

School of Media, Creative Arts and Social Inquiry

**“The Pilot’s Wife” and Hosting Tourism on Magnetic Island: A Memoir and
Autoethnographic Enquiry of Place, Self and Narrative within Structures of
Authority and Power**

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Declaration

To the best of my knowledge and belief this thesis contains no material previously published by any other person except where due acknowledgement has been made.

This Thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

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Date

ABSTRACT

This thesis is an interdisciplinary study (creative work and exegesis) that draws on my experience of establishing a tourism floatplane business with my husband Paul on Magnetic Island within the Great Barrier Reef Marine Park. The creative work, a memoir, describes events from the developmental stage of the business through to an Administrative Appeals Tribunal hearing in 2007 on the legality of the float plane operations within the Marine Park that was, at the time, the subject of extensive media attention and community protest, both for and against the project. I found that the texts written during and post the conflict did not accord with the ways in which I experienced living and working on Magnetic Island and other regional areas in Australia that could be classified as host tourism destinations.

The thesis is a critical and reflexive response to the literature and discourses on host tourist destinations such as Magnetic Island that position tourism as being in conflict with local residents or position tourists in a separate social space rendering invisible the power and economic structures within which small business tourism¹ operators work. It is a parallel text, written in analytical and memoir modes, to answer the research question: What can the events surrounding the establishment of the Red Baron floatplane as a tourist operation on Magnetic Island Queensland in 2007 reveal about place, self and narrative within structures of power and authority?

Both components of the thesis answer the research question independently and, at the same time, each informs the other, with the creative work providing a form of understanding not possible through analytical discourse alone (and vice versa). The thesis as a whole does not seek to re-try the case of the Red Baron but rather to understand one cultural experience of establishing and seeking to maintain a business, in which the Tribunal hearing played an important part. The creative work recounts events that are autobiographical in nature, and employs the narrative techniques of creative non-fiction to answer the research question. The exegesis does not seek to analyse the story but rather to address the same research question by drawing on knowledge found in academic texts, media material, tribunal documents and transcripts, diary notes, drawings and photographs from my personal collection.

The study is significant because it provides new information about the forces and stakeholders that impact upon tourist destinations in Australia, the composition of communities within them, the causes of conflicts therein and the nature of the conflict resolution processes thereby engendered. Rather than provide solutions, the production of the creative work and exegesis

¹ Small business in this case is being used to reference the typical small business on Magnetic Island which is often two persons, frequently family owned.

offer an alternative way of researching and writing about conflicts within tourism places. The study therefore has implications for future planning procedures.

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TABLE OF CONTENTS

ABSTRACT	1
ACKNOWLEDGEMENTS	3
THE PILOT'S WIFE	6
EXEGESIS	124
HOSTING TOURISM ON MAGNETIC ISLAND	124
Terminology	124
Acronyms	124
INTRODUCTION	125
Chapter One	126
NARRATIVE WAYS OF KNOWING	126
1.1 Introduction	126
1.2 Epistemological Considerations	126
1.3 Methodology	127
1.4 Model	128
1.5 My Life as a Narrative Told by Others	129
1.6 Autoethnography and Memoir	129
1.7 Narratives of Truth and Power	132
1.8 Place, Self and Character	133
1.9 Rewriting the Self into the Narrative	133
1.10 Chapter Summary	135
Chapter Two	136
IMAGINED GEOGRAPHIES	136
2.1 Introduction	136
2.2 Myths	136
2.3 Wilderness, Conservation and the Great Barrier Reef	138
2.4 Chapter Summary	141
Chapter Three	142
MAGNETIC ISLAND	142
3.1 Introduction	142
3.2 A Place on the Margin	142
3.3 The Mythical Tropical Island	143
3.4 European Settlement	144
3.5 The Ferry: A Portal to Paradise?	146
3.6 The Beach	148
3.7 Horseshoe Bay	149

3.8 Trouble in Paradise: Heritage From Below	150
3.9 “Greenies” and “Boosters”	151
3.10 Chapter Summary	152
Chapter Four	154
ADMINISTRATIVE REGIMES OF MAGNETIC ISLAND	154
4.1 Introduction	154
4.2 Part one: Administrative Regimes of Aviation and the Environment.....	155
4.2.1 Administrative Boundaries of the Reef	155
4.2.2 Tourism in Conflict	157
4.2.3 Sentient Space	158
4.2.4 Permits and Licences as Products of Power	161
4.3 Part Two: Dispute Resolution.....	162
4.3.1 Adversarial	162
4.3.2 Interrogative: The AAT and the GBRMPA	162
4.3.3 Disruption of Power: The Red Baron Case in the AAT	165
4.3.4 Interrogation: The Hearing	166
4.3.5 Interlocutory Decision	168
4.3.6 Restoring Order	171
4.3.7 Chapter Summary	172
Chapter Five	173
TEXTS OF THE RED BARON SEAPLANE CONTROVERSY	173
5.1 Introduction	173
5.2 Texts	173
5.3 Making the News: Texts of the Red Baron Conflict	174
5.3 Criticisms of the Administrative Bodies and the AAT	175
5.4 Chapter Summary	178
Chapter Six	179
CONCLUSIONS	179
REFERENCES	182

THE PILOT'S WIFE

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EXEGESIS

HOSTING TOURISM ON MAGNETIC ISLAND

Terminology

Reef: (*Upper case 'R'*) used to refer to the Great Barrier Reef as a whole

reef: (*Lower case 'r'*) used to refer to sections of the Great Barrier Reef

Acronyms

AAT:	Administrative Appeals Tribunal
EPA:	Environmental Protection Agency
EMP:	Environmental Management Plan
GBR:	Great Barrier Reef
GBRMP:	Great Barrier Reef Marine Park
GBRMPA:	Great Barrier Reef Marine Park Authority
HAT:	Highest astronomical tide
QPWS:	Queensland Parks and Wildlife Service

INTRODUCTION

In this exegesis I ask: what can the events that comprise the establishment of the Red Baron floatplane as a tourist operation on Queensland's Magnetic Island in 2007 reveal about place, self and narrative within structures of power and authority? The methodology used - a combination of autoethnography and the creative non-fiction techniques of memoir - allows me to engage in a conversation about the aviation tourism industry that would not have been possible by analysis alone. As I am researching from "inside" this industry, I confront my own biases and attempt to avoid being overly polemical by including a range of opinions and views.

The Red Baron controversy drew a considerable amount of interest from the media, and has been referenced and commented on in journal articles and government documents. This study will provide new information about the ways in which the Great Barrier Reef Marine Part Authority permit system is experienced and understood (or misunderstood) by tourism operators, residents and other stakeholders.

In *Narrative Ways of Knowing* I set out the epistemological considerations for the study and introduce the methodology. I review literature on autoethnography and memoir writing, and examine the ways in which narratives can both define and re-write the self. I argue that other narratives and stories published about the Red Baron Seaplane controversy were not in accordance with my own personal experiences and posit that rewriting the self through memoir acts as a way to reclaim and reshape my experiences in more positive ways.

In *Imagined Geographies* I examine the ways in which the Great Barrier Reef has been "imagined" over time, and discuss how place myths and place images have influenced the socio-cultural production of the Great Barrier Reef. I pay particular attention to the wilderness myth and ask how that has contributed to the conservation of the Great Barrier Reef.

In *Magnetic Island*, I give a short history of Magnetic Island as a site for European immigration, settlement and tourism activities. I examine a tourism development at Nelly Bay and consider the ways in which it caused conflict and divided the community. Then, in *Administrative Regimes of Magnetic Island*, I review the ways in which tourism operators are regulated and I examine the power relationships of the aviation industry through a Foucauldian lens.

Finally, in *Texts of the Red Baron Seaplane Controversy*, I analyse the texts written about the controversy, and assess the ways in which they drew on dominant cultural place myths and images and on the inability of the governing agencies and the tourism industry to adequately inform the public about the GBRMP permit system. In the *Conclusion*, I offer suggestions on how to better manage tourism in the Great Barrier Reef, and suggest possibilities for further studies.

Chapter One

NARRATIVE WAYS OF KNOWING

1.1 Introduction

In this chapter I set out the epistemological considerations for the study and introduce the methodology. I review literature on autoethnography and memoir writing, and examine the ways in which narratives can both define and re-write the self. I argue that other narratives and stories published about the Red Baron Seaplane controversy were not in accordance with my personal experiences and posit that rewriting the self through memoir acted as way to reclaim and reshape my experiences in more positive ways.

1.2 Epistemological Considerations

The events narrated and analysed in this exegesis follow the succession of events from meeting my husband Paul in Perth, to the establishment of a tourism aviation business and through to an Administrative Appeals Tribunal hearing in 2007. In addition to the media reporting of the Red Baron case², post-event analysis and reportage also appears in a number of academic journals and government and non-government texts. Rothwell and Jessup (2009) supported the protesters and drew attention to the legal and environmental aspects of the case, while Dumont (2013, p. 110) used the protests against the seaplane operation as an illustration of NIMBY-ism and the co-opting of environmental arguments as a way to protect residents' lifestyles and amenity.

Telling and analysing the events involved in establishing a tourism business from my own perspective presents a range of difficulties that would not have been present if these events had not been made public. Some of the information that I would have wished to disclose carries legal restrictions that apply not only to legal texts, but also to the disclosure of some of the background story. In consideration of this restriction, legal advice was obtained prior to commencing the study and will be sought again before the creative part of the thesis is published. Because of the previous legal reporting of the events, it would not have been ethical (and would have been legally questionable) to interview opponents of the Red Baron Seaplane operation. Alternate views have

² The "Red Baron case" was a term used by the Great Barrier Reef Marine Park Authority in its annual report of 2007-2008. Rothwell and Jessop in *The Limits of the Great Barrier Reef Marine Park* (2009) use the term the "Red Baron" as a way of identifying our business and the aircraft that we were operating.

been obtained from the extensive media reports, Tribunal documents and transcripts and from my personal diary notes kept from meetings with the opponents and legal representatives.

1.3 Methodology

I belong to a group of researchers who have become disenchanted or frustrated with traditional research writing. Goodall (2008, p.12) articulates this as “the frustration (that) was or is caused by reading and writing work - often good work - that either did not seem to capture the fullness of complexity of lived experiences and/or do not allow for creative methods of expression about those experiences”. Traditional research methods follow empirical research methodologies in a language that Ellis and Bochner (2006, p. 431) refer to as lacking emotional connections and as a “head” cut off from both body and emotions. As a researcher, I examine and write about a personal experience from *inside* the tourism industry and also from *within* the community in which the conflict that I narrate took place. However, I also move outside my own personal experience to contextualise this conflict in broader terms.

I began this study by writing an integrated text, braiding creative writing with theory and analysis, rather than a separate creative work and exegesis. About halfway through the research, however, I had an identity crisis. I wrote to my supervisors saying, “I don’t know who I am. I don’t know if I am a social scientist using creative writing techniques or a creative writer drawing on my experience and expertise as a social scientist.” This was compounded, I observed, “by a loss of identity because our story has already been told and our characters cast in a number of different texts; and also by the whole phenomenon of the Red Baron in Townsville and Magnetic Island.” My creative writing work “flat-lined” and, at best, was a collection of fragmented memories while at its worst either supported or opposed the already public texts about the conflict. The writing was polemic and did not move the understanding of the events beyond that of my own personal experience.

Recalling and writing about the Tribunal hearing was particularly difficult. In my writing diary I observed, “One of the things that I’ve noticed is that I have actual physical responses to writing about the hearing. There are times when I feel so physically exhausted that I just can’t keep going.” I was only able to move forward by separating the creative work from the exegesis and by drawing on the theory of narrative and on creative non-fiction techniques in order to write the memoir.

1.4 Model

Barbara Milech and Anne Schilo's (2004) research question model, which has been used for this work, proposes that:

Both the exegetical and the creative component of the research thesis hinges on a research question posed, refined and reposed by the student across the several stages of a research program. Both the written and the creative component of the thesis are conceptualised as *independent answers to the same research question* - independent because each component of the thesis is conducted through the "language" of a particular discourse, related because each "answers" a single research question. (2004, p.9 of 17pp)

This model is further explained by Milech and Schilo in *Thinking Through Art, Creating Through Text* (2013, p.247):

Conceptualising the exegesis as part of a whole thesis flowing from a central research question enables a researcher to make connections between doing/making and thinking/writing – to "find," as Lacan urges, an insight that emerges from the interplay between them.

Initially I found the research question model difficult to execute while using an interdisciplinary perspective. The model accommodated different "voices." However, the social theory and narrative theory centred in my work on different ontologies that, on the surface, appeared to be significantly different. As the work progressed I began to see how each part of the thesis worked independently and also informed the other parts through their interplay to create a whole. From this, I was able to develop my own model based on that used by Milech and Schilo:

Research question: What can the events that comprise the establishment of the Red Baron floatplane as a tourist operation on Magnetic Island Queensland in 2007 reveal about place, self, and narrative within structures of power and authority?

Academic literature -----Informed the creative work -----what images to write about to answer the research question

And

Images from the creative work -----informed the exegesis -----what themes to research in academic texts to answer the research question

The writing and research processes happened simultaneously and evolved over the course of writing the memoir and exegesis in a series of steps in what might be thought of as the interplay through which I became more conversant and knowledgeable about the subject matter and about writing itself.

1.5 My Life as a Narrative Told by Others

The tourism business *Red Baron Seaplanes*, which I established with my husband Paul in 2007, was the subject of public debate. I do not now think about that experience as a series of events or epiphanies, but rather as a “story” or “narrative”, something that had a beginning, middle and end. It was a narrative that was initiated by the media reporting of the events and the resulting public commentary on these events. Before the events that are narrated in *The Pilot's Wife*, I had not thought of myself, or of my lived experience, in terms of a narrative. As a social theorist, I understand and write about being a social actor; however there is a difference between being a social actor within a particular socio-cultural setting and being a social actor who has a narrative told publically about them self and about parts of their life. As an audience member for the media texts from the time period, I had the uncomfortable experience of being both ‘present’ and ‘absent’ at the same time. Although I cannot recall a distinct moment in time when I knew that I had become part of a narrative, separate from my everyday life experiences, it was something of which both I and my husband were aware. The media texts created discordance, an unsettling, that was accentuated when post-event legal reports and academic articles were published. This unsettling extended to my own writing as I began re-telling my experiences in an integrated text, layering in the creative writing and academic analysis.

1.6 Autoethnography and Memoir

The origin of the term ‘autoethnography’ has been accredited to anthropologist Karl Heider (Chang 2008, p. 208). Heider (1975) used the term autoethnography to describe his method of collecting and recording information on how the Dani people (a tribe in what was then known as West New Guinea) described their everyday life experiences from their own perspective. Autoethnography has been adapted and developed by researchers to include a wide variety of investigative techniques that connect personal experience with culture and is now one of the fastest growing research approaches in the arts, social sciences, and humanities (Anderson, 2006; Freeman, 2011; Reed-Danahay 1997).

Ellis et al. (2011, p. 1) posit that autoethnography is both a process and a product because a “researcher uses tenets of *autobiography* and *ethnography* to *do* and *write* autoethnography”. In describing the method, they contend that personal experience can be used as data to illustrate particular cultural experiences in the same way that qualitative researchers might use data collected from research participants, for example, from in-depth interviews or focus groups. However, it is the ideas or epiphanies that the researcher might have about a particular socio-cultural experience that drive and direct the research.

There are a number of acceptable ways of presenting theory and data (Ellis, 2004, p. 178). One way is to tell a story, and then to include an analysis chapter to frame the text. Alternatively, the story can be ‘layered’ with theory, supporting the data or information. Ellis (2004, p. 332) advises that all autoethnography is interpretive and therefore a form of “fiction” and that “Novels and ethnographies coexist on a continuous plane of truth seeking; they are not oppositional forms of truth telling”. The autoethnographer often uses narrative devices such as “showing” rather than “telling” plot development, and other facets of storytelling that engage the audience in ways other than those used in traditional social enquiry, as explained by Ellis et al (2011, p.4):

Thus the autoethnographer not only tries to make personal experience meaningful and cultural experience engaging, but also by producing accessible texts, she or he might be able to reach wider and more diverse mass audiences that traditional research usually disregards, a move that can make personal and social change possible for more people.

Patton’s *Grand Canyon Celebration* (1999), published as an autoethnographic memoir for a mass audience (beyond academia) is one such text. The work is framed in the prologue and epilogue by an explanation of the theory of coming of age rituals from a humanist perspective. Patton (1999, p. 15) refers repeatedly to the work as a “story”, with little explanation as to how this was achieved other than searching for what he refers to as the “elusive thing called voice”. The narrative details a journey through the Grand Canyon in North America that the author made with his son and a guide to mark his son’s coming of age. The characters overcome a number of physical challenges and engage in storytelling around the campfire at the end of each day. Much of the narrative within the text however, consists of conversations between the characters with the Canyon acting as a “setting”, lacking a presence of its own, in a style similar to that used by Ellis in *The Ethnographic I* (2004), where an academic classroom is used to illustrate the methods adopted to construct an autoethnographic text. In the epilogue of *Grand Canyon Celebration*, Patton (1999, p. 332) reflects that the analysis of the creative work “imposes a conceptual framework on the story’s meaning”.

Autoethnography makes claims to fluidity and boundary crossing. However, critics of autoethnography have called the methodology solipsistic, self-indulgent and a form of navel gazing

(Freeman, 2013), and the methodology has not always been embraced by the disciplines with which it intersects. As Patton (Patton, 2002, p. 86) writes:

Many social science academics object to the way it blurs the lines between social science and literary writing. One sociologist told me angrily that those who want to write creative non-fiction or poetry should find their way to the English Department of the university and leave sociology to sociologists.

This quote exemplifies the lack of clarity that crossing borders between disciplines can create. Autoethnographic methodology aligns itself to memoir in broad terms, such as those stated by Freeman (2011, p. 218), “Ultimately, autoethnography is about ways of writing the self, about the activity of constructing oneself through words on the page”, a central concern of autoethnography and memoir. Scott (2014, p. 760) claims that the distinction between autoethnography and memoir lies in their different applications within research writing. Autoethnography, she states, “creates informed knowledge”, while memoir’s purpose is to record memories and lived experience, “memoir writes the personal story, without the theory”.

However, the argument that memories and narrative vignettes are “memoir” can lead to confusion in literary terms. Recalled memories and narrative vignettes *can* be memoirs but they are not memoirs in and of themselves. Memoir writing, like autoethnography, is a process and a product. Memoir is distinct because it implies (explicitly and implicitly) that the author has employed elements of craft and creativity. A memoir can be about a socio-cultural experience; yet it is the application of creative non-fiction techniques that illuminates and creates informed knowledge about these experiences within the narrative for the reader, rather than through a framework of theory and analysis, as in autoethnography.

Memoir makes claims to “truth” (Bikerts, 2008; Freeman and Rossignol, 2015; Gornick, 2001; McDonald, 2007, 2008; Sala, 2013; Steinberg, 2013). McDonald claims that memoirists enter into a contract with a reader and “the more the text claims to be reportage, the stronger the expectation on the part of the reader (that it) will be both true *and* accurate” (McDonald, 2007, p. 149). James Frey, author of the bestselling memoir *Million Little Pieces* (2004), was exposed as a fraud after it was discovered that the events that he depicted were mostly made up, while Helen Garner’s memoir *The First Stone* (1995) caused considerable controversy because she changed one person into multiple characters to avoid a possible defamation suit (McDonald, 2007, p.150). However, these controversies are rare and memoir has become a respected (and popular) genre of life writing (Ker Conway, 1999; McDonald, 2007; Gornick, 2001; Zinsser, 1998).

Writers of creative non-fiction, of which memoir is a form, create a “persona” from which a text is narrated. Gornick (2001) advises that an experience is only the raw material from which the narrative is shaped. The material requires both self-reflection and the creation of a persona, a

narrator, to tell the story. Robinson (Robinson, 2017, p.3) agrees that the narrator's voice is important to creative non-fiction, that it is this distinction that sets it apart from the genres of journalism, scholarly writing and "other forms of non-fiction (e.g. history writing), where the personal presence and voice is less central".

Steinberg (2013) writes about the paradox of the "I" character in creative non-fiction, describing how, in his own narratives, the "I" eventually becomes a "fully imagined character who is me but not me". The idea that the "I" character is a constructed character, and separate from the writer-narrator in creative non-fiction, has been the subject of debate (Freeman and Rossignol, 2015; Sala, 2013; Steinberg, 2013) much of which has focused on the effects of the "gap" caused by the duality. Freeman and Rossignol (2015) write that the gap can present obstacles in the reliability and truth-telling characteristics of the text, however they also acknowledge that the gap can be an opportunity both for creative growth as well as the opportunity to move away from a narrative focused solely on the writer's personal experience, should the writer choose to do so.

1.7 Narratives of Truth and Power

The narratives about Magnetic Island and the Red Baron conflict were inevitably written to influence audiences and, as such, they drew on information that framed their texts in ways to achieve this end result, rather than necessarily for the "truth-telling" content of the material (although all contained elements of "truth"). All narratives have power and many, if not most, narratives seek to persuade, but that power can only be harnessed through the relations that exist between the authors of the texts, their audiences and the institutions that allow these narratives to "speak" (Foucault, 1975). The institutions captured in these narratives determined not only the type of narrative that was produced, but determined "who is speaking" and "who is permitted to speak"; as such, they are discourses of power. It is important, therefore, to focus on the content of narratives, and ask what they tell about places and the people that inhabit them, and also to include an examination of the paradigms of power within which these narratives "speak".

One way of thinking about power and narratives is that some narratives are from "above" while others narratives are from "below". Narratives from "above" have the power to overshadow and, at times, to silence narratives from "below" (Foucault, 1975). My own narrative, told by me, is from "below" and can shed light on the operations of power that existed during and after the Red Baron conflict. It is my contention that my narrative from below, when added to narratives from above, can suggest better ways of tourism management in environmentally sensitive areas.

1.8 Place, Self and Character

The creative work explores my personal experiences with my husband Paul prior to, and including, the establishment of a tourism floatplane business that we operated within the GBRMP. On a deeper level, it articulates “place”, what it is to be “in place” or “out of place”, how environmentally sensitive places are managed, what leads to conflict over places and how such conflicts are contested. Place, in this memoir, is treated in two ways of knowing: as a “character” in the narrative and as a setting that can be mapped and regulated by administrative bodies such as the GBRMPA and the Civil Aviation Safety Authority (CASA).

My writing combines aspects of both autoethnography and memoir. It uses personal experience as a starting point to explore the cultural experience of starting a business. However it goes beyond this personal experience to examine the self within a wider social setting. The memoir draws on creative writing techniques with the emphasis on “showing” rather than “telling” through sensory images as well as structure use of scene and summary.

It is not uncommon for creative writers, including those who work in creative non-fiction, to treat place as a character in a story. For me, as a writer, thinking about place as a character has changed my thinking about the organisation of place and spatial relationships, and I wanted to explore how this alternate way of perceiving places could be harnessed when writing about lived experiences.

Through the act of writing, I began to think differently about the landscape. It was no longer a “given” place, something that had always been there, but instead I saw it as a place that could be constructed on the page and written about through multiple cultural perspectives, one of which was as a place personified and temporalised. But also place can be written about as something dynamic, changeable, and subject to multiple representations that are disputed in a legal context, such as that of the Red Baron hearing in the AAT.

1.9 Rewriting the Self into the Narrative

Brodkey (1987, p. 68) tells me that narratives of the same story cannot exist in isolation from one another and that recounting events can only be constructed within, or with regard to, narratives that already exist. To begin this research I first went backwards and excavated the texts that already existed. I am *captured* by existing narratives and the ways in which they construct the *truth* of who I am and what I stand for. I find myself submerged *within* the existing texts. Tropes of “invisibility” and “power” frame my writing and I speak of the published texts as the “story that stole my life”.

Foucault (1966) reminds me, in his analysis of Cervantes' narrative *Don Quixote*, writing the self is intertextual. Foucault contends that Don Quixote was an exemplar of the beginning of the seventeenth century when those in Western culture began to think differently. He is referring to this change as a "discontinuity" or "rupture" (p. 50). An important aspect of this change was how narrative itself became the way in which knowledge or "truth" about the social world, and our place within it, came to be understood. Foucault refers to the novel as "the first work of modern literature" (Foucault 1966, p. 54). Cervantes' novel is written in two parts³. In the first part, Don Quixote's adventures begin when he imagines himself as a character from the book. Foucault (1966, p. 53) explains:

The book is not so much his existence as his duty. He is constantly obliged to consult it in order to know what to do or say, and what signs he should give himself and others in order to show that he really is of the same nature as the text from which it springs.

In the second part of the novel, Quixote himself becomes the subject of stories told about him by the people whom he met in his adventures. He meets characters who have read the first part of his story and recognise him, the real man, as the hero of the book.

Cervantes' text turns back on itself, thrusts itself into its own destiny, and becomes the object of its own narrative. The first part of the hero's adventures plays in the second part the role originally assumed by the chivalric romances. Don Quixote must remain faithful to the book that he has now become in reality; he must protect it from errors, from counterfeits, from apocryphal sequels; he must fill in the details that have been left out; he must preserve the truth. (p.53)

Foucault's understanding of Quixote illuminates a trajectory in which dominant narratives are internalised and then, through the actioning of narratives and re-storying, the social self becomes the object of narrative.

Through the process of rewriting the self in a memoir I am also the object of the narrative. However, I have found that I was able to reshape and reclaim of many of the experiences in positive ways while still staying true to the events as they unfolded. This was not, however, simply because I was "bearing witness" to the events, but rather because I had researched and became more knowledgeable about them.

³ The first part of *Don Quixote* was written in 1605 and the second in 1615.

1.10 Chapter Summary

In this chapter I have set out the epistemological considerations for the study and introduced the methodology. I have reviewed literature on autoethnography and memoir writing and examined the ways in which narratives can define the (written) self and ways in which self can be re-written using creative non-fiction writing techniques. I have argued that narratives and stories published about the Red Baron Seaplane controversy failed to accord with my own personal experiences and I posit that rewriting the self through memoir acted as way to reclaim and reshape my experiences in more positive ways. In the next chapter *Imagined Geographies*, I review the literature on place myths and place images, with particular attention to the wilderness myth, as they pertain to the Great Barrier Reef and the Marine Park.

Chapter Two

IMAGINED GEOGRAPHIES

Once we understand the constructedness of space, we can see how it may be struggled over and claimed, rather than being 'just there' or 'given'. (Johnson et al., 2004, p. 110)

2.1 Introduction

In this chapter, I examine the ways in which the Great Barrier Reef has been “imagined” over time, and discuss how place myths and place images have influenced the socio-cultural production of the Great Barrier Reef. I pay particular attention to the wilderness myth and how that has contributed to the conservation of the Great Barrier Reef.

2.2 Myths

Place myths and place images are embedded in cultural imaginations and these myths facilitate, modify and influence the ways in which people ascribe meanings to and inhabit places over space and time (Coyle and Fairweather, 2005; Shields, 1991). In *Imagined Country*, for example, John Short (1991) focuses on the various meanings attached to wilderness, countryside and the city, while, in *Images of the Urban Environment*, Pocock and Hudson (1978) examine the socio-cultural meanings of the built environment and the visual images associated with it. Studies that focus on environmental myths are concerned not just with the classification of certain environments, but also with their social, political and ideological meanings. Short (1991, p. xxii) argues that myths:

(e)mbody beliefs, values and information, and which can influence events, behaviour and perception.

An environmental myth can contain both fact and fancy. The important question is not “is it true?” but “whose truth is it?”

In *Places on the Margin*, Shields (1991, p.6) supports the notion that our understanding or (personal) truth about particular places is informed by myth, and argues that these personally and /or communally held place myths often pervade and subvert planning and regional development policy.

Wilderness is a Western cultural concept (Short, 1991, Shields, 1991, Gomez-Pompa and Kaus, 1992, 2018; Barr and Klinsky, 2004). Short (1991, p.5) informs that the origins of

“wilderness” can be traced back to the agricultural revolution almost 10,000 years ago: “the term ‘wilderness’ emerges then because it is only with settled agriculture that a distinction is made between cultivated and uncultivated land, savage and settled, domesticated and wild animals”. He claims that the concept of wilderness as a way of viewing the world was responsible for many acts of European colonisation from the fifteenth century onwards that excluded local people and, “deprived them of their dignity and rights of civilised treatment” (p.22) because they had not sufficiently transformed their land from its “wilderness” state.

Wilderness has traditionally been associated with land areas (Barr and Klinskey 2014) and has drawn considerable interest from academic researchers. Wilderness, as a subject of study, is also of interest to creative writers; in *The Wild Places* (2008) by Robert Macfarlane for example, the writer sets out to explore what might be left of the *wild lands* in the British Isles. In doing so Macfarlane, through the course of travelling, writes that his view “shifted” on what he perceived wilderness to be. Barr and Klinskey (2014, p.72) claim that the ways in which we perceive places, such as wilderness, is a cultural and human experience; the landscape, they write, does not exist without a human observer: “the land exists but the “scape” is a projection of human consciousness, and image received.”

The United States was the first country to institutionalise wilderness as a “place” through legislation in the *1964 US Wilderness Act* that defines it as a place “where man (sic) himself is a visitor who does not remain” (Gomez-Pompa and Kaus, 1992, p. 271). As Shafer and Benzaken advise (1998, p.80),

The act (sic) was the result of more than a century of philosophical musings and debate about the value and need for places to be designated as wilderness. The act set aside a core of over 3.6 million hectares (9.1 million acres) spread over 54 different areas.

The 1964 *act* targeted mostly forested mountain areas in the United States. However the idea of wilderness protection has become a worldwide phenomenon and has not always been welcomed in rural and remote areas. Gomez-Pompa and Kaus (1992, 2018) argue that wilderness places are considered by their proponents as “pristine” environments that existed before human interference, with delicately balanced ecosystems and, importantly, that these places need to be preserved for future generations. All of these concepts, they write, “fall under the general term *conservation*, yet they represent mostly urban beliefs and aspirations” (2018, p. 272). The problem with this form of perception of place, they claim, is that it fails to acknowledge historical human uses of wilderness areas and renders those living in place “invisible” and, in some cases, fails to recognise their localised work in conservation.

Over the last decade academic debate in conservation and marine park management has expanded to include whether oceans and coastal waters should be considered “wilderness.” As I discuss below, the perception of the Reef as a “wilderness” has played a role in that debate.

2.3 Wilderness, Conservation and the Great Barrier Reef

Before European settlement, the eastern seaboard and islands falling within the Great Barrier Reef were populated by Indigenous peoples. Many of these groups refer to the Reef as “sea country” and the Reef was, and still is, an important Indigenous resource for food and cultural ceremonies. Its landscapes have spiritual meanings; one of these is the myth of “Gobul”, the dreamtime snake. The snake’s body follows the Herbert River and Palm Islands; Yunbenun (Magnetic Island) forms the head of the snake. The cultural and social perceptions of the Reef changed as European settlers claimed the sea country for commercial uses, leading to conflicts and displacement of the local Indigenous people (Hooper 2008; McCalman 2013).

There is evidence that the Wulgurukaba people lived on Yunbenun (Magnetic Island) for thousands of years before European settlement. Archaeological searches have uncovered fossils, shell middens, rock paintings in caves and skeleton remains, both on the shoreline and the interior of the Island. The Wulgurukaba maintained their traditional lifestyle after European settlement; however, disease and conflict with settlers eventually forced them to move off their traditional lands. By the late 1930s any remaining Wulgurukaba Island people had been relocated to missions on the mainland or nearby Palm Island.

Native title was granted to the Wulgurukaba people over 6ha of land at Westpoint in July 2012 and, since then, a further 55ha under the Deed of Grant Trust. In 2013 a new walkway from Nelly Bay to Geoffrey Bay was named “Gobul Way” in acknowledgment of the traditional owners. A small group of the Wulgurukaba people have returned to live on Magnetic Island but many are still displaced, both culturally and physically. Two destinations can be accessed from ferries departing the Townsville port. Predominantly “white” residents and tourists depart on the ferry to Magnetic Island, while ferries to Palm Island are occupied by almost exclusively “black” Indigenous peoples; a poignant reminder of the continued fallout from segregation and exclusion.

In *The Reef* (2013) McCalman integrates storytelling and research to examine the changes in the ways in which the Reef as a “place” has been perceived have evolved over several hundred years. McCalman identifies three evolutions which he names “Terror”; “Nurture”; and “Wonder”. All three are European social constructions, beginning with that of the early European explorers. Each of these evolutions has represented fundamental changes in both the way the Reef is perceived as a seascape, as well as the construction of the Reef as a social space. Interweaved between them

are the Indigenous cultural perceptions, mostly in forms that support the positive environmental use of the Reef. These evolutions reflect historical place myths, that the Reef was a place to be feared, then a place of consumption, and, finally, a place in need of protection. These evolutions are not distinct changes, but are more in keeping with Foucault's (1966) idea of "ruptures" within the social fabric that can be identified within historical texts, discourses and, in some cases, by physical changes to the land or seascape.

Explorer James Cook experienced the Reef as a treacherous labyrinth, something to be feared, while fellow adventurer, Mathew Flinders, recognised it as a valuable resource for commercial trade within the Inner Reef and the Reef Lagoon.

An arm of the sea is enclosed between the barrier and the coast, which is at first 35 or 30 leagues wide; but is contracted to twenty abreast of Broad Sound, and to 9 degrees at Cape Grenville; from whence it seems to go on diminishing till a little beyond Cape Tribulation, reefs are found close to shore. Numerous islands lie scattered in this enclosed space; but so far as we are acquainted, there are no other coral banks in it than those by which some of the islands are surrounded; so that being sheltered from the deep waves of the ocean, it is particularly well adapted to coastal trading (as cited in McCalman, 2013, pp.59-60).

Flinders' vision became reality when Europeans settled along the eastern seaboard and on the islands in the late 19th and 20th centuries. Initially settlement was for cattle production and the mining of minerals, such as gold on the Cape York Peninsula. It was not long, however, before the fertile coastal plain was cultivated for sugar cane and tropical fruits such as bananas and pineapples. To facilitate trade, ports to accommodate large vessels were built along the coastline, many of which are still in operation in their modernised forms.

Since the 1960s and around the world, there has been a rise in environmental movements that seek to preserve places of environmental significance that might be perceived to be under threat from mining or other forms of development (Buckman 2008; McCalman, 2013; Young, 1996;). In Australia, two significant areas - one in Tasmania and the other the Great Barrier Reef in Queensland - were pivotal in the formalisation of environmental activist movements (Buckman, 2008; McCalman, 2013; Young, 1996;). In Tasmania, a proposed dam and hydroelectric plant that would affect large areas of the Lake Pedder National Park ignited both support for and resistance to the project and, between 1962 and 1976, "no less than five environment groups were created to defend south-west Tasmania" (Buckman, 2008, p. 19). Coinciding with the Lake Pedder protests was an initiative to protect the Great Barrier Reef from mining (McCalman, 2013; Young, 1996; Shafer and Benzaken, 1998). Both campaigns were successful, resulting in large land areas in Tasmania being declared national parks and the Great Barrier Reef being declared a marine park under the *Great Barrier Reef Marine Park Act of 1975*.

A key component of the success of the Great Barrier Reef campaign was attributed to the environmentalist focus on the wilderness values of the Reef. Young (1996) posits that the activists were able to harness the values of the terms “pristine” and “remoteness”, values associated with terrestrial wilderness, because of the Reef’s vast size, its physical distance from human activity, and because it is (largely) underwater. “The Reef’s ecological value, combined with the region’s widely acclaimed aesthetic beauty, were other features frequently associated with wilderness areas” (p.71).

It could be argued however, that these wilderness values could only fully be appreciated because of the people who had been excluded from the area in the course of the changes to the administrative control of the Reef. Kenchington and Day (2011, p. 275) claim that “the use of the word ‘Park’ in the title of the *GBRMPA Act 1975* reflects the Australian political climate of 1975 but, in the contexts of subsequent global developments in theory and practice of marine ecosystems management has contributed to significant misunderstandings about the Great Barrier Reef Marine Park.” These misunderstandings include the perception that fishing and many other uses are not permitted in the GBRMP; confusion over the zoning scheme; and assumptions that permits are automatically granted for activities requiring permits (after they have been applied for).

Tourist operators draw on the wilderness myth in both generic and specific images to promote tourist activities and expenditure. However the sheer size and diversity of the Marine Park means that not all reef experiences will be the same. Different climate zones, tropical, dry tropics and sub-tropics, have produced a variety of vegetation and wildlife on Reef Islands. The geography of the Reef itself presents problems for tourist promotion, as Kenchington explains (1991, p. 63), "Despite the fascination of reefs, the Great Barrier Reef is a difficult tourist destination. For the most of its length the major and most spectacular reefs and clearest waters lie well offshore." The time taken to reach the outer reef varies greatly but a trip can take between two and five hours, depending on the mode of travel and the starting point.

The Reef is largely a seascape, an underwater world, and many of today's images of the Reef have been made possible through modern technology that has allowed previously unseen areas to become visible:

Until about the 20th century (sic) the Great Barrier Reef could only be inspected clearly by reef walking at low tide or by looking down from above through a glass bottom box. The availability of face masks, followed by snorkels, fins and later scuba equipment, made it possible to observe the animals and plants of the Great Barrier Reef functioning in its (sic) natural environment. (Kenchington, 1991, p.62)

Kenchington's description of the Reef is a good example of the ways in which the reef is both revealed and concealed. Conceptualising the vastness of the Great Barrier Reef can be difficult as

McCalman (2013, p. 3) reports, " Like most tourists, I'd vaguely thought of the Reef as a specific place - perhaps an island resort, a beach or a section of coral seen while snorkelling. Instead we found ourselves dwarfed by a vast country of sea, reef and coast." Discourses on the Reef, including government reports and tourism literature, contribute to this misconception by using the term Reef both to describe the Park as a "whole" as well as when describing specific sections of the reef or its coral outcrops.

It can even be argued that the Reef, through this and other similar texts and discourses, has become a metaphor for itself. Distilling the Reef into metaphor, however, makes it difficult to locate the complexity of other geographical features within this vast sea country. The metaphor is a double edged sword. One edge allows for otherwise complex information to be disseminated to a wide range of people in order to sell tourism products or solicit support for or against the social use of the Reef; the other edge conceals much of the geographic features as well as the changing social production of the Reef over time, facilitating a dichotomy between "insiders", those who live and work close to or are knowledgeable about the region, and "outsiders", those who only know the Reef through its metaphor and its mythical values. As detailed in the next chapter, in times of conflict, insiders will often call on outsiders to support their differing points of view and/or to resolve disputes.

2.4 Chapter Summary

In this chapter I have discussed how place myths and place images have influenced the socio-cultural production of the Great Barrier Reef. I have paid particular attention to the wilderness myth and how that has contributed to the conservation of the Great Barrier Reef. In *Magnetic Island*, I expand on this by exploring the ways in which Magnetic Island has been influenced by the place myths and place images of the Reef but also how it has (re)produced some of its own.

Chapter Three

MAGNETIC ISLAND

3.1 Introduction

In this chapter I examine the place images and myths of Magnetic Island.

“A Place on the Margin” is a short history of the Island as a site for European immigration, settlement, and tourism activities; “The Beach” explores the beach as a place of social production, and “Battle for the Bay” examines the major development of Nelly Bay Harbour that radically changed the Island’s landscape and was responsible for over 20 years of conflict amongst Island residents and the administrative bodies that oversaw the project. Completed shortly prior to the Red Baron conflict, it will be argued the Nelly Bay Harbour development stirred up emotions and divided the community over environmental and tourism/development issues in ways that were later harnessed in the Red Baron controversy.

3.2 A Place on the Margin

Magnetic Island could be described as a place on the margin. Shields (1991, p. 3) posits that marginal places are “those towns and regions which have been ‘left behind’ in the modern race for progress” and which “evoke both nostalgia and fascination”. In adopting the theoretical concept of ‘centres and peripheries’ to support his argument, he claims that marginal status does not result from an ‘out-of-the-way’ geographic location but through the way(s) in which a town or region has been “placed on the periphery of cultural systems of space in which places are ranked relative to each other” (p. 3). Islands within the Great Barrier Reef are understood as having periphery relationships with their mainland “gateways” (King 1997; Weaver, 2017). Magnetic Island’s gateway is Townsville and here I examine the ways in which Magnetic Island has become a marginal ‘place’ through its history as a site for immigration, settlement and tourism activities and its mythical constructs as a tropical island paradise.

Magnetic Island’s proximity to the coast means that it sits within both the boundaries of the Port of Townsville and the military controlled airspace for the Townsville Airport. To confuse matters further, it comes under the jurisdiction of the Townsville City Council, which classifies it as a suburb. In shape, the Island is similar to Tasmania but there the similarity ends. The Island is small, some seven kilometres long by road from its southernmost tip at Picnic Bay to Horseshoe

Bay at the northern end. A narrow belt of settlement exists on the eastern side while the rest, some sixty percent of the Island, is National Park.

Magnetic Island has a residential population of around 2,500 people, made up of permanent, part-time, and seasonal residents. Some of the part-time residents are from Townsville and spend part of their working week or weekends on the Island on a regular basis. Seasonal residents are predominately older, retired people from southern Australia - places such as Victoria, New South Wales and Canberra - with 'second' homes where they spend the winter.⁴ Occasionally these homes are rented as holiday accommodation or short-term rentals for the remainder of the year. The number of part-time and seasonal residents who identify as part of the Magnetic Island community has not been measured. As the main industry on the Island is tourism, all these groups use and share services that are also provided for tourists: shops, cafes, buses, ferries, or medical facilities. Some residents (from all groups) actively engage in hosting tourism activities or the providing of these services, which can range from letting holiday homes or rooms to tourism activities such as horse-riding, water sports, fishing and sailing. While previous studies have sought to identify the number of visitors who engage in tourism activities on the Island (Tourism Queensland, 2002, p. 14), no studies have been conducted on resident participation in these activities.

3.3 The Mythical Tropical Island

Place myths and images have been particularly potent in shaping the production and consumption of tourism on Magnetic Island and much of this consumption stems from texts (Short, 1991; Pocock, 2005; Jenkins, 2003). Whether in the form of memoir, letters, postcards, or novels, texts, play an important role in our understanding of particular places and our engagements with them (Short, 1991; Pocock, 2006; Meethan, 2006). Dominant European cultural myths about tropical islands have been and are drawn from Western fiction. In particular, the writings by authors such as Daniel Defoe, Robert Louis Stevenson and Robert Ballantyne assist in the construction of the myth of an ideal (and idyllic) tropical island that provides an escape from the problems of modern society (King, 1997; Pocock, 2005; Short, 1991). This myth of an Island life has also long been promoted in popular media representations such as the musical - and subsequent movie - *South Pacific*; Crosby, Hope and Lamour's 'Road' movies; and more recent movies such as *The Beach*, set in Thailand, as well as in tourist literature and travel blogs.

⁴ The dry season on Magnetic Island extends from May to November and corresponds to the southern Australian States' winter. Daily temperatures are usually a consistent 25-27 degrees Celsius.

Central to any tropical island myth is the coconut palm-lined beach devoid of civilisation and development. In this myth, the coral reef plays a subsidiary role, a feature that calms the wild outer sea, creating a lagoon where fish might be caught with the incoming tide, an easy source for a meal. European encounters with tropical islands, as Pocock explains (2006, p. 336), offer an idyllic lifestyle with “freedom from the obligations of work and production made possible by an apparent natural abundance of resources.”

The television program, *Fantasy Island*, aired in Australia in the 1970s and 1980s, assisted in the integration of seaplanes and floatplanes within the island myth. At the beginning of each episode, one of the main characters, Tattoo, runs up to a tower near the jetty, rings a bell three times after spotting the seaplane approaching the Island and calls out “the plane - the plane”. Queensland tourism advertising frequently incorporates the image of a floatplane at the iconic “Heart Reef” within the Whitsundays region of the Reef (Queensland Holidays, July 2014).

3.4 European Settlement

The first formalised European settlement on Magnetic Island was for the construction of a quarantine station at Westpoint⁵ in 1883. Two years later, in 1885, the whole Island was proclaimed a temporary quarantine reserve. In 1886, following a survey, the quarantine area was reduced to 700 hectares on the western flats. This survey report noted that five different parties had settled on the Island: the quarantine station at Westpoint; a Chinese settlement nearby; James Young and his daughter further away; the Harry Butler family at Picnic Bay; and the Joseph Butler family at Nelly Bay.

One of these families, the Harry Butlers, became the first recorded permanent residents of Magnetic Island in 1876 and they were the first entrepreneurs to engage in tourism production. Harry Butler, his wife Elizabeth and their four children lived at Picnic Bay, initially supporting themselves by growing vegetables, catching fish, and collecting coral for lime production. The family's introduction to tourism began in a small way by providing day trippers from Townsville with "cups of tea" and other small services. It was not until Harry built huts to accommodate visitors to the bay that the resultant health resort and a ferry service that they started grew to become the family's main livelihood. The resort incorporated grass-roofed huts with coconut palms planted beside them in an attempt (it would appear) to replicate a landscape experience of the South Sea Islands. Harry Butler's health resort was a fusion of two cultural ideals; firstly, the practice in England (and other parts of Europe) that embraced the belief that the beach was a “healthy” place

⁵ As the name suggests, Westpoint is on the western side of the Island and it is also the closest point to the mainland.

with curative and medicinal properties (Short, 1991); and, secondly, the myth of a tropical island paradise.

Robert Hayles became a tourism industry settler after visiting the Island in 1898. He went into competition with the Butlers after securing leasehold land at Picnic Bay, and built the Island's first hotel - a two-storey building with eight bedrooms. Hayles' family company became one of the most successful tourism operations on the Island, responsible for much of the Island infrastructure, for linking the mainland with ferries, and for building jetties at Picnic Bay and Arcadia.

Early European settlement also included the farming of tropical fruits such as mangos and pineapples at Horseshoe Bay. A wooden jetty was built in order to transport these goods to Townsville. The jetty also opened up the eastern side of the Island for tourism. During the Second World War, much of the Island was requisitioned for military use and remnants of the forts built during that time remain on the eastern part of the Island and are now a tourist attraction. The Horseshoe Bay jetty was badly damaged in 1971 by Cyclone Athena, and was subsequently demolished by the Townsville Harbour Board in 1973.

From the 1960s to the 1970s, the hippy 'counter culture' was responsible for an influx of settlers on Magnetic Island, as well as in other locations along the coastline such as Kuranda, west of Cairns. As Henry (1999, p. 124) points out, "they came to Kuranda to 'escape the system' and to live an alternative lifestyle." Julian Assange (2011, p. 31) who spent his early childhood on the Island in the 1970s, describes it as a "hippy republic"; a "freedom-haunted place of about a thousand inhabitants, where people who didn't fit in any place else came to live." His autobiography cites the novel *Tom Sawyer* to illustrate and invoke a childhood spent outdoors and connected to nature; a contrast to his description of Townsville at that time: "the people in Townsville lived in suburban housing, many of them living the 'Australian dream' of a small house and car." (Assange 2011, p. 28). In an editorial in the *Magnetic Island Times*, Hurst (11 December, 2010) mused about Assange's connection to Magnetic Island, asking, "What type of place could produce such a son?" Hurst articulates his impressions in a nostalgic recollection of the 1970s' Island, claiming it was a time when:

Steak and three veg islanders thought the best thing about Magnetic was how the local cop could stand at the end of the jetty and turn around those he considered undesirable coming off the ferry.

An old island saying went: on Magnetic Island drunks lived in Picnic Bay, the bourgeoisie live in Nelly, the old fogies in Arcadia and hippies in Horseshoe Bay.

Some, like artist Dennis Dean, who lived in a cave at the end of Horseshoe Bay Beach for a while and later built a dome at White Lady Bay, described himself proudly as a hippy in those days. For the small island population, the counterculture had arrived, from most

accounts however it was a clear, happy time to be a young man alive in Paradise. (Hurst, 11 December, 2010)

The second component of migration can be identified as the "Sea Changers". Like the hippies, the Sea Changers migrated from capital cities in Australia to remote or rural coastal areas in search of better lifestyles (Burnley and Murphy, 2004). Studies conducted with this group in 2000 found that their main reasons for moving were financial and environmental, and specifically related to accessing cheaper housing and work opportunities and the sense that this was a more relaxed environment, a better place to raise a family and retire (Burnley and Murphy, 2004, pp. 133-160). No such studies have been conducted specifically on Magnetic Island. However, since work opportunities are limited on the Island it is not unreasonable to conclude that a number of people (those not travelling to work in Townsville) became 'tourism settlers' and might choose to undertake entrepreneurial activities in order to support themselves (Barr, 1990).

In a study of Magnetic Island residents, Harrington (2007) explored the ways in which residents constructed a "sense of place" by drawing on the place myths of "nature", "difference" and "separateness". As one of the participants commented:

My family first came here for holidays as it was seen as an unspoilt area and the way Australia may have been some years ago...the big attraction is it is not suburbia...no glitz... it's a family place and it just doesn't have the same sort of social problems as other places...it's stuck in a time warp...there's no need to comply with social norms and there is a wonderful community atmosphere (Harrington, 2007, p. 35).

This quote feeds into discourses on marginal places. On Magnetic Island marginality is, in part, maintained through the ferry service that links the Island to the Port of Townsville.

3.5 The Ferry: A Portal to Paradise?

Prior to the new harbour development at Nelly Bay, the passenger ferry docked at Picnic Bay, a long wooden jetty painted white, jutting out into the azure blue water. A study of Magnetic Island residents and visitors who experienced arriving at the Picnic Bay jetty encapsulated the feelings of locals and visitors as "an emotionally charged moment in their relationship with the island, that of alighting from the ferry and walking along the jetty" and "it is the place where most people meet the island for the first time, a symbolic portal or gate, where the present is strung with a series of narratives that link the past and the future." (Harrington, 2007, p. 36-37).

I never arrived or departed from the Picnic Bay jetty; it was no longer in operation when we first visited the Island. References to ferry journeys are scattered through my memoir, the vignette

below describes me arriving at the Nelly Bay terminal and illuminates how my connection to the Island had changed over time:

I will always remember the distinct moment when I knew I had become an *Islander*. I had travelled back from Townsville on the ferry on a particularly busy day for tourists. There weren't enough seats so passengers stood in the walkways and held onto the overhead rails when the boat rolled in the choppy sea. After the ferry docked at Nelly Bay I followed the travellers as they moved *en masse* towards the bus stop.

In that moment, caught up in the tourists' excitement of the discovery of the Island, I imagined myself as though in a film, the final shot, as the heroine walks towards the crowd and becomes invisible. But, try as I might, I couldn't sustain the feeling. There was awareness, a sense of loss, that I would never again be a visitor. As the travellers peered, as interested voyeurs might, through the windows of the bus at the tropical houses and landscapes, *my* gaze was different. This place was now my home. I knew the bus driver by name. I had visited the beaches they were going to a hundred times, maybe more. My consciousness was not the same as theirs. I was an insider and the visitors were outsiders.

At the time of writing, the passenger ferry and vehicle barge are still the only forms of public transport to the Island. Feeding into the fear of the Island being brought into the "future" is the often-mooted proposal of a bridge connecting the mainland to the Island. Such a bridge was first proposed during the Second World War to connect the Island to important military outposts. Since that time, the idea of a bridge has become something of an "urban myth"; often discussed but never taken seriously (Harrington 2007). As Harrington's study found, for people who identify themselves as Islanders, the idea of a connection to the mainland would damage their perception of their tropical island lifestyle, separate from modernity:

Bridge? - No, bad idea. Then it wouldn't be an island, and wouldn't have that attraction of being separate from the mainland.

No bridge should ever be built - leave it the way it is as this is part of our heritage...Maggie needs to remain separate ...Australia is just 'that other island over there'. (Harrington, 2007, p. 36)

This extract, however, only presents one view and not all Island residents are in agreement. A sign erected at the Nelly Bay Ferry Terminal by the Magnetic Island Community Development Association (MICDA), also proclaims the myths of nature, separateness and difference. The sign "Welcome to World Heritage Listed Magnetic Island" includes a large map of the Island and a brief history of early European settlement. Debbie Denison, a reporter from the *Magnetic Community News*, claims that the description of the Island as 'World Heritage' is misleading and detrimental to the Island tourism industry by implying that the Island is a park with no infrastructure or things to

do (Dennison, 24 May, 2011). Dennison quotes another group, the Magnetic Island Ratepayers and Residents Association (MIRRA), as being opposed to the wording, calling for a unified approach by tourism groups to the way in which the Island is promoted. Opinions from local politicians were also solicited by Ms Denison:

Magnetic Island is one of many island and coral cays in the World Heritage listed Great Barrier Reef, and the Island can be very proud of that fact. However Magnetic Island itself is not a World Heritage listed island. (Member for Herbert, the Hon. Ewan Jones)

Magnetic Island is certainly a suburb of Townsville and we are currently developing a town plan for the island. The Island shouldn't be described as World Heritage National Park. If that was the case, there would be no freehold land on the island, at best the land would be leasehold. (Deputy Mayor of Townsville, David Crisafulli) (Denison, 24 May 2011, p. 2).

The quotes exemplify the differing views of what Magnetic Island *is* or *might be*. However, the Island is not like any other suburb in Townsville, neither is it pristine and undeveloped. The Island as a place is ambiguous and full of contradictions, just like the beaches that surround it.

3.6 The Beach

There are twenty-five bays and beaches on Magnetic Island, with only a handful accessible to the general population. Some of the less accessible beaches can only be reached by walking tracks, while others can only be reached by boat or viewed from the air. There are a number of family-oriented beaches, and two of them - Rocky Bay and Balding Bay - are tolerated by the local population and government authorities as nudist beaches. Partial nudity (topless bathing) is socially accepted at all beaches, mostly due to the influence of European backpackers. Above all, the beaches are viewed as egalitarian, free places. Private ownership of beaches is not possible on Magnetic Island, although an attempt has been made to limit public access at some gated estates⁶ where homes have direct access to beaches or water frontages.

The beach is an important part of Australian culture. In *The Myths of Oz*, Fiske et al, (1987, p.54) argue that the “meaning of the Australian beach can be located in at least two apparently different paradigms; one places it within the category of the environment of the city, making it intrinsic to it and therefore 'culture'; the other sees it in the category of the 'natural', alternative (or

⁶ Nobby's Headland in Picnic Bay is advertised as a gated estate but is only policed through signage. The Grand Mercure Resort at Bright Point has water frontage (although not beach) and is policed through locked gates. Several private waterfront homes also restrict public access though fencing and signage, although this appears to be more successful at keeping others out when the water frontage consists of rocks rather than beach.

even in opposition) to the comfortable security of the suburb.” However, they claim that the quintessential Australian beach is not a tropical beach like the ones found on Magnetic Island.

3.7 Horseshoe Bay

The street entrance to Horseshoe Bay can be read in similar ways to those of city beaches. It has a cultural precinct comprising shops, restaurants and accommodation. The esplanade has parking areas, grass with trees, a children’s playground and outdoor seating; this is also where tourist operators set up temporary beach offices⁷ to sell their products. The trees consist of a mixture of natives, such as casuarinas, and imported varieties like the Banyan from India. Also, as might be expected on a tropical beach, there are a number of tall coconut palms. Much of the early planting of trees and coconut palms was done by local residents and tourist operators before the council took formal ownership and control of the parks and gardens on the Island. It is predominantly the coconut palms, however, that appear in tourist brochures to promote the Island beaches.

On the far eastern end of Horseshoe Bay there is a small group of houses that can only be accessed from the beach or by a walking track at high tide. As is the case at many coastal places in Australia, the houses at this end of the bay were built without permits as holiday accommodation by "coastal pioneers" (Jones and Selwood, 2012). When the Townsville City Council introduced formalised planning on Magnetic Island, the land on which the holiday shacks had been built was converted to freehold plots bordering the beach. In recent years, as in many other parts of Australia, such beachfront properties have become prized real estate. Property owners who spend large amounts of money on beachfront properties often want privacy, yet they still seek to take advantage of uninterrupted ocean views.

The following extract from a real estate advertisement for one Horseshoe Bay house in 2010 (on the market for \$4.5 million) illustrates how the edges between the beach and the house are rendered as invisible when they are narrated as "seamless", "private", and "exclusive". They suggest ownership of the beach in front of the home and imply that public access to the beach, and activity on it, belongs in a different area away from the house:

The beach-side home is still the perfect modern family home and arguably one of the best holiday houses on the Australian coast. Access is along 300 metres of beach with a tidal creek as your own private moat. This exclusive 2,400 square metres of absolute beach frontage is rarely available. The transition between indoors and outdoors is seamless, sounds of the ocean and waves on the beach enhance the ambience.

⁷ These sites are leased from the Townsville City Council. They are set up and dismantled on a daily basis.

Horseshoe Bay has its own busy eat strip these days and is still a popular area for holidaying families but up at the beach house it is isolated and private yet accessible (Pitman, 2010, p. 45).

There is no mention of the walking track in front of the house (between the creek and the beach) or that the beach is used and accessed by the general public, including holidaying families. Through this narrative, the reader is instead invited to imagine a property that replicates a tropical paradise in keeping with the island myths of 'nature' and 'separateness', and not one comparable to those by the city beaches found on the mainland. The far western end of the beach has no esplanade; instead a wide sand dune and areas of national park act as a buffer for these private properties so they cannot be seen from the beach. In addition, no commercial water activity is permitted at this end of the beach in order to maintain a more natural experience for holidaymakers.

3.8 Trouble in Paradise: Heritage From Below

Jones and Selwood (2012) posit that problems occur when marginal and allegedly idyllic places such as Magnetic Island are forced to catch up with the wider world. The problem is highlighted when “some peoples “freedom and pleasure” is perceived as occurring at the expense of other social values such as environmental protection, public order or even...public health” (Jones and Selwood, 2012, p. 140). On Magnetic Island, that wider world is symbolised by the increased interest in tourism and proposed development from outside the Island community (Valentine, 1989). During the early 1980s, Valentine (1989, p. 84) reported that nearby Townsville experienced a rapid increase in local and international tourism and between “1983-84 and 1986-87 international tourist nights in the Townsville region trebled to 170,000 (total regional visitor nights were 3.5 million).” Magnetic Island’s proximity to Townsville and its tourism assets of tropical beaches and fringing reefs ignited interest in expanding tourism facilities on the Island.

Two major developments were mooted, one at Florence Bay, on the eastern side of the Island, and one at Nelly Bay on the southern side. The proposals were significant in a number of ways. Promotional material referred to Magnetic Island as Townsville’s “jewel in the crown”, thereby linking the Island with the city’s broader tourism catchment area. The proposals offered economic gain to investors, along with increased employment opportunities for both Townsville and Island residents. Both the proposals, however, threatened to physically alter the landscapes and challenged what some perceived as the “laid-back” lifestyle on the Island. Prior to the Nelly Bay proposal, a resort proposal had been mooted for Florence Bay. This proposal, for new resort-style accommodation, was claimed by the developer to be a \$100 million project generating 2,000 jobs (Valentine, 1989, p. 84). Valentine (1989) reported that, in March of 1989, the ‘Save Florence Bay

Association' was formed. It was chaired by a Labor Party alderman and, in an unusually bi-partisan approach, one of the two vice presidents was from the Liberal Party and the other was a state Labor Party politician. As a result of the political intervention, the Florence Bay proposal failed.

The harbour development at Nelly Bay, proposed in 1983 and opened in 2003, radically changed the local landscape and was the cause of a bitter community debate and a conflict that has continued for over twenty years (Valentine, 1989; Moscardo and Murphy, 2014). The 1983 proposal for Nelly Bay included an all-weather marina, extensive accommodation for 1,300 tourists, 100 home-sites, a tavern, commercial centre and a new beach (Miscardo and Murphy, 2014). Valentine (1998) claims that, unlike the Florence Bay proposal, the Nelly Bay initiative failed to generate the same level of political opposition because the ambience of Nelly Bay was already considered to be more in keeping with that of a "suburb". In addition, its fringing reef and coral outcrops were deemed to be of limited value in environmental assessments of the project (Mapstone et al., 1989).⁸ In short, Nelly Bay was not considered to be a "pristine site" in the manner of Florence Bay.

3.9 "Greenies" and "Boosters"

On Magnetic Island, two "teams" are now generally accepted to have formed in response to the Nelly Bay proposal. The first, the *Island Voice*, often labelled as the "greenies" (opposed to the project) and a second group, the *Advance Magnetic Island Association*, those who are thought to have been influenced by the offer of jobs and by "boosterism", and were therefore supportive of the project (Miscardo and Murphy, 2014; Moyle et al, 2010; Valentine, 1989; Whitehouse, 1992). Despite the controversy, the Great Barrier Reef Marine Park Authority approved the marina development in 1987 and construction work was commenced. However, in December 1990, the developer, Magnetic Keys Limited, went into receivership and the project ceased (Whitehouse, 1992).

An independent review of the marina development, commissioned by the Federal Government, gives an excellent account of the major arguments that caused the division within the Magnetic Island community. Mr John Whitehouse, from the law firm Dunhill Madden Butler, was appointed to undertake the review. The terms of reference were to investigate the GBRMPA's procedures in issuing the permit for the marina, and the specific criticism and allegations made by

⁸ Mapstone et al. conducted a study, in 1989, for the Nelly Bay Harbour project and compared Nelly Bay's fringing reef with other reefs around the island, including those at Picnic Bay, Geoffrey Bay and Florence Bay.

the *Island Voice* and by Democrat Leader, Senator John Coulter, against GBRMPA over the management of the project (Whitehouse, 1992).

Written submissions were invited from interested persons and a round table meeting was held in Townsville at which twelve persons and organisations made oral presentations (Whitehouse, 1992). Mr. Charlie McColl, representing the *Island Voice*, drew attention to the financial problems with the development and the potential environmental damage that the marina could cause to Nelly Bay. Whitehouse summed up the position that *Island Voice* was taking in the conflict:

Island Voice believes the Magnetic Quay project should never have been started. Mr McColl indicated that the Island Voice considers that Nelly Bay should be restored and the marina removed⁹. (1992, p.26)

Conversely, *Advance Magnetic Island* was reported as fully supporting the project and as viewing the loss of beach frontage as a reasonable trade-off in providing a safe harbour for boats and an upgrading of the Island's infrastructure. The *Advance Magnetic Island's* representative, Mr John Ellerton, was highly critical of *Island Voice*, saying they were a "small group of radicals" who had abused the legal system. He said that the Magnetic Quay development was not an environmental issue; rather that the group "hates private enterprise" and "most of the members of Island Voice are unemployed and living on grants and welfare" (Whitehouse, 1992, p. 27).

The Nelly Bay Harbour was finally completed by Nelly Bay Harbour Pty Ltd (NBH) and opened in 2003, although its development was on a much smaller scale than that originally proposed. At the time of writing, it includes a marina, a ferry terminal that accommodates landings, a jetty for the passenger ferry and the barge,¹⁰ two resort complexes, and around 50 waterfront properties on reclaimed land. Part of the terminal complex that was set aside as a tavern has never been developed and remains a "hole in the ground"; however much of the other work has been completed.

3.10 Chapter Summary

In this chapter I have examined the place images and myths of Magnetic Island. I have argued that place myths and place images have influenced European immigration, settlement, and tourism activities. I have argued that the major development of the Nelly Bay Harbour radically changed the

⁹ The return to a predevelopment state is a sentiment that was expressed in relation to the Red Baron project in Horseshoe Bay by Mrs. Connolly, which is narrated in my memoir in the summing up of arguments for the Tribunal hearing and was reported in the Townsville Bulletin (McKinnon, Wednesday November 14, 2007, p.13).

¹⁰ The ferry only carries passengers, whereas the barge is for vehicles, trucks and cars. As there is no bridge to the Island, and no airport or aircraft landing area other than that for the emergency helicopter, all people and services come to the island by passenger ferry or the barge.

Island's landscape and was responsible for over 20 years of conflict amongst Island residents and the administrative bodies that oversaw the project. I have contended that the same development, completed shortly prior to the Red Baron conflict, stirred up emotions and divided the community over environmental and tourism/development issues and that these were later harnessed in the Red Baron controversy. In the next chapter, I examine the administrative regimes that apply to Magnetic Island.

Chapter Four

ADMINISTRATIVE REGIMES OF MAGNETIC ISLAND

4.1 Introduction

As detailed in the previous chapter, tourism development can cause considerable conflict among residents, developers and tourism operators, and several researchers have called for greater local involvement in tourism-related planning decisions on Magnetic Island (Moscardo and Murphy, 2014; Moyle et al., 2010). However, while these studies focused on the effects of tourism development, they failed to take into account the number of administrative regimes that oversee any given island site, the potential incompatibility of the governance regulations and policies, and the legal restrictions with which individual tourism operators may be required to comply.

Administrative power is understood, within the Australian context, to fall within one of the three arms of government, namely the executive, the legislature and the judiciary. This separation aims to avoid the concentration of power within any one arm of the Australian democratic system (Cumes, 2008; Lane and Young, 2007). The regulatory aspects of government are exercised by the legislature and the executive with the resolution of individual disputes falling to the judiciary.

This chapter examines three Australian administrative bodies. First is the Civil Aviation Safety Authority (CASA), which is responsible for licensing, permits and the monitoring of the daily activities of pilots, aircraft engineers and aircraft. Second is Airservices Australia, which is responsible for monitoring and controlling aircraft within the national airspace. Third is the Great Barrier Reef Marine Park Authority (GBRMPA) which, *inter alia*, manages tourism operations within the Marine Park.

In 1976, the Australian Federal Government established the Administrative Appeals Tribunal (AAT) under the Administrative Appeals Tribunal Act, the purpose of which is to conduct “merits reviews” at the Federal government level (Lane and Young, 2007). As detailed below, a merits review by the AAT has the power to set aside and then remake a decision. It is under this legislation that any new tourism permits issued by the GBRMPA can be challenged by person(s) who believe they have been aggrieved by a decision. This legislation does not restrict the review to permit applicants only, which means that community members can challenge any and all decisions. It would be reasonable to conclude then that the permitting and grievance system for the GBRMPA is endogenous. This assumption is further supported if the permittee participates in self-regulation activities, such as the development and implementation of environmental management plans (a

requirement of some GBRMPA permits) given that, as Elderman et al., (1999, p. 407) posit in *The Endogeneity of Legal Regulations: Grievance Procedures as Rational Myth*:

Organisations actively participate in constructing the meaning of compliance, and this construction process generates ideologies of rationality, which legitimate and reinforce particular compliance strategies. That organisations are both responding to and constructing the law that regulates them renders law “endogenous”; the context and meaning of law is determined within the social field that it is designed to regulate.

An important component of compliance to the rules and regulations set by administrative bodies is therefore protection from litigation. However, the Red Baron hearing before the AAT in 2007 demonstrated that this is not necessarily the case, and therefore raises a number of issues concerning tourist operators’ perceptions of their legal rights and obligations within environmentally protected areas, as well as the power of administrative bodies to regulate once authority has been deferred to them. In addition, the Red Baron case raises a number of questions in relation to the socially accepted ways, or norms, by which business owners and others engage in compliance behaviours in order to avoid litigation.

This chapter is in two parts and uses arguments advanced by Michel Foucault to analyse and extend some of his ideas about power within governance and dispute resolution processes, as narrated in my memoir. Part 5.2 examines the ways in which aviation regulators - CASA and Air Services Australia - and the environmental administrator - the GBRMPA - maintain order and control through regulations and written practices. I argue that compliance is maintained through these practices and also considers the rational myth that compliance with rules and regulations will protect individuals and organisations from litigation.

Part 5.3 examines and analyses the Red Baron case before the AAT in 2007. I argue that the Tribunal disrupted notions of law and order within the administrative regimes of CASA and the GBRMPA by exerting power exogenously and by applying analogical reasoning to the permit process. In conclusion, I propose that order was restored when the Tribunal was excluded from the hearing part of the case.

4.2 Part one: Administrative Regimes of Aviation and the Environment

4.2.1 Administrative Boundaries of the Reef

The Great Barrier Reef is a network of over 2,900 individual reefs and approximately 900 coral cays and islands stretching approximately 2,300 km along the Queensland coastline. The network consists of an outer reef and a lagoon. The Reef’s width varies from 20 km at its narrowest to 250

km at the widest point. GBRMPA (1994, p. 26) defines the Great Barrier Reef Lagoon as a collective term for “The large areas of water, devoid of coral reefs, that lie inshore of the barrier reefs.” The Lagoon makes up around 33.45 percent of the World Heritage Area.

The section of the Reef falling within (Federal) Australian waters was declared a Marine Park under the *Great Barrier Reef Marine Park Act of 1975* and, in 2004, the boundaries were extended to adjoin the majority of the North Queensland coastline and to include all of the waters surrounding Magnetic Island. The World Heritage-listed Great Barrier Reef Marine Park is an area encompassing 345,400 square kilometres, making it one of the largest World Heritage areas on earth – an area larger than the United Kingdom, the Netherlands and Switzerland combined. This natural structure is so extensive it can be seen from outer space.

Following the boundary extension, GBRMPA prepared a new zoning plan to accommodate the various fishing, tourism, and recreational uses of the Marine Park, and also to set aside “no-go” zones in order to protect areas of particular environmental importance and sensitivity (GBRMPA, 2005). As part of the process GBRMPA invited the community to participate and, as a result, they received over 31,500 written submissions from industry groups and members of the community. The new zones were implemented in July 2004 and, in November, the Queensland Government mirrored the zoning to complement those used by GBRMPA in all state waters. The GBRMPA zones are as follows:

General Use

Habitat Protection

Conservation

Buffer

Scientific Research

Marine National Park

Preservation

Commonwealth Islands

The Commonwealth Islands zone encompasses entry to areas of the Marine Park above low water on Commonwealth-owned Islands (GBRMPA 2005, p.14). However, the ruling does not include islands, such as Magnetic Island, that form part of the State of Queensland.

Magnetic Island sits within the Great Barrier Reef Lagoon, eight kilometres northeast of Townsville. Horseshoe Bay on Magnetic Island, the area of focus in the Red Baron case, was zoned in 2007 as “General Use”, allowing for recreational fishing, boating and tourism activities with a permit. Prior to the AAT hearing¹¹, the boundary between the State and Federal government waters

¹¹ Connolly v. Great Barrier Reef Marine Park Authority, No. 2007/696 (Australian Administrative Appeals Tribunal 2007).

was determined by a mathematical equation: the area between the lowest astronomical tide and the highest astronomical tide (H.A.T.) was ruled as being within the state of Queensland and the waters from the lowest astronomical tide seaward were understood to be within the Federal Government's jurisdiction. This ruling applied to all the waters and bays surrounding Magnetic Island.

4.2.2 Tourism in Conflict

Tourist visitation to the Great Barrier Reef is reported as 17.8 million in 2015-16, with an estimated direct value in tourism consumption at \$10.6 billion. Environmental groups, such as the World Wildlife Fund (WWF), claim that the Great Barrier Reef is under threat from climate change, catchment pollution from farming, coastal development such as port expansion, and poor fishing methods. During disputes, environmental groups often publicly side with the tourism industry, claiming that the loss of quality of Reef experiences will result in the loss of jobs and incomes. However, as Kenchington (1991, p.57) advises, there is an "uneasy relationship between tourism and environmental conservation". McKercher (1993, p. 136) states that sustainability is becoming the "motherhood issue" in Australian society today and, "For tourism to survive sustainability, it must take a proactive leadership role."

The very nature of the Australian tourism industry makes cohesive action on issues such as sustainability difficult. Tourism operations on the Great Barrier Reef are dominated by large multi-national companies. It is these companies that are represented on tourism lobby groups such as Tourism Australia and Tourism Queensland, and local tourism boards such as Townsville Enterprise. Some of the representatives from these groups make their way onto the board of the GBRMPA. They fund university studies and have political connections. They are part of the tourist companies that have million-dollar advertising budgets, in-house lawyers and spokespersons who are paid to be the "faces" of their companies. And then there are the small, often family-based, tourist business owners who are dependent on the larger corporations and tourism boards to bring in the tourists. Rarely do the owners of these small businesses get involved in major tourist problems beyond their own immediate area. They tend to be poorly organised and often cannot afford the large fees required to join major tourism bodies¹², which therefore remain controlled by the large corporations.

¹² Fees are set at different "levels". Lower entry levels don't provide small operators with an opportunity to attend meetings or have a "speaking voice". Fees advertised by Townsville Enterprise in 2008, for example, range in price from: level "1" \$705 for a business with under 20 employees to Platinum membership, with an annual fee of \$90,845.

As a result, smaller tourist businesses lack cohesive representation and do not have the subsidised legal resources, such as the *Environmental Defenders Office*, that are available to environmental activists. Tourist operators within the Marine Park rely on joint permits obtained from the Federal Government's GBRMPA and the State Government's Queensland Parks and Wildlife Service in order to avoid confrontation and protection from litigation. Knowledge about how small tourism operators engage with these governing agencies is limited. Tribunal hearings are rare and are mostly confined to large scale tourist developments that either alter physical landscapes and/or pose environmental risks (Nelly Bay Harbour development on Magnetic Island is an example).

4.2.3 Sentient Space

Administrative Regimes of Aviation and Environment through a Foucauldian Lens:

Foucault (1980, p.39) argues that a “synaptic” regime of power, “a regime of its exercise *within* the social body, rather than *from above* it” developed in the Western world in the course of the eighteenth century. For Foucault (1975, p. 189), power was exercised by surveillance conducted through documentation, training and examination. Aviation and environmental regimes have developed regulations and permit systems that constrain tourist operators and written procedures that allow these to be monitored and examined. Australian aviation regulators require pilots and aircraft engineers to undertake many years of training and examination before being issued with licences. This examination continues beyond the issuing of licences. Log books must be kept by pilots and engineers, and for specific parts of aircraft¹³. Pilots are required to keep a log book to record flying hours and must also undertake regular flight reviews and medical examinations¹⁴.

An important component of discipline, according to Foucault (1975, p.141), is containment: “Discipline sometimes requires *enclosure*, the specification of place as heterogeneous to all others and closed in upon itself”. Administrative regimes sometimes deal with a specific “place”, as seen with the Marine Park Authority and the Great Barrier Reef, while for others, such as CASA and Airservices Australia, containment is both place bound and space bound; they are national bodies that operate within Australian territory and also control “airspace”. What these administrative

¹³ In 2007 the aircraft VH-KKD, narrated in the memoir, had three log books: one for the airframe, one for the engine, and one for the propeller. Log books are kept by the owner of the aircraft but can only be written in by aircraft engineers.

¹⁴ Flight reviews for commercial pilots are designed to ensure that the pilot's skills in any given class of aircraft that he or she is flying are current. Medical examinations for a commercial pilot flying for passenger airlines occur every six months and, for a commercial pilot in general aviation, every twelve months, but this can vary according to age, country and type of aircraft flown.

bodies have in common is that they have clearly defined legislative responsibilities and powers and all have written rules, regulations and maps that enforce compliance.

There are times when administrative bodies co-operate. The GBRMPA jointly manages the Marine Park with the Queensland Parks and Wildlife Service. For aviation, this may result in a *Notice to Airman* (NOTAM) issued to *all* pilots, commercial and private, for environmentally sensitive areas of the Marine Park (an example is Michaelmas Cay). Restrictions in a NOTAM might include hours of operation, flight height, or exclusion zones around the site. In these negotiations, each regime maintains their own administrative boundaries with the focus on how to best manage the environment while still maintaining the integrity of the legislative frameworks of the separate governing agencies.

