



YOUR WAY FORWARD FOR NATIVE TITLE

MESSAGE STICK

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North Queensland Land Council.

SEPTEMBER 2017

PBC SUPPORT UNIT UPDATE



7

Traditional Hunting hitting the media yet again...



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THE INCALCULABLE IMPONDERABLE

OR THIS WEEK'S DISCOUNT?

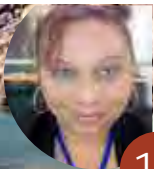
Timber Creek compensation claim
(Northern Territory v Griffiths
[2017] FCAFC 106).



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From Yarrle to Canberra



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Researching your Family History



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MESSAGE STICK

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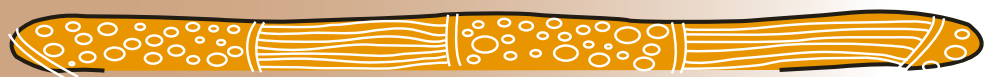
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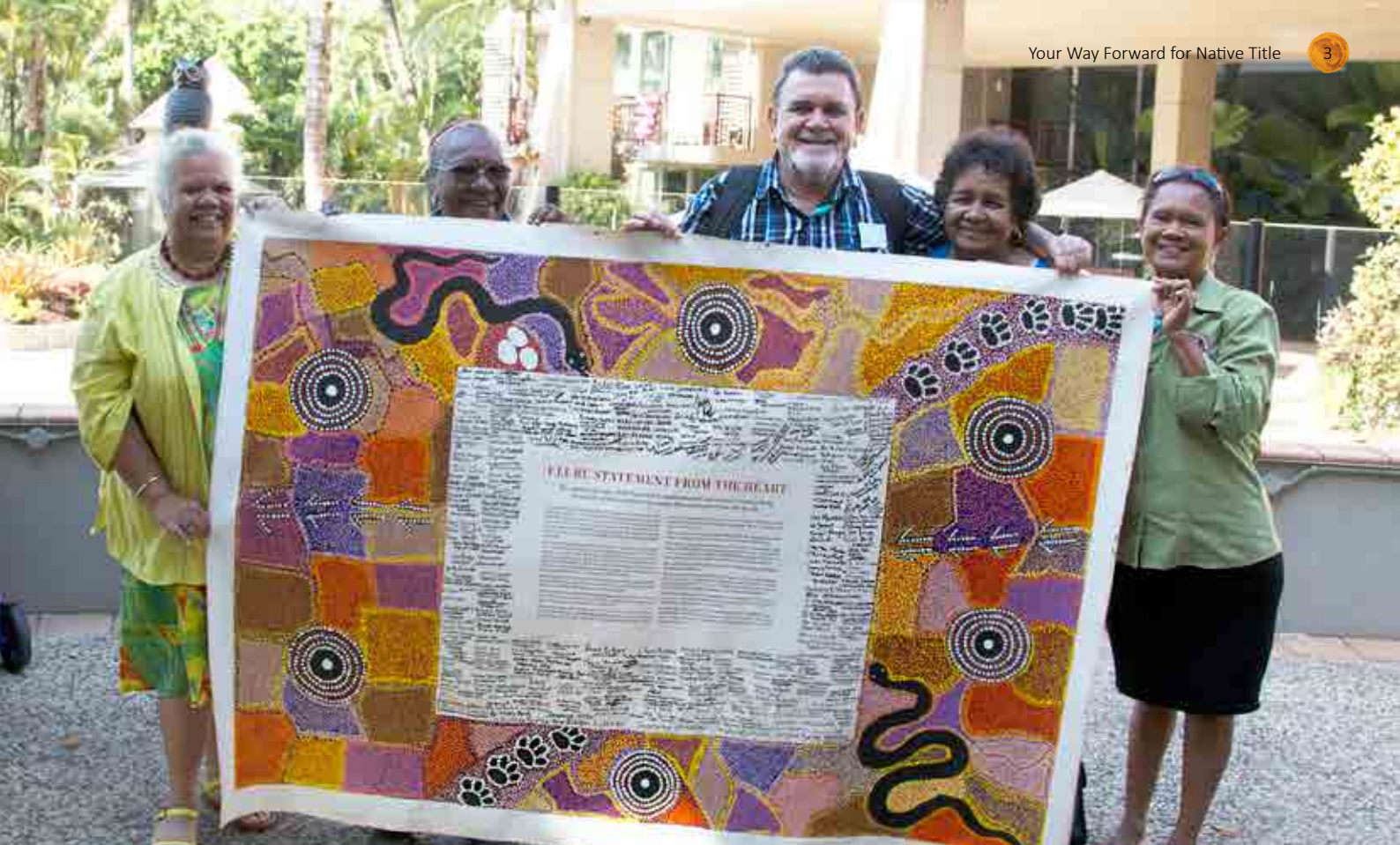
Any queries regarding Message Stick, please contact the editor Michelle Liddy on 1800 814 779 or mliddy@nqlc.com.au.

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NQLC Directors Kaylene Malthouse, Patricia Dallachy, Terry O'Shane, Angie Akee and Annette Hooligan with the official *Uluru Statement of the Heart* canvas.

Message from

Madam Chair

Welcome to the September edition of Message Stick for 2017. I would like to start by acknowledging and paying my respects to the custodians of the land within the NQLC footprint, both past, present and future. I also give my condolences to the families of people who have recently passed since our last Message Stick.

Since our July edition, the Board and I have been settling back in after a huge June and July, which you would have read about in our July edition of Message Stick.

One of the main priorities that the Board and I have been involved in this quarter is being across everything within our elected wards, and being accessible to you all. We recently attended the PBC Summit in Cairns where I was delighted to see a huge turnout, particular from our youth. I have mentioned before about my aspiration to get our young ones more involved in our work, to

upskill, nurture and prepare them to eventually take the lead. Meeting many of the young ones for the first time during the Summit was such a wonderful experience. We have some brilliant young minds among us and I'm very excited to watch them grow and improve on the work we and our Elders started. It was also wonderful reconnecting with familiar faces. I appreciate the time you took out of your busy day to day schedules to attend the Summit, as this shows the seriousness you take in building successful PBCs.

The Engagement and Development Support Unit did a great job pulling everything together for the PBC Summit. There was a lot covered over the three days including PM&C's current PBC Support Funding policies and practices, as well as their Assessment Tool and PBC Development Plan. Gary Lui goes into further detail on the Summit on page

7 of this Message Stick.

We had two very special guest speakers present on the Uluru Statement, which is something fellow Directors Terry O'Shane, Phil Rist and I are heavily involved in, as well as Traditional Owners Janine Gertz and Sam Backo. Professor Megan Davis, a Cobble Cobble Aboriginal woman from Queensland and Professor of Law was first to present. Professor Davis was also a member of the Expert Panel as well as an Indigenous member on the Referendum Council; she is a strong advocate for constitutional recognition of Indigenous Australians. She started her presentation with a powerful video looking at the long road of Indigenous inequality in Australia since the arrival of Captain Cook, with the first major act of protest being the 1966 'Wave Hill Walk-off' led by Gurindji man Vincent Lingiari. Professor Davis talked through the process that led to the Constitutional



Patricia Dallachy at the PBC Summit in Cairns.



Victor Maund and Annette Hooligan at the PBC Summit in Cairns.



Kaylene Malthouse with Jacqueline Shaw of Wabubadda Aboriginal Corporation RNTBC.



Professor Megan Davis presenting at the PBC Summit in Cairns.

Recognition Regional Dialogues, as well as the journeying of our mobs together to Uluru, where the Uluru Statement was born out of the regional dialogue discussions. The Uluru Statement continues the theme of the Dialogues which is 'Voice, Truth Telling and Treaty'.

Next to present on the Uluru Statement was Thomas Mayo, a Torres Strait Island man, who lives and works from Darwin in the Northern Territory. Thomas became involved in constitutional recognition through meetings leading up to the Regional Dialogues that were held across the nation. Thomas is now working fulltime on advocacy for the outcomes that the Uluru Statement calls for. He is the Branch Secretary and Official of the Maritime Union of Australia, who give their full support to the campaign. Thomas has also been heavily involved in getting the message of constitutional recognition and Indigenous rights out to the public. Thomas brought with him the official *Uluru Statement from the Heart* canvas, which, along with the Statement, incorporates signatures of the delegates at the Uluru convention which was turned into an artwork by Mutitjulu artists (pictured). Thomas also brought along another canvas for people to sign showing their support for the referendum, with many Summit attendees eager to sign and show their support.

The Board of the North Queensland Land Council, on the 30th of August at the NQLC PBC Summit in Cairns, resolved to fully support the calls for a constitutional referendum. We wish to see the Voice, Truth and Treaty outcomes in this generation to save the next; we therefore join our voices with the Yolgnu and Gurindji People, in the challenge to the Prime Minister to commence the referendum process.

A number of board directors, management staff and FAME Reference Group members attended an economic development workshop in Melbourne recently. The workshop provided valuable insight from our mobs around the country, who shared their individual PBC experiences of business development and joint ventures with other stakeholders within their communities. Various industry representatives spoke of their reconciliation plans and engagement with traditional owners.

By the time you read you this edition of Message Stick, the NQLC Ward Elections will have been completed and the NQLC Directors for the coming two years will have been elected. Be sure to check our website or contact your current Ward Directors for an update on who the elected directors are, and look out for their bios in the December edition of Message Stick.

I hope you enjoy this edition of Message Stick and I look forward to working with you all over the coming months.

Kaylene Malthouse
Madam Chair, North Queensland Land Council

Update from the CEO



Welcome to the September edition of NQLC's Message Stick. I hope you enjoy this edition and as always, we welcome any contributions or feedback. Our next Message Stick is due out early December.

We have another new recruit here at NQLC and are continuing to fill some further new positions/vacancies. Claire Michael joined us in August as our Electronic Document and Records Management System (EDRMS) Officer. NQLC is currently embarking on the enormous task of moving all of our data onto a new electronic management system in order to ensure best practice for our records keeping and reduce our use of paper. Claire has a degree in Records and Archives plus brings over fifteen years' experience in Records Management and Archives, ranging from operational, project management, compliance and system changes. Claire is a recent convert to the Tropical North from chilly Melbourne and she tells me she's loving the FNQ lifestyle. The NQLC has been extremely lucky to be able to recruit someone of Claire's calibre and experience to lead our EDRMS project. We are still looking for a Senior Anthropologist to fill the Townsville position so until then, our Cairns research staff are covering all Townsville claims.

Our Engagement and Development Support Unit has been busy organising and hosting the NQLC PBC Summit, held recently in Cairns. I was lucky enough to be able to attend this three day event, along with our Board of Directors, and as always I was impressed with the enthusiasm and determination of our traditional owners. I was also particularly impressed with the number of youth we had in attendance, and their eagerness to learn and continue the work of their elders. PBC Support Officer, Gary Lui goes into more detail on the objectives and outcomes of the day on page 7 of this Message Stick

I and a number of management staff, NQLC Directors, and FAME Reference group members attended the Native Title

and Economic Development Conference in Melbourne earlier this month. This two day conference was convened by Native Title Services Victoria and the Melbourne Business School (a subsidiary of Melbourne University) and this year's theme was 'Reconciliation Action Plans and Opportunities for Indigenous Enterprise. Presenters – TO groups and Corporate/business sector representatives – explored the utility of drawing upon Reconciliation Action Plans (RAPs) in developing Indigenous business. Through a number of case studies we benefited from hearing directly about the practical experiences of TOs in using RAPs, developing successful enterprises, and joint venturing with commercial partners. It was an extremely thought provoking and inspiring conference and I know that each of us that attended brought back a range of lessons that we will be applying.

The Queensland Representative Body Alliance (QRBA) met again in early August and the focus was on refining a PBC Schedule of Fees proposal to put to the State Government. As I have previously advised, under the direction of The Minister for Natural Resources and Mines, Dr Anthony Lynham, the Queensland Government has put together an Interdepartmental Working Group (which includes the QRBA) to settle on a schedule of fees that PBCs can charge the Government for processing Future Act Notices. Negotiations on the schedule are progressing well and I believe we will have one in place by the end of this year. This will, of course, provide an additional income stream for our struggling PBCs.

Our Research Unit have been busy doing an audit review of our compactus material, building a comprehensive consultant register and establishing a new process for requesting information. They have also developed an updated Family History Form which you will find on page 13 of this Message Stick. Have a read of their article on page 12 which tells you more about why it is important to provide a Family History Form to NQLC.

There have been many interesting developments in the native title space, one particular development is the changing attitude of the Court towards ILUