lacked the skills to develop and implement it further.

Overcoming this vision gap will require changing implementation mechanisms and developing and experimenting with new mechanisms for information sharing in NEG experiments. This is an important call to arms to those concerned with systemic learning and adaptation, where so far much has been said about the vision but little about the mechanisms. One potential step towards developing an institutional structure for sharing learning was demonstrated in RNRM cases, where the RGC achieved considerable success in sharing information between groups. This approach avoided relying on agencies per se, and instead used government funding to set up a state level forum comprised of representatives from each collaborative group. While questions remain about the extent of information sharing capable through RGC structure, it may offer a novel avenue for NEG approaches to fostering a form of systemic learning.

The RNRM case also demonstrated that government agencies, with properly designed procedures for conducting periodic evaluations, could successfully seek to evaluate and potentially adapt government policy prescriptions (as opposed to sharing information among collaborative groups themselves). The more formal system of evaluations and requirements for evaluations at stated periods had taken some important steps to ensuring this form of systemic leaning was possible.

To sum up, this chapter has examined the operation of a range of features of accountability and learning, revealing the many challenges they face in practice. Nevertheless this chapter has pointed to a number of conditions and mechanisms that might foster more effective learning and accountability relationships and contribute to “good” NEG.

Given the limited scope of the analysis, these conclusions are necessarily tentative and further research is required. In particular, the findings relating to accountability are limited to the extent that the chapter has focused on some specific instances and relationships of accountability and has not offered a definitive view on how “accountable” the cases were per se.334 Further the findings on learning offer only a snapshot of these evolving processes that may or may not improve over time. Time is, in fact, a vital issue from the perspective of successful learning approaches as many of the impacts of governance efforts, and accordingly the opportunities to learn from them, are only experienced over the longer term. Given this, an important remaining issue for exploration is whether collaborations are sustainable over time to

333 Similar arguments have been made in Trubek D and Trubek L, “The Coexistence of New Governance and Legal Regulation: Complementarity or Rivalry?” Paper presented at Annual Meeting of the Research Committee on Sociology of Law, Paris, July 2005; Camacho, n 331.
334 Freeman and Farber, n 7 at 908.
actually allow these experiments to pursue effective learning.\textsuperscript{335} This is the subject of the next chapter.

Chapter 8: Maintaining and Sustaining Collaboration

8.1 Introduction

So far this thesis has investigated a number of key features for “good” new environmental governance (NEG) and drawn lessons as to the conditions that promote them. It has examined the emergence of collaboration, participation and deliberation, learning and adaptation and accountability.

This chapter revisits NEG’s “collaborative” approach to governing discussed in chapter 5. As that chapter illustrated, there are many challenges faced by NEG experiments in the early stages of forming a collaborative group and developing a guiding plan. Yet, even after a group coalesces, the challenges posed by collaboration do not miraculously dissipate. Collaborative groups must still seek to sustain their efficacy, maintain the interest of volunteer collaborators, and continue to operate as an organisation, including administrating ongoing meetings, hiring staff, fundraising and financial management. These tasks are critical to achieving a successful collaboration that implements actions, conducts adaptive management and forms an enduring niche in the governance landscape. Accordingly, this chapter examines the challenge of maintaining and sustaining collaboration.

This is an important task because there remains a “knowledge gap” in the NEG literature regarding the challenges of sustaining collaboration. Many of the under researched questions that remain include: under what conditions and to what extent can the engagement of volunteer

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1 Note however that some collaborative groups may only exist for a short term rather than take on a long term role in implementation, monitoring and adaptive approaches to governing; Lubell M, Sabatier P, Vedlitz A, Focht W, Trachtenberg, Z and Matlock M “Conclusions and Recommendations” in Sabatier P, Focht W, Lubell M, Trachtenberg, Z, Vedlitz A and Matlock M (eds), Swimming Upstream: Collaborative Approaches To Watershed Management (MIT Cambridge, 2005) p 287.


3 Of course the survival of a particular collaborative organisation against all odds may not always be a good thing. Some authors for example argue against relying too much on one organization. See discussion in Taylor, M Public Policy in the Community: Public Policy and Politics (Palgrave Macmillan, 2003) p 153; Bonnell and Koontz, n 2, p 720.


5 As implied above, successful collaboration is defined here as involving (i) ongoing and active involvement of key significant stakeholders who came together to collaborate; and (ii) effective organisation processes that enabled the group to continue with their cooperative efforts to implement actions and solve their environmental problems over the longer term; Head B, “Participation or Co-governance? Challenges for Regional Natural Resource Management” in Eversole R and Martin J (eds), Participation and Governance in Regional Development (Ashgate, 2005) p 148; Karkkainen B, “Collaborative Ecosystem Governance: Scale Complexity and Dynamism” (2001/2002) 21 Virginia Environmental Law Journal 189 at 240; Varughese G and Ostrom E, “The Contested Role of Heterogeneity in Collective Action: Some Evidence from Community Forestry in Nepal” (2001) 29 (5) World Development 747 at 752.

collaborators be sustained? What forms of government assistance might address organisational challenges that groups face? How long do collaborative institutions generally survive and how long should they survive to be useful? What happens to the participants when a collaborative initiative has achieved its goals? This chapter provides insights into these questions and helps build a more complete picture of collaboration in NEG by examining the three case studies and their efforts to sustain a successful collaboration.

Following this introduction the chapter proceeds in 3 sections. Section 8.2 begins by taking a close look at the legislation and guidelines of the three cases to evaluate how each case is specifically designed to sustain collaboration. Section 8.3 then analyses how ongoing collaboration was sustained in practice in each of the case studies, examining the conditions that promoted or detracted from the survival of the collaborative groups. This examination focuses on both younger and more mature collaborations. For example, research into the mature, fifteen year old EIP program reveals insights into the “life cycle” of collaboration which, after an invigorating youth, may sometimes lapse into a comfortable middle age before finally succumbing to senility. In contrast, research into the comparatively younger six year old NEIP and RNRM programs reflects on the initial challenges and emerging issues for sustaining their collaborative groups into the future.

While each case throws up a range of different issues, the analysis reveals insights into two common and interrelated challenges faced by all three cases, namely maintaining the involvement of volunteer collaborators and gaining adequate support and funding for effective organisation. Section 8.4 sums up these findings and suggests some important lessons for the conditions under which successful collaboration may be sustained.

Before commencing this analysis it is important to clarify the scope of the chapter. There are inevitably a substantial range of potential exogenous and/or endogenous conditions that can impact the sustainability of collaborative institutions in the long term. Analyising all of
these factors is beyond the scope of this chapter. Instead the emphasis is on the conditions of institutional and legal design.\textsuperscript{12}

\section*{8.2 Designing sustainable collaboration: How do the cases intend to sustain collaborative groups?}

In contrast to NEG experiments that involve short term voluntary cooperation around a specific task, the three cases all aim to establish effective collaborative groups with long term roles in implementation, monitoring, and "adaptive management" to try and tackle intractable and/or complex environmental issues (see chapter 4).\textsuperscript{13} In order to facilitate an analysis of whether and how this objective was achieved, this section examines the relevant features of the cases’ legal design that may impact on the survival of collaboration. It commences by providing a general overview of these design features before focusing on some of the more important features in depth.

\subsection*{8.2.1 Overview of design feature that support survival}

As we saw in chapter 5, the architects of the three programs targeted a variety of strategies to support the emergence of successful collaboration, including: harnessing community and regulatory pressure;\textsuperscript{14} funding and assistance to reduce initial transaction costs; building trust; and pursuing "consensus" decision making among parties to ensure some form of commitment to targets and actions. Many of these strategies that contributed to the emergence of collaboration can also contribute to its maintenance and survival.\textsuperscript{15} For example, it is arguable that trust shares a reciprocal relationship with collaborative success over time.\textsuperscript{16} That is, after building trust to reach an agreement through negotiation, the group’s subsequent successful implementation of a project spawns trust because it demonstrates that stakeholders honour their

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\textsuperscript{12} There is obviously some overlap between the conditions that contributed to the emergence of collaboration and those that impact on its maintenance and survival. However the two sets of goals are far from identical and for present purposes, the latter are the primary focus; Trachtenberg Z and Focht W, "Legitimacy and Watershed Collaborations: The Role of Public Participation” in Sabatier P, Focht W, Lubell M, Trachtenberg Z, Vedlitz A and Matlock M (eds), \textit{Swimming Upstream: Collaborative Approaches To Watershed Management} (MIT Cambridge, 2005) p 53.


commitments and work competently.\textsuperscript{17} Such trust may serve to increase the ability of collaborators to work together and carry out the next project and so on.\textsuperscript{18}

There is, however, more to sustaining successful collaboration than these supporting strategies. For example, as the literature on “common pool resources” suggests, enduring institutional structures are likely to succeed when they contain a number of additional design features, including: (i) affected interests can participate in decision making and modifying rules; (ii) there are efficient and low cost conflict resolution mechanisms available; (iii) government authorities do not significantly challenge the collaboration’s decisions and actions; and (iv) the benefits individuals receive from the collaborative process are commensurate with the contributions they make toward managing the resource.\textsuperscript{19}

The architects of the EIP, NEIP and RNRM process were mindful of these sorts of principles, at least in broad terms. All three cases target a variety of the above conditions, including requiring ongoing cooperative, negotiated style decision making\textsuperscript{20} and sanctioning the work of the collaborative endeavour as a government based program.\textsuperscript{21} The programs also require collaborators to continue to welcome interested stakeholders and include affected interest in reviewing and updating plans.\textsuperscript{22} Such openness and participation can enhance stakeholders’ perceptions of fairness and contribute to wider acceptance and legitimacy of the collaboration, which is vital to its survival.\textsuperscript{23}

However it is design principle (iv) above that is perhaps the most relevant and challenging issue for successfully sustaining the type of collaboration pursued by the case studies. This is because the majority of volunteer collaborators in the cases are unlikely to bear the many ongoing costs of actively collaborating if they do not receive some form of benefit in return, be it the protection of resources they value,\textsuperscript{24} personal satisfaction from focusing on “their”

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\textsuperscript{17} Leach and Sabatier, n 16, p 234.
\textsuperscript{18} Leach and Sabatier, n 16, p 234.
\textsuperscript{20} See chapter 6.
\textsuperscript{22} VEPA, Guidelines for the Preparation of Environment Improvement Plans (Publication 739, VEPA, 2002) p 10; Environment Protection Act 1970 (Vic) s19A1 (3); Bilateral Agreement between the Commonwealth of Australia and the State of Queensland To Deliver the Natural Heritage Trust, August 2004 (Ctb, Qld) Attachment E p 68 (hereafter “Bilateral Agreement NHT”)
\textsuperscript{23} Lubell et al, n 1, p 287-288.
\textsuperscript{24} Or the resolution of an environmental problem that impacts upon them.

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physical place and community, or additional benefits provided through the NEG program such as access to grant money, new knowledge or new social and professional networks.

The cases have accordingly been designed to impart support and resources (discussed below) to try and reduce the burdens imposed on collaborators and thus increase the chances of maintaining volunteer involvement. In addition, such support is intended to contribute to the efficacy of the collaboration by bolstering its capacity to sustain an active and effective organisation (e.g. maintain communication between partners and recruit support staff) and thus successfully carry out ongoing implementation. Such successful implementation should in turn contribute to the sustainability of the collaboration by delivering environmental improvements.

The discussion that follows outlines in more detail for each case the potential benefits collaborators may receive, the costs and burdens associated with collaboration and the mechanisms designed to provide resources and support to the group. Focusing first on EIP and NEIP, then RNRM, the investigation reveals that the three case studies are similar in many respects but also quite different in others, in terms of the mechanisms that are invoked to support collaboration. A number of questions are also raised about whether these mechanisms are likely to effectively sustain successful collaboration in practice.

### 8.2.2 Resources and support and the costs and benefits of collaborating

#### 8.2.2.1 EIP and NEIP cases

The design of the EIP and NEIP case share a major similarity in so far as both place almost exclusive reliance on the contributions of collaborators to support the organisation and its activities.

Collaborators in both cases must collectively contribute their own time, resources and/or identify external funding sources to support a range of organisational actions and projects over the life of the collaboration. These actions include basic administrative tasks such as facilitating communication between collaborators, calling and attending regular meetings, taking minutes, and...
and managing budgets. Collaborators must also use their own resources or identify external funding to maintain the momentum of the group to conduct ongoing projects, carry out monitoring and adaptation processes, review and update plans, and fulfil ongoing communication and reporting to the wider public about activities.29

Both cases have however been designed to lessen the magnitude of many of these burdens for volunteers such as local residents and community groups. Ongoing VEPA assistance (eg. provision of technical information) is likely to be provided across both cases.30 Further, many of the more expensive administrative and organisation tasks are imposed on those with greater resources and capacities.

For example, in EIP case the industry partner is expected to fund and/or perform the majority of administrative31 and implementation tasks.32 To ensure this occurs, the EIP,33 has been designed to incorporate mechanisms that change industry’s cost/benefit equation, providing reputation incentives to leading industries, and/or utilising regulatory, social or economic threats34 (even the direct application of law35) to ensure “good” and poorer performing industries see benefits as outweighing the costs of collaborating (for further see chapter 5). Beyond this, the guidelines suggest industry may also be motivated to support the collaboration because ongoing benefits from collaborating,36 including improved environmental performance, can lead to better relationships with the local community, reduce environmental impacts and liabilities and improve financial performance.37

In the NEIP framework, the intention is to harness and lock in the resources and capacities of a governmental partner known as a “NEIP sponsor” who is responsible for obtaining

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31 In the EIP program, industry is required to make “contact with the community” (eg. letter box drops and advertising) as well as be responsible for “circulation of agendas and minutes of the meeting[s] as well as providing refreshments and any other administrative support” the collaborative group may require, VEPA, Guidelines for running a community liaison committee (Publication 740 VEPA, 2001) p 5.
32 VEPA, n 22, p 9.
33 The guidelines provide very little information on benefits government bodies who collaborate may receive - simply suggesting they will have and maintain “an interest” in the industry, the most obvious being VEPA who has direct responsibility over environmental performance, VEPA, n 22, p 2.
34 For example: changing a licence, pursuing prosecution or imposing a compulsory EIP effectively allow the VEPA to compel an industry to continue an EIP process. Citizens’ capacity to generate negative publicity may also be used to threaten a company’s social licence.
35 See chapter 5.
36 In certain instances, reputation benefits and less prescriptive regulatory requirements are also touted. These later benefits arise where an EIP is undertaken as part of an “accredited licence” scheme; VEPA, n 22, p 1; Environment Protection Act 1970 (Vic), s 26B(2)(c).
37 VEPA, n 22, p 1.

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approval of the plan. As we saw in chapter 4, this “sponsor” agency or government body must volunteer to take on this role and is encouraged to provide leadership and support to the group, and is granted relative autonomy as to how to do so. This design feature of the NEIP resembles John’s emphasis on the important role a “sponsor” of collaborations can fulfil, such as obtaining or providing funding and information to support the collaborative process. But in contrast to John’s work, which contemplates the key sponsorship roles of elected officials and top agency managers, NEIPs have been designed to lock in government organisations like local governments. Whether these organisations are similarly willing and capable of committing sufficient resources and information to support the maintenance of the collaborative process is an important issue that is examined below.

If these sponsors decide not to directly support the group, the design of the NEIP does not contemplate any alternative sponsorship mechanism. Surprisingly, this is directly contrary to the NEIP’s approach when it came to supporting the initial emergence of collaboration, where both officers and seed funding were provided to reduce transaction costs. However upon the approval of the NEIP plan by the VEPA, such seed funding ceases and the resource burden of continuing collaborative momentum and organisation falls to the partners. This approach is common to other NEG experiments where short term funding for coordinators is used to “kick start” the collaboration, with the expectation that over time the group will become independent of funding and support themselves.

Whether the NEIP group can rise to this challenge is unclear. Certainly it is likely that the NEIP partners will implement actions they committed to in the plan by virtue of NEIP’s contractual accountability mechanisms that make failure to complete actions a breach of law. However this check does little to ensure the collaborators will pool sufficient resources together to maintain the groups’ organisation, or indeed recommit to the effort after the initial plan has been implemented.

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38 As discussed in chapter 4 this body must be a “protection agency” and have responsibilities for the environment.
40 Note John emphasises an “outside sponsor” such as an official or agency manager, while NEIP views the sponsor as a partner and an organisation like a local government, John, n 25, p 239.
41 John, n 25, p 239.
42 For example, they may not be able to stretch their limited resources to continue to support the NEIP over the longer term.
43 VEPA, n 39, p 9.
44 For further see chapter 5.
46 Bonnell and Koontz, n 2 at 154-155.
Of course, both NEIP and EIP collaborators may well be more than compensated for such organisational burdens by the long term benefits of collaboration.\textsuperscript{47} Such benefits however, are unlikely to include continuing access to grant money, which is not contemplated in either case.\textsuperscript{48} Instead, the two programs assume that continuing collaboration will be sustained by the possibility of beneficial program outcomes. For example, local residents in EIP may gain benefits from reducing industry's deleterious impacts on their day to day life.\textsuperscript{49} NEIPs may provide local resident and community groups benefits by addressing environmental issues of importance to the community at the local scale.\textsuperscript{50}

Of course the VEPA recognised that the benefits may be insufficient or the practical demands may be too great to sustain participation of all volunteer collaborators. As one guideline notes, a “common occurrence” is “membership reduction over time”, particularly by less well resourced local residents.\textsuperscript{51} For this reason, the guidelines require the collaboration to seek out additional collaborators over the longer term to prevent the collaboration from collapsing and ensure it remains effective and legitimate by reflecting the range of different community interests and perspectives.\textsuperscript{52}

It is unclear how long these efforts to renew collaborative participation are to continue, not least because the guidelines remain silent on the precise length of any specific EIP or NEIP collaboration. This lack of clarity raises a number of questions. For example, in what circumstance and for how long are these collaborations capable of being sustained in this manner? Indeed, if a collaborative initiative achieves many of its goals over the longer term will the collaboration dissolve or will collaborators or others in the community still identify sufficient benefits in collaborating?\textsuperscript{53} As the NEIP program is only a few years into implementing its first plan it is still too young to consider many of these issues. However the EIP program, with a 15 year history I is capable of providing important insights into many of these questions\textsuperscript{54} and they are accordingly explored in the findings section below.

\subsection*{8.2.2.2 The RNRM case}

The RNRM case presents a far more complex and onerous set of ongoing responsibilities for collaborative bodies than either the EIP or NEIP frameworks. However RNRM also

\begin{footnotes}
\item \textsuperscript{47} Fung and Wright, n 9, p 27.
\item \textsuperscript{48} Fung and Wright, n 9.
\item \textsuperscript{49} VEPA, n 39 p 1; VEPA, n 22, p 1.
\item \textsuperscript{50} VEPA, n 39, p 1.
\item \textsuperscript{51} See VEPA, n 22, p 3.
\item \textsuperscript{52} See VEPA, n 22, p 3, 6; VEPA, n 39; Lubell et al, n 1, p 287.
\item \textsuperscript{53} Bonnell and Kootz, n 2 at 154; Lubell et al, n 1, p 294.
\item \textsuperscript{54} Fung and Wright, n 9, p 38.
\end{footnotes}
provides far more direct governmental support and “benefits” for collaborators such as access to 
grant money.

In terms of the tasks and costs associated with collaborating, volunteers are required to 
manage their regional body as an incorporated body, as well as carry out administration tasks 
such as hiring and managing staff, balancing budgets of many millions of dollars, and managing 
and implementing projects. In addition, regional collaborations are required to conduct ongoing 
monitoring and evaluation, and multiple reporting processes, as well as communication and 
reporting to the wider public about their activities and spending. These tasks are likely to be a 
significant burden for even the most committed and skilled volunteers, particularly if, as some 
NEG scholars assert, rural Australia is fast approaching the limits of volunteerism.

To mitigate this potential problem, RNRM case has been designed to offset many of the 
ongoing costs of collaborating. Indeed, the nested structure of RNRM acts to enhance 
sustainability of lower level collaborative bodies by providing greater access to pooled 
resources of governments and support services. This includes governments providing a small 
going remuneration to collaborators (eg. funding to cover travel costs), as well as providing 
funding for regional organisations’ core operations. Core operations comprise activities such 
as plan evaluation, integrated monitoring and reporting, communication, board functions and 
meeting requirements, employing staff (eg. Executive Officer, Finance officer, Administrative 
Assistant) and paying rent. Regional communities are however expected to seek investment 
from other external sources (and their capacity to do so may be vital to sustaining RNRM if 
dedicated government funding were to cease some time in the future).

Regardless of the funding source, the regional body must not only maintain its own 
collaborative structure, but it must also liaise, engage, work with and oversee timely 
implementation of government funded projects by other regional stakeholders (such as farmers 
or other stakeholders that were involved in the development of the plan and committed to its 
targets, actions and priorities). Depending on the arrangements developed by a given regional 
community, the body’s relationships with these lower level implementers may take on a number
of different forms. For example, some may be characterised by close collaboration between regional bodies and “sub regional” groups, while others may involve a service provider style of relationship where projects are sub-contracted out by the regional body to individuals. Other bodies may employ a mix of these or other strategies. Despite such variation, all these relationships are central to the success of RNRM in the long term and for the purposes of this discussion they are all considered to fall under RNRM’s broad idea of “cooperative partnerships”.

The RNRM program may succeed in sustaining such broader collaboration because access to and use of government funding is likely to act as a key benefit in return for collaborators’ efforts. As we saw in Chapter 6, securing funding was a strong motivator for sub regional groups. Notably, these types of rewards would also be in addition to any personal benefits participants receive from collaborating, such as protecting a natural resource they value.

Of course, even with rewards such as government funding, it is possible that personal benefits may change over time, or the costs of collaborating may become too much and participants on the regional body may seek to disengage. The RNRM program is accordingly designed to maintain numbers and stakeholders on the body to ensure effectiveness and legitimacy, and thus its survival, by giving government an ongoing commitment to ensure membership on a regional body remains “appropriate” and the body remains designated.

Despite the extensive support and benefits RNRM may provide to collaborators, the literature suggests the program’s arrangements may still face a number of challenges in sustaining broad collaboration. Among other things, the nested structure may be weakened by conflict and unwillingness of governments and agencies to share power at “higher levels” in nested arrangements (a problem that also beset the emergence of successful collaboration in RNRM as discussed in chapter 5). Inadequacies in the magnitude of government support may also undermine the chances of sustaining successful collaborative organisation. The findings below return to consider whether and when these issues were problematic in RNRM.

8.2.3 Summary

To summarise, while the cases employ a number of strategies to sustain their respective collaborative approaches, all three cases intend to make the benefits individuals receive from the collaborative process commensurate with the contributions they make toward managing the

63 Sabatier et al, n 15, p184.
64 Sabatier et al, n 15, p184.
65 Sabatier et al, n 15, p182-185.
66 Bilateral Agreement NAP, n 56, ss 7.1(f)and(g); Bilateral Agreement NHT, n 22, ss 67, 68.
67 Margerum, n 28 at 141.
To do this, the cases have been designed to reduce costs of collaborating and increase its efficacy in implementation through the provision of funding and/or designing support structures.

EIP and NEIP have been designed to depend heavily on industry and sponsors’ support and encourage groups to renew participation if drop off occurs. Comparatively, RNRM may be more successful over the long term, not least because of its nested support and funding arrangements, and the provision of additional “benefits” such as access to grants for stakeholders.

However as we have seen, there were questions raised about some of the features across the cases. For example, in EIP and NEIP, it is unclear whether sponsors and efforts to renew participation will be effective. Further, in RNRM, conflicts between government and/or insufficient funding may undermine the program’s sustainability. How these issues played out in practice is examined in the next section, followed by a conclusion of the implications for the literature.

### 8.3 Sustaining successful collaboration in practice

This section examines when and to what extent the cases were able to sustain successful collaboration in practice. This analysis proceeds in three parts, each focusing on EIP, NEIP and RNRM sub cases consecutively and examining both their challenges and accomplishments in sustaining successful collaboration.

#### 8.3.1 EIPs – the “lifecycle” of collaboration

This thesis’ 8 EIP sub cases contained one of the oldest EIPs, along with 4 others that had sustained their collaboration over second and third iterations of plans and ranged in age between 4 to 10 years. Even the remaining 3 sub cases that were implementing their first plan had been operating as a collaborative group for over 3 years. Across these sub cases, the findings indicated that all had achieved substantial success in maintaining an effective collaborative organisation during the implementation and monitoring of their initial plans. As we will see, this success was attributable to a number of factors, including securing sufficient commitment and support from industry, stability in local residents’ numbers and efficiently implementing actions.

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64 Ostrom, n 10 at 149; Schlager, n 19, p 154-162; Sabatier et al, n 15, p 184.
65 Sabatier et al, n 15, p 184; Margerum, n 28 at 141; John, n 25, p 239.
66 EIP Sub case 6.
67 At the time of writing the ages were as follows: EIP sub case 1 (7 years), EIP sub case 3 (10 years), EIP sub case 8 (6 years), EIP sub case 4 (4 years).
68 EIP sub cases 2, 5 and 7.
to reduce industries’ impact on the local environment. However as discussed further below, having achieved such success in the early stages of EIP, long standing EIP collaborations sometimes produce diminishing returns and suffered from a number of other flaws.

A central strategy to sustaining EIP collaborations was securing industry resources and support to facilitate the collaborative group’s organisation and administration. Most respondents reported this strategy had been effective. Leading, “good” and poor performing industries had all provided or paid for an appropriate room or office to conduct regular collaborative meetings. They facilitated the administration of meetings, including minute taking and paying for an ongoing negotiator (who often successfully resolved ongoing conflicts), as well as funded internal communications between group members by circulating agendas and monitoring data. Industry funding and support also ensured the group was effective in conducting monitoring and implementation.

Certainly respondents recognised that providing support for these activities and tasks had imposed significant costs on industry. Industries in better financial positions were accordingly often better placed to fund both the collaborative group’s implementation activities and administration. However most respondents were of the opinion that industry had done the best they could with available resources to support the collaborative organisation. As one local resident stated: “you’ve got to work within budgets”.

Aside from the most recalcitrant performers that had been directly compelled to conduct an EIP under their licence, most industries were motivated to make these resource contributions to support the group because they generally saw the benefits of collaborating in the EIP program as far outweighing the costs.

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73 Interview 161, Industry.
74 Interview 133, Resident.
75 Local government sometimes assisted with administrative tasks, particularly where they took on a role of being an “independent” chair person. However in general it was more common for industry to fund the majority of organisation and administration tasks.
76 Interview 151, Industry; Interview 184, Industry.
77 As one respondent pointed out: “I think the company probably they have been in a very good financial position so they’re able to invest money to do that” Interview 181, EPA.
78 Interview 173, Local Resident.
79 See for example Interview 184, Industry: “it’s all dependent on how much money you spend, you can do a lot if you spend a lot of money but if there’s only a certain amount of money in the pot then, you know I mean if you’ve got a business that generates a thousand dollars you’re not going to go and spend five million dollars to make a, to balance a return...people aren’t in the business for losing money”.
80 “They vary from degree to degree depending on what resources the company can put in and some of them are pretty simple and it’s perhaps appropriate for the site” Interview 132, EPA.
81 Interview 162, Local Resident.
82 For background on this issue see chapter 5.

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All industries pointed to gains that had materialised from ongoing collaboration with local residents, including accessing local \(^{83}\) and “outside” knowledge \(^{84}\) of non-government collaborators, which had helped industry to identify its impacts on the surrounding community and encouraged innovation.\(^{85}\)

Other benefits that motivated industries’ continued commitment and support for their collaborative groups tended to vary between industry types. For leading and “good” performers it was respectively the ongoing “reputation” benefit from having an EIP and Accredited Licence (see chapter 5)\(^{86}\) and the protection of industry’s public and commercial profile, (“social licence”)\(^{87}\) achieved through ongoing engagement of otherwise aggrieved local communities.\(^{88}\) For most poor performers, however, many of their motivating “benefits” were induced by VEPA leverage that shifted industry’s cost benefit equation and made continued collaboration a more attractive option than prosecution or harsh licensing conditions.\(^{89}\) Such leverage reportedly allowed VEPA to ensure poorer performing industries provided appropriate support for the collaborative group.\(^{90}\)

Direct community involvement and pressure also reportedly provided motivation for poorer performing industries to sustain their funding commitment and involvement in the EIP. As one respondent explained:

if there weren’t the [local stakeholders on the EIP] then there would be no second EIP, the company wouldn’t do it, its costs a lot of money.\(^{91}\)

In addition to commitments from industry, VEPA officers also provided ongoing support to the group including attending all meetings, assisting in negotiation to resolve periodic conflicts and renegotiating many targets (see chapter 6), and reviewing the plans. With such

\(^{83}\) “The people on those committees have become very valuable to [industry] in the sense of a good conduit to be able to interact and discuss on the ground issues in the local community”; Interview 121, EPA.

\(^{84}\) “The meetings although sometimes unpleasant are a valuable conduit for the group to identify issues, and some issues we might not identify otherwise...so the community process can be useful” ; Interview 174, Industry

\(^{85}\) “I’m talking about walking away from an EIP meeting and saying “hey there’s something to think about, maybe we should consider that, isn’t that a good idea”. If you are getting that constant feedback and ideas from outside it almost encourages innovation in the organisation and innovation will encourage continuous improvement”; Interview 141, Industry.

\(^{86}\) “We get a reputation bonus out of it, but it’s hard to put a dollar figure on to say “gee do we sell a couple more products a year because of that or what”; Interview 151, Industry.

\(^{87}\) Gunningham and Sinclair, n 14 p 164.

\(^{88}\) “I think the main thing is that it demonstrates to some of our staunchest critics that we listen and we learn and we engage...people always assume its just shareholders you look after but if you are not doing a good job by communities and they don’t support your licence to operate, you see it affected in the bottom line”. Interview 141, Industry.

\(^{89}\) For some highly recalcitrant performers it was the continuation of conditions in their licence that ensured industry sustained their participation. As one respondent explained, “I guess the licence changes have I guess taken that voluntary aspect out of it”; Interview 174, Industry.

\(^{90}\) Interview 182, Local Resident.

\(^{91}\) Interview 184, Industry. Sabatier et al, n 15, p184.

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VEPA assistance and industry support provided for organisation, very few non government respondents reported that the ongoing time and costs of collaborating were too onerous, or outweighed the benefits of progressive improvements being made to the local environment through implementation (discussed further below). As a result local resident and non government membership remained relatively stable during the early stages of implementation.

Despite these members lacking representativeness (discussed in chapter 6), the wider legitimacy and acceptance of the collaborative group may have been enhanced by the fact that the collaborations had remained open to new participants and the wider local community during these stages. For example, collaboratives held annual general meetings that were advertised and open to all who wished to attend, or published meeting times on public websites allowing interested individuals to show up, while others required individuals to express interest in attending meetings.

The above features ensured that the EIP groups operated undisturbed, comfortably and relatively successfully through their youth and into middle age. During this period the groups were able to implement nearly all the actions in their plan or plans. The result was respondents could point to a range of outputs such as broad plant upgrades, staff training, replacing specific equipment, operation changes including community complaint procedures, as well as the conduct of monitoring studies to guide actions. These outputs progressively led to a range of reported environmental improvements. These improvements often included

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92 Sabatier et al, n 15.
93 However, a few local residents in some of the sub cases still tend to complain to the VEPA rather than seek participation or action via the EIP: “we will get a few dust complaints from time to time…but those people aren’t interested in being any further involved you know getting involved”. Interview 132, EPA.
94 According to respondents, most actions had either been achieved or were on track to be achieved in the current plan. Even for projects that had been staged over a number of EIP plans, many had been completed over these later iterations.
95 “We spent a lot of money, boy did we spend some money...we had to fix up pipes hundreds of odour sources, hundreds, it’s like spaghetti out there”; Interview 184, Industry.
96 “They spent a lot money in the first 2 years...50% of what they have done is training of workers, fixing how doors close, trucks. They’ve been very good” Interview 112, Local Resident.
97 “The last one we had a significant project here with a pump seal upgrade...it was something new so they could come away with a real feel for this is something fairly new and cutting edge that’s been put in place”; Interview 161, Industry.
98 “So through the EIP process lighting was highlighted as an issue and we have started a program of switching the lights so that lights in elevated areas of the plant are only turned on when someone needs to access it” Interview 174, Industry.
99 “The hotline, that definitely came out of the EIP group and that’s probably been a big community change that people can ring a free number and get somebody at any time of the day and night” Interview 15/62, Local Resident; “If someone complains we have the shift manager go to their home to listen with them or smell with them, lovely mental image. These managers can be contacted at any time and will go to the residents place at any time. We operate 24 hours so sometimes it is at 3 in the morning” Interview 111, Industry.
100 “We have a report which is forthcoming which reports on some background noise readings that we undertook...we are inviting the consultant to the next meeting and give them the results so they can take them away and mull over them”; Interview 174, Industry.
achievements on broader environmental issues,\textsuperscript{101} but it was more common for industries to achieve significant reductions in their impact on the local area. The following comment was a common refrain across the cases, sometimes even after the completion of only one plan:

All the big problems for the community basically have been fixed...there hasn’t been much that hasn’t worked.... you wouldn’t know [industry] were here half the time now.\textsuperscript{102}

Yet it was this progressive success of the collaborative group at resolving local environmental issues that resulted in perhaps the most significant challenge to sustaining an effective collaboration over longer term. That is, maintaining the interest and involvement of local residents in EIP collaboration.

The experience of the five oldest collaborations revealed that as the local impacts of industry were gradually solved; many local residents saw very little reason to continue time consuming engagement with the EIP. Rather than evolving in their environmental interests from local to broader environmental issues or in their expectations of the company’s environmental performance, many local residents simply disengaged once the problems that affected them personally had been resolved.\textsuperscript{103} As one respondent explained:

One of our neighbours down there. He has issues with noise at a certain frequency. When he told them about his noise issues and they eventually fixed it, his issue was pacified. He’s not going to get up every third Thursday to go to the meeting.\textsuperscript{104}

Various respondents recounted the decline in interest and participation, particularly those from “good” and poor performers where local impacts of industry had been one of the strongest motivations for the initial involvement of local residents.\textsuperscript{105} For example, one told a story of how “a core membership of around a dozen ...[had] dropped off because the community... concerns have been addressed and it’s no longer a big deal.”\textsuperscript{106} Other industry participants

\textsuperscript{101} Although there was no hard data available on how substantial the achievements of EIPs were, good and leading industries involved in EIPs for a substantial period were able to point to definite actions and figures (e.g. reductions in 10,000 cubic metres of natural gas per day, 35% reduction in freshwater usage, substantial rehabilitation of industrial and mining site through developing wetlands and native plant species, 80% reduction in site incidents over 5 years). Other stakeholders confirmed that these targets were realistic and had substantially been achieved. However, as we saw in chapter 7, the EIP was rather less effective in influencing the environmental performance of poorer performing companies. Indeed, given their evident tokenism, these industries appeared to achieve minimal to no improvement on broader issues.

\textsuperscript{102} Interview 162, Local Resident.

\textsuperscript{103} As one respondent put it “The individuals have all got their own agenda”; Interview 161, Industry.

\textsuperscript{104} Interview 112, Local Resident.

\textsuperscript{105} Another reported “the initial EIP meetings “people would turn up and were very irate, you know like you’d get 70 people at a meeting”. However after many of the concerns of the community had been addressed through the EIP the story was different - “not many residents bother to come to our meetings, there’s only a couple of die hard people...we only get two people that come to our residents meetings regularly, we’ll just poke along with it”.

\textsuperscript{106} Interview 184, Industry.

\textsuperscript{107} Interview 123, EPA.

\textsuperscript{108} Cameron Holley New Environmental Governance
reported that participation of local residents had declined to very small or occasionally zero attendance at meetings. 107

As noted above, the drop off in participation from local residents was, to some extent, anticipated by the designers of EIPs who required collaborators to try and renew participation. However, respondents characterised efforts to generate new participants as unsuccessful and often futile. 108 In rare situations when an industry committed a localised pollution incident, local resident participation would certainly mushroom, but it would quickly plummet as soon as the issue was resolved.109 Even extensive efforts to generate new membership 110 such as public notices in local papers and newsletters, and holding public meetings to find new members met with little success.111

The reason such efforts failed was largely attributable to the collaboration’s success in resolving local environmental problems. That is, there were no longer sufficient preconditions of collaboration such as urgent pressing problems to galvanise concern (chapter 5). It also appeared that efforts to renew participation were hampered by the usual cost barriers and the tendency of some local residents to “free ride” on the labours of others.112 As one respondent pointed out:

We still can’t get members to join…People haven’t got time, I can understand that….Providing things are running well they say you’re doing a good job, we’re not interested.113

Yet, despite the decline in participation and a failure to engage new collaborators, all five mature sub cases persisted to address any remaining local issues as well as industry’s wider environmental performance. This is of significant interest to this chapter because it provides a unique opportunity to reflect on the challenges of maintaining collaborative momentum once some of the initial objectives of collaboration have been substantially achieved.114

107 “It has been in the last 5 years as we have dealt with many of the issues, the meetings have been held less and less frequently…If no one turns up we have made a commitment to hold them anyway.” Interview 111, Industry.
108 Two respondents did note they had gained one new participation on the EIP committees, however even then one of them ended up dropping off; Interview 15-62 Community; Interview 131, Industry.
109 As one respondent explained: “The trouble is with the [EIP collaborative group] if you have explosion or something you get 40 or 50 people turn up at the meeting to complain. Or if there is a bad smell goes over or something like that you get them all turn up….But not at an ordinary meeting”; Interview 162, Community.
110 Interview 132, Industry.
111 As a respondent from one of the oldest EIPs pointed out “contacting the community is something I feel we’ve failed in because we still don’t get people coming and joining up and we’re all older, we’re all old now; Interview 15/62, Resident.
113 Interview 162, Local Residents.

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Who then bucked the wider trends of decline and what motivated them to continue to collaborate to address industries’ wider environmental performance? Non-government groups such as the local environmental interest groups in EIPs were the most stable participants, with only one reportedly disengaging. In part, their ability to sustain their involvement may have arisen because these groups had a wider and more experienced membership upon which to draw. In addition, these groups maintained a genuine interest in wider environmental issues (eg. biodiversity, wetlands, and the condition of the marine environment) that were longer term and thus remained unresolved. While these issues had yet to be solved, the collaboration had nevertheless achieved sufficient success up to this point as to encourage environmental groups to continue to collaborate to try and achieve more.

the group members are pretty keen [on biodiversity and wetlands] and want to see that further developed...the [groups’] interest...is ensuring that we are going the next step, not just creating a wetland but looking to see where the improvements are occurring

In addition to environmental groups, a number of local residents maintained their participation because they had identified a number of longer term benefits that were seen to outweigh ongoing costs of collaborating. Without interviewing all collaborators it is of course difficult to identify all benefits that local residents pursued. Even so, a number of themes emerged from the interviews. Some residents were concerned to fulfil personal interests in industry operations, while others were reportedly motivated by more altruistic returns. However the most surprising, but one of the most commonly mentioned motivations for local residents continuing to collaborate was a lack of trust. This motivation was reported in a number of mature sub cases that had involved “good” and “poor” performers where a high degree of mistrust had characterised the initial stages of the collaboration (see chapter 5). While local residents confirmed that they had developed “friendships” and “mature relationships” with industry representatives, they were quick to add that this had not mitigated or replaced a

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115 For further see chapter 6.
116 As one industry pointed out, such wider membership “is great and they are more valuable” because they connect with and can draw on wider community, Interview 131, Industry; Fung A and Wright E, “Countervailing power in empowered participatory governance’ in Fung A and Wright E (eds), Deepening Democracy: Institutional Innovations in Empowered Participatory Governance (Verso, 2003) p 264.
117 Interview 132, EPA.
118 Interview 131, Industry.
119 Interview 132, EPA.
120 The latter was particularly relevant to those in sub case involving leading performers where such desires had been the originally motivation for them choosing to collaborate: “Some people go into the Lions Club, some go to St Vinnies, others go to...I think they say okay, I'm interested in how industry works to improving and find that interesting ...[they] want to make a difference in contribution”, Interview 161, Industry.
121 A few industries did suggest they had built trust with particular participants, as opposed to all the members of the collaborative group (Interview 111, Industry).
122 As one local resident simply put it “we're good friends” Interview 15/62 Local Resident.
123 Interview 111, Industry.

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continuing feeling of mistrust for industry itself – a feeling that had sustained their ongoing involvement. As one local resident and one industry respondent from different sub cases respectively explained:

> We still go there [to the meetings] even when nothing’s wrong...If we didn’t go some of the guys might revert

> there’s still this element of “hang on, it’s not right to trust you completely”...It’s a funny thing... So it might not be trusting, but certainly they are more accepting that we’re here and that we’re doing what we can and we’re doing our best.

The irony of this finding is that although trust is often seen in the literature as a factor of successful collaborations, these findings suggest that in circumstances such as EIP cases, collaboration may actually achieve quite significant improvement in environmental problems and sustain ongoing involvement with very little trust at all, and indeed mistrust may in its own right be a substantial driver of ongoing collaboration.

Regardless of the motivation for collaborators sustaining their involvement, respondents suggested the collection of “die hard” stakeholders that remained were unlikely to contribute to successful collaboration in the future. There were two main reasons reported for why this was so.

First in some of the most mature EIPs, some of the residents that continued to collaborate had moved well outside of the local area, reducing their capacity to bring in local knowledge and contribute to adaptive management processes:

> they’ve been around for a while and they’re moving away...Outside of our influence zone....That’s an issue for us... they’re not going to be in a position to tell us what the current most important issue is.

Second, even in sub cases where local residents had tended to stay in the local area, the reduction in numbers and attendance at meetings, combined with lack of technical knowledge

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124 Interview 112, Community; A local resident from a different case expressed similar lack of underlying trust.

125 Interview 112, Local Resident.

126 Interview 161 Industry.

127 Interview 161, Industry.

128 As one respondent pointed out: “so for a large part the neighbourhood committee are made up of community representatives who used to be neighbours who now live [elsewhere]” Interview 161, Industry.

129 Interview 161, Industry.

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and/or interest in broader environmental issues (discussed in chapter 6) led some respondents to suggest that the collaboration was “losing its punch”.

While this problem of diminishing returns is hardly unique to collaborative approaches, they were— in the case of many mature EIPs—a fundamental limitation. Participating industries, even many of those with wider input from environmental group representation, may no longer be subject to significant wide ranging pressure to improve environmental performance nor be exposed to many novel ideas that can fuel innovation. Notwithstanding, the initial success of many EIPs in resolving community concerns, the corollary of this “lifecycle” phenomenon saw a substantial dropping off in environmental achievement. One long-term industry participant summed up a common situation as follows:

for somebody who’s getting to the mature point in the EIP process, we’ve been at it for a while. Like I said before all the low hanging fruit has gone. Our first EIP had two or three hundred action items ... but now we’re at the point we’ve come down the curve and we’re sort of plateauing ... now its about what can we do to get the next little step change? 130

This lifecycle from a dynamic youth to a moribund old age raises the obvious question of whether it is desirable to continue to sustain the collaboration. Some may argue there are inherent democratic values in sustaining collaborative institutions like EIP that give citizens an additional channel to express their environmental preferences to government. 131 Some respondents also suggested that sustaining the collaborative group had the benefit of providing an experienced network to respond to potential new industry projects, such as an expansion of the plant,132 which may arise in the future.

Even so, with environmental improvements beginning to plateau, community concerns largely having been addressed, and minimal local stakeholder collaboration, it appeared the VEPA was no longer getting the “bang for its buck” in continuing to service EIP collaborations (eg. attending regular CLC meetings and reviewing industry progress against the plan). Furthermore, as some VEPA officers acknowledged, attending EIP meetings of mature EIPs diverted their time away from enterprises with far worse environmental records, who did not participate in an EIP:

there is not too many company’s out there that would see an EPA officer every three months ... the thought has crossed my mind that time [spent on

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130 As a different respondent reflected, “There is not a lot more we can do to address noise issues.”, Interview 111, Industry; Interview 161, Industry.

131 Lubell et al, n 1, p 287.

132 As one industry respondent put it, they saw their collaboration as: “an investment in the past and future. If we have a new proposal there is that forum available”; Interview 111, Industry.

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EIPs] would be better spent ploughing into things that are actually burning issues at the time.\textsuperscript{133}

While VEPA continues to support mature collaborations there appears to be a risk that the “over-regulation” of some mature EIPs may be producing the “under-regulation” of other environmental problems.\textsuperscript{134} Of course much depends on individual circumstances. For example in collaborations involving more recalcitrant or locally hazardous facilities, continuing resource input from VEPA may be more justified than in EIPs involving mature non-hazardous or good performing EIP enterprises. Even so the implication of the findings is that in at least some cases, collaborations can outlive their usefulness and their continued survival can become an imposition (at least in cost benefit terms).\textsuperscript{135}

To conclude, the above analysis suggests a “life cycle” of collaboration\textsuperscript{136}, which, after an active youth, lapses into a comfortable middle age before finally succumbing to senility. As the findings indicated, for much of its early life the EIP process was able to sustain a successful collaborative process. Particularly vital to its success was the EIP’s capacity to secure sufficient funding and in kind support from industry by using community and regulatory pressure and/or providing benefits to industry.

Unsurprisingly, the gradual success in implementing actions to improve local environmental conditions ensured stakeholders identified benefits in continuing to participate.\textsuperscript{137} However, once the specific local environmental issues that had originally motivated local resident to collaborate were resolved, many disengaged because they saw little benefit in continuing to bear the practical demands of collaborative institutions.\textsuperscript{138} Part of the issue here was that many of the local residents appeared to have their own interests and agendas, rather than pursuing overall improvement in industry environmental performance or in some cases any wider concern about other impacts on the local area. This did not prevent them from making a valuable contribution to the broader public interest but it did appear to constrain the overall effectiveness of the EIP. Indeed with few preconditions to spark new involvement, the collaboration was left largely anaemic.

With reduced collaborator numbers, residents moving out of the local area and a lack of technical knowledge, the collaborations’ adaptive management capabilities appeared weakened and environmental improvements began to plateau. While there are many possible viewpoints in

\textsuperscript{133} Interview 113, EPA.
\textsuperscript{134} Dovers, n 114 p 518.
\textsuperscript{135} Dovers, n 114 p 518.
\textsuperscript{136} Lubell, et al n 1, p 295; Fung and Wright, n 9, p 38.
\textsuperscript{137} Isaac and Heller, n 27, p 93, 101; John, n 25; Lubell et al, n 1, p 288.
\textsuperscript{138} Margerum, n 28 at 141; Fung and Wright, n 9, p 38.
the literature on the benefits of sustaining such collaborations, from a cost benefit perspective of
the government regulator, it is hard to avoid the conclusion that in at least some of these cases
euthanasia was preferable to ongoing life support.139

Having gained some valuable insights in to the experience of the mature collaboration by
focusing on EIP program, the next section turns to examine the maintenance of collaboration in
the much younger NEIP, which at the time of research was still implementing the actions of its
first plan.

8.3.2 NEIPs – breakdowns, stoppages and malfunctions

As we saw above, the EIP case achieved considerable success in sustaining an effective
collaborative organisation in its early stages of implementation. In contrast, the experience of
the NEIP collaboration during implementation was one characterised by breakdowns, stoppages
and malfunctions. Indeed, the findings indicated they had been unable to sustain a functioning
and effective collaborative organisation and fully capitalise on the collaborative momentum that
had initially been set into motion by government “seed” funding, negotiation, consultation and
trust building (see chapter 5).

The groups’ struggle coalesced around four interrelated challenges, namely: (i) gaining
sufficient support from a “sponsor”; (ii) formalising and managing an organisational structure;
(iii) accessing external funding to provide support to the groups’ operations and actions; and
(iv) maintaining stakeholder interest and motivation. Before discussing these issues it is
important to note that findings below were derived primarily from the two oldest NEIPs, sub
cases 1 and 2 (being over 6 years of age). This was because sub cases 1 and 2140 had been
implementing the first of their plans for 2 and 3 years respectively, while NEIP 3 was only 4
years old and had only just been implemented at the time of this research.

A key feature of the NEIP’s design for sustaining the collaboration was gaining the support
of a “sponsor”. Around the time plans were finalised and the initial short term “seed” funding
commitments had ceased (including direct monetary contributions from the sponsor), the local
government sponsors strove to “facilitate funding applications”141 to maintain the collaborative
process and its implementation into the future.142 While none committed ongoing financial

139 Lubell, n l, p 286, 295.
140 There is a third NEIP which was of similar age but it had not received approval of its proposal and plan as earlier
as the other two.
141 Interview 222, Local Government; Interview 215, Local government.
142 “Council has said that they’ll keep providing secretarial assistance”; Interview 237, EPA.

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resources to the group, the sponsors began to provide in-kind support in the form of an administrative role (filing, organising meetings and recording information).\textsuperscript{143}

However, unlike the elected official or top agency manager who John envisions as playing a key “sponsor” role, these local government sponsors reported that they largely lacked the capacity to fully meet such ongoing responsibilities. This is not surprising given that local governments are themselves notoriously under-resourced. Indeed, their resources and time were already substantially stretched by providing support to a range of other community groups and fulfilling their many statutory (and thus higher priority) obligations relating to “rates, roads, rubbish”. The result was that local government sponsors\textsuperscript{144} viewed their long term “sponsor” responsibilities under the NEIP as an “add-on”, in an already overloaded schedule:

I don’t see the NEIP as a sustainable, long-term project...[because] if you leave it up to local government it’s going to be one of the many projects we have to manage... and we can’t continue to support them all\textsuperscript{145}

After voicing these issues to the VEPA, both sponsors were quickly encouraged to submit applications to a VEPA grant program to obtain funding for a NEIP project and an associated coordinator who could dedicate their time to support the NEIP. While they were successful in obtaining the grants, almost 3 years passed between submitting the application and ultimately receiving the funding. During this vacuum the collaborations faced three further key challenges.

The first of these challenges related to collaborators’ efforts to maintain effective operation and organisation of the collaboration with little of the expected assistance from the sponsor and only very limited in-kind support from the VEPA.

The findings indicated that the collaborators largely lacked the necessary time, resources and capacities to complete core administration and organisational tasks and make significant progress on implementing actions. As one respondent bluntly put it: “I think the lack of support to the core function of the NEIP has made it difficult to sustain”.\textsuperscript{146}

Indeed, in NEIP 1 the group struggled to hold formal meetings,\textsuperscript{147} actively coordinate collaborator activities, circulate minutes and carry out public communication.\textsuperscript{148} With little

\textsuperscript{143} Interview 215, Local government. Interview 222, Local government. Interview 234, Local government.

\textsuperscript{144} Another sponsor from NEIP 1 pointed out: “It’s just the time that I can afford in my role and I’m responsible for... a very broad agenda [already] so there’s not a lot of time I can put into it”; Interview 213, Local Government.

\textsuperscript{145} Interview 222, Local Government.

\textsuperscript{146} Interview 226, Peak local government Body.

\textsuperscript{147} As one respondent explained, the meetings that were held were generally informal, involving partners just talking about what they may or may not be doing, rather than more robust discussions and coordination on activities: “we had no resources and it was just me with very limited time, we were...able to talk about what we were doing...[but]..."

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coordination to speak of, the group was unable to effectively pool its resources to implement actions. Progress was accordingly significantly “slower”\(^{149}\) than expected, with many actions not being implemented at all.\(^{150}\) As one respondent explained:

> it fell into a bit of a hole... It seems to be dependent on what funds each group can scrounge together, but they haven’t really got around to doing that...that has probably been the biggest drawback, they can’t follow through these ideas.\(^{151}\)

In NEIP 2 the collaborators had more success in supporting their operation for a short period of time and implementing one project by virtue of a grant they had originally received during the planning stages of collaboration (discussed further below). On the whole, collaborators still reportedly struggled to maintain effective organisation and momentum.\(^{152}\) Indeed, as one respondent explained, the time-strapped, and sometimes inexperienced, volunteers often lacked a clear sense of how to conduct meetings and coordinate the group to implement actions:

> not everyone has a professional background where they have sat on committees that have to perform a task...the meetings become a bit of talk fest...it needs someone pushing the thought into action\(^{153}\)

With clear limits to the capacity and resources of groups to sustain an effective collaboration, obtaining external funding might have assisted them in better sustaining the NEIP and ensuring implementation of more actions. However this was a “catch 22” situation, as the weak organisation and administration capacities meant collaborators struggled to obtain the necessary information about potential funding opportunities,\(^{154}\) or meeting the extensive

\(^{148}\) Since 2005 we’ve probably went into a bit of a lull in terms of momentum...The reason for that was that we didn’t...Have the resources to employ a staff person anymore, and basically we were waiting for opportunities for funding to employ someone. Interview 215, Local government.

\(^{149}\) Interview 215, Local Government.

\(^{150}\) Interview 218, Environmental group.

\(^{151}\) Interview 218, Environmental group.

\(^{152}\) Members of the NEIP Leadership are presently sharing the administrative functions of the NEIP. In their view “this arrangement is unsustainable in that the [NEIP] needs a single point of contact who can arrange and facilitate meetings, provide up-to-date and reliable information and undertake ongoing administrative duties”; See Surf Coast Shire Council and Anglesea NEIP Partners, *Anglesea Neighbourhood Environment Improvement Plan* (Surf Coast Shire Council, 2004).

\(^{153}\) Interview 223, Industry.

