



YOUR WAY FORWARD FOR NATIVE TITLE

MESSAGE STICK

Message Stick is published by
North Queensland Land Council.

MAY 2015



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Guest Profile: Tagalaka Aboriginal
Corporation RNTBC Croydon

MessageStick is published by
the North Queensland Land
Council Aboriginal Corporation

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Message Stick is made possible from funding provided by the Federal Government under the Native Title Funding Program.

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Misprint: In the February 2015 edition of Message Stick, we incorrectly stated that Leanne Enoch MP was the cousin of NQLC Director Colin Enoch. Leanne Enoch MP is the niece of Colin Enoch. NQLC apologises for the error.

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MESSAGE FROM THE CHAIR

I would like to commence my report by congratulating the Bar Barrum Peoples' recent High Court win. That decision has a benefit all around the country as it resolves once and for all that Military Orders 'Hirings' such as the 13,000 or more declared during WWII do not extinguish Native Title. I hope that the Bar Barrum claims stalled by this case now go on to a speedy, successful conclusion.

In late March the CEO and I attended the Chair/CEO Forum in Canberra, which was addressed by the Minister for Indigenous Affairs, the Honourable Nigel Scullion. There were concerns expressed about the recent Indigenous Advancement Strategy funding round, as no submissions by native title representative bodies or service providers were successful. Rep Bodies Chairs' all signed a letter to Minister Scullion requesting that the native title program funds be quarantined. Native title outcomes do not meet the Indigenous Advancement Strategy funding criteria; therefore we have requested it be a stand-alone program, separate to the Indigenous Advancement Strategy.

Minister Scullion wrote back insisting native title would remain within the Indigenous Advancement Strategy but was looking at ways to quarantine native title funding as well as developing more suitable key performance indicators.

All in all the Minister has only committed to fund the current system for one year, 2015/16. It remains to be seen what will happen to the current system after that.

On our regional front the NQLC is in the process of lodging new native title claims throughout the region, many for groups who have not had a successful claim in the past.



With 37 claims already determined, it is crucial that the NQLC now focus on researching and lodging new claims during the 2015/16 funding year. So after a very successful period with a large number of native title claims resolved the NQLC now enters a new phase of new claim construction.

ERROL NEAL

Chair, North Queensland Land Council



MESSAGE FROM THE CEO



I am pleased to report that the North Queensland Land Council claim lodgement strategy is progressing well and several new claims have been authorised and lodged since the last edition of Message Stick.

Djabugay #2, Nywaigi and Girramay #2 have all been authorised and lodged, and most recently Warrgamay was authorised.

A number of claims are in advanced state of research in the Townsville and Proserpine Whitsunday areas. Some of these groups, such as Nywaigi, are lodging a native title claim for the first time whilst others are replacing former claims from the Central Queensland Land Council times. Djabugay and Girramay are launching claims that cover the rest of their Country after receiving Native Title Determinations over portions of it.

A sea claim for the central region is also under research.

On another note there have been continual changes in the staff that administer the native title programme within the Department of Prime Minister and Cabinet which has caused, in NQLC's view, some delays in the decision making and funding arrangements for next financial year.

At this late stage of the year we are still awaiting confirmation of our funding amount for next financial year.

The Minister for Indigenous Affairs, Nigel Scullion has also not approved our submission for continued 'Representative' status for

2015/16. The arrangement for subsequent years at this stage is unclear.

On another more positive note, the NQLC assisted the Bar Barrum People to achieve a significant victory in the High Court over the issues of Military Hirings during World War II, which were found not to extinguish native title.

Congratulations to the Bar Barrum People and also to NQLC's Principal Legal Officer, Martin Dore and the staff who assisted with this significant victory. See page 6 for details of the Bar Barrum High Court win.

The coming year will see some PFA guideline restrictions lessened relating to the assistance that can be provided to PBCs. The NQLC is closely examining options of providing additional support to PBCs including business development assistance, capacity building and providing help to write submissions for alternate means of PBC support. The NQLC is allocating additional resources and staff to PBC in 2015/16.

Ian Kuch
Chief Executive Officer

STAFF PROFILES

WELCOME SOME OF OUR NEW STAFF AT NORTH QUEENSLAND LAND COUNCIL



ASHLEY GREENWOOD
ANTHROPOLOGIST

Ashley Greenwood was born in Sydney and lived there until moving to Melbourne to study at University. There she completed a Bachelor of Social Sciences and then followed up with a PhD in Anthropology. In between these things she has travelled extensively and lived in many different places in Europe, the US and Latin America.

Ashley worked for a PBC in the Kimberley before embarking upon research with displaced Indigenous groups in Guatemala, Colombia and Peru. She has now moved to Cairns in the hopes of applying her knowledge and learning more about the Native Title process. Ashley is eager to get to know the region through the eyes of its locals.



ROBERT SALTNER
LOGISTICS OFFICER

Robert has lived in Townsville for a number of years and has grown up here.

Robert has worked in community and social work for over 10 years, including roles as a Youth Worker for the Youth Justice Service, Senior Housing Officer for Housing Queensland, Support Worker for Share Houses for Young People and as a Tenant Advocate for Northern New South Wales' Tenants Advice and Advocacy Service.

Robert enjoys playing and watching all kinds of sports and is currently playing touch football and has an Indigenous cricket team that has been participating in the Rainforest Cup Cricket Carnival in Tully for over 6 years. He is a Cowboys supporter and enjoys going to the game with his family.

Robert is greatly appreciative for the opportunity that North Queensland Land Council has given him to learn and develop new skills within the organisation.

IMPORTANT WIN FOR BAR BARRUM



On 13 May 2015 the High Court handed down its decision in *QLD v Congoo*.

The issue was whether orders made under Regulations under the National Security Act during the years of WWII extinguished all native title.

The orders allowed the military to take possession of Lands named in the order and enabled them to do of the land anything that a freehold owner can do. Further, any person with an interest in the land was forbidden to exercise that interest whilst the order was in place. There were provision for a person with an interest to claim compensation of loss of use of the interest and at the conclusion of the order, those with an interest were once again free to exercise that interest.

The Act, Regulations and Orders were made many many years before native title was confirmed to exist in the Mabo decision.

The matter first arose as an issue in the normal progress of the Bar Barrum native title claims. Given the importance of the matter, Justice Logan referred the matter to the full Federal Court (three Federal Judges). Bar Barrum won that matter with a 2-1 majority ruling to the effect that the order did not extinguish native title. The State sought and won the right to appeal the decision to high High Court.

NQLC supported the Bar Barrum people by providing a senior and junior counsel to argue the matter in the High Court. The final result was a narrow thing – three judges of the High Court would have allowed the appeal, being

of the view that the orders did extinguish all native title. The other three judges that heard the appeal thought that the orders did not extinguish native title.

In the case of an even split in the High Court (a rare event), the full Federal Court ruling stands, meaning that the result is that these military orders did not extinguish native title.

The three judges that ruled for extinguishment took a very conservative view – they said that the orders gave the military exclusive possession, which was inconsistent with any native title continuing to exist.

The others rejected that idea and said that read in context it was not exclusive possession of the type that causes extinguishment. They categorised the possession as some other form of possession that did not cause extinguishment and they focused on the need for there to be a clear and plain intention of the Parliament to cause extinguishments by enabling these provisions to be made. Of importance to these three judges, was the fact that there was provision for ongoing and periodic payment of compensation of loss and use of the land. Had the provisions had the effect of extinguishing native title, they would have had a similar effect of ending the non-native title interest in the land. This was obviously not the case as there were specific

provisions allowing for the periodic payment of compensation and specific provisions that at the end of the orders being in effect, the other non-Indigenous interest could again be exercised to their full extent. These judges therefore saw no clear and plain intent to extinguish any right permanently and indeed saw an intent that all rights should be installed after the orders had finished.

In effect, they said the orders were akin to regulation of the exercise of rights rather than causing extinguishment of rights.

The decision is extremely important for not just the Bar Barrum people but for many Aboriginal groups around the country. In earlier material filed in the Federal Court it was disclosed that in excess of 13,000 of these orders had been identified in their archives at the point that that researcher stopped looking. NQLC itself has a number of claims where the country of the claimants was subject to these orders.

By **Martin Dore, Principal Legal Officer**



Image: Dusk over Walsh River, Bar Barrum Country (Photo credit: Ginger Megs)

RIGHT TO NEGOTIATE 'GOOD FAITH' ARBITRATION

The Native Title Act 1993 (Cth) sets out a process where certain proposed 'future acts' require the proponent (person wanting to do the future act) to 'notify' the native title party/s and¹:

.... the negotiation parties must negotiate in good faith with the view to obtaining the agreement of each of the native title parties to:

- (i) the doing of the act; or*
- (ii) the doing of the act subject to conditions to be complied with by any of the parties.*

In the case of the NQLC boundary, the most common future act that triggers the 'right to negotiate' - we sometimes refer to this as the 'RTN' - is when a mining lease is to be granted (unless the mining lease is subject to an Indigenous Land Use Agreement (ILUA), including a Small Scale Mining ILUA).

WHAT DOES "NEGOTIATE IN GOOD FAITH" MEAN IN NATIVE TITLE DEALINGS?

Most native title parties will be aware, or have experienced the role, of the National Native Title Tribunal (NNTT) in mediating native title claims. However, another role of the NNTT is to be the arbitrator in RTN matters where the parties have not been able to reach agreement in the RTN process. One of those instances that the NNTT might arbitrate on a matter relates to the grant of a mining lease and whether or not the miner has negotiated in good faith.

Usually, it is the miner who will apply to the NNTT for an arbitrated decision for the mining lease to be granted (which they are able to do if agreement has not been reached 6 months after the State has 'notified' its intention to grant the lease). BUT before the NNTT can decide if the lease can be granted - it must be satisfied that the miner has

negotiated in good faith. Sometimes the native title party doesn't argue this point, but if it does, the NNTT has decided that there is a criteria to decide if the miner has negotiated in good faith or not.

In 1996, the NNTT heard an argument that the State (Western Australia) did not negotiate in good faith and the NNTT decided that some guiding principles for assessing good faith are²:

- i. Unreasonable delay in initiating communications in the first instance;
- ii. Failure to make proposals in the first place;
- iii. The unexplained failure to communicate with the other parties within a reasonable time;
- iv. Failure to contact one or more of the parties;
- v. Failure to follow up a lack of response from the other parties;
- vi. Failure to attempt to organise a meeting between the native title and grantee parties;
- vii. Failure to take reasonable steps to facilitate and engage in discussions between the parties;
- viii. Failure to respond to reasonable requests for relevant information within a reasonable time;
- ix. Stalling negotiations by unexplained delays in responding to correspondence or telephone calls;

¹ Section 31, NTA.

²

Western Australia v Taylor [1996] NNTTA 34; (1996) 134 FLR 211 at 219 (referred to as the 'Njarnal' decision, and 'Njarnal' indicia of good faith).

- x. Unnecessary postponement of meetings;
- xi. Sending negotiators without authority to do more than argue or listen;
- xii. Refusing to agree on trivial matters, for example, refusal to incorporate statutory provisions into an agreement;
- xiii. Shifting position just as an agreement seems in sight;
- xiv. Adopting a rigid non-negotiable position;
- xv. Failure to make counter proposals;
- xvi. Unilateral conduct which harms the negotiating process, for example, issuing inappropriate press releases;
- xvii. Refusal to sign a written agreement in respect of the negotiation process or otherwise; and
- xviii. Failure to do what a reasonable person would do in the circumstances.

MICHAEL DOWSE COLLINS AND ANOTHER V NGUDDABOOLGAN NATIVE TITLE ABORIGINAL CORPORATION RNTBC [2015] NNTTA 13 (25 MARCH 2015)

There have only been two instances in the last seven years where a native title group represented by NQLC has been taken to arbitration – and in both cases, we argued that the miner had failed to negotiate in good faith. In the first case, the matter continued to be negotiated and was resolved before the issue of ‘good faith’ was heard.

The second instance we argued that the grantee party (miner – Mr MD Collins) did not negotiate in good faith with the native title party (the Djungan People through their PBC, Nguddaboolgan Native Title Aboriginal Corporation RNTBC) on the following four grounds:

- a) unreasonable delay in engaging in the right to negotiate procedure;
- b) fixed and intractable negotiation position;
- c) inconsistent information/unsatisfactory conduct relating to a change in position; and
- d) viewpoint regarding cultural heritage and impact on native title rights and interests

Although these grounds did not necessarily fit neatly into the Njamal criteria, the Member noted

that the issues raised by the native title party fell to whether or not the grantee party’s conduct was reasonable in the circumstances³.

On the grounds put forward Member Shurven found:

a) the native title party invited the grantee party to enter into good faith negotiations before the mining leases were notified, and although the grantee party delayed engaging in the RTN process for a period of 13 months after notification, his conduct was not unreasonable in the specific circumstances;

b) the grantee party’s approach to cultural heritage “...could not be seen to have assisted reaching agreement with the native title party, particularly given that cultural heritage is central to the issues raised...by the native title party”⁴. Member Shurven also found that the grantee party’s “...comments and attitude...has not been consistent with the legislative system...nor is it consistent with what a reasonable person would do in the circumstances...”⁵; and

c) in the course of negotiations it appeared that the grantee party did not have the authority to settle negotiations but required the approval of ‘backers’ but he would not clarify who those backers were nor their role, to which Member Shurven held that she did not “...believe this is reasonable conduct...[and]...refusing to provide such information to a party to the agreement when requested is unreasonable in the circumstances”⁶.

Ultimately, Member Shurven found “...that the grantee party has not fulfilled its obligation to negotiate in good faith...”⁷ and the parties need to go back to the negotiation table with the view to reaching agreement.

By **Rhonda ‘Jake’ Jacobsen, Senior Legal Officer – Manager, FAME**

3 Paragraph 36.
4 Paragraph 57.
5 Paragraph 83.
6 Paragraph 68.
7 Paragraph 100.



Pictured: Frank Royee

YARN WITH AN ELDER....

In this edition of Message Stick, Darryl Murgha interviews Frank Royee, a well respected Malanbarra Yidinji Elder.

TELL ME A BIT ABOUT YOURSELF...

I spent my whole life in the Gordonvale community. I went to Gordonvale State School for both primary and secondary education, and spent many decades working hard in the sugar cane industry where I'd cut the cane by hand.

I come from a big family and have lost brothers and sisters; there are only six of us remaining now.

Growing up I played footy and enjoy camping and fishing. I remember during the school holidays we would do a lot of camping and fishing along the Mulgrave River, which is our Traditional Country. We'd gather bush tucker and sit around the camp fire at night, listening to stories from the Elders. They would tell us about the sacred areas around us, show us the old burial sites and cave paintings, and point out the men and women sacred areas. It's these stories and traditions that I then passed down to our young ones.

WHAT ARE YOUR ASPIRATIONS?

My aspiration is to bring back a healthy country while creating economic development for the Malanbarra Yidinji People.

I am currently working on a ranger service for the Goldsborough Valley to look after our sacred sites and have worked to create a Cultural and Natural Resource Management Plan.

There are weekenders that travel through our sacred sites with 4WDs and some times with pig dogs. These things are destroying the local plant and wildlife. We were taught the traditional way of fishing in the river, using the stones and rising and falling of tide water to catch fish, but 4WDs are driving through and destroying it. It saddens me to see and my aspiration is to stop it from happening by developing a ranger service which protects it.

There has also been the introduction of Tilapia fish

in the river system which is killing off a lot of native species. I'd like to develop a culling system to protect the Country, similar to the fishing competition in Lake Tinaroo. I want to bring back healthy country with a healthy river system. If you have a healthy river system, you have healthy people and healthy animals and healthy plant life.

HOW WILL YOU CREATE ECONOMIC DEVELOPMENT OPPORTUNITIES?

At the moment there are a lot of tourism operators that have commercial licenses to run businesses in the Goldsborough Valley region. These businesses are running without any consultation with the Tradition Owners.

We have a five year tourism plan and are in negotiation with Raging Thunder on how they can implement an

Indigenous influence. For every kayaking tour we want to see a local Indigenous person there to act as a guide, to tell the history of the land and its people, so that they can reflect and have respect for its history.

We have an office established in Gordonvale with two people operating out of there. This will eventually be the base for the ranger service.

The wheels are in motion. We are working with local governments, parks and tourism agencies to create economic development opportunities for our people. I've been a Gordonvale man all my life, working in the cane industry so we have the support of the local farmers. We have lost a lot of elders in the past but I want to see our cultural protocols become part of business, and to train our younger ones on how to continue to protect the land and its history.

North Queensland Land Council thanks Frankie for taking the time to contribute to the May Edition of Message Stick. For anyone wanting to contribute to the Malanbarra Yidinji Cultural and Natural Resource Management Plan, please contact NQLC on 07 4042 7000.

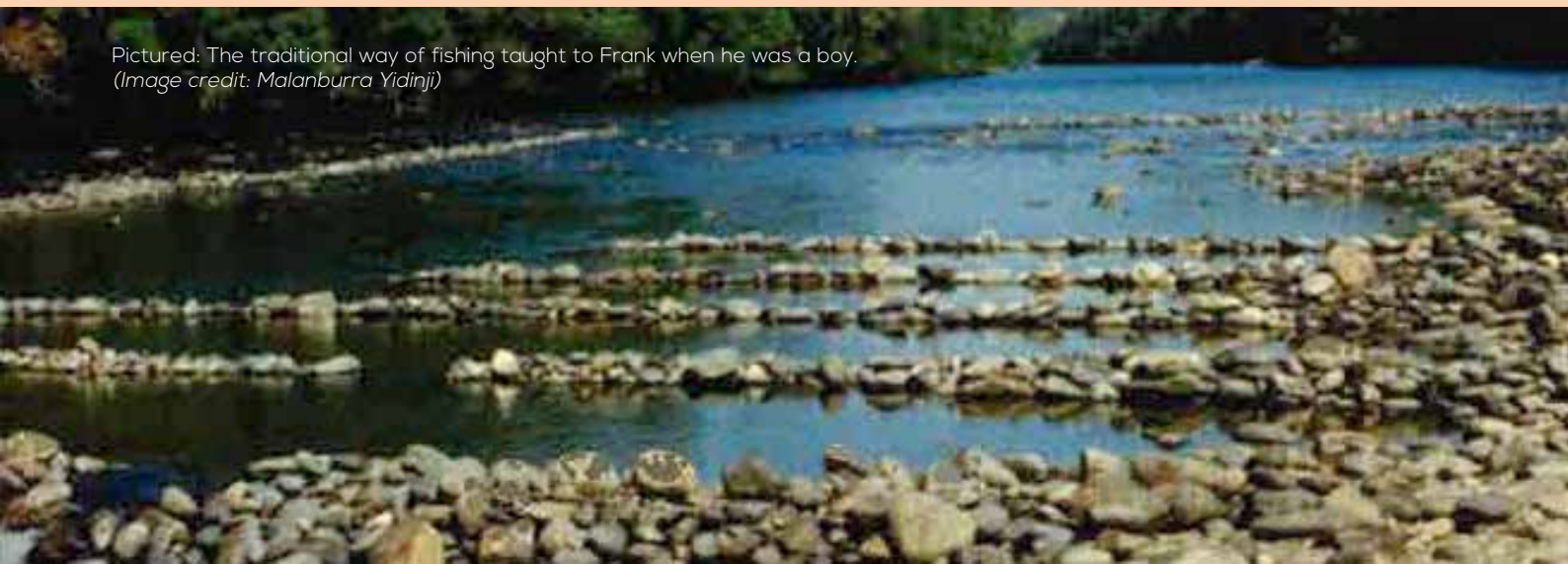
MALANBARRA YIDINJI CULTURAL AND NATURAL RESOURCE MANAGEMENT PLAN

The Malanbarra Yidinji Cultural and Natural Resource Management Plan is a community based plan to manage the environment and its natural resources accordingly with Malanbarra Yidinji values for country. It provided anagement and monitoring options for NREM to be respectful of Malanbarra Yidinji values of Country. The plan has been developed by some of the Malanbarra Yidinji Elders. As such the plan cannot be considered as endorsed by the whole Yidinji community.

Objectives:

- Protection of places important for cultural and spiritual reasons
- Conservation of traditional resources
- Maintenance of good water quality and riparian habitat
- Maintenance of good river bed conditions and river flow
- Reduction of disturbance from human activities and pest species
- Conservation of iconic species
- Maintenance and enhancement of commercial and employment opportunities for the Malanbarra Yidinji people
- Maintenance and enhancement of community health and wellbeing arising from using resources, accessing Country and practising culture.

Pictured: The traditional way of fishing taught to Frank when he was a boy.
(Image credit: Malanburra Yidinji)



STAFF PROFESSIONAL DEVELOPMENT



NQLC Staff from the Cairns, Townsville and Mackay offices gathered together in April for their annual professional development workshop, inviting along Cape York Land Council and Queensland South Native Title Services.

Highlights from the week include talks by Barrister-at-law Dan O'Gorman SC who gave an update on the recent Case Law and its implications for Native Title, and also presented with renowned anthropologist David Martin on connection reports.

Dr Valerie Cooms travelled up from Canberra to give a talk on cultural competencies in

the Native Title Space, sharing stories of her long career in Government, being a mother and a granny and completing her PhD.

Our own Brad Foster presented with Claire Stacey of the Native Title Research Unit in the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) giving an overview on all the hard work happening behind the scenes for the Prescribed Body Corporate (PBC) Toolkit development and Sean Sexton, Senior Advisor for the Department of Prime Minister and Cabinet joined us to talk about the Indigenous Advancement Strategy.

National Native Title Conference 2015

Leadership, legacy and opportunity

16 - 18 June 2015



The 2015 National Native Title Conference is being held within the North Queensland Land Council's service region on the traditional lands of the Kuku Yalanji people in Port Douglas, QLD. The event will be jointly organised by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and Cape York Land Council (CYLC).

WHO IS THE CONFERENCE FOR?

- Native title claimants and holders
- Staff and Council of the Native Title Representative Bodies
- Anthropologists and other native title practitioners
- Politicians
- Academics
- Indigenous holders and managers of land
- Legal counsel
- Government employees involved in native title
- Judges
- Those interested in native title

CONFERENCE PROGRAM

Day 1: NTRB and PBC Program – Tuesday 16 June

The Conference begins with the NTRB and PBC Program on Tuesday 16 June. This Program is for NTRB/NTSP and PBC staff, native title claimants and holders and Indigenous peoples only.

Day 1: Conference Opening – Evening, Tuesday 16 June

All conference delegates are invited to the Conference Opening. The Conference Opening marks the start of the Public Program. Its features include: Welcome to Country, musical performances and traditional dancing.

Day 2 and 3: Public Program – Wednesday 17 June – Thursday 18 June

The Public Program is open to all delegates. This program includes keynote speeches, dialogue forums, Indigenous Talking Circles, workshops and papers presented by native title holders and claimants, practitioners, NTRB/NTSP staff, researchers, Government representatives, academics and others.

Day 3: Conference Dinner – Evening, Thursday 18 June

The Conference Dinner is held on the evening of Thursday 18 June and concludes and celebrates the conference. The dinner provides a 3 course meal with drinks, along with speeches and performances.

For all enquiries please email ntconference@aiatsis.gov.au or call AIATSIS on (02) 6246 1108.

FEDERAL COURT WANTING FINALITY

BACKGROUND

In native title matters there have been, in some cases, a history of claims being lodged, struck out or withdrawn and re-lodged in one guise or another multiple times.

POWER

The Courts have always had the power to make orders, such as “the claim not to be re-lodged” without approval of the Court, where they believe the re-lodging of a claim amounts to an abuse of the process of the Court, but have rarely used this power, especially in native title.

NEW APPROACH GUARANTEEING NO MORE CLAIMS OVER A PARTICULAR AREA

The relevant provisions of the Native Title Act are:

A determination of native title is a determination whether or not native title exists in relation to a particular area (the determination area) of land or waters....

– Section 225, Native Title Act 1993

In a number of recent cases the Court has seized on the part of the section then says “...whether or not...” and have said that this includes the power to make a finding that no native title exists.

Mr O’Gorman SC has confirmed that in his opinion the Court has the power to make orders that no native title exists. That is to say a finding not just:

- against the applicants that they have not proved their case and that the claimants have no native title in the area claimed and
- not just a finding that any Indigenous respondents do not have native title in the

area of the claim and

- not just that any overlapping claim heard at the same time pursuant to section 67

but an order to the effect that nobody has native title in the claim area, whether or not they were involved in the Trial.

This is an interesting development – in normal litigation the results are binding only on the parties to the matter. However here we have a result binding on all whether they were part of the litigation or not. Recent cases where the Court has found that no native title exists include:

- Wyman on behalf of Bidjara People v Queensland (no.3) 2013 FCA 1229 (a case involving the Karingbal, Brown River and Bidjara People); and
- Sand v Queensland 2015 FCA 15 (Tinbal People).

LEAVE REQUIRED TO WITHDRAW

Under the Federal Court Rules, an applicant in a representative matter such as Native Title requires leave of the Court to withdraw the claim. Recently in Hill on behalf the Yirendali People Core Country Claim v Queensland 2015 FCA 300 leave was refused. The matter is set down for Trial this year.

Leave was sought as the applicants did not have funding and had exhausted their monies. Clearly the Court does not accept lack of funds as a reason to withdraw. If the applicants cannot properly run their case when the trial starts then a possibility is that once again, the Court may make a no-native title ruling.

By **Martin Dore, Principal Legal Officer**

STAY IN THE LOOP

A new dedicated space providing you with information and key dates. From local events all the way through to funding opportunities.

If you would like to post something in our Stay in the Loop section of September's edition of Message Stick, email our Media Officer, Michelle Liddy on mliddy@nqlc.com.au.

16-18

June

National
Native Title
Conference
Port Douglas

(See page 13 for more info)

FAME WORKSHOP SERIES

22-24 June

Implementing Agreements and
Maximising Benefits - Cairns

25-27 June

Engagement between Native Title
Parties, Industry (Mining and
Infrastructure) and the State -
Townsville

(For more info call NQLC on 07 4042 7000)

5-12 July

NAIDOC WEEK

22 June

JURU NATIVE
TITLE CONSENT
DETERMINATION
BRISBANE

6, 13 & 27 JUNE

Workshops: Culture and Language in Tertiary Education

Yalga-binbi Institute and Black Ink Press are researching Traditional Owner's ideas and opinions about the importance of Culture and Language in Tertiary Education. They are hoping to gather thoughts and input from representatives from your Country and mob and invite you to their upcoming workshops which will give you and your mob the opportunity to have your say.

Please phone Meyalah or Kirsty to confirm attendance on (07) 4773 5077.

Morning Tea and Lunch will be provided.

Dates and Locations

Ingham/Cardwell - 6th June 2015

Location: TYTO Conference Centre, 73-75 MacIlwraith Street, Ingham QLD 4850

Cairns/Innisfail - 13th June 2015

Location: Ibis Styles Motel, 15 Florence Street, Cairns Qld

Mackay - 27th June 2015

Location: 58 Macalister Street, Mackay, Qld

31 July - 2 August

Cairns Indigenous
Art Fair @ Cairns
Cruise Liner
Terminal

19-21 June

Laura Aboriginal
Dance Festival

3 June

Mabo Day
23 year anniversary



From front left: Sharon Prior, Sami Levers, Melissa Robertson, Doreen Duong, Tina Hart, Glenis Grogan, Maria Buschen, Daryl Muggah, Jay Joseph, Steve Duckabury, Lena Kyle, Chris Harris, Chris Richardson, Brad Foster, Juddaluh Neal, Patrick Wheeler, Alison Halliday, Luke Clubb, Jacinta Pryor.

PBC PAGES

PBC SUPPORT UNIT

Along with Chris and I completing our 'Road Trip' visits to all of the NQLC region's funded PBCs (we've been busy fellas!), the PBC Support Unit (Brad, Chris and Steve) facilitated two workshops in March/April for PBCs to learn more about Grant Submission writing. These workshops, one each in Cairns and Townsville, were facilitated by Ms Melissa Robertson of Savvy Events. At the workshops Melissa shared with us her wealth of knowledge about where to look for funding and how to prepare successful submissions. What's more, Melissa came with a 'bagful' of handy tips and tricks about how to best use the internet to organise a Corporation's affairs. Melissa was a great facilitator and the training was enjoyed by all who participated. Everybody learnt something new and useful.

We did have an ulterior motive in organising the training though (after all, there's no such thing as a free feed) and that was to specifically work through the PBC Support Funding Applications for 2015/16. Most of the PBCs have now submitted their applications to the NQLC and we're pleased to say that this year they are of a very high standard – which will certainly make our job of assessing them and recommending funding that much easier.

Brad's been very busy in Townsville putting the finishing touches to the PBC Toolkit, which we hope to have out in June, and working with stakeholders to do some preliminary identification of potential joint venture opportunities between PBCs and commercial operators. We have been provided with some additional funding by Prime Minister and Cabinet to explore this space further and there will be more to come on enterprise development for PBCs in future issues of Message Stick.

By **Steve Dicksbury, PBC Support Officer**



DIRECTORS BEWARE

Federal Court imposes hefty fines and penalties for directors breaching the CATSI and other Acts.

In *ORIC v Murray* 16 April 2015, ORIC prosecuted a number of Directors of Bunurong Land Council (Aboriginal) Corporation. The Court was faced with Directors who breached the rules of their corporation and various provisions of the Corporations Aboriginal and Torres Strait Islander Act 2006 (CATSI Act). The breaches included that the corporation:

- Failed to hold an Annual General Meeting by 30 November over a period of approximately 5 and a half years;
- Failed to meet every three months as required by their rule book;
- Failed to issue receipts for money received by the Corporation;
- Failed to have accounts approved for payment at a Directors meeting;
- Failed to ensure monies received were paid into the corporation's bank account;
- Failed to keep its financial records at the corporations document access address;
- Failed to have its ICN and name on all invoices issued;
- Failed to keep proper written financial records;
- Failed to keep financial records for 7 years;
- Failed to produce a financial report for two consecutive years.

These failures in turn meant that Directors had failed to exercise his or her powers and discharge their duties with care and diligence and also failed to take reasonable steps to ensure the corporation complied with its rule and with statutory requirements. In addition there were breaches of the taxation laws:

- The corporation failed to submit BAS statements, failed to remit to the Tax Office GST collected and failed to make payments to the Tax Office.

Director Sonia Murray breached various provisions by having money due to the Corporation paid into a bank account that she controlled. She also breached various

requirements by arranging for some monies that the corporation was due (for work done) to be paid direct to the individuals who had done the work, and on occasion directing individual workers who had received monies to pay money into accounts she controlled. She also made withdrawals from the bank accounts of the corporation totalling \$731,380 without keeping records as to how that money was spent.

Other Directors were charged with failure to take steps to put in place policies and practices to control and monitor the activities of Director Sonia Murray.

Penalties imposed were:

Director Sonia Murray

- Pay compensation to the corporation of \$7,717.98
- Be disqualified from managing Aboriginal and Torres Strait Island corporations for 7 years
- Pay a pecuniary penalty to the Commonwealth of \$25,000
- Pay ORIC's cost of the action against her

Director Mervyn Brown

- Be disqualified from managing Aboriginal and Torres Strait Islander corporations for 3 years
- Pay a pecuniary penalty to the Commonwealth of \$10,000
- Pay ORIC's cost of the action against him

Director Leonie Dickson

- Be disqualified from managing Aboriginal and Torres Strait Islander corporations for 3 years
- Pay a pecuniary penalty to the Commonwealth of \$5,000
- Pay ORIC's cost of the action against her

Director Verna Nicols

- Be disqualified from managing Aboriginal and Torres Strait Islander corporations for 3 years
- Pay a pecuniary penalty to the Commonwealth of \$10,000
- Pay ORIC's cost of the action against her

It was clear that the last three directors largely left Ms Murray to carry out all the business of the corporations, trusting her completely. This case emphasises that each director has their own responsibility to ensure that the



corporation is obeying the rules and the CATSI Act and cannot turn a blind eye to the wrongs another director is committing.

Each has a duty to ensure necessary practices, especially in relation to money, are followed and tax obligations complied with.

Director Brown said in evidence “....I don’t know what a bloody director does...” Obviously he should not have accepted a directorship without first acquainting himself with the legal duties of a director.

Director Murray gave evidence that she worked part time on a phone psychic line for a friend. Perhaps she should have foreseen the trouble she was to get in by not doing the right thing!

DIRECTOR'S RESPONSIBILITIES

Sometimes the rules of a corporation may provide that various families appoint a representative to the Board.

It is important that directors who have been appointed by this method understand their duties. Where you are a director representing a family or other groupings you have a seat on the Board, which ensures that issues of concern to that family/grouping can be brought to the Board and discussed. The usual position at

law is that when it comes to the Board making a decision on any matter, the Board must make its decision on the basis of what it considers as in the best interest of the corporation overall.

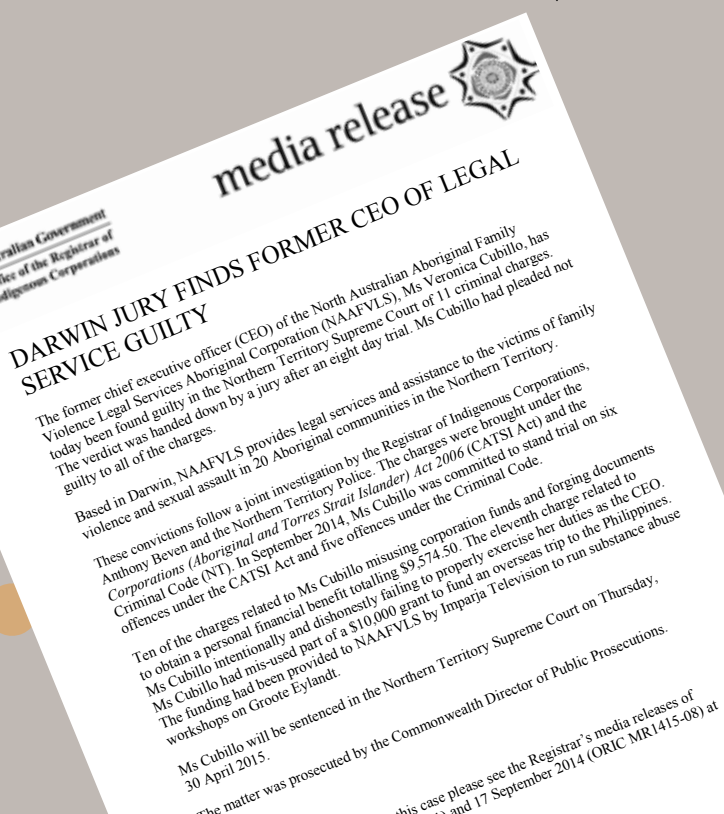
Obviously this can cause difficulties for a director whose family/group is against some proposal but overall the proposal would need to be in the best interest of the corporation.

A director who failed to act in the best interests of the corporation would be failing to exercise their powers with diligence and for a proper purpose, could be accused of breach of director’s duties. However, if the matter is one which effects only a particular area for which Traditional Law and Custom the family/group speaks for and the rules say that decisions should be made in accordance with Traditional Law and Custom, then the director would not be in breach if they supported the view of the family/group that under Traditional Law and Custom speaks for that area.

Note also that under the PBC regulations, where the PBC is to make a native title decision (essentially a decision about something that may affect the native title) there is a requirement to consult with the mob and if there is a process of decision making which under Tradition Law and Custom must be used, then that process must be followed.

It follows that for a native title decision, a director would not be in breach if they followed Traditional Law and Custom and, for example voted to support the family/group who had the right to speak for the area in question.

By **Martin Dore, Principal Legal Officer**



Pictured: 'Darwin Jury Finds Former CEO of Legal Services Guilty'..... Another reason why it's always best to play by the rules.



YOUR PBC

TAGALAKA ABORIGINAL CORPORATION RNTBC CROYDON

The Tagalaka people have persevered through many struggles over generations and continue to fight for our aspiration of self-determination for Country. Our old people began our journey to gain recognition and our rights to our ancestral lands. We owe it to the souls that have been, are now and will in the future walk on and care for Tagalaka lands to continue that journey. With strong leadership in place and our on-going heart for our family, Country, and traditional practices, we will provide a better future for our children. Connection with our ancestral lands, stories and practices is vital in our sense of belonging, peace of heart and overall wellbeing. Land is our beginning, our life and our ending place – it is as important as life itself to us.

We are the custodians of Tagalaka lands, waterways, and wildlife. It has for thousands of years been the responsibility of our families to live in balance and manage the nature and our people in this area. As times change, our tools and practices may change, but our values remain firm.

The Federal Court in December 2012 granted Tagalaka people native title rights over lands in the Croydon Shire and Township and extending to include lands in the local Government electorates of Etheridge and Carpentaria. Today the Tagalaka People's native title rights, interests and assets are primarily managed by the Tagalaka Aboriginal Corporation RNTBC (a Prescribed Body Corporate under the Corporations

Aboriginal and Torres Strait Islander, Act (2006).

Over time, many of our Country assets and values including our art sites, our story places and our sacred sites have been damaged, and there is much healing needed for these as well as our family. Our family and our land are connected so that when one is healthy the other is also healthy. We recognize the need to heal our Country and our family together through Tagalaka planning and projects.

To date, Tagalaka has continued on our healing journey, transported through:

- Tagalaka Federal Court in December 2012 Determination.
- Development and Implementation of the Tagalaka Country Plan 2014 (Sponsored by the Northern Gulf Resource Management Group).
- Development and Implementation of the Tagalaka Strategic Plan 2015 (Sponsored by North Queensland Land Council).

Exemplar of the Plans Implementation is an emerging collaborative project between Bynoe CACS (Normanton) and Tagalaka Aboriginal Corporation RNTBC of the



'shared' office premises currently being built with the assistance of the Croydon Remote Jobs and Communities Program (RJCP) participants (Tagalaka people residing in Croydon and coincidentally, it was mostly Tagalaka people who were instrumental in the setting up of Bynoe CACS and today, there are still two Tagalaka directors sitting as Bynoe CACS board directors).

Native title is a challenge within itself, even today. For a lot of Tagalaka people, being geographically isolated certainly disadvantages us. Having limited funds or no funds to try and educate us in this whole

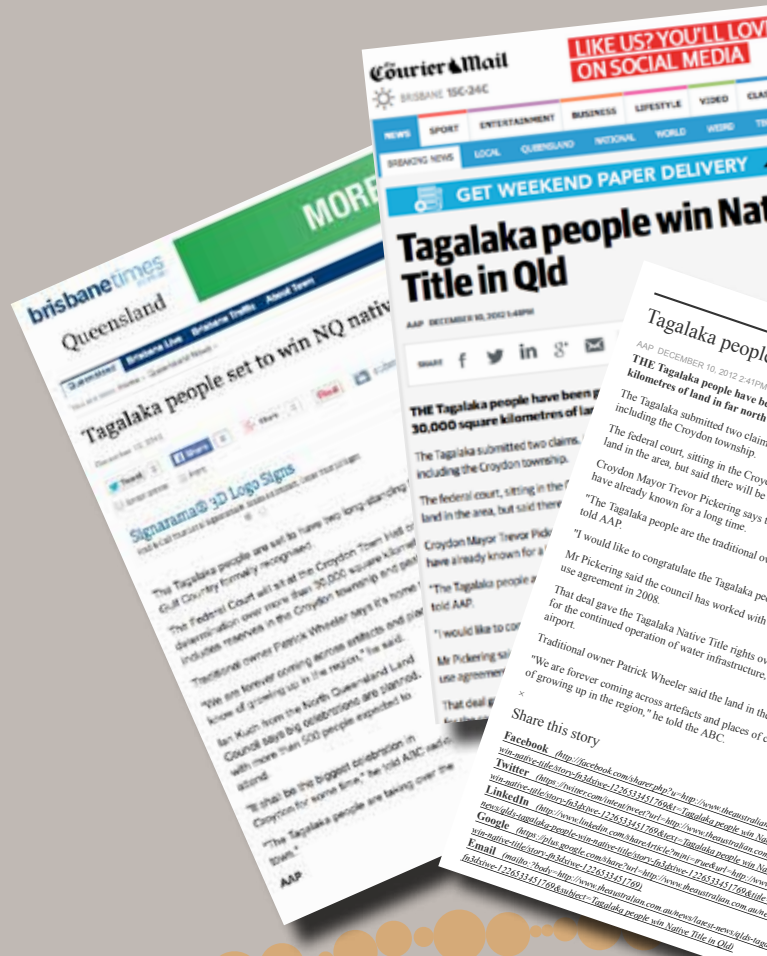
process is a major challenge. If things had been different, if we were in a better financial situation, and if navigating the Native Title system was more widely communicated, many of our challenges would be easier to understand and overcome.

Given the modest financial PBC support, Tagalaka realise that we cannot do everything at once and thus we will act strategically and prioritise the actions we feel necessary for Tagalaka. We will also maintain open minds for emerging priorities and opportunities.

By **Patrick Wheeler, Tagalaka Native Title holder and Director of Xtra Steps Consulting**



Tagalaka Native Title Determination, 2012.





THE AUSTRALIAN
Tagalaka people win Native Title in Qld
 ...en granted Native Title rights over more than 30,000 square
 Queensland.
 ...s, in 1998 and in 2001, over land in the southeast gulf district,
 don Town Hall, on Monday recognised their rights over public
 separate determinations for pastoral leases.
 he ruling affirms what the Tagalaka and the local community
 vners of land and waters within the Croydon shire," he
 ople on this historic day," he
 the traditional owners for many years, signing a land-
 er public land held by the council, but also allowed
 historical buildings, sports grounds and the
 e area contains many special sites.
 cultural significance that we didn't even know



Tagalaka Grannies under the very watchful eyes of Nanna, who is sharing knowledge taught to her by her Mother and Grandmother. (Image credit: Patrick Wheeler)