Airservices Australia maintains its power through its ‘invisibility’, while the pilot and aircraft are always ‘visible’, a concept that Foucault believed important to maintain order:

In discipline it is the subjects who have to be seen. Their visibility assures the hold of power that is exercised over them. It is the fact of being constantly seen, of being always seen that maintains the disciplined individual in his subjugation. (Foucault, 1975, p. 187)

In my memoir, I make reference to the visibility of aircraft in a scene where my husband Paul has an aircraft accident in the small town of Moulamein in NSW. The crash triggered the emergency beacon in the aircraft, alerting Airservices Australia in Canberra. Like all other aircraft in Australia, his plane was fitted with a transponder that located the position of the aircraft. An air traffic controller cannot be seen by pilots; however controllers are visible to their line managers who may be in a control tower or (as was the case in Paul’s accident) centralised monitoring facilities.

Aviation is a highly regulated industry and discipline is maintained beyond the training of individual pilots by keeping records and requiring regular examinations. Every commercial flying aviation organisation is required to hold an Air Operators Certificate (AOC) and is required to have a Chief Pilot and Head of Aircraft Maintenance (HAM). The Chief Pilot’s job is to oversee the daily operations of the company aircraft and to manage the other line pilots who may be employed. The HAM is responsible for ensuring that the company’s maintenance schedule is complied with by liaising with the company’s designated maintenance organisation. After a Chief Pilot is nominated by a company, she or he is required to undergo an examination to establish their understanding of the regulations with CASA representatives, as well as a flight test in all the types of aircraft being flown by the organisation, before they are approved. Once approval has been given, the Chief Pilot, in conjunction with the company owner, is responsible for the safety of the aircraft operations for the organisation.

In order to obtain an AOC, the organisation has to undergo a number of tests and approvals. Included in the approvals is the production of an Operations Manual that details all the procedures

that are undertaken by the flying organisations. Each of these procedures is referenced back to CASA regulations. Every member of the organisation, including pilots and ground crew, are legally required to read and sign the manual to confirm they understand and will comply with it. Included in the Red Baron Seaplane manual, for example, was a copy of the maps of alighting areas around Magnetic Island, details of the aircraft's handling capabilities, and ways to reduce the impact of take-off noise in Horseshoe Bay. The manual also included copies of passenger manifests and weights and balance information. Failing to keep these documents or falsifying them carry penalties and, as such, assist in ensuring legal compliance by an organisation.

A typical examination of an aircraft flying organisation is referred to as "surveillance" and might include a "ramp check", a check of the aircraft where it is located and the associated equipment required for flights; or a "desk audit", an inspection of the paperwork that is required to be kept on the aircraft operations. The flying organisation may be issued with a compliance order if any problems are found. If minor, such as incorrect paperwork, this will only require the rectification to be completed within a set time frame. However, more serious breaches can result in the organisation being shut down or issued with a fine; the worst case scenario would be a criminal conviction. In recent times, however, an important part of CASA surveillance has been to build relationships with operators and prevent future non-compliance.

There is a third and important component within an administrative regime, which Foucault calls *self-regulation*, which is the primary purpose of all training and examination (1975, p. 155):

An inspecting gaze, a gaze which each individual under its weight will end by interiorising to the point that he is his own overseer, each individual thus exercising this surveillance over, and against himself.

In aviation, self-regulation for individual pilots can be best understood by the term "pilot in command" found in *Australian Civil Aviation Regulations 1988* (224). Important for the Red Baron case (to which I return later in *Dispute Resolution*) is the provision in the legislation that the pilot in command of an aircraft is responsible for the operation and safety of the aircraft for each flight. Pilot in command is a legally binding responsibility. However it is understood that, in conferring this responsibility to a pilot, she or he will undertake their responsibilities unsupervised, thereby supporting Foucault's theory of compliance through internalisation.

The GBRMPA and Queensland Parks permit system and the surveillance of aerial tourism operations are simplistic when compared to those of CASA and Airservices Australia. Permits are, on average, only two to three pages long. They reference legislation, include details of map co-ordinates where the aircraft detailed in the permit can operate, and specific "no-go" areas within the allocated zone(s). As detailed in my memoir, our aircraft permit was accompanied by an Environmental Management Plan (EMP). However, these plans are rare and this was the only

aviation EMP that accompanied a marine park permit in 2007. Permits are granted on the understanding that not all visits (by the permit holder) to any given area will be used because of weather and economic factors. The provision is referred to as *latency* and, as a result, all permits will have a greater number of allowable visits than those expected to be needed or able to be used. Permit holders are required to collect Environmental Management Charges from those customers who are reported on and these are to be paid to the appropriate authorities every three months. Reporting includes the sites visited by aircraft (or vessel for a boat) and the information collected is used to monitor compliance with permits (numbers of passengers and visits) as well as to see how often a particular permit is being used at a given site. During the ten years that we operated Red Baron Seaplanes no overt surveillances, such as those regularly conducted by CASA, were undertaken on our operations by GBRMPA. Site compliance work is commonly referred to QPWS, and Horseshoe Bay was regularly monitored by a QPWS boat and occasionally by one from GBRMPA. Members of the wider community are also invited to be the “Eye on the Reef” and to report information about Reef health, marine life or incidents involving marine life or people. This focus, involving community members, represents a significant movement towards a “healthy” environment in which the social body is charged with taking responsibility for and maintaining the Reef rather than it being the sole responsibility of QPWS and GBRMPA.

4.2.4 Permits and Licences as Products of Power

All permits and licences are written documents of power. They are not where power originates but they are products of power networks. They are legal documents that are binding in courts of law. Some documents, like GBRMPA aviation permits, will be signed by the administrative body and the permittee to validate that a contract between both parties has been entered into. In this context, GBRMPA has given permission for a permittee to undertake tourism activities within a given framework. In turn, the permittee agrees to these conditions and accepts that there will be penalties for non-compliance. Aviation licences and marine park permits are for a fixed term and are designed to comply with regulations but they are also liable to be modified or changed as a result of legislative and or regulatory changes. In this context, certain aspects of these documents and licences are fluid, or, as one administrator in GBRMPA said about our EMP, they are “live” documents.

CASA regulations are particularly dynamic. Permits and licences are written documents that set parameters and are the reference points for examination that is *time* relevant; by this, I mean that the permit or licence can only be legally binding within the document parameters and the time period or *life* of the permit. Permits and licences form part of intricate ideological and culture

networks within administrative regimes. In CASA, the regime is based on a *just culture* whereas in GBRMPA, it is based on the *precautionary principle* - two completely differing logical underpinnings with opposing objectives and trajectories. The Marine Park Authority attempts to weigh up future “possibilities” in order to assess individual permit applications, while CASA has built its rules and regulations on the detailed examination of past accidents and deductive reasoning within a culture that is concerned with ensuring that information gathering takes precedence over prosecution (Marchbank and Wilson, 2010). This is not to say that CASA does not impose sanctions, because it does; rather its focus is on continued safety and protection of the social body as a whole, rather than concentrated on the punishment of individuals.

4.3 Part Two: Dispute Resolution

4.3.1 Adversarial

In the adversarial model of dispute resolution, most commonly used in the Australian court system, the parties of the dispute have the primary responsibility to define the boundaries of a dispute, not the judge, nor any other decision maker (Rose, 1999). The function of the judge or other decision makers is to control proceedings and to provide fairness and integrity. As a general rule, they cannot actively interrogate witnesses or go outside the case being presented by the parties in the case (Burns, 1999; Lane and Young, 2007; Rose, 1999). As narrated in my memoir, our dispute with the aviation maintenance organisation occurred within the adversarial mode, which stipulated that the parties actively participate in alternative dispute resolution through mediation. There are consequences for not participating. Should one party make an offer to settle in mediation that is refused by the second party, the court may find that offer reasonable and, if so, the second party would be required to pay the first party’s costs if it proceeded to a court and a similar resolution settlement is handed down by the judge hearing the case.

4.3.2 Interrogative: The AAT and the GBRMPA

In response to a number of disputes against the executive by community members, the Australian Federal Government introduced the *AAT Act* in 1975. The Act facilitated the establishment of tribunals as an alternative dispute resolution process. Tribunals do not fall under either the judiciary or legislative arms of government but rather they are separate bodies to which a branch of the executive (such as the GBRMPA) may defer authority to make a decision. Disputes concerning the Marine Park Authority are uncommon. However they can be among the most complex, lengthy and expensive of all cases (Rose, 1999). As discussed below, a review of two Marine Park Authority

hearings in 1991 resulted in the recommendation of a number of legislative changes to the AAT. However, none of these changes have been adopted (Rose, 1999, p. 121).

Tribunals are considered to be ‘hybrid’ institutions (Cumes, 2008) because they are simultaneously an executive arm of government and a judicial system. As explained by Cumes, there are a number of tribunals in Australia that function in different ways. There are two main categories: the first type act as de facto courts exercising civil jurisdiction (for example the Consumer, Trader and Tenancy Tribunal of NSW and the State Administrative Tribunal of Western Australia); the second type are purely administrative review tribunals, such as the Federal Government’s AAT. The AAT has the power to review decisions made within administrative bodies by the powers vested to them (only when this power is specified in the bodies’ particular legislation). In so doing, it is said to “stand in the shoes” of the original decision maker to remake the decision, which is referred to as a review of merits (Cumes 2008; Downes, 2011; Lane and Young, 2007; Rose, 1999).

There are distinct differences between the adversarial model of the courts and the interrogative model of the AAT. The goal of a tribunal hearing is not to identify a “winner and loser” but rather the government agency and the tribunal are bound to assist the applicant to ensure a ‘preferable’ decision in the case (Rose, 1999). As Rose explains, the concept of “investigative” rather than “adversarial” dispute resolution aims to provide a more equitable outcome for the applicant:

There is no necessary conflict between the interests of the applicant and the interests of the government agency in obtaining all the relevant facts and opinions and ensuring the correct and preferable decision is made. Tribunals and other administrative decision making processes are not intended to identify the winner from two competing parties. (Rose, 1999, p. 105)

In a speech at the National Law Conference in Canberra (2011), Hon. Garry Downes gives a definition of correct and preferable decisions:

Correct, if there is only one decision. Preferable, if there is more than one possible result; in other words if the decision maker has a discretion. This, of course, is what makes the Tribunal and merits review different. It is what sets the process apart from crucial adjudication. (Downes, 2011, p.37)

Downes refers to this as an “extra power” and “the merits reviewer will be involved with policy and value judgements which are generally not part of the role of courts” (Downes, 2011, p. 37). In making a value judgement, Downes says the “yard stick” is community standards, although this often proves problematic:

The problem with this whole area is the problem of ascertaining what community standards are. This cannot be the subject of evidence. It is something that is sometimes said, of judges, to be *in gremio judicis* (in the judge’s bosom). (Downes, 2011, p. 38)

Downes clarifies this statement by observing that a decision maker uses his or her own personal experience and “exposure” to the community to ascertain what those values will be.

The purpose of a tribunal hearing is to provide a quick, inexpensive and informal method of dispute resolution (Rose 1999). While these ideals may be applicable in individual cases, as Rose advises, tribunal hearings to settle disputes over rulings made by the GBRMPA have often proven to be the most complex, costly and lengthy of all cases:

In 1991, following the report of the Steering Committee of the Review of the AAT, it was asked to look at how it deals with environmental decisions as a result of concerns expressed about two particularly complex and lengthy AAT cases, involving the Great Barrier Reef Marine Park Authority.

The hearing in one of these cases had been expected to take about eight weeks. It ultimately went for over nine months and consumed 92 days of hearings, during which 78 witnesses gave evidence, sometimes more than once. Over 400 exhibits were tendered, many being detailed reports of expert witnesses. Seven weeks after the hearing ended, but before the decision of the AAT was issued, the applicant withdrew, so no formal decision on the merits was ever made. (Rose, 1999, p.121)

Rose (1999, p. 121) reports that the findings of the ARC¹⁵ concluded that the Tribunal, in its current format, was problematic due to the complexity of issues and number of parties and interests involved in its deliberations with GBRMPA. It recommended a number of structural changes in procedures with an emphasis on pre-hearing procedures and the implementation of alternative resolution processes stating:

The ARC suggested that the additional ADR¹⁶ techniques might include information mediation, co-mediation, independent expert appraisal and case presentation or mini-trial. No legislative changes have occurred in response to these recommendations of the ARC. (Rose, 1999, p. 121)

The report identifies the complexity that occurs when multiple parties become involved in a dispute. While not explicit in the AAT legislative framework, it is inferred that the original intention was that the AAT be established to settle small disputes between individuals and administrative bodies where legislation fails to take into account the complexity of human experience. In this context, it

¹⁵ Administrative Review Committee

¹⁶ Alternative Dispute Resolution

would be reasonable to say that the AAT charter is concerned with individual justice rather than, for example, planning decisions that take into account the social body as a whole.

4.3.3 Disruption of Power: The Red Baron Case in the AAT

In 2004, a company owned by my husband Paul and I, known as Far North Queensland Airwork and trading as Red Baron Seaplanes, applied for a joint permit from the State and Federal government authorities of GBRMPA and QPWS to operate a floatplane in the Marine Park. The application requested permission to work from three of Magnetic Island's bays: Horseshoe Bay (being the primary site of operation) and Nelly Bay and Picnic Bay as alternate sites when water conditions on the northern side of the island, where Horseshoe Bay is situated, were unfavourable. The project met all zoning requirements. However, as part of the application process, the relevant administrative bodies (GBRMPA and QPWS) included a public comment period to allow for community input into the project. In addition, Red Baron Seaplanes was required to produce an EMP¹⁷, something that no other seaplane or floatplane operation within the Marine Park was previously required to do.

Red Baron Seaplanes was issued with a Marine Park permit in November 2006 and began its operations in Horseshoe Bay. In January 2007, the authority received eight complaints from local residents and a review was conducted. The permit was subsequently upheld with minor adjustments, including a review of the EMP. Two residents, Mr and Mrs Connolly, were not satisfied with the finding and lodged an appeal with the AAT to have the permit revoked. As discussed below, as the operators of Red Baron Seaplanes, we were the joined party in the hearing. The first part of the hearing was held in Townsville over three days in July-August 2007.

As narrated in my memoir, the AAT hearing was confusing and traumatic for us. Paul and I had previously been involved in a court case with an aircraft maintenance organisation. However the Tribunal only partially resembled the court of law with which we were familiar, and it did not offer the type of mediation process in which we had previously participated in order to resolve the conflict with the maintenance organisation. Neither did it resemble the types of discussions and meetings that we previously had with various administrators. The confusion that Paul and I experienced was not uncommon for those caught up within the judicial system. As Manderson points out (2008, p.257):

As we talk about the law as a system or a structure, with the excited confidence of insiders, we should never forget that this *system*, to those who are caught up in it against their will,

¹⁷ The EMP was written in conjunction with GBRMPA and QPWS officers

most often feels like a nightmare, its logic indistinguishable from a nightmare's relentless illogic. Law's subjects often feel like law's victims; and their experience ought not to be ignored –it goes by the name of the *Kafkaesque*.

Frequent references appear in the memoir to our *Kafkaesque* experiences, in particular our perception that we were being tried for the crime of simply making a permit application. My memoir is narrated looking to the past and is focused on the confusion and trauma that my husband and I experienced during that period. In the following, I analyse and discuss the AAT hearing and its decision-making processes in order to identify how and why it caused us so much confusion and disrupted our notions of law and order.

4.3.4 Interrogation: The Hearing

The Tribunal hearing was held in Townsville. As narrated in my memoir, the Tribunal instructed Paul and me to take an active role in the Tribunal hearing. Our Company, *Far North Queensland Airwork Pty. Ltd.*, was listed as the joined party under *AAT Act 1975 (30) (1A)*:

Where an application has been made by a person to the Tribunal for a review of a decision, any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding, and the Tribunal may, in its discretion, by order, make that person a party to the proceeding.