\(^{154}\) As another respondent reflected on the capacity of local resident and non government groups to gain grants: “It’s a matter of having someone who understands how the system works, as much as anything, knowing how you go about getting funding ...they don’t know when the new buckets of funding come along...I think it is unrealistic to think it will work like that” Interview 231, CMA

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demands of application writing. As a number of respondents saw it, there were simply too many “barriers that volunteer groups have in accessing funding”.

Even so, both collaborations had early success in identifying and obtaining external funding while they had been supported with a coordinator paid for by initial “seed” funding. Yet the findings indicated that this external funding appeared to also have constraints upon its use and value for the collaboration. In particular, most funding received was short term in nature, and focused on implementing one specific project. This resulted in fluctuating motivational cycles on the part of the collaborative group. That is, when a project grant was utilised, the collaboration moved from a “lull” into action, sometimes using of a small amount of grant funding for a project officer to support the collaboration. However, it would again drift towards inertia when the money expired.

This “cycle” was aptly illustrated in NEIP 2. During the period of study, NEIP 2 had successfully implemented a “plastic bag free” campaign funded through short term grants and some partners’ resources, where a resource project officer assisted the group in coordinating the project and implementing action. However upon completion the group immediately fell into a lull. While the collaborators had multiple ideas about possible directions for the group, as we saw above, they lacked the basic capacity or resources themselves to coordinate and move forward to identify a new project. As some respondents pointed out:

we spent at least a year of just having meetings and just going round in circles and getting nowhere and in fact we’ve stopped having meetings altogether and we’ve only just picked up again.

The final interrelated challenge to sustaining successful collaboration faced by the NEIP collaborators was trying to sustain stakeholder motivation, interest and numbers. On the one

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155 For example as one local government officer noted “It would be difficult [to apply for funding]. . . [because] to prepare a decent submission kind of takes, you know a couple of weeks for it over a period of time anyway. So that you know what you’re talking about”; Interview 215, Local Government.
156 Interview 211, Coordinator.
157 For example, as part of implementing a storm water management plan at NEIP 1, the sponsor was able to secure funding from a Victorian State Government initiative for addressing storm water related issues. Similarly, NEIP 2 has implemented a range of projects that relied primarily on a variety of external funding sources including the Australian Greenhouse Office Cool Communities Program and a plastic bag free campaign. Maribymong City Council and Stony Creek NEIP Partners, Stony Creek Neighbourhood Environment Improvement Plan (Maribymong City Council, 2004) p 25; Surf Coast Shire Council and Anglesea NEIP Partners, Anglesea Neighbourhood Environment Improvement Plan (Surf Coast Shire Council, 2004) p 23.
158 For example, respondents reported that the short term nature of grants meant there were few opportunities to monitor and learn adaptively from past experience (see chapter 7).
159 Interview 215, Local government.
160 Most often for a single project from which a small part of resources could go toward supporting the group.
161 “Yeah there was a real void there for some time, what are we going to do now?” Interview 228, Local Government.
162 Facing these problems, the collaboration stopped having meetings altogether for a period of time, before recommencing again later; Interview 227, local resident.
hand, the legal backing of the plan reportedly ensured that no respondents had totally disengaged from the collaboration per se, as distinct from giving it a low priority.163

However both cases reported a gradual decline in stakeholder interest and involvement between completing the plan and implementing it. For example in NEIP 2, non governmental stakeholders went from over 15 down to “4 or 6” people who were interested in the plastic bag project being implemented at the time,164 while NEIP 1 confronted similar problems with declining attendance by key stakeholders who had been involved at the planning stage.165

It was the abovementioned organisational and implementation deficits that appeared to be the primary cause of this drop off. Indeed, at a practical level, the failure of the group to maintain effective communication structures and links between the partners meant some simply lost enthusiasm and motivation.166 Further, the periods of inaction and limited progress made in implementation produced very few improvements in the neighbourhood environmental issue. These in turn were not commensurate with the high costs of collaborating in the unsupported NEIP that was “a huge ask” for volunteers.167 Thus many individuals and community groups168 felt that there simply wasn’t enough likely return to justify bearing these ongoing costs. As one local resident explained:

it’s hard for people to get home from work and then go “I’ve got a NEIP meeting at seven o’clock. It’s like for what?”169

The unfortunate side effect of this decline in active stakeholder participation (and the resources they provided),170 was that it served to further reduce the groups’ capacities to

163 As I discuss below, partners tended not to actively engage in meetings due to fatigue and burnout.
164 Interview 228, Local Government.
165 This included industry, business and non-sponsor local government partners. As one respondent pointed out regarding industry: “Industry…signed off on the document but industry involvement in the follow up has been pretty conspicuously lacking. And I would think that would be a key. Interview 214, Government Agency; Interview 215, Local government; Interview 218, Environmental Group
166 “This appeared to be particularly the case with government officers. “When we had the project officer and a clear accountability and point of contact, it was very easy for the government project partners to have a point of contact where they run all their programs and administrative requests through. You lose that and it’s suddenly all, gee, who do I contact? And I think I’ve seen a bit of a drop in enthusiasm of the project partners to throw resources into it over the last probably twelve months”, Interview 222, Local Government.
167 Interview 225, EPA.
168 A few community and environmental groups appeared to find collaborating less rewarding than they had imagined. As one respondent from NEIP 2 recounted, during the planning stage of NEIP the group had envisioned and commenced a range of activities that gave environmental and community groups “Lots of opportunity to be involved...in things that they enjoy.” However when seed funding for the coordinator was withdrawn, the group’s general incapacity to engage and coordinate a range of different projects led to them “just going one project at any given time”, in this case the plastic bag campaign. Unsurprisingly, it was primarily those interested in the project that sustained their active participation, with a drop off in attendance of a range of groups interested in environmental projects; Interview 222, Local government, Interview 228, Local government.
169 Interview 224, EPA.
conduct effective organisational and implementation tasks. Furthermore, with anaemic organisational structures, attempts to reignite\textsuperscript{171} or attract new stakeholders were virtually non-existent.\textsuperscript{172}

These four interrelated challenges relating to “sponsors”, organisational structure, accessing external funding and maintaining stakeholder interest and motivation plagued the NEIP groups for nearly 3 years. However near the end of this time both sponsors finally obtained a short term grant from the VEPA.\textsuperscript{173} In NEIP 2,\textsuperscript{174} the collaboration made a strategic decision to fund community events and initiatives\textsuperscript{175} to re-connect with the wider community\textsuperscript{176} and hopefully find new resources, capacities and ideas to reinvigorate and sustain the group into the future.

In NEIP 1, where the funding from VEPA had been obtained a few months earlier, a part time coordinator was employed for 2 years. On all accounts, even after the lengthy period of inaction,\textsuperscript{177} the NEIP’s momentum and implementation had improved dramatically.\textsuperscript{178} The new coordinator provided administration and organisational support, went back and reviewed where partner organisations were in terms of implementation and did some significant “chasing...to re-initiate that process” (see chapter 7). The collaboration momentum reportedly “picked up”\textsuperscript{179} and began to make “some significant progress”.\textsuperscript{180}

\textsuperscript{170} Indeed, the loss of additional support placed an increasing strain on the collaborators that remained active, resulting in some volunteers getting increasingly “burnt out”; Interview 228, Local Government.
\textsuperscript{171} Notably this included a failure to try and attract greater industry involvement in NEIP 1, despite acknowledgement of its importance. As one respondent frankly stated: “what I would say is that we have put no energy into [developing partnerships with industry] in the last 2 years. Okay. That’s something that we need to do. We’re aware of that”, Interview 215, Local Government.
\textsuperscript{172} “Actively getting more people involved...it comes down to the availability of funds and the availability of a body to do it, I think everybody has good intentions, but there’s still your core business that you’ve got to take care...”Interview 211, EPA; Despite this weakness and the ongoing representation deficits noted in chapter 6, the groups had all sought to ensure they remained open to wider community participation, with sponsor and VEPA websites documenting the NEIP plans, providing contact details regarding meetings and reporting briefly on activities.
\textsuperscript{173} This is the same grant discussed in chapter 7. It was to be used, in part, to support the collaborative group.
\textsuperscript{174} This approach echoes Taylor’s findings about successful strategies for sustaining collaborative groups; Taylor M, Wilson M, Purdue D and Wilde P Changing Neighbourhoods lessons from the JRF Neighbourhood Program (The policy Press, 2007) p 76.
\textsuperscript{175} Interview 227, Local Resident.
\textsuperscript{176} “So we’re actually going to try a number of just social type activities that are really really low key...we’re just going to put on a DVD...you just come down after work and have a beer .. it’s actually enjoying yourself and discussing ideas and hopefully those other ideas that they were looking for in the past can come alive. Because someone else might say we could really incorporate [art or bike paths and sustainable transport] into that, and someone else says oh well I was really interested in that last year and we never heard more about it, that’s great. So things might morph from one to the other”; Interview 228, Local Government.
\textsuperscript{177} Interview 213, Local Government.
\textsuperscript{178} As discussed din chapter 7, this included improved monitoring, reporting and accountability structures.
\textsuperscript{179} Interview 218, Environmental Group.
\textsuperscript{180} Interview 215, Local Government.
Despite this improvement in NEIP 1 and the potential in NEIP 2, most agreed the short term VEPA grant was, by definition, a short term fix for the collaboration. While such support may assist the groups to identify new or more stable sources of funding, respondents were doubtful and suggested that once the grant had ceased the group would drift back towards the struggles of ineffective coordination, slow implementation and missed opportunities for funding.\textsuperscript{181} As one respondent pointed out:

Yeah I think it will probably be cycles….we would hate to be constantly dependent upon those kind of [short term] funds.\textsuperscript{182}

Ultimately, respondents believed that sustaining an effective NEIP collaboration required sufficient and secure long term funding.\textsuperscript{183} As one respondent summed up: “I don’t believe a group like ours is sustainable without funding and without someone to co-ordinate us some more”.\textsuperscript{184}

To summarise, while it is still early days in the NEIP case, it appears that in the longer term the NEIP is unlikely to sustain effective collaborative organisation. Indeed, it is clear that the core strategy of kick starting a group and then leaving it to its own devices\textsuperscript{185} was flawed. Without sufficient provision of resourcing (or indeed through apposite design such as use of regulatory pressure in EIPs) successful collaboration appears unlikely.\textsuperscript{186} Such support may very well come from a sponsor, however as the findings revealed it is clear that not all actors can be effective in this role. It is also clear from the above that while small amounts of funding can shift the group from inaction to action, the nature of such support is important. Grants that are difficult to obtain and short term in nature do little for sustaining collaborative momentum.\textsuperscript{187}

Finally, unlike the EIP case where gradual improvements in local environmental conditions maintained stakeholder interest (at least for early periods), the NEIP faced significant difficulty in maintaining stakeholder interest. In part this related to the inability to maintain links between partners, but it was also attributable to the fact that the collaborations’ slowed or

\textsuperscript{181} There were indications that some were looking for more long term sources of funding, “That will be one of things that we are attempting to focus on in the next few months I think is to secure more regular ongoing funding or a way of doing that; Interview 215, Local Government.

\textsuperscript{182} Interview 215, Local Government.

\textsuperscript{183} “It’s important to have ongoing and a longer term perspective. The NEIP will fail in the sense if it’s not adequately resourced”. Interview 213, Local Government.

\textsuperscript{184} Interview 221, Coordinator.

\textsuperscript{185} Curtis, n 45, p 453.

\textsuperscript{186} Margerum, n 28 at 141; John, n 25, p 239.

limited progress in implementing actions failed to produce significant improvements and returns to outweigh the stakeholders costs required to obtain them.\footnote{Isaac and Heller, n 27, p 93, 101; John, n 25, p 239, 241-242; Lubell et al, n 1, p 288.}

8.3.3 RNRM – the benefits and limits of funding support

RNRM, like the NEIP cases, was still in the early stages of implementation at the time of research. At the time of writing it had obtained a government commitment to support the program until at least 2013.\footnote{See http://www.nrm.gov.au.} This means the RNRM will at minimum likely have a 13 year life. This thesis’ sub case study contains a regional body that is approximately 6 years old. However, a number of insights can be gained from the respondents’ reflections on the regional body’s early experience in trying to sustain the collaborative organisation during plan implementation.

As the discussion below reveals, RNRM was in fact quite successful in sustaining its broad collaboration. The regional body moved relatively smoothly from planning to implementation, maintaining an active regional collaborative organisation and engaging and involving local level stakeholders in implementation. However the overall effectiveness of the collaborative process appeared to be hindered by a number of inadequacies in funding arrangements for the administration of the regional body and its projects. The discussion that follows outlines these successes and weaknesses in turn.

On all accounts the regional body avoided the significant periods of in-action and lulls that plagued the NEIP groups. For the most part, stakeholder groups such as subregional bodies all remained engaged as collaborators. The reasons these groups remained engaged was in part because their membership numbers allowed them to replace individual representatives in the face of what we will see below, were often onerous underpaid positions. However the groups were also motivated to maintain their involvement because of benefits they received from collaborating, including potential improvements to natural resources through implementation (discussed below) and the potential to control and obtain grant money (which the findings suggested remained an ongoing motivating benefit for sustaining involvement despite conflict of interest questions being raised about the practice of regional body representatives seeking to use government funding to support their groups: see chapter 7).\footnote{As one recent regional body document noted: “For some within these appointing groups or organisations, there is a perception that “their” director is in place to represent their interests”. BDTNRM, Business Plan 2007-2010 (prepared by Balfour consulting, 2007) p 3.}
As discussed below these conflicts of interest issues may have damaged wider perceptions of the regional body’s legitimacy. However it is still early and the regional body has taken a number of steps likely to improve wider perceptions of fairness and legitimacy. These included actively trying to engage overlooked and/or new stakeholders including mining and tourism interests, as well as seeking to change its constitution to address conflict of interest issues, and encouraging wider “membership” of its incorporated body.

With relatively stable stakeholder involvement, the regional body maintained an active collaborative organisation, conducting regular board meetings and hiring new staff. This success was due directly to the core government funding the body received to organise and carry out actions.

Box 8.1 below provides an illustration of the collaborative momentum maintained by the regional body, including its success in implementation, and its capacity to maintain collaborative engagement with regional stakeholders.

• Government investment for implementation had allowed the regional collaboration to make substantial progress on the ongoing implementation of around 100 projects. To do this the regional body shifted away from a reliance purely on subregional bodies (as used during planning stage discussed in chapter 5) to a service provider system of implementation, which relied on the most logical actors (eg. farmers, subregional groups, consultants) providing services to the regional body for project delivery. At the time of writing the regional body had achieved a number of tangible results, including 25 property management plans, 23,000 ha of native riparian vegetation protected, 25.7 km of divisional fencing built and 90 ha of wetlands cleared of weeds.

• Respondents were confident that as long as there was government funding, they would continue to have the capability to implement such projects, engage stakeholders in delivery and sustain collaborative RNRM.

• Respondents were also confident that collaboration was possible over the longer term with a wide range of regional farmers who had not engaged at the planning stage. Certainly, the nature of different farming practices and farmer demographics in the region reportedly made

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191 Interview 341, Regional Body.
192 Interview 341, Regional Body; BDTB.
193 As one respondent explained such funding ensured: “we can employ the people we need to administer the Regional Investment Strategy...we have got strong commitment to traditional owners so we have got a couple of people there to do some work...a book keeper and an administration person...we can research, we can subcontract out the on-ground stuff, there is logical providers - whether it be property owners or community NRM groups, those sorts of things to carry that out”, Interview 342, Regional Body.
195 "They [peak industry bodies] are now trying to work with [regional bodies] because they can see the money...so there has been quite a significant shift in the attitude of the industry peak bodies” Interview 323, Government Agency.
196 “There will be players who won’t change” Interview 3210 CSIRO; “I don’t think it came as any surprise...we are trying to pick up the recalcitrants when we can, [but] there are a lot of good people out there, we try and work with them encourage them deliver them the tools, should deliver as incremental increase” Interview 313, Industry Body.
some farming industries more open to collaborating in RNRM projects to improve farming practices than others. However, a number of respondents reported that for the majority of the region’s farmers it was “money that talked” and relying on the “hip pocket” was a suitable approach to initiating and maintaining engagement with the region’s various stakeholders in order to successfully deliver on ground projects.

One of the primary ways that the regional body made “money talk” was a “win-win” approach. The term win-win is used for short hand. The idea is that there is no conflict between what is best for the environment and what is best for a farmer or industry. Respondents were confident that this strategy would be able to engage and involve sufficient numbers of farmers from the region in the delivery of projects over the life of the collaborative endeavour. As one respondent explained:

we try to be strategic in looking at what the future holds for these people and working with them to get NRM outcomes that we want, which also benefit them...so we are trying to sell it like that...we will get take up.

Box 8.1: Early RNRM Success in Maintaining Collaboration.

Even though RNRM appears unlikely to succumb to the type of inaction and lulls that characterised the NEIP, the findings revealed that it had faced a number of challenges that reduced the likely overall success of the collaboration. These included inadequacies in support funding for the regional body, difficulties obtaining external private funding, uncertainties in long term support from state and federal governments, and limited funding to implement actions and deliver improvements. These are discussed in turn below.

A core exercise in maintaining an effective and robust regional collaborative body (particularly one responsible for managing multimillion dollar budgets) is ensuring sustained volunteer engagement and staff retention. Yet the findings suggested this was a major problem for the case study, with high turnover in both representatives from stakeholders groups on the body and the body’s support staff. This led to the regional body reportedly

197 Interview 345, Subregional Group.
198 “So I guess that’s their world, the hook or the driver is where these projects comes along and they can provide funding to expedite things they wanted to get done on ground” Interview 344, Subregional Group.
199 “What makes them come...simple it’s this...money. Its all about dollars...they need to survive”; Interview 316, Farmer.
200 If farmers can be smart economically they will be more productive, and being more productive means actually being more environmentally aware and friendly.
201 Interview 341, Regional Body.
203 See also BDTNRM, n 202, p 3.
204 While regional body members did change after a government review discussed in chapter 7, there had also been ongoing changes in group representation.
205 One respondent who had experience working with different regional bodies in Queensland commented that the subject case was less stable than others they had worked at before, noting significant “staff turn around” and “new positions put on the board”; Interview 345, Subregional Group.
facing risks of loss of corporate knowledge, difficulties developing and refining its day to day operations and experiencing periods that were “a real shemozzle”.206

Despite growth in overall staff numbers,207 the significant turnover in regional body support staff was seen to arise primarily from inadequacies in funding arrangements to support the regional body’s operations. There were two main inadequacies in arrangements. First, remuneration needed to attract and then retain staff was often insufficient compared to opportunities in the wider labour market.208 Second, respondents pointed to the short-term nature of funded projects, which reportedly created undesirable job instability.209

the way the projects are run at the moment, for only 12 months at a time, and only months into that project, the officer will already be looking for the next job because they know its going to run out... [it] creates a very unstable environment.210

Further inadequacies in funding and support arrangements contributed to high turnover in volunteer stakeholders.211 Certainly regional body volunteers received a small remuneration for time and travel costs. However this reportedly did little to compensate many stakeholders who were already suffering burnout from long histories of involvement in volunteer NRM programs:212

when people have been involved in the landcare groups and what not for years and some have been secretary and chairs, they just get tired and they have had enough.213

Even for collaborators who were not suffering such fatigue, the positions were still seen to be “not very well paid” 214 given the numerous and onerous responsibilities expected of collaborators. Indeed, the accountability and money management responsibilities were

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206 Interview 344, Subregional Group; BDTNRM, n 202, p 5.
207 BDTNRM, n 202, p 16.
208 As one interview put it: “Attracting sufficient skills, [is difficult] having short term not very well paid positions. All the same errors of why you don’t get capacity into a region”; Interview 3210, Science; BDTNRM, n 202, p 20.
209 Another respondent exaggerated that the instability and short term nature of funding meant officers were left “wondering whether they had a job any other week”; Interview 342-2, Subregional Group.
210 Interview 345, Subregional Group.
211 While individual representatives found it difficult to sustain their involvement the sub regional groups did have the capacity to draw on a range of representatives from within their membership; Interview 342 -1, Subregional Group.
212 See Curtis, n 45.
213 Interview 345, Subregional Group. Another respondent pointed out “There’s a great deal of planning and community fatigue, volunteer fatigue as a product of Landcare, NHT1, part of the roll out of NHT2 all of the others.” Interview 3210, Science.
214 Interview 3210, Science.
themselves seen to be sufficiently onerous and challenging for often unskilled or untrained volunteers. As one respondent simply explained: 215

the administrative burden in itself is sufficient to roll the whole process over and to give everyone the shits 216

Given these burdens, the regional bodies often sought to obtain additional external resources to supplement government support and to help them meet their responsibilities 217 (a move that was encouraged under the RNRM program). By all accounts the regional body had experienced some success in acquiring funds (most often for projects) from local peak industry bodies, state departments, and the Sugar Research and Development Corporation. 218

However, respondents suggested such investment was comparatively minimal compared to government investment, and unlikely 219 to replace government funds as the primary source of support for regional bodies over the longer term. 220 Indeed according to recent documentation from the regional body, the capacity of the regional body to attract significant external investment from the private sector was still severely constrained by perceptions of conflict of interest that threatened the general legitimacy and probity of the group (see chapter 7). 221

Given such challenges, the regional body appeared to be increasingly obtaining extra resources to support their organisation through using government investment in projects. Such a response has been particularly documented in the case of Paton et al’s research on regional bodies in Victoria 222 but it was also readily apparent in my own research. As one respondent, reflecting a common perspective, pointed out:

it is valuable [to the regional body] to manage the projects themselves....pull in the 5% or 10% off the projects and sort of self-fund 223

215 As we saw in chapter 7, weakness in support for volunteers led to governance and management problems, conflict of interest concerns and ultimately changes of board membership (see chapter 7). However even after this change, turnover in individual representation has continued to occur. According to some respondents, part of the turn over problem was simply that the regional bodies were still “just figuring out how to operate as organisations...[and] think long term”. Interview 349, Regional Group Collective.
216 Interview 3210, Science.
218 BDTNRM, n 60, p 29-30.
219 This finding was confirmed by a recent inquiry into the future of RRNM; Keogh K, Chant D and Frazer B, Review of arrangements for regional delivery of natural resource management programmes (Ministerial Reference Group for Future NRM Programme Delivery, 2006) p 28.
220 “I don’t think you’re ever going to wean yourself away from the government funds in a big way, but for some groups that’s all the money they get.” Interview 361, Regional Group Collective.
221 This is a danger raised by Lawrence and Cheshire, n 57, p 9; BDTNRM, n 190 p 15, 16, 22.
222 Paton et al, n 217 at 263.
223 Interview 342, Subregional body.
While this approach may have aided in sustaining regional body collaboration, some respondents suggested too much “centralisation” around the regional body could produce negative consequences for engaging and sustaining collaboration with key local level stakeholders in the nested arrangement. As one respondent pointed out, if it became a pervasive and common practice over the longer term for projects to be delivered through regional body staff (rather than through sub regional bodies and other local providers), the danger for sustaining successful collaboration over the longer term was the regional body may “shoot the process in the foot”:

if they don’t get it done by community groups the chances are they’ll employ contractors and the issues then are that there will be no local ownership of those projects and further ongoing maintenance and community engagement in the process.224

Further threats to the long term sustainability of successful collaboration arose from uncertainties about governments’ commitment to funding the program. This occurred both at the federal and state level. At the federal level, there was significant uncertainty associated with continued government backing and investment in RNRM. Prior to the announcement late in 2006 that the federal government would extend investment for a further five years (discussed above), many respondents were unsure about whether government funding would continue past its scheduled completion date in 2007-2008. Such uncertainty did little to create an environment of stability and perseverance from stakeholders, with regional bodies and staff reportedly speculating that they may have to “close their doors”.225 Even the announcement of a further five years of funding arguably does little to overcome this underlying uncertainty if regional bodies are unable to successfully wean themselves from government investment. As one respondent summed it up:

the biggest problem with RNRM is they don’t have surety of funding. People come and people go...who wants to live on soft money you know...226

At the state level there were different tensions and uncertainties created about the level of long term support from the state government.227 Like “turf warfare” among administrative

224 Interview 318, Environmental Group.
225 “Funding. 2007 is just this huge stake for everyone. People talk about ‘are we’re going to have to close our doors?’... you’ve got to hire people, and at the same time you’re hiring people when you’re not even sure how long you’re going to be around” Interview 361, Regional Group Collective.
226 Interview 313, Industry.
227 One respondent referred to ongoing debates about agreeing to core funding arrangements under NHT “There is a big debate going on between us and Commonwealth, cause there is a view particularly in the central agencies that this model was foist on Queensland and as a result the Commonwealth should pay for the administrative cost, particularly the NHT groups”; Interview 323, Government agency.

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departments that has undermined sustainability of other earlier NEG experiments, state agencies reportedly struggled to find agreement regarding their collective approach to RNRM. While some agencies with direct responsibility for NRM reportedly wished to pursue a collaborative and “whole of government” approach, others were more resistant to sharing their power, leading to a reportedly “disintegrated government system”.

With “government solidarity” at a low point, a number of independent reviews of the RNRM system were conducted during planning stages. Around the time of transitioning from planning to implementation, an options paper was subsequently put to the public on the future of RNRM for the state. Although the result was overwhelming support for the current system, the public review did little to contribute to a stable and sustainable collaborative approach, creating significant uncertainty about the future of the program for staff, regional stakeholders and regional bodies:

Queensland government has just reviewed arrangements...that’s added to the cynicism of “well shit what are we trying to do here if we are putting all this effort into getting partnerships”... it makes it very difficult...to actually get on and commit to something

The final weakness and challenge to sustainability of successful collaboration relates to the ability of the regional body to deliver results. As suggested in both EIP and NEIP, central to maintaining stakeholders’ involvement and ensuring a sustainable collaboration was the capacity to deliver environmental improvements. However, many respondents questioned the capacity of RNRM to actually achieve all its goals to improve resource conditions, not least because there were major inadequacies in funding for implementation. As one respondent bluntly put it: “there is, quite frankly, sweet fuck all money”. Specifically, respondents saw government funding as not commensurate with the responsibilities and outcomes to be delivered by regional bodies. As one respondent pointed out:

our budget is a few million a year. Now what we are expected to do with a few million dollars is make sustainable land use, protect all the biodiversity

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229 “They need partnerships to actually operate.” Interview 334, Regional Body.
230 Interview 334, Regional Body.
231 Interview 334, Regional Body.
232 Interview 334, Regional Body.
234 Interview 311, Industry Body.
235 Interview 311, Industry Body.
236 Interview 334, Regional Body.

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and fix the water quality out to the reef, all within 10 years. That's a pretty big ask.237

A further consequence of this lack of funding is the constraints it imposes on the capacity of RNRM to engage a wider range of local stakeholders and environmental and natural resource issues. Indeed, while a "win win" strategy may be an important means of engaging many farmers (as noted in Box 8.1), there are (as a number of respondents pointed out) only so many "win win" situations out there.238 With limited funding, respondents suggested it was unlikely that regional bodies could engage seriously with situations where private benefits of farmers have disappeared and outcomes become win-lose:

It will probably need more of the cash element to really work...where there is a high level of public benefit and no private benefit that's obviously where you are going to need incentives, compensation239

To conclude, the above analysis suggests that RNRM had been able to achieve some success in sustaining collaborative momentum of the regional body, facilitating it to implement actions and engage and maintain involvement of many farmers and other stakeholders. Compared to the NEIP case, these are impressive results and like the early success in EIP, were attributable largely to the competent arrangements for funding and supporting organisation and implementation.

However, this success must be weighed against the challenges also faced by RNRM. Conflict among state government agencies and overall uncertainty about long term funding arrangements weakened stakeholder commitment and the stability of the program. It was also clear from the findings that the likelihood of sustaining successful collaboration would be threatened by insufficient funding, a failure to match support to responsibilities (both for staff and volunteers) and like the NEIP experience, a tendency to provide short term rather than long term project funding. These problems appear to undermine corporate knowledge, the effective operation of the regional body and potentially contribute to the marginalisation of local stakeholders. Indeed, if more resources are not forthcoming over the longer term, improvements on the ground may decline or disappear, RNRM's substantive legitimacy may dissipate and with it the willingness of stakeholders to remain engaged.

237 Interview 337, Local government.
238 "Maybe we have got the easy yards here, it's the hard yards...we can't do any more we squeezed the lemon almost dry and we have knocked over 50% of the reef, where does that leave us as a community and a society" Interview 313, Industry Body.
239 Interview 331, Science.

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These issues are far from being resolved, and it appears that some regional bodies are likely to face difficulties at least in the short term trying to gain significant private investment to make up the above funding shortfalls. This leaves a large question mark hanging over the future of the program in the long term if government decides to scale down or withdraw support.

8.4 Discussion and Conclusions

This chapter has investigated the conditions that contribute to sustaining successful collaboration over time. Drawing on the experience of young, middle aged and old collaborative efforts, it has provided a range of insights into what remains a significant "knowledge gap" in NEG literature.240

A number of significant challenges for the survival of successful collaboration were revealed in the finer details of each case. All were at quite different stages in their collaborative processes, and the findings raised a variety of issues unique to each program. For example RNRM faced challenges of volunteerism and burnout due to a long history of Landcare and other volunteer programs in rural Australia. The high conflict collaborations in EIP raised issues regarding "lack of trust", while in NEIP sponsors struggled to support a group not used to "going it on their own".

In its own way, each case appeared to fall short of sustaining successful collaboration. Certainly both EIP and RNRM were far more successful than NEIP in this regard, at least in so far as both were able to maintain momentum and implement significant actions. However at a broad level all cases struggled to maintain volunteer involvement and/or sustain effective organisational processes and implementation. Based on the above discussion these problems were due to two pervasive and interrelated weaknesses, namely a failure to effectively balance costs and benefits to maintain volunteer involvement and/or shortfalls in support and funding provided to the group for organisation.241

Indeed, consistent with concerns in the literature, the practical demands of collaborating over the longer term quelled collaborators' enthusiasm across all three cases.242 There was evidence of collaborations suffering from high turnover in volunteers (such as in RNRM), stakeholders becoming essentially passive (as in NEIP), or volunteers "dropping off" altogether (as in EIP). As we saw above all were detrimental to sustaining a successful collaboration, threatening corporate knowledge, and/or reducing the resources and knowledges available to the group to make decisions, implement actions and achieve environmental improvement.

240 Margerum, n 28 at 141; Lubell et al, n 1, p 294.
241 Margerum, n 28 at 141; John, n 25, p 239; Dovers, n 114, p 38.
242 Fung and Wright, n 9, p 38.
These problems stemmed in part from insufficient support to reduce the costs of collaborating. However this insufficiency also had a broader negative impact on organisational effectiveness in some circumstances. This was most evident in comparisons between the successful organisation and implementation in the adequately supported EIP and RNRM cases on the one hand, and the inaction and stoppages in the unsupported NEIP on the other. These trends are consistent with research elsewhere in the literature.\(^{243}\)

The findings also indicated, however, that even when resources are provided they may not sustain successful collaboration.\(^{244}\) As we saw in RNRM, insufficient funding and support\(^{245}\) made it difficult to retain staff and volunteers, undermining the effectiveness of the regional organisation and potentially its future collaboration with lower level stakeholders. Funding obtained in NEIP and RNRM was also often reported as being too short term in nature to allow collaborative groups to effectively sustain their staff and/or activities.\(^{246}\) The findings in NEIP and RNRM\(^{247}\) also confirmed the well recognised barriers and difficulties faced by insufficiently supported groups\(^{248}\) when obtaining external funding.\(^{249}\)

As pointed out a number of times above, these challenges of volunteerism and/or inadequacies in government support and funding\(^{250}\) are consistent with many broad concerns raised in the literature.\(^{251}\) This chapter’s findings accordingly underscore their significance as central matters that warrant close attention in the literature if NEG collaborations are to be durable and effective over the longer term. Given this, the question that needs to be asked is what specific conditions are likely to sustain successful collaboration?

First, in terms of maintaining volunteers,\(^{252}\) it will be apparent that volunteer involvement is not simply a question of whether the costs of collaborating are too much to bear for individual volunteers, but more a question of how these costs are balanced with the benefits volunteers receive.

As we have seen, the cost-benefit trade off varied considerably depending upon the context and by no means all collaborators concluded that costs always outweighed benefits. For example, some RNRM stakeholders focused on and sustained their involvement in part because of rewards (such as access to grant money).\(^{253}\) Others, such as local residents in EIPs,
maintained their involvement due to personal interest, public regarding interests, and even "a lack of trust" in industry. Indeed consistent with the findings in chapter 5, the lack of trust in the EIP case suggests that relationship between trust and successful collaboration often posited in the literature does not hold in all circumstances.254

More interestingly, the findings confirmed suggestions in the literature that a substantial degree of "success" in improving environmental conditions will be a crucial "benefit" to offset volunteers' costs and sustain stakeholder interest and collaboration.255 This was evident in EIP where gradual progress in resolving local environmental issues was vital to retaining stakeholder interest in the early stages of collaboration. In harmony with this finding, the weak and limited environmental improvements in NEIP were seen to be worth less than the transaction costs required to obtain them and stakeholders disengaged from active participation.256 It is also possible RNRM will face similar problems over the longer term due to insufficient government investment constraining successful delivery of resource condition improvements.257

However, the relationship here may be more complex than a simple linear relationship between success and survival suggested by the literature. Although the EIP collaboration focused on improving industry’s environmental performance across local and broader environmental issues, the substantial improvement in local environmental issues that motivated many residents to become involved actually lessened their perceived benefits and returns of ongoing participation relative to the time and effort that ongoing collaboration required. Part of the issue here was that many of the local residents appeared to pursue their own interests and agendas, and disengage once they had been achieved. This decline had significant negative impacts on the ongoing success of the collaboration and its ongoing adaptive implementation to manage industry pollution.

The implication here - rarely acknowledged in the NEG literature258 - is that in some circumstances success can in and of itself, serve to de-motivate further collaboration. Of course, this will not be the case in all collaborations. For example, it is important to remember that unlike many NEG collaborations, EIP is focused on an industry, not a defined “local area”, ecosystem or some other “place” or “community”. In many “place based” collaborations, the focus tends to be on forging common visions and goals, developing new neighbourhood or regional identities, and partially redefined preferences and interests of stakeholders around the

255 Isaac and Heller, n 27; John, n 25, p 239, 241-242; Lubell et al, n 1, p 288.
256 Lubell et al, n 1, p 288.
257 Head, n 5, p 145.
258 Fung and Wright, n 4 p 38.
idea of the neighbourhood or region. EIP is not however about this kind of “place making”. It is more about “place monitoring” a specific industry’s site and the particular impacts it produces on the wider area. Thus while the EIP involves collaborators negotiating common objectives, these generally relate to shared expectations of industry’s emissions for a specific pollutant, not forging a new vision or shared mission for the local area, nor necessarily involving reformulated personal and institutional identities. As such, it is perhaps unsurprising that many local residents’ collaborative vision did not extend beyond mitigating industry’s immediate impact on their own life.

In the light of the above, one implication may be that a transformation in personal interests and goals - the way participants think and act, individually and collectively, about their local environment - may be a desirable base condition for sustained successful collaboration in NEG. However, further research is required to determine if genuine transformation of personal and institutional goals and priorities is possible or even beneficial.

Beyond this issue, there may be other reasons why a negative relationship between success and survival experienced in EIPs may not be generalisable to other NEG initiatives. EIP involved mostly individuals focused on improving point source problems of a typically “limited duration”. Other collaborations may address longer-term natural resource management issues that are typically characterised by intrinsically and fundamentally unpredictable ecosystems subject to cycles of “adaptive change”. In these situations, improvements in environmental conditions that are sufficient to precipitate collaborator drop off may in fact take much longer to achieve and/or may be far more difficult to secure for any extended period of time.