However, while we were a party to the proceedings, we were not a joined party to either the Connollys or GBRMPA. The Tribunal *stands in the shoes* of the decision maker, therefore, it can be argued, the Tribunal and GBRMPA were one and the same; adding to the confusion of what roles we and GBRMPA were required to play during the hearing.

Much of the hearing time was taken up by providing information and explanations about how floatplanes were operated and regulated as well as the ways in which the Marine Park is managed. Rather than conducting information-gathering in a non-threatening manner, such as a round table hearing, the Tribunal was informed by (a) the presentation of documents from GBRMPA,¹⁸ the Connollys and us, and (b) information obtained in a legal setting by interrogation from the decision makers and the parties in the case. As explained by Rose (1999, p. 11),

(A)AT decisions have legally binding consequences, there are at least two parties, the proceedings must generally be determined through a hearing, parties before it have the right to be represented and the Tribunal has power to take evidence on oath or affirmation.

¹⁸ These are called "T" documents

Paul was required to give evidence on the third and last day. Placing Paul on the stand may have been appropriate for information gathering but, in the Tribunal setting, that information became “evidence” which is legally contestable. The Tribunal questioning, particularly in regard to aviation, became a competing narrative giving the appearance that these rules and our compliance with them were negotiable when, in fact, this was not so.

As narrated in my memoir, the Tribunal questioned Paul about an aircraft accident involving the Australian golfer, Jack Newton.¹⁹ The accident was discussed in general terms and no legislation or rulings resulting from this accident were discussed. At the time of writing I have not been able to find any reference to the accident on the CASA website.

It is generally accepted that there were a number of factors contributing to the Newton accident (Newton and Stone, 2001). The weather was poor, Mr Newton had consumed a considerable amount of alcohol, and the aircraft engine was running when Mr Newton attempted to board it. The publicised accounts of the accident indicated that the pilot in command of the aircraft had broken the law by failing to follow CASA regulations in place at the time of the accident by (a) loading the passengers while the aircraft was running and (b) leaving passengers on the tarmac unattended. Without the findings of the investigators however, any discussion about the accident was purely speculative.

Justice Downes drew comparisons with Newton’s accident when questioning Paul about the configuration of our floatplane aircraft. He wanted to know where the pilot sat in relation to the passengers; about the visibility and the distance of the propeller from the water; and if CASA had taken these factors into consideration when issuing its approvals for our AOC. Justice Downes’ line of questioning was perplexing, because no accident or incident had occurred and our aircraft was certified under Australian aviation law.

Despite the ambiguity and perplexing nature of the Tribunal’s questions, they were asked in a respectful manner that acknowledged Paul’s experience as a pilot. However, Mrs Connolly did not take her lead from the Tribunal; the manner in which she questioned Paul, as a witness, was particularly vilifying. Mrs Connolly made numerous claims and statements during cross examination that supported her own point of view in regard to the way in which floatplanes are or should be operated. In her summing up, Mrs Connolly called for major changes to tourism in Horseshoe Bay, including a restriction of motorcraft and for all permissions for floatplanes to operate in the Bay to be withdrawn. The following extract from the Tribunal transcripts exemplifies Mrs Connolly’s complete misunderstanding (and/or mistrust) of commercial floatplanes:

¹⁹ The accident occurred at a Sydney airfield on 24th July 1983

These planes are antiquated planes which would not pass today's noise regulations. They would not be allowed to fly, and that's what it had, gadgets put on them, so they can go and land in the sea, because there are no regulations there, because who is going to complain? (Transcripts of proceedings, AAT, Q2007/0696, 2 August, 2007).

The extract typifies the arguments made by Mr and Mrs Connolly and their supporters in their original submissions to the Tribunal about floatplanes and it highlights the difference between a Tribunal hearing and a case in common law. In common law, Mrs Connolly's remarks (and submitted documents) in support of her and her husband's claim that floatplanes are not regulated in the Marine Park would need to be supported with evidence that this was the case, and that the issuing of the permit breached a law or regulation. It would not be acceptable simply to say, as in a request for a Tribunal intervention, they were "aggrieved" by a decision made by the authority issuing the permit. While it is reasonable that Mr and Mrs Connolly could not be expected to understand the legal complexities of aviation law and procedures, the Tribunal failed to draw attention to that fact and to instruct GBRMPA and/or CASA to meet with the Connollys prior to the hearing to provide them with information and to address their concerns.

As the Tribunal hearing progressed, we perceived, from our involvement, that the focus had shifted from a dispute between our operation and a government agency over some complaints, to a dispute between the complainants and ourselves. We attempted to meet with Mr and Mrs Connolly on several occasions to try and find a mutual solution; they refused, as was their right. The Connollys and their supporters were not looking to inform themselves about how floatplanes operated or to find common ground. They were seeking a win/lose scenario and, from our point of view, the setting and procedures of the Tribunal facilitated that expectation.

4.3.5 Interlocutory Decision

On the 19th October 2007 an Interlocutory Decision was issued. In the reasons given, the Tribunal stated that the issue for review was "To decide whether a float plane should be given permission to conduct scenic flights from the bays of Magnetic Island." (2007, p. 3). The Tribunal preliminary decision found the following:

We do not consider the aircraft's operation has a significant impact on animal life, other aspects of the environment or cultural and heritage values of the traditional owners and other people. We wish to hear further evidence from the Civil Aviation Authority (CASA) about its assessment of safety of the operation and receive further submissions to additional conditions to reduce the noise impact before we finally decide this matter. (AATA 2098, Townsville, 18 December 2007, p. 4)

As might be expected, the Tribunal found that the residents who complained did not like the noise that the aircraft generated. However it gave both parties an opportunity to present further evidence and an opportunity to suggest ways that the noise impact might be reduced. The Tribunal gave a detailed report on the evidence that it had collected in relation to safety. In what was, to us, a surprising turn, it focused its attention away from GBRMPA and towards CASA regulations and the use of the aircraft in Horseshoe Bay, highlighting four areas of concern as summarised below:

- (a) Aircraft configuration: the position of the pilot in the aircraft and the distance of the propeller from the water.
- (b) Containment: no designated alighting area where others are excluded.
- (c) Amenity: the impact on swimmers and boat operators.
- (d) Frequency: the number of flights that the aircraft was permitted to conduct. (Decisions and reasons for decision (AATA 2098, Townsville, 18 December 2007, pp. 24-25)).

The Tribunal's preliminary findings were confusing from an aviator's perspective. It combined regulatory frameworks and it separated the responsibilities of a pilot in command from a consideration of the aircraft, treating it as an inanimate and dangerous object:

We accept Mr Mills' evidence that safe practices are crucial to Airwork's ongoing operations and that it embraces the rules and codes that apply to its operation. We also accept that Mr Mills is an experienced pilot...However that does not mean that the aircraft's mode of operation is inherently safe. (AATA 2098, Townsville, 18 December 2007, p.23)

This quote exemplifies that the Tribunal understanding and ours, as commercial aviation operators, offered different perspectives on what constitutes the safe operation of an aircraft. For us, safety was a question of compliance and regulatory control. The pilot's and our organisation's commitment could not be separated from the mode of operation of the aircraft. The aircraft was certified as a floatplane and its engine and propeller were identical to those of nearly all other floatplane aircraft in Australia and other parts of the world. Our organisation held all the CASA licences and Paul, as with any other pilot expected to fly with us, held a commercial pilot's licence. Under these conditions, any flight was conducted with a pilot in command of the aircraft and, as such, she or he was responsible for how the aircraft is handled and how the flight²⁰ complied with laws and regulations.

It was, however, the following comments that the Tribunal made about amenity that we (as people working in the aviation industry) found the most confusing and illogical:

We have no doubt about Mr Mills' qualifications and experience, nor that he complies with air navigation safety requirements. However, we are concerned about the whole operation

²⁰ In Australian aviation a flight is determined to commence from the time the aircraft is started and completed when the engine is shut down.

undertaken by Airwork. Our concern will not be satisfied by evidence about precautions taken during take-off and landing, or taxiing, per se. We are concerned about the safety of the operation on a hot Sunday afternoon when the aircraft is taxiing through moorings, with swimmers, people in dinghies and jet-skiers about. Those swimmers and users might not be at their most alert, and may have consumed alcohol. Frankly, we think there is real danger in the aircraft operating in these conditions. (AATA 2098, Townsville, 18 December 2007)

The comments appeared to ignore evidence before the Tribunal about Horseshoe Bay and also about aircraft regulations and maritime safety regulations. It was illegal for anyone to operate a marine craft such as a boat, dingy or jet-ski while intoxicated. Information had also been provided to the Tribunal about the configuration of the bay in terms of swimmers. The Horseshoe Bay beach had (and still has) a swimming enclosure patrolled by lifeguards. It is, and was, uncommon for people to swim outside of the enclosure for a number of reasons. Firstly, because the area is regularly checked for tropical marine stingers²¹ and secondly because swimming in areas where boats were moored was discouraged due to boat propeller injuries and, in many waterways, swimming in a designated boat mooring area is prohibited.

Importantly, however, the Tribunal's comments can be seen to support Justice Downes' explanation of the AAT's "extra power" to make the "right" or "preferable" decision based on its value judgements. Ironically, the value judgement made in this case was on a lifestyle characteristic often associated with tourism places, that of the pleasure and freedom from social control. The comments in the decision supported the complainants' argument to rights of heritage, as articulated in Mrs Connolly's concluding statement:

The amenity – (it) does affect our amenity. We can't be spontaneous any more. We have nowhere to go where we can get peace and quiet. If we want to take our tinny out or our other boat... we can't just go and sit out in the middle of the bay where we used to
(Transcripts of proceedings AAT Q2007/0696, August 2, 2007, p. 294)

The Tribunal could go outside administrative boundaries and make value judgements when determining how an individual may be aggrieved or affected by a decision. However Paul, as a pilot, and our commercial aircraft operation as a whole, could not go outside the rules and regulations they were legally bound by and any rulings that might be made by the Tribunal could only be complied with by us if they were compatible with aviation and marine safety regulations. Therefore Paul and I viewed the Tribunal, when giving primacy to value judgements, as disruptive to our understanding of law, order and compliance in aviation.

²¹ Box jellyfish and Irukandji jellyfish frequent the waters around Magnetic Island during certain weather and marine conditions. They are both extremely toxic and have been known to cause death.

4.3.6 Restoring Order

As narrated in the memoir, of major concern was how the final decision might impact the legalities of the aircraft when operated in Horseshoe Bay on Magnetic Island, but also more generally within the Marine Park. Following the Interlocutory Decision, Paul and I engaged the services of a lawyer and a barrister who specialised in administrative and environmental law. We were advised that the Tribunal decision could rule the aircraft “dangerous” which would become a legal “fact” with repercussions for the entire floatplane industry in the Marine Park and all other environmentally sensitive places in Australia. We also discovered that Horseshoe Bay did not fall within the Federal Government’s component of the Marine Park. On advice, we petitioned to have the Tribunal excluded from hearing the case:

The Joined Party says that the area within Horseshoe Bay, from the mean low water mark-headland to headland, are waters that on January 1901 were and remained within the limits of the State of Queensland (s fourteen of the *Seas and Submerged Lands Act 1973*), and therefore is an area that cannot be included in the Great Barrier Reef Region and consequently the Great Barrier Reef Marine Park (s. 3 *Great Barrier Reef Marine Park Act 1975* definition “Great Barrier Reef Region”). (Joined Party Documents, 2007)

GBRMPA agreed with the petition and, as a result, the Tribunal ruled, on the 18th December 2007, that Horseshoe Bay was not within the Federal Government’s jurisdiction but within the State of Queensland, effectively moving the administrative boundaries of the Marine Park. The AAT did, however, determine that two other bays mentioned in the permit application, Nelly Bay and Picnic Bay, were within GBRMPA’s jurisdiction and upheld the original decisions with minor adjustments to the permit conditions.

Prior to this finding, the permit for Horseshoe Bay, Nelly Bay and Picnic Bay was written and signed off by officers of GBRMPA and QPWS. As a result of the Tribunal hearing and the moving of the boundary, the written permits were separated. One permit for Nelly Bay and Picnic Bay was issued by GBRMPA and a second, for Horseshoe Bay by QPWS. For the sake of consistency, we agreed to the amendment of the QPWS permit conditions to align with those of the permit for Nelly Bay and Picnic Bay. As of the time of writing, it is my understanding that GBRMPA still collect Environmental Management Charges from tourism operators working out of Horseshoe Bay (and the Bay is still jointly managed by GBRMPA and QPWS), so essentially nothing has changed from an environmental and aircraft management perspective.

4.3.7 Chapter Summary

In this chapter, I have described how three Australian administrative bodies - CASA, Airservices Australia and the GBRMPA *inter alia* - manage tourism operations within the Marine Park. I have argued that the Red Baron hearing before the AAT in 2007 raises a number of issues concerning tourist operators' perceptions of their legal rights and obligations within environmentally protected areas as well as concerning the power of administrative bodies to regulate once authority has been deferred to them. In addition, I have posited that the hearing raises a number of questions in relation to the socially accepted ways, or norms, by which businesses participate in compliance behaviours in order to avoid litigation. I have detailed the ways in which the Tribunal disrupted my own and my husband's notions of law, order and compliance within the administrative regimes of CASA and the GBRMPA by exerting power exogenously and by applying analogical reasoning to the permit process. I have finally argued that order was restored when the Tribunal was excluded from the hearing part of the case.

Chapter Five

TEXTS OF THE RED BARON SEAPLANE CONTROVERSY

5.1 Introduction

In this chapter, I examine and analyse media and journal articles about the Red Baron Seaplane conflict. I argue that these texts are informed by competing place myths and images and that they illuminate the inability of both the government agencies and the aviation tourism industry to provide information to the public about the Marine Park permit system in meaningful ways.

5.2 Texts

The Red Baron conflict was the subject of both extensive media attention and community protest both for and against the project (Townsville Bulletin, 2007; Nine News, 2007; Magnetic Community News, 2007) and media analysis of the Tribunal case post-event. The conflict also appears in a number of academic journals and government and non-government texts (EDO Bulletin, 2008; GBRMPA 2008; Rothwell and Jessup, 2009). The focus here will be on the discourses of the case since, as Brodkey (1987) advises, narratives of the same story cannot exist in isolation from one another and the recounting of events can only be constructed within, or in regard to, narratives that already exist. However, on one level, the reporting and analysis of the Tribunal case by the different authors is rhetorical; the media and the academic and administrative discussions are not intertextual between themselves but only between the boundaries of the genres and academic disciplines in which they sit (Barnes and Duncan, 1992). Each has their own ontologies (understanding of the “real”) within different epistemological frameworks (methods and paradigms in which the real is discovered) (Neuman 2006). What the texts have in common is their discussion about an event; the establishment of a tourism operation within an environmentally sensitive area of the Great Barrier Reef Marine Park. Each of these texts draws on dominant, but different, cultural narratives in order to persuade audiences to adopt their particular point of view.

5.3 Making the News: Texts of the Red Baron Conflict

Lanz and Booth (1998, p. 909) claim that social issues compete for attention and space in the arenas of public discourse, such as news media, and that the “media is a set of practices and institutions with dynamic rules, norms and interrelationships”. Journalists will often compete for front page stories but, for an item to become significant, it must contain drama as well as a personal interest for the audience being targeted.

The majority of the media coverage during the Red Baron conflict was produced for local audiences in Townsville and Magnetic Island and drew on the values of “heritage” and “equity”. Townsville is a garrison city. It hosts a large army base and its airport is controlled by the Royal Australian Air Force. During the Second World War, a Catalina seaplane base was stationed in Townsville. Magnetic Island was a military outpost and gun emplacements were situated on the eastern side of the Island in order to protect the Townsville Harbour entrance. The remnants of the gun emplacements are now a tourist attraction; the *Forts Walk* is both a war memorial and an introduction to the Island’s landscapes and wildlife, such as the koalas that make their homes in trees that border the rough bush track. Local media narratives were tied into local population demographics by drawing on war motifs. These were aided by the aircraft’s title, “The Red Baron”, so named for its dual wing configuration and colour, a tribute to the World War One air ace, Baron Von Richthofen²². Some examples of headlines from the Townsville Bulletin appear below:

Red Baron Shot Down? (Magnetic Community News, October 23, 2007)

Baron in costly Dogfight (Townsville Bulletin, November 6, 2007)

Red Baron faces day of reckoning (Townsville Bulletin, December 18, 2007)

Impossible struggle for Red Baron (Townsville Bulletin, May 16, 2008)

Baron Sees red over new battle (Townsville Bulletin, September 20, 2008)

These narratives tended to cast Paul and me as “heroic” and the local residents who opposed us as “villains”. Opponents were labelled “unreasonable” (Vernon, Townsville Bulletin, August 4, 2007) and, in one case, “abusive” (McKinnon, November 3, 2007):

As Mr Mills was speaking to the Townsville Bulletin and a local TV station yesterday, Horseshoe Bay protester John Norman walked through spraying abusive remarks at the businessman. Mr Norman, who is one of seven people who lodged the appeal, refused to be interviewed.

The small number of complainants, and their reluctance to talk to the press, resulted in them being dubbed “The Secret Seven” (McKinnon 2007). The equity theme was framed around the

²² Baron Von Richthofen flew a triplane. However the aviation industry (in Australia and other parts of the world) frequently refer to biplanes painted red as the “Red Baron”.

complainants' "selective blindness" to the other water-based activities, both commercial and recreational, that occurred on a daily basis in Horseshoe Bay. Townsville Bulletin journalist Mary Vernon (2007) supported the complainants' right to question decisions made by governments and statutory authorities. However, the case before the Tribunal was, in her view, taking matters to "extremes" (Vernon, 2007). Vernon drew attention to the numerous government authorisations that the floatplane operation required, saying:

Each of them imposed requirements and conditions before issuing the approvals and the Mills patiently waited, fulfilled the lengthy and tedious requirements and finally were able to start operating their pleasure flights, taking off and landing in the clear waters of Horseshoe Bay, sharing quite equably with the jet-skis, paddle boats, fishing trawlers and luxury yachts which make up the bustling water sports hub of Magnetic Island. (Vernon, 2007)

Letters to the editor from citizens of Townsville and Magnetic Island also addressed the theme of equity. All local news outlets ran stories that were supportive of the floatplane project. However, they did publish letters voicing both sides of the argument. One of these letters was from Mr Norman, who had refused to speak to the media in Townsville. In it he proposed an alternative helicopter aviation experience because he believed it would provide better sightseeing experiences for the tourists. He also cited another case as a precedent for the small number of people complaining:

A helicopter tourist attraction for the Daintree at Cape Tribulation was shut down after a few weeks of operating by three determined local protesters. Our son was the pilot (not the owner) and the operations had to cease when authorities acted, after previously approving this tourist attraction. (Norman, Magnetic Island Community News, July 2007)

Mr Norman claimed that the helicopter was kept well away from the tourist and residential settlements (presumably to reduce noise levels) and that, despite meeting all the criteria set down by the authorities, these flights were stopped.

5.3 Criticisms of the Administrative Bodies and the AAT

Some of the media and academic texts produced during and after the conflict criticised the Queensland Government's Environmental Protection Agency²³ (EPA) and the AAT. The texts were emotive and, while they all inferred that the opinions expressed were those of the authors, in some

²³ The Environmental Protection Agency (EPA) was the umbrella authority for the Queensland Parks and Wildlife Service (QPWS)

instances, as detailed below in a journal article by Rothwell and Jessup (2009), the information provided was misleading and relied upon the authors' authority as writers of "legal texts".

For example, an editorial in the *Townsville Bulletin* (November, 6, 2007) articulated the values of "democratic right", "burden of proof" and "small business".

Democratic right argument:

The case of the Red Baron has identified serious flaws in the way such complaints are administered with a small minority allowed to disrupt and potentially ruin a business that has the support of the majority. The crowd of about 500 people who turned up to support Carol and Paul Mills, owners of the scenic flight business, provided visual proof that the seven residents who have lodged a complaint are not representing a silent majority.

Burden of proof and small business argument:

(b)ut the impressive turnout will not prevent the Mills from having to spend thousands of dollars in defending their business against allegations which may yet be proven to be baseless. Therein lies the problem with the Federal Government's AAT, which is to preside over the Red Baron's fate: the cost of defending such allegations is already enough for a business such as this. (*Townsville Bulletin*, November 6, 2007)

The editorial went on to say that it supported an individual's right to be heard but that there "should be an onus on complainants to back up their allegations before their concerns are formally taken further".

Environmental activists constructed a very different view of Horseshoe Bay in their texts. Horseshoe Bay and Magnetic Island were constantly referred to as a "World Heritage site" which, while correct, failed to acknowledge the issues raised by the media, in particular that the Island was also a suburb of Townsville and that Horseshoe Bay was the "activities bay" for the Island; it was here that commercial water sports activities such as jet skiing, speed boats, fishing boat charters and floatplanes were permitted to operate by GBRMPA and QPWS. By rendering these facts invisible, the texts were able to key into myths of "wilderness" and "protection" and thereby make their arguments more believable for audiences unfamiliar with the area.

A one-paragraph report in the Environmental Defenders Office newsletter (2008) stated that its North Queensland Office had been assisting "residents" of Magnetic Island in the AAT. However, unlike views in the local media coverage, those held by people supporting the floatplane operation were not included. No mention was made in this report as to whether alternate views were sought or, if not, why not. Considering the overwhelming support for the proposed operation and the findings of the Tribunal in relation to the lack of environmental impact, the newsletter item rendered invisible both the wider community of Magnetic Island and an important part of the Tribunal findings. The report claimed that the AAT did not have the power to consider the permit

issued by the EPA (in Horseshoe Bay) but, it stated, “Residents are continuing their efforts to impose similar conditions in line with the reasoning adopted by the AAT” (EDO Newsletter, 2008).

A journal article written by Rothwell and Jessup (2009, p. 87) went a step further than the EDO newsletter by claiming that QPWS (under the umbrella of the EPA) *did not* amend their permit to align with the new permit for Nelly Bay and Picnic Bay issued by the AAT and concluded that the “primary concerns of the applicants before the AAT and of the AAT itself have been left unheeded”. The article was written in two parts. The first was an analysis of the AAT ruling that Horseshoe Bay was not within the Great Barrier Reef Marine Park but instead, for administrative purposes, was within the State of Queensland. The authors disagreed with the AAT’s decision and presented an alternative legal argument. The second part of the article dealt with the supposed failure of the EPA to amend its permit and the relevance of this failure to the Environmental Protection Biodiversity Conservation (EPBC) Act. The authors claimed that, without the protection of a Commonwealth Government issued permit (by GBRMPA), the Red Baron operation was at risk of breaching the Act. The authors cited a letter sent to Mrs Connolly (who, with her husband, lodged the AAT appeal) from Mr David Jackson, the Federal Government’s Department of Environment, Water, Heritage and the Arts, dated June 2008, which stated that “Despite the threat of the Red Baron’s operators breaching the EPBC Act, the minister, through his delegate, has chosen not to intervene” (Rothwell and Jessup, 2009, p. 90). While Rothwell and Jessup (2009) may have genuinely believed that the information they provided on the Red Baron’s State and Federal Government permits was correct, the information in the journal article was not entirely accurate because it relied on the belief that the EPA had not agreed to a permit amendment. However, immediately following the Tribunal hearing, Paul and I agreed to amend our EPA-QPWS permit for Horseshoe Bay to align with the permit amended by the AAT. Despite the AAT ruling, the State and Federal administrators continue to jointly manage Horseshoe Bay. While I am not privy to the letter sent to Mrs Connolly by David Jackson from the Department of Environment, Water, Heritage and the Arts, Paul and I also received a letter from Mr Jackson in that regard (dated June, 2008). The letter stated that, while Horseshoe Bay was not part of the Commonwealth Marine Park, it is nonetheless a part of the Great Barrier Reef World Heritage Area and, as such, the department affirmed its jurisdiction in the case. It went on to conclude that no further involvement would be required by the department provided that we continued to comply with the terms detailed in our EMP.

The narratives and texts about the Red Baron case demonstrate a wide diversity of views but also illustrate the ways in which place myths and images aid in the construction of particular texts for specific audiences. The local media drew on myths of heritage and equity. It constructed Townsville and Magnetic Island in its texts as places that were pro-development and places that

supported tourism and entrepreneurship. By contrast, the environmental texts drew on myths of wilderness to construct Magnetic Island as a place under threat from inappropriate tourist development and therefore in need of protection.

5.4 Chapter Summary

What the texts of the Red Baron case demonstrate is, firstly, how they have been informed by competing place myths and images and, secondly, the inability of both the government agencies and the aviation tourism industry to translate information to the public about the Marine Park permit systems in meaningful ways.

Chapter Six

CONCLUSIONS

In this thesis, the combined creative work and memoir, I have explored and examined what the events surrounding the establishment of the Red Baron floatplane as a tourist operation on Magnetic Island Queensland in 2007 reveal about place, self, and narrative as these shape, and are influenced by, structures and processes of power and authority. The methodology, a combination of autoethnography and the creative non-fiction techniques of memoir, has allowed me to engage in a conversation about the aviation tourism industry from an “insider” perspective.

Through the process of writing, however, I’ve had to confront my own biases and include a wide range of views that do not necessarily agree with my own in order to avoid being overly polemical. In the exegesis, I presented and analysed the various ways in which the competing narratives of the Red Baron controversy were constructed in legal, academic and media texts. In the memoir, I chose particular scenes to narrate, not because they competed or agreed with existing texts, but because they illustrated the ways in which I responded to the places I lived and worked, showed the power dynamics and tension between governing agencies and others, or were able to present multiple points of view.

The memoir is where much of the interdisciplinary work happens. I found the act of creating the memoir was much more than organising “raw” data to *show* rather than *tell* about the events, or bearing witness to an emotional experience; writing the memoir became an act of problem solving that was distinctly different from autoethnography and academic enquiry. In the memoir I needed to wrestle with problems such as world building, characterisation, point of view, and plot and structure.

Creating a persona in the memoir, while also inhabiting the writer-narrator, was to prove the most challenging aspect of the writing process. However, the duality, created by the persona and writer-narrator, was vital in order to allow the “I” character to experience the Kafkaesque (as in the AAT hearing) while still having enough distance to write about the trauma and not be debilitated by it. I often felt overwhelmed and consumed by the existing Red Baron texts, therefore creating a persona that was “me” but not “me” was to ultimately prove a freeing experience. I didn’t feel bound to (re)create myself in the image of the other texts that had been written before.

Not only did I write myself as a fully imagined character, but also many of the other people portrayed in the narrative; including Justice Downes and my husband Paul. Imagining the characters in this way, and reflecting on their actions in the conflict, led to a significant breakthrough in the

understanding of AAT procedural processes as well as the ways in which pilots internalise power relationships in their training. Significantly, though this new understanding of power relationships, I was able to let go of the fear and trauma associated with the AAT hearing. Once I understood the process, and our reaction to it, the Red Baron texts, including the texts created by the hearing, no longer had the power to silence. The act of writing and problem solving in the memoir, therefore, led to a deeper understanding of the Red Baron conflict that would not have been possible by analytical analysis alone.

The Red Baron controversy drew a considerable amount of interest from the media, and has been referenced and commented on in journal articles and government documents. This study has provided new information about the ways in which the GBRMPA permit system is experienced and understood (or misunderstood in some, if not most, cases) by tourism operators, residents, and other stakeholders.

I have demonstrated in the exegesis that Magnetic Island (within the Great Barrier Reef), as a site for tourism production and consumption, has changed over time and these changes have, on occasion, caused conflict amongst island residents, developers and other stakeholders. I have argued that place myths, economic conditions and other lifestyle factors influence the ways in which people perceive Magnetic Island as a “place” that is simultaneously a tourist destination, a site of tourism production, and a residential settlement.

I have argued that the AAT disrupted my own and my husband’s perception of law, order, and compliance within the aviation industry and shown that our perception (of what constitutes order) was only restored by excluding the AAT from ruling on part of the case. I have illuminated the trauma that we experienced, which was caused by the AAT dispute resolution process. On the bases of the evidence, it is my opinion that, given the nature of this process, elements of this trauma were most probably also experienced by the other participants, the representatives of the administrative bodies and the people who opposed the permit application.

In 1991, a review of how the AAT deals with management decisions involving the Great Barrier Reef Marine Park Authority was conducted. The review recommended a number of structural changes, including information mediation, co-mediation, independent expert appraisal, and case presentation or mini-trial (Rose, 1991, p. 121). However, none of these changes were adopted in the Red Baron case. It is my opinion that, had alternative mediation processes been available to us, particularly with regard to information mediation, the amount of time devoted to the Red Baron case hearing could have been reduced or, indeed, that the issues may have been capable of resolution without the need for a hearing. In 1994, the GBRMPA published *25 Year Strategic Plan for the Great Barrier Reef World Heritage Area 1994-2019*. The plan stated,

Many people have an interest in, or use, the Area. No single *agency* has total responsibility for the Area. Many *agencies* and many different *user* groups share responsibilities for the Area, including all three levels of government. This Plan is designed to get everyone working together towards a shared future rather than competing with or duplicating each other's activities. (emphases in document cited) (GBRMPA 1994, p. 4)

As narrated in my memoir, the managers of GBRMPA do not always work with external management agencies in their permit application processes. I submit that, if the original permit application process had included representatives from CASA, Air Services Australia and Maritime Safety Queensland, then many of the issues in the Red Baron case could have been resolved without the need for a hearing or, at the very least, the time taken up by the hearing could have been considerably reduced.

At the time of the AAT hearing, our business was registered with the Australian Seaplane Pilots Association (ASPA). The ASPA membership consists of a combination of recreational and commercial pilots and does not have a position on the board of GBRMPA or a representative to deal directly with the management agency on floatplane and seaplane issues. As the issues dealt with at the AAT hearing concerned management of floatplanes, it would have been of benefit for us, and for the tourism aviation industry, to have had a representative from the ASPA present and/or to help with the financial costs.

In conclusion, this thesis methodology, a memoir and autoethnographic study, offers an alternative way in which to research and write about the Australian aviation tourism industry, the administrative bodies that regulate it and the bureaucratic constraints that it faces. To date, knowledge about how small tourism operators engage with these governing agencies is limited. It is hoped that this study will provide new information to assist in the future management of the aviation tourism industry on Magnetic Island and the Great Barrier Reef.

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