Collaborations involving greater associational participation may also be more resilient than EIPs. Certainly, the findings in EIP and RNRM suggested interest groups were often better placed than individuals to maintain their involvement, either because of their depth of membership or interest in a broad range of longer term environmental issues.

Ultimately whether participation drops off because of sufficient improvements to environmental conditions or a lack thereof, an important condition for ensuring that successful collaboration is sustained is the engagement of new stakeholders to compensate for the dwindling commitment of some of their predecessors.

259 Karkkainen, n 5 at 242.
260 Karkkainen, n 5 at 242.
261 Karkkainen, n 5 at 242.
262 Karkkainen, n 5 at 242.
264 As we saw in NEIP a lack of progress resulted in participants disengaging and becoming passive rather than active collaborators.
In the case studies a number of attempts were made by the group to try and reignite existing participants’ interest and also to engage new collaborators. However, consistent with recent empirical research in the watershed context, the findings suggest this approach will often have limited effectiveness. As NEIP experience demonstrated, unless the collaborative group is effectively supported they may not have the capacity to conduct an energetic recruitment process. Moreover, even if groups have the capacity as in EIP case, such efforts appear largely fruitless where there are no compelling environmental issues to galvanise such collaboration.265

What may be needed then is more proactive conditions for sustaining successful collaboration. This would obviously focus on supporting and maintaining those actors that originally collaborated. As suggested above, one such condition may be to broaden stakeholders’ interests from personal to wider issues. Another condition is obviously greater funding and support matched to the tasks at hand, which is vital to reducing costs to volunteers and ensuring a more effective organisation and implementation process.266

Simply suggesting that more, rather than less government investment is needed in NEG to ensure successful collaboration is sustained is, however, a little imprecise. Do the findings allow us to be more specific? Certainly the analysis above suggests that such contribution need not be large. Indeed, consistent with the findings of Taylor and other authors in different collaborative governance contexts, the resources which appear to make the difference between stasis and a connected, organised and active group may be relatively small.267 As we saw in NEIP, quite significant shifts from lulls into action occurred with the injection of a very modest resource input which facilitated the hiring of a single part time staff member whose brief was to keep the group in contact with each other, and maintain momentum.

However, in a time of increasing resource constraints on government and government agency load shedding, it may be unrealistic to expect even small contributions to support collaboration over the long term.268 In this context, and consistent with arguments that NEG needs to engage seriously with the issue of how to effectively resource collaborative enterprises,269 what is needed is to explore how to create new institutional mechanisms and ways of redirecting funding to provide more sustained longer-term resourcing commensurate to the tasks and responsibilities.

265 Bonnell and Koontz, n 2 at 158.
266 Bonnell and Koontz, n 2 at 165.
268 For further discussion of this see: Crawford A, *The Local Governance of Crime* (Clarendon Press, 1997) at 165-168.
The findings provide some insights here into a range of possible conditions for better resourcing and supporting sustained collaboration. First, broadly akin to suggestions in the literature that harsh default rules can contribute to the survival and success of collaboration, the findings in EIP evidenced that focusing community or regulatory pressure on the most well resourced parties (in this case industry) can prove a relatively successful way to resource a collaborative group. Such pressure may be used simply to compel the party to commence collaboration and then leave it to collaborative benefits to provide motivation for continued resource contribution (as was the case with good performers). Alternatively, for reluctant collaborators such as poorer performing industries, sustained pressure (direct or implied) may be vital.

While the support and resources provided from industry in EIP were not sufficient to offset the costs of many local resident collaborators who eventually disengaged, this is arguably not attributable to the mechanism of resourcing itself, but how it was applied in practice. Indeed, one could imagine a more apposite application of pressure by VEPA to encourage industry to provide minimal financial reimbursement for citizens and other local non-government stakeholders for the costs associated with their participation in the EIP process. Apposite accountability mechanisms would of course be needed to avoid enhanced risks of capture.

A second insight into support arrangements arose in the NEIP case. Contrary to claims that outside “sponsors” such as top agency managers or elected officials might facilitate funding and information to support the collaborative process and implement agreements, the translation of a similar strategy met with very limited success in the case of NEIPs. Over-stretched, and under-resourced local government were largely ineffective as long term sponsors and failed to provide long term funding support for the group. Clearly not all actors can be apposite sponsors for the purposes of sustaining collaboration, and attention must be paid to selecting the right “sponsor” and using apposite incentives structured to harness their support.

The findings also shed some light on the capacity of nested structures to support organisational sustainability. Some authors in the literature have suggested nested arrangements provide an important avenue to obtain more apposite funding for local collaborations, not least because it allows pooling of agency resources for special projects and greater access to support services. However, as the same authors hypothesise, various parts of this structure may impose additional challenges, such as achieving power sharing between

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270 Gunningham and Sinclair, n 14, p 149; Selin and Chavez, n 14 at 191.
271 Freeman and Farber, n 187 at 870. 903.
274 Margerum, n 28 at 141; Karkkainen, n 58 at 235-236.
275 Bonnell and Koontz, n 2 at 161, 163.
agencies/governments at higher regional or state scales.276 While such challenges did not debilitate the RNRM collaboration, the evident tensions between state government agencies and their impact on program stability suggested that such challenges are likely to pose a very real threat to the effectiveness of nested arrangements to successfully support sustained collaboration.277

The issue of how to support and resource collaborations also raises the important question about whether it is always desirable for governments to actually support NEG collaborations indefinitely.278 Speaking to questions raised in the literature279 about whether the survival of collaborations will always be a worthwhile goal, the findings in EIP suggest that sustaining collaboration in the long term is not necessarily desirable. After local problems had been resolved and participants disengaged, many of the collaborations that remained were a shadow of their former selves. Arguably they had come to the end of their lifecycle and outlived their effectiveness to generate innovative proposals and conduct robust adaptive management monitoring. Moreover, at least some were becoming an imposition on government resources.

As we have seen there are different positions one can take on the importance of sustaining collaboration indefinitely – from a simple cost benefit view, to seeing the institution as enhancing democracy and social capital and facilitating vital ongoing adaptive management. It is beyond this thesis to weigh these various values and positions here. Much will likely depend on individual circumstances, as well as how effective the collaboration is in addressing the sorts of weaknesses that brought about EIP decline, including maintaining volunteer involvement, and generating new participants. Even so, the importance of the EIP finding is its empirical confirmation that not all situations may justify the survival of collaboration per se.

To conclude, the findings in this chapter have underlined that appositely resourcing collaborative organisations and maintaining volunteer involvement are two very serious challenges that NEG must overcome to sustain successful collaboration. Nevertheless this chapter has pointed to a number of conditions and mechanisms that might contribute to the survival of NEG institutions over the longer term, and contribute to “good” NEG. Necessarily, given the very limited research on the survival of collaboration, these conclusions are tentative and further research is needed to investigate and confirm the extent to which the findings described above have wider application.280 In particular, research on the broader range of

276 Margerum, n 28 at 144-146; Bonnell and Koontz, n 2 at 161, 163.
277 Margerum, n 28.
278 Lubell et al, n 1, p 295; Dovers, n 114, p 518.
279 Lubell et al, n 1; Dovers, n 114, p 518.
280 Raymond, n 255 at 54.
contextual variables is needed to better understand the factors that impact on the likelihood of sustaining effective collaborative institutions.
Chapter 9: Conclusion - Achieving “good” NEG in practice

9.1 Review and background

A profound transformation in environmental governance has taken place around the globe. Traditional regulatory approaches have proven ineffective for solving many of today’s environmental issues, leading to a search for viable alternatives. The most credible such alternative to emerge to date has been NEG - an approach characterised by a range of innovative properties, including collaboration, participation and deliberation, learning and adaptation, and “new” forms of accountability.

Despite wide divisions of opinion concerning the virtues or otherwise of NEG, there has been little hard nosed empirical work to test competing normative claims to determine who is correct about what, or to identify whether, when and how NEG can in fact “work.”

This thesis has sought to address these significant gaps in the NEG literature and to do so in a systematic, original and structured manner. Its central concern has been to address the question: under what conditions can “good” NEG be achieved? To better answer this core question a series of sub-questions have been developed, framed around a selection of key elements of “good” NEG, as follows:

• what conditions foster the emergence of successful collaboration?
• what conditions contribute to sustaining successful collaboration?
• what conditions foster “meaningful” participation and deliberation?
• what conditions foster effective learning and adaptation?
• what conditions foster effective “new” forms of accountability?

Rather than addressing these questions in a theoretical vacuum, the thesis’ analysis was underpinned by an evolving collection of scholarship outlined in chapter 2. Here, it was made

3 Karkkainen, n 2 at 209; Gunningham N and Sinclair D, Leaders and Laggards (Greenleaf Publishing, 2002)
clear that NEG scholarship encompassed many different schools of thought.\textsuperscript{6} However, rather than engage with each of the many fragmented and sometimes conflicting strands of NEG, it chose to maintain some theoretical coherence. It did so (consistent with emerging understandings within the NEG literature itself)\textsuperscript{7} by embracing a more generalised understanding, based on a collection of recognised principles that loosely connect various NEG theories and which offer a broad alternative vision for approaching environmental governance.\textsuperscript{8}

Applying this theoretical orientation, the study went beyond most of the existing empirical work, (which has consisted largely of single case studies and a few institutional examples)\textsuperscript{9} by empirically comparing and contrasting three different NEG programs. This comparative approach (spanning point source pollution, second generation and natural resource management policy areas) enabled the thesis to make a new and innovative contribution to the NEG literature,\textsuperscript{10} taking a “hard look” at how NEG aspirations and mechanisms fared in practice. It also made a contribution towards closing the gap between theory and practice\textsuperscript{11} following a methodological approach that emphasised interaction between theory and empirical research.\textsuperscript{12}

Commencing the empirical analysis in chapter 4, it was demonstrated that each of the case studies aspired to achieve defining features of “good” NEG. Paying close attention to the institutional design of the cases, links were then drawn between the design features of the cases and comparable recommendations made in the literature regarding how to best achieve “good” NEG.

The subsequent analysis of collaboration, participation and deliberation, learning and accountability in practice accordingly tested and compared how these recommendations played out in practice. When it came to some features of “good” NEG, the findings from this study revealed that common recommendations made across many NEG theories rarely “worked” in practice. Indeed, it was evident that “open door” policies,\textsuperscript{13} government support and oversight and imposed procedural requirements were highly unlikely to deliver on participation ideals of

\textsuperscript{7} See: De Burca G and Scott J, “Introduction: new governance, law and constitutionalism” in De Burca G and Scott J (eds), Law and New Governance in the EU and the US (Hart, 2006); Lobel, n 1.
\textsuperscript{8} See De Burca and Scott, n 7, p 2; Karkkainen, n 6; Lobel, n 1; Lobel, n 5 at 506, 508.
\textsuperscript{11} Karkkainen, n 2.

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inclusive and "balanced" representation. Common institutional design features such as mediators and agency assistance also failed to neutralise gross imbalances of knowledge, intensity of interest, and capabilities between deliberators.

When it came to collaboration, it was evident that many in the literature were more shrewdly attentive to the difficulties this process faced in practice. Indeed, recommendations regarding funding and incentive structures proved useful for overcoming cooperation dilemmas and transactions costs in practice, ultimately leading to varying degrees of successful collaboration.

When it came to other features of "good" NEG the results were more mixed. Indeed, while many authors were correct in arguing that funding was vital to sustained successful collaboration, more optimistic assumptions that collaboration could be maintained on the back of interested volunteers appeared to be flawed.

Some accountability designs in the literature were also found to be effective in practice, such as destabilisation rights. However, faith in horizontal accountability structures and "bounding decision spaces" through goal oriented legislation were shown to have points of weakness in practice.

Many different approaches to learning were also found to be valuable in practice, but in more constrained situations than many authors suggest. Comprehensive adaptive management depended on technical capacities of stakeholders and funding; process-based regulation was beneficial only when it was placed in the right pair of hands; and aspects of systemic learning worked only where formal procedures and mechanisms were developed for agencies or where collaborative groups were supported to fulfil the tasks themselves.

Reflecting on specific findings regarding these features of "good" NEG, the analysis chapters drew on theory and practice to provide recommendations on alternative sets of institutional conditions and the contexts in which successful collaboration, meaningful participation and deliberation, effective learning and new forms of accountability are most likely to be achieved.

Having done so, the purpose of this final chapter is to draw the thesis' findings together and to offer some broader reflections and implications for both practice and theory. First, section 9.1 reflects on the guiding research question and highlights some of the key "pillars" that were central to many of the features of "good" NEG. Section 9.2 then discusses some specific theoretical contributions, pointing to the implications of the findings for normative

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14 Unless in very small population like NEIP 3.

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debates within the literature. It also considers some of the broader themes in NEG literature raised in chapter 1 regarding the relationship between law and new governance, the role of the State, and the involvement of non-government actors in NEG. Section 9.3 then outlines some areas for further research. Finally, section 9.4 offers some concluding remarks on this thesis and the future of NEG.

9.1.1 Conditions for achieving “good” NEG

So far this thesis has analysed the individual features of “good” NEG discretely and has drawn a number of distinct implications for practitioners and theorists. These implications are important in their own right. However, in addition to focusing on individual elements of “good” NEG, there is also merit in stepping back and asking: what are the main lessons and recommendations for policy and the literature regarding “good” NEG as a whole?

This section addresses this question by outlining a collection of conditions or “pillars” that were central to achieving “good” NEG, and making a two-fold contribution. First, it identifies conditions and design features to which policy makers should give serious thought when designing new experiments. Second, at an explanatory level, the pillars identified below stand as broad, interrelated and overlapping principles which warrant attention by scholars in future normative theorising regarding NEG.

Drawing from the findings and analysis in earlier chapters, seven key “pillars” can be identified.

Pillar 1 - appropriate background circumstances: in what circumstances is NEG best applied? As we saw in chapter 5, collaborative NEG is probably not justified when problems are of very modest dimensions, not least because there are likely to be few returns from the initiative and it cannot be justified in cost benefit terms. Beyond this, it was easier to establish relatively successful collaboration and participation where environmental problems were severe (or perceived to be severe by stakeholders), where there were high personal stakes for

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16 Lubell et al, n 9, p 289.
17 Lubell et al, n 9, p 289.
18 Lubell et al, n 9, p 289.
19 Lubell et al, n 9, p 289.

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non government actors, a small number of affected actors, and collaborators already had access to significant resources. These circumstances were exemplified in NEIP sub case 3.

This is not to suggest that NEG is, or should be, limited to these specific circumstances. However, as a time and resource intensive endeavour, success in other situations will likely be difficult without a number of other “pillars”, not least government funding and/or skillfully designed incentives.

Pillar 2 – funding: the importance of funding to NEG was implied in the NEIP and RNRM case studies where inadequate government funding prevented successful collaboration, stymied effective monitoring to fulfil accountability and learning aspirations, and constrained commitments and/or action to improve environmental conditions. Moreover, across all cases, funding constraints (including its entire absence) stymied wider participation by time strapped volunteers.

As with similar forms of “collaborative” governance around the globe, governments evidently see many forms of NEG primarily as a means to cap their spending and limit resource pressures by bringing other sets of resources to the table. This somewhat myopic preoccupation with resource savings will commonly have detrimental effects on success judged in terms of environmental improvement - demonstrated most clearly in the abject failure of the NEIP to fulfil most of its NEG aspirations. Of course, there are draw backs and cost/benefit considerations when it comes to funding, however the harsh reality appears to be that unless governments are prepared to spend substantially more on NEG, it is highly likely to deliver sub par achievements or even little or nothing of substance.

Pillar 3 - designing effective incentives: the archetypal illustration of this foundation to “good” NEG was found in the EIP case. Here, “negative” incentives were harnessed to ensure

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22 The problem must not be so severe that improvements are infeasible; Ostrom E, Governing the Commons (Cambridge UP, 1990); Heikkila and Gerlak, n 20 at 586.

23 Of course vital to EIP was also a penalty default rule as discussed further below, however in terms of participation of local ordinary citizens it was much easier to generate significant involvement due to higher stakes.

24 Both government and non government.


28 Not least, the tendency of funding to skew representation towards usual suspects; See also: John D and Mlay M, “Community-Based Environmental Protection: Encouraging Civic Environmentalism” in Sexton K, Marcus A, William Easter K and Burkhardt T (eds), Better Environmental Decisions Strategies for Governments, Businesses and Communities (Island Press, 1999) p 368.


30 This may offer something of a sober reality check for NEG practitioners in a time of decreased taxes and increasingly greater expectations on government to “do more with less”. Further, the findings also offer a reminder for scholars that there is a need to address more clearly how funding to support NEG can be secured, redirected or obtained. See John D, “Good Cops, Bad Cops” (1999) October/November Boston Review 19 at 19.

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that many\textsuperscript{31} otherwise unwilling industries\textsuperscript{32} engaged in collaboration, divulged information, negotiated on local issues, and invested in monitoring, implementation and sustained collaboration.

Of course, it is hardly a new point that incentives structures like "penalty default" rules\textsuperscript{33} (or even "positive" incentives such as funding\textsuperscript{34}) are needed to encourage action and change behaviour in situations where the self interested economic interests of polluters and the public interest in protecting the environment do not substantially coincide.\textsuperscript{35} However as the experience of the NEIP program revealed, unless these issues remain in the forefront of policymakers' consciousness then weaknesses such as a lack of involvement and commitment from key industry stakeholders, will continue to bedevil NEG initiatives.\textsuperscript{36}

**Pillar 4 - facilitating new capacities for non-governmental actors.**\textsuperscript{37} Like pillar 2, this foundation for "good" NEG was inferred from the many weaknesses that arose from its absence. For example, asymmetries in existing knowledge and skills undermined deliberation;\textsuperscript{38} participation by marginalised interests and ordinary citizens was stymied by a lack of interest and/or skills; and unskilled volunteers were often ineffective at fulfilling mutual accountability, monitoring,\textsuperscript{39} and maintaining a successful collaborative endeavour.

Thus, we should not assume that the skills, knowledge, capacity and interest of non governmental actors will naturally match the expectations and obligations of a particular NEG program. Rather, new institutional mechanisms are needed to facilitate new capacities.\textsuperscript{40} This could include training and educating participants in the issues material to NEG experiments; imparting deliberative or organisational management skills;\textsuperscript{41} and/or providing language support.

\textsuperscript{31} Although not all - as we saw in chapter 5, the most recalcitrant industries required the direct force of law.


\textsuperscript{33} Karkkainen, n 32.

\textsuperscript{34} Karkkainen, n 5 at 229; Margerum R, "Integrated Environmental Management: the Foundations for Successful Practice" (1999) 24(2) Environmental Management 151 at 156.


\textsuperscript{36} Gunningham, n 35.

\textsuperscript{37} See for example: Freeman J, "Collaborative Governance in the Administrative State" (1997) 45 UCLA Law Review 1 at 31-32.

\textsuperscript{38} Fung and Wright, n 15, p 259; Fung A and Wright E, "Thinking About Empowered Participatory Governance" in Fung A and Wright E (eds), Deepening Democracy: Institutional Innovations in Empowered Participatory Governance (Verso, 2003) p 23.

\textsuperscript{39} Of course governments may also need training themselves as we saw with the VEPA, which lacked the skills necessary to know what should or should not be monitored.

\textsuperscript{40} See for example: Freeman, n 37 at 32 making a similar recommendation.

Pillar 5 - mobilising environmental interest groups: as others have argued, environmental groups can play particularly important roles in ensuring accountability, and high standards of environmental outcomes. This thesis revealed some key insights into the conditions under which this pillar of "good" NEG may be realised in practice.

As we saw in chapter 6, national and state interest groups were typically hostile to or incapable of collaboration at local levels, leaving localised environmental groups as the most plausible prospective participants in NEG. However, even local groups participated in only a minority of cases, more often being absent from the NEG demos or choosing to exclude themselves from a collaborative forum. While the local groups that did participate were often effective in offsetting the dominance of industry and government on some issues, they typically held a narrow political vision focused on a single environmental issue and/or struggled to deal with the challenges of combining a collaborative role with environmental advocacy.

One potentially effective way of overcoming the above limitations was demonstrated in the RNRM case by the Regional Group Collective. A collaborative organization operating at "higher" state scale, this collective was able to link with state based environmental groups who in turn utilised government funding to assist in better mobilising countervailing powers at lower collaborative levels.

Pillar 6 - operate at multiple scales: overlapping with pillar 5, NEG should look beyond an exclusive focus on the local and/or regional, because, notwithstanding scientific, ecological and democratic reasons for devolving governance to the "local" level, not all processes, problems, or solutions, can be effectively located at this one scale. As we saw in chapters 5 and 8, larger ecosystem scale experiments may reap benefits from working simultaneously at smaller scales to reduce transaction costs and maintain active involvement of local actors in implementation. This is consistent with a number of findings by NEG scholars.

Less widely acknowledged however, are potential benefits that can arise from NEG programs seeking to develop collaborative institutions at high state or even national scales. While creating additional transaction costs and power sharing problems, collaborating at high scales may help reduce overall transaction costs of interactions between local collaborators and

42 Fung and Wright, n 15.
43 Karkkainen, n 32 at 961.
44 Fung and Wright, n 15 p 280-282.
45 Fung and Wright, n 15, p 284.
46 Similar findings have been made by Taylor regarding community based organisations; Taylor M, "Community Participation in the Real World: Opportunities and Pitfalls in New Governance Spaces" (2007) 44(2) Urban Studies 297 at 312.
48 Margerum, n 47 at 145.
49 Margerum, n 47.
50 Margerum, n 47 at 145.
governments, help pool agency resources to provide greater access to support services, foster information sharing between groups, and link local groups to mobilised state environmental groups.

Pillar 7 - fostering information flows: as we saw in chapter 7, many respondents argued that enhancing the flow of information and experience between collaboratives would have significant benefits, not least enhancing capacities, diffusing innovations and reducing costs. Chapter 7 also argued that enhancing the structured flow of information from collaboratives to agencies could deliver accountability benefits, fostering benchmarking so as to better inform the exercise of agency discretion. Such benchmarking processes may also aid in fostering a system of accountability that depends more on “peer review” between collaboratives, helping to lessen the need for blunt, anti-deliberative and anti-collaborative government vetos over decisions.

Democratic experimentalists have identified these and other benefits of information pooling and diffusion. However, as we saw in chapter 7, a present limit to reaching their ideal in practice is the cultural resistance and lack of capacity of some agencies to adopt such information pooling roles. The thesis has accordingly argued that we may need to look beyond agencies and focus on the development of other mechanisms to achieve this “pillar”. The RNRM case provided one such illustration here, namely funding a state or national level collaborative forum comprised of representatives of localised actors.

To sum up, the findings suggest there are at least seven key pillars to “good” NEG, namely: (i) background circumstances likely to make NEG more or less applicable as a tool for environmental problem solving; (ii) government funding; (iii) skilfully designed incentives; (iv) capacity building and training; (v) mobilising environmental interests; (vi) linking action at different scales; and (vii) improving the flow of information.

While not hard and fast prescriptions guaranteed to always “work”, these “rules of thumb” provide valuable guidance for policy makers seeking to construct “good” NEG. Further, although NEG scholars are well aware of the importance of some of these individual building

51 Margerum, n 47 at 141; Karkkainen, n 2 at 235-236.
52 Indeed, it is possible that links between local and higher state or national forums may in fact increase the chances of enhancing and fostering greater representation of other interests at a local level such as interests outside of a defined region: Margerum, n 47 at 145.
55 Lubell et al, n 9, p 289.
blocks, very few theoretical frameworks have encapsulated these pillars in their entirety. These pillars will thus likely be of benefit to scholars in future normative theorising regarding NEG.

Having outlined some pillars of “good” NEG, the next section turns to consider some specific theoretical issues.

9.2 Insights for theory

This thesis has primarily focused on NEG in practice, however, a number of implications have also been identified for NEG theory. This section draws out four key theoretical insights made by this thesis. The first insight discussed below relates to normative debates in the literature. Here the findings suggested that NEG in practice supports some aspects of critics’ arguments and other aspects of proponents’ arguments. This leads the thesis to counsel both sides to put the boxing gloves to one side and better respond to the world as it is rather than as they would like it to be.

Revisiting some of the broad theoretical themes raised in chapter 1, the second insight discussed below is the thesis’ confirmation of the hybridity hypothesis regarding the interaction between law and new governance. Thirdly, this section looks at what we have learnt from NEG experiments about the role of the State. It suggests that the State remains strong and active, but points to the need for normative theories to better address the thesis’ findings regarding the risks of State authority. Finally the section draws on empirical insights to highlight the divergent types of non government actors involved in NEG, fleshing out the different consequences each pose for NEG’s participatory aspirations.

Commencing with normative debates, a useful starting point is to revisit the controversial issue of whether NEG does secure improved environmental outcomes. Some of the NEG experiments that were the subject of this thesis were still in their infancy, and the available data sources were too limited and unreliable to make this issue a central part of the thesis. Nevertheless, it may be of value to comment on it here, albeit tentatively and on the basis of the less than perfect data sources.

Turning first to the EIP, the analysis chapters revealed that this experiment had achieved significant improvement to local environmental issues (so much so that collaborators began to disengage and questions were raised as to the desirability of continuing some EIPs). However the EIP was weaker in reducing broader environmental issues, with only leading and good

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56 Democratic experimentalism is perhaps one of the closest; see: Karkkainen et al, n 54.
57 For an overview see: Koonz and Thomas, n 4.
58 See Sabatier et al, n 4.
59 See Gunningham and Sinclair, n 3.
industries being able to demonstrate achievements (and even those that occurred in the case of
leading performers were likely to have arisen even without the EIP).

In the NEIP case, the likelihood of significant environmental outcomes being delivered
was minimal at best. This was attributable primarily to the fact that in all but quite rare
situations, the NEIP failed to engage and obtain commitment from key industry actors,\(^\text{60}\) lacked
funding sources to foster commitments that went substantially beyond “business as usual”,
developed weak performance standards, conducted highly ineffective monitoring and
implementation and struggled to maintain a collaborative organisation.\(^\text{61}\)

The findings regarding the RNRM program suggest its regional bodies and strategic
planning approach were more likely than NEIP to deliver important environmental
improvements, not least because of government investment in monitoring, technical assistance
and implementation. At the same time, the potential extent and scope of environmental
improvements was constrained by flaws in the program, including conflict among high levels of
government, burdensome accountability arrangements, and most damningly, insufficient
funding for achieving desired improvements with regard to such a complex problem.\(^\text{62}\)

In short, the above suggest that NEG is not some “holy grail” for solving environmental
problems - it will work some of the time, but not all of the time.

Turning to some of the more specific normative debates, the findings suggest that
criticisms of NEG have sometimes been overdrawn. For example, chapter 5\(^\text{63}\) demonstrated that
consensus can mean different things to different people\(^\text{64}\) and generalised claims\(^\text{65}\) that all
consensus approaches lead to problems such as lowest common denominator solutions or a
focus on the least important environmental issues, are overdrawn.\(^\text{66}\) Furthermore, the findings
suggest that trust operates differently in different contexts, and at least in some situations like
EIP, may be largely irrelevant to successful collaboration and effective outcomes.\(^\text{67}\)

\(^{60}\) Karkkainen B, “Information-Forcing Regulation and Environmental Governance” in De Burca G and Scott J (eds),
Law and New Governance in the EU and the US (Hart, 2006) p 296; Gunningham and Sinclair, n 3 at 149.
\(^{61}\) Bidwell R and Ryan C, “Collaborative Partnership Design: The Implications of
Organizational Affiliation for Watershed Partnerships” (2006) 19 (9) Society and Natural Resources 827 at 840
\(^{62}\) Head B, “Participation or Co-governance? Challenges for Regional Natural Resource Management” in Eversole R
and Martin J (eds), Participation and Governance in Regional Development (Ashgate, 2005) p 145-146.
\(^{63}\) Karkkainen, n 5 at 240, Fn 116; See also Karkkainen B, “Post-Sovereign Environmental Governance” (2004) 4:1
Global Environmental Politics 72 at 91.
Environment 10; Coglianese G, “Is Consensus an Appropriate Basis for Regulatory Policy” in Orts E and Deketelaere
K (eds), Environmental Contracts Comparative Approaches To Regulatory Innovation In The United States and
\(^{67}\) Raymond L, “Cooperation without Trust: Overcoming Collective Action Barriers to Endangered Species

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strikingly, this finding demonstrates the mirror opposite of the broad criticisms that NEG is “all talk and no action” - leading to mutual goodwill but little impact.68

In contrast, the analysis chapters also provided empirical support for a number of broad criticisms charged against NEG. For example, the findings in chapter 5 suggest that while collaboration in NEG is not impossible, it is costly and time consuming.69 Thus without significant government investment or some other transaction cost reducing mechanism,70 NEG experiments will likely only be optimal in limited situations71 such as small communities with a direct connection to an environmental resource.

While recognising that representation, inclusion and deliberation criteria are “high” ideals that can vary greatly, Chapter 6 also reinforced claims by some authors that “real participation”72 and deliberation73 is difficult for NEG to achieve in practice. Further, the findings confirmed the very real capacity for NEG to disenfranchise environmental interest groups,74 or to rely unduly on the fortuitous existence of local groups that often lack a broad vision or the skills to play an effective countervailing power role.75 Finally, the findings in Chapter 7 added support to claims that NEG can create significant risks of agency capture, unprincipled deal making and rent seeking.76

Yet despite the fact that many criticisms of NEG were reinforced by the present study, it would be unjustified to conclude that NEG is somehow inherently flawed or that governments and citizens should shut up the NEG shop and go home. As pointed out across all empirical chapters, significant steps and achievements had been made toward all features of “good” NEG,
and in some cases, emerging institutional structures for overcoming these weaknesses were being trialed.

The lesson from the above then, is this: we are swimming in far more vast and murky waters than we suspect. Many proponents and critics of NEG will need to let their high horse drown before we can make significant progress swimming together toward the shore of understanding and fully appreciate the strengths, weaknesses, potential and limitations of NEG. This is not to disparage vital normative theoretical projects in NEG. Rather it is to suggest that both proponents and skeptics need to better respond to realities in practice. At minimum, this will require many scholars to relax their more idealistic and ambitious normative claims, because these have sometimes served to cloud both the strengths and weaknesses of NEG. There are several leading NEG theorists that have recently begun to take this path, such as Karkkainen in the USA, Head in Australia, and Scott and Holder within the European Union.

The second theoretical insight from this thesis is that new governance and law tend to operate in a hybrid relationship. Although there are a number of views on the interaction between law and new governance, the “hybridity” thesis best reflects the constructive co-existence of law and new governance that was evident in this thesis’ findings.

All three cases studied relied on law to lay down outer parameters and broad aims for NEG, but imparted discretion to collaboratives to set specific targets and determine how they should be implemented. In EIP, collaborations were required to confirm and not slip below existing legislated and licence standards, but they were given freedom to go “beyond compliance”. In developing regional resource condition targets in RNRM, plans remained consistent with, rather than undermined, standards elaborated in law such as the Vegetation Management Act. Moreover, in NEIP, requirements for targets to be consistent with planning schemes and existing environmental protection policies ensured NEIP plans coexisted and supported pervading legal norms.

Given evident risks of tokenism and vague environmental performance goals in many of these NEG cases, the “thin green line” provided by law across these areas was arguably vital to preventing manifest back sliding in existing environmental protection standards.

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77 As Karkkainen has aptly put it: “Both its proponents and its skeptics must own up to the fact that some parts are working better than others, and some parts are probably not working at all.”; Karkkainen, n 2 at 212.
78 Head, n 62.
80 De Burca and Scott, n 7, p 9-10.
81 De Burca and Scott, n 7; Trubek and Trubek, n 10.
82 Certainty the role of law was not always uniform across the cases, however it was central to the cases in many other respects, De Burca and Scott, n 7, p 6.
83 De Burca and Scott, n 7, p 8.
Notably, law also formed a vital hybrid with new governance in other ways. Indeed, as discussed in the previous section, negative incentives are a key pillar in the success of NEG, not least because they can leverage action from reluctant actors. Further, the findings in EIP revealed that direct legal compulsion could also support NEG. This may involve successfully mobilising highly recalcitrant actors to engage in a new governance approach. Law also acted as a useful tool for compliance via licence change and court proceedings, which ensured actors ultimately fulfilled their NEG commitments.

The third insight provided by the thesis concerns the changing role of the State. As we saw in chapter 1, many authors have suggested that NEG appears to blur the traditional line between State and civil society. In particular, the State no longer is the exclusive actor, top down command is no longer the only means of achieving action, nor indeed is decision making any longer entirely centralised. What then to make of this shift? Is it a "withering away" – the State becoming one of many actors involved in governance but no longer privileged in terms of power and influence? Or does the State retain certain unique roles and if so what are they? Based on the experience of the case studies, there was little evidence that the shift evident in NEG "threatens" the authority of the State, "hollows it out" or amounts to effective deregulation. Rather the State has remained "strong", and continues to play three unique and fundamentally important roles.

First, the state ensures there are resources for NEG. In cases such as NEIP and RNRM, the State was "strong" in the sense that it was the main provider of resources (both in kind and monetary) for the organisation of NEG, decision making processes and implementation.

Second, the State played a central role in steering and setting overarching frameworks, albeit to varying degrees of specificity, that defined the nature of participation and negotiation, established expectations of performance, processes to be followed, and accountability obligations to be met.

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84 Although this was typically only successful for local issues rather than broader environmental issues.
85 De Burca and Scott, n 7, p 8.
86 Karkkainen, n 5 at 237-238.
87 See: Karkkainen, n 63 at 75-78.
88 Mol A, "Bringing the Environmental State Back In: Partnerships in Perspective" in Glasbergen P, Biemann, F and Mol A (eds), Partnerships, Governance and Sustainable Development, (Edward Elgar, 2007); Gunningham, n 35; Karkkainen, n 2 at fn 2.
92 Notably, even though NEIP relied on the resources of collaborators or external sources, such money was typically provided by government grants or agencies collaborators. Where no specific funding was provided (as in the EIP case) the strength of the State still remained vital and evident, although here it was "command" powers used to encourage or directly compel partners to bring necessary resources to the table.

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The third role performed by the State involved providing public accountability and compliance across the cases, using accountability and enforcement mechanisms\(^93\) and/or having “the final say” over decisions. As we saw in the NEIP and RNRM case, it was in this third role that the State most visibly flexed its muscles, often dominating decisions and/or exercising strict accountability controls.

Of course, as we saw, the State was not always “strong” enough (eg. failing to provide sufficient resources, letting accountabilities slip) and it often struggled to fulfil other roles that were expected of it -such as acting as a pooler and distributor of information. Further non government actors were also involved in many of the above roles and it is not suggested that the State is necessarily the exclusive provider of all these functions.\(^94\) However, the need for some degree of effective State intervention in these three key areas is paramount and is broadly reflected in the pillars of good NEG described above.

This understanding of the State generally confirms the implicit or explicit claims in most NEG theories, namely that the State remains “active” in new governance.\(^95\)

However another key insight from this thesis for NEG theory – particularly the more normative and idealised treatments such as strands of democratic experimentalism,\(^96\) collaborative governance\(^97\) and others\(^98\) – is that an “active” State can very often be a “controlling” State. In broad terms, the above theories often have an implicit assumption or idealised hope that the State will work to support NEG and achieve a more participatory approach to problem solving by devolving both decision making power and responsibility for implementation. Yet as the thesis found in chapter 6, the State can often dominate decisions when it has its own funding or its own programs at stake in NEG, effectively undermining NEG’s deliberative and participatory aspirations. The tendency of the State to “shed its load” by utilising inadequately supported volunteers was a related example of the negative role sometimes played by the State– treating groups more as their own “private” delivery mechanisms than empowered publics. Further, where continued investment is ongoing, as in

\(^93\) For example the use of law in EIP or even ultimately the withdrawal of funding in RNRM.
\(^94\) Resourcing for example was supplemented by non government actors’ time, knowledge and effort, although respondents clearly saw government as ultimately responsible for either resourcing NEIP and RNRM programs or for ensuring industry took action in EIP. Non government actors also exercised their own social and economic leverage to induce cooperation of some industries, although ultimate recourse to State power was central for poor performers in EIP (and vitally needed in NEIP). Non government actors also had input in terms of: influencing performance goals, who participated, how implementation was to be conducted, and in terms of accountability and enforcement roles. However ultimately all of this occurred within a framework of minimum baselines set by overarching legislation, government vetos and oversight.
\(^95\) Lobel, n 5 at 502; Fung and Wright, n 15.
\(^96\) Fung and Wright, n 15.
\(^97\) Freeman, n 37 at 31-33.
RNRM, the State evidently maintains and extends its control through rigid accountability controls,\(^99\) potentially morphing collaborations into bureaucracies.

Given this, the above NEG theories may be better served if they were able to merge an understanding of the importance of not deresponsibilising the State, with an understanding of the threat of “State” power,\(^100\) particularly given that wider trends in governance have often been revealed to involve participatory deliberative and community empowerment in name only.\(^101\)

The fourth and final theoretical insight from the findings is that there is a significant diversity of actors in civil society, each bringing different strengths and weaknesses to the NEG process. Theories and research in NEG (including this thesis) tend to variously refer to participants in NEG as stakeholders, non government actors, “community” and similar neologisms. All of these terms call to mind actors from civil society but they do so in terms that do not do justice to what the study suggests is a disparate and heterogeneous collection of actors from civil society.\(^102\)

At a broad level, the findings suggest there are at least four main categories of actors (excluding for present purposes economic private interests such as industry) engaged in NEG.\(^103\) That is, localised environmental groups, state and national environmental groups, ordinary citizens who have little or no experience in working with governments and so called “usual suspects” – citizens or groups already mobilised and active around an issue. In this study, each of the broad groupings had different motivations for participating and each brought with it different capacities and skills that pose different challenges for NEG.

Much has already been said above about local and state environmental groups above so it will not be repeated here.\(^104\) Ordinary citizens played a unique role, participating primarily\(^105\) when they have a significant personal stake in the issues at hand. Correspondingly they were less likely to participate when doing so involved significant time, resource or skill demands. In general they focused primarily on the local impacts that motivated their decision to participate, offering less input into broader environmental concerns. They were unlikely to try and represent others within their demos (unless the affected group of actors was very small) and they had a

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\(^99\) Lawrence and Cheshire, n 91 at 8.
\(^100\) Defilippis, n 75 at 684-685.
\(^101\) Certainly, Head appears to be better aware of such trends: Head, n 62.
\(^102\) Karkkainen, n 5 at 238.
\(^103\) Karkkainen, n 5 at 238.
\(^104\) Suffice it to say that local groups were quite effective at sustaining their involvement, both because of group numbers and interest in longer term environmental issues.
\(^105\) There were of course exceptions such as altruistic actors or others who continued to participate due to a lack of trust.

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tendency to disengage when their interest had been satisfied, making it difficult to sustain
effective collaboration where they were the dominant actors.106

Usual suspects dominated NEG initiatives where the stakes in environmental problem were
diffuse, not least because they already had an interest in the issues and were easily identifiable
interests for organisers of NEG such as government agencies. Usual suspects, particularly those
who were dependent on government funding in the past, also had a particular attraction to NEG
when there is a promise of accessing and control funding - a factor which itself can lead to
increased problems with rent seeking behaviour.107

While these groups were likely to bring with them a passion and knowledge about the
issues at hand, they were considered not to be “typical” of the local affected population.108
Despite their passion, usual suspects struggled in conducting meetings, coordinating their group
and rising to other management expectations of their collaborative organisation. The benefit of
usual suspect groups was they could draw on existing membership to rotate representatives
making it easier to sustain collaboration, and they were more likely to be informally accountable
to a wider range of actors in their group.

While these categories are in need of further refining,109 even in their present form they are
of some significance for NEG theory. Not least, at an explanatory level they suggest that
references to “participatory” aspirations or notions of “participation” often referred to in NEG
theories are too vague110 - there are in fact many different kinds of “participation” going on that
have different normative implications for environmental outcomes and democracy. Indeed,
these findings suggest that NEG theory must be clearer about what kinds and levels of
participation by what group of actors it sees as necessary to provide an effective and democratic
alternative vision of governance.111 The four categories provided by this thesis may help in
informing this work.

The above has outlined for the reader four key theoretical insights made by this thesis. This
included taking some steps toward resolving normative debates in the literature and the
confirmation of a hybridity relationship between law and new governance. It also suggested the

106 Of course, one should not “look down” on their contribution or involvement given they were typically
disenfranchised interests, overlooked by traditional regulation who were forced to bear the brunt of society’s
industrial lifestyle. VEPA, n 5, p 2; Conley A and Moote M, “Evaluating Collaborative Natural Resource
107 Taylor, n 29, p 185.
108 Taylor, n 29, p 185.
109 Most are generalisations and none purport to capture every aspect of how a certain category of actor will behave.
Some ordinary citizens for example were motivated by broader altruistic concerns. Further, contextual factors such as
coming from an extremely small affected population were seen to alter the motivations for participating and the way
actors behaved in NEG.
110 See Karkkainen B, “Toward Ecologically Sustainable Democracy?” in Fung A and Wright E (eds), Deepening
111 Karkkainen, n 5 at 239.

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State remains strong and active, but pointed out that it can at times be “too active” and “exploit” or dominate NEG. Finally, the above also highlighted some key categories of “participants” and the roles they play in NEG, suggesting there is a need for clarity in terms of what NEG is striving for in a participatory approach.

Despite having outlined many policy and theory related recommendations, implications and insights arising from this research, much more still remains to be learned and tested regarding NEG. The next section turns to outline where research in NEG could head.\textsuperscript{112}

\section*{9.3 Research}

In the course of reviewing literature and conducting the research on NEG, a number of critical areas for research were identified as important to advancing our understanding of NEG.\textsuperscript{113} Some of these have already been discussed in the analysis chapters, however five other broad areas for further research are worth mentioning here.

First, this thesis has taken a theoretical orientation that approaches NEG from the basis of broad principles recognised as common to NEG. The thesis has demonstrated the utility of using the conceptual “tool” of “good” NEG to develop a structured understanding of this recent shift in environmental governance. While this tool will hopefully help to guide and inspire future comparative empirical research into NEG in practice and theory,\textsuperscript{114} such a broad focus may gloss over important theoretical and practical differences within the evolving NEG field. Accordingly an important area for both theoretical and empirical study is to more closely examine and test some of the distinctions and differences between NEG theories, determining which may better account for NEG descriptively or provide a better normative vision in view of the realities of practice.

Related to this issue is another - this thesis conducted a comparative analysis of arguably the most central defining features of NEG. However as NEG is still an emerging and evolving field, its key features will no doubt be subject to further refinement.\textsuperscript{115} Accordingly, future research will be needed to confirm whether or to what extent the features examined in this thesis remain important to NEG, and to examine other features in NEG as it evolves.

A third area for research is based on the recognition that the conclusions and implications drawn in this thesis are limited to the sub cases and case studies from which they were drawn. While the comparative analysis of multiple programs and sub cases has allowed this thesis to

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{112} Lubell et al., n 9, p 293.
\item\textsuperscript{113} Lubell et al., n 9, p 293.
\item\textsuperscript{115} Lobel, n 5 at 501.
\end{enumerate}
\end{footnotesize}
reflect on a significant variance in NEG designs and contexts, research into other manifestations and experiments in NEG is still vital to test and confirm what the findings and implications drawn here hold for other NEG institutions and contexts. Attention could also be paid to how other specific conditions and issues relating to the key defining features are examined here.

There is also a need for further research on the case studies, particularly the younger cases of RNRM and NEIP. Indeed although the thesis proceeded over four years, there are many important issues that have been raised both here and in the literature that were not able to be examined but that warrant further attention. Future research into these cases could also reflect longitudinal aspects such as changes over time, and to what extent environmental outcomes are achieved.

Indeed, a fifth and final area for research that has not been explored in its entirety in this project or indeed elsewhere is NEG's impact on environmental outcomes. A wide ranging and comparative quantitative and qualitative study is arguably vital to determine the extent to which its processes actually improve the environment. A useful framework for conducting such a study has recently been raised in the literature by Koontz and Thomas.

All of these questions will require a creative and long term agenda for NEG research. To conclude, the next section turns to reflect generally on NEG's position in environmental governance and its future.

9.4 Concluding Comments

In conclusion, this thesis has sought to open a space for practitioners and scholars to pause for thought, reconsider, and reformulate their understanding of and orientation regarding NEG. Its primary message can be stated like this - NEG can work, but it may not be as straightforward or as effective as many may hope. Nevertheless, if, practitioners and scholars capitalise on its strengths and respond to its limitations in practice (which has not always been their forte) then this new form of governance can and should make an important contribution to environmental outcomes.

At the time of writing, many in Australia appear to be slowly "coming round" to a similar conclusion - a fact which is seeing a shift in direction for some of the NEG experiments studied in this thesis. While the relatively successful EIP program certainly continues to command
VEPA’s support, it is a different story with NEIP. Indeed in 2008 the VEPA put the NEIP on hold while it undertook a review of both the NEIP’s successes and weaknesses to find a new way forward.\(^{121}\)

The RNRM program is also undergoing a transition, in part brought about by a recent change in government. As the incoming Labor government has rightly pointed out: deficiencies in RNRM have been highlighted by a number of government reviews, including claims that RNRM and similar programs have been unable to demonstrate value for investment.\(^{122}\) The result has been the announcement in 2008 of a reformed RNRM program that “recognises that the previous system was not working efficiently”,\(^{123}\) but that seeks to build on the “strengths of previous natural resource management”.\(^{124}\)

Pioneering NEG experiments internationally may also be moving toward a critical stage of reform, not least the Habitat Conservation Planning process, where there have been increasing calls for agencies to learn from and adjust to regulatory mistakes and success.\(^{125}\) In Europe, it is perhaps too early to say whether similar lessons are being learned with regard to the most influential, but relatively recent NEG innovation, the Water Framework Directive.\(^ {126}\)

What do these developments suggest about NEG’s position in environmental governance, and indeed its future? At one level, NEG evidently remains something of a continuing experiment for States and civil societies. It is also clear, however, that such experimentation is at a stage of transition – moving from a period of trial and testing to one of consolidation and refinement; keeping what works, and finding new ways to do things where it didn’t. NEG’s future success will accordingly require building on pillars and lessons like those provided by this study. It will also require closer scrutiny and analysis by scholars of NEG in practice to ensure that any refinement of NEG keeps it on the “right path” toward success.\(^ {127}\)

Given that programs like RNRM have 50 year goals, the road ahead is clearly long, and if early experience is anything to go by, there are likely to be many bumps and potholes along the way. Nevertheless, as history has shown, the reformation of environmental governance will continue to progress, however unevenly, suggesting there is all the more reason to learn now from both successes and failures of NEG so that we can build a more effective and democratic approach for environmental governance in the future.


\(^{123}\) Joint Media Release Hon Peter Garrett MP Minister for the Environment, Heritage and the Arts, Hon Tony Burke MP Minister for Agriculture, Fisheries and Forestry “Caring for our Country - better land management, less red tape” DAFF08/024BJ14, Mar 2008.


\(^{126}\) Scott and Holder, n 79.

\(^{127}\) Lubell et al, n 9, p 295.
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Appendix 1: Interview Protocol and Consent Form

Interview Protocol

Opening biographical questions
- How long have you been involved in the sub case?
- What role and involvement have you taken in the sub case?

General success and failures of program
- What would you say you are proudest of in the sub case process?
  - What factors may have contributed to these successes?
- Have there been any frustrations or difficulties faced during the sub case process?
  - What are some of the causes of these frustrations/difficulties?
  - In what ways do you think things could have been done differently to avoid such frustrations/difficulties?

Collaboration
- How did the sub case go about forming the collaborative group?
  - Challenges?
  - Did any factors assist in the process? Trust? Funding?
  - Was consensus an important part of the process?
- Do you think the partners are sufficient?
  - Is any one missing?
- Have partners remained active during implementation stages?
- Is the collaboration sustainable over the longer term?
  - What factors may assist or detract form it being maintained?

Participation
- How was the membership of sub case determined?
  - Voting? Government Selection?
- How representative is the sub case?
  - What ways or methods were used to achieve representation? What were their advantages/disadvantages?
- Are there any environmental, NGOs or community based groups?
  - If so what has their role been? If not, what factors may have contributed to the absence?
- Are there ways that the sub case or its members seek to interact/communicate with the wider community?
Deliberation
- How did the decision making process operate?
  - Negotiation? Voting? Mediators?
- Was there equal influence from partners?
  - Can you describe some examples of this influence? What are some of the reasons for this?

Accountability, learning and adaptation
- How were targets and objectives set?
- Are the targets adequate in your opinion? For example, will they lead to positive outcomes for the environment and community?
- What implementation has occurred?
- Has progress been on target or behind? What factors contributed to this?
- How is monitoring of targets, actions and evaluation been going? Advantages/disadvantages?
- How effective are accountability arrangements?
  - Do partners “check” each other’s behaviour?
  - What role does government play?
- Has the sub case group been able to learn from monitoring data and adapted its management process?
  - What factors contributed to this? Weaknesses and strengths?
  - Has there been any sharing of learning or experiences between cases?

Conclusion
- Do you have any other comments about the sub case process?
- Have I missed anything you think is relevant or you would like to talk about?
- Who else do you think would be good for me to talk to?

Consent Form

Brief description
This project examines current collaborative environmental and natural resource management approaches that involve public, private and community stakeholders at local, regional, state and national levels. The project is examining the various regional natural resource management approaches in Queensland, as well as two collaborative regulatory initiatives in Victoria that have been implemented for big business and neighbourhoods.

By means of this examination, the project will contribute to current theory and practice regarding how to best design the coordination of stakeholder resources and capacities so as to effectively and efficiently achieve environmental and natural resource regulatory goals. The
project’s practical significance for the various stakeholders will be to provide them with independent feedback on, and identify opportunities for enhancing and improving ongoing management and regulatory approaches.

Specific aims of the project

The aims of this research project are to:

1. assess the environmental and regional natural resource management arrangements for Queensland, as well as analyse neighbourhood environment improvement plans and environment improvement plans, in regards to: (a) their effectiveness; and (b) their capacity to fulfil regulatory and other environmental goals at a local level through the mobilisation of stakeholder’s knowledge and capacity;

2. develop a participatory strategy capable of substantially improving the environmental performance of Small and Medium Sized Enterprises through integration of environmental considerations into their core business activities;

3. develop principles for, and a broader model of, Local Capacity Regulation that is robust, sustainable and easily reproduced, and capable of being applied to a wide range of other environmental and regulatory contexts; and

4. develop an institutional framework that can facilitate effective community intervention in other domains of governance.

Before the interview/Confidentiality and privacy considerations

I am a researcher at the Australian National University, where I am working on a project described above. I am conducting interviews with a range of stakeholders concerned with that subject matter. Before we start the interview, it is important that I tell you the following:

1. all information you provide will be kept confidential and not disclosed in any published data;

2. no organisational name or individual name will be used or disclosed by the ANU research team, and any information we publish will not enable a reader to identify that we have spoken to you;

3. data would be stored in a locked cabinet in the locked office of the chief investigator. The identity of the interviewee will be coded and the codes kept separately as an additional security measure;

4. the only known circumstances when confidentiality would not be protected would be if data were subject to subpoena; and

5. please note that your participation is voluntary and you do not have to answer any questions and you can end the interview at any point you wish.

Cameron Holley New Environmental Governance
Contact Details

If you have any questions regarding the research project please contact Cameron Holley, School of Resources, Environment and Society, Australian National University, ACT 0200, telephone (02) 6125 3569, email u4152043@anu.edu.au.

If you have any questions concerning human ethics please contact Human Ethics Officer, Research Services Office, ANU, ACT 0200, telephone (02) 6125 2900, email Human.Ethics.Officer@anu.edu.au.

You agree to be interviewed on the basis stated above:

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Appendix 2: Figures on Numbers of Participants

Figure 6.1: Membership Across EIP Case

- Local Residents
- Local Environmental Groups
- Local Branches of State/National Environmental Groups
- Political Parties
- EPA
- Industry
- Local Government
- Other Agencies/Statutory bodies
- Other non environmental interests (business, community groups etc.)
- Other collaborations of gov. and non gov.

Figure 6.2: EIP Sub Case Membership

- Other collaborations of gov. and non gov.
- Other non environmental interests (business, community groups etc.)
- Other Agencies/Statutory bodies
- Local Government
- Industry
- EPA
- Political Parties
- Local Branches of State/National Environmental Groups
- Local Environmental Groups
- Local Residents
Figure 6.3: Membership Across NEIP Case

- Local Residents: 1%
- Local Environmental Groups: 20%
- EPA: 15%
- Industry: 8%
- Local Government: 7%
- Other agencies or statutory bodies: 3%
- Other non-environmental interests (business, community groups, etc): 40%
- Other collaborations of gov. and non-gov.: 5%

Figure 6.4: NEIP Sub Case Membership

- Other collaborations of gov. and non-gov.
- Other non-environmental interests (business, community groups, etc)
- Other agencies or statutory bodies
- Local Government
- Industry
- EPA
- Local Environmental Groups
- Local Residents
Figure 6.5: Membership across RNRM in Queensland

![Figure 6.5: RNRM Sub Case Membership](image)

Figure 6.6: RNRM Sub Case Membership

![Figure 6.6: RNRM Sub Case Membership](image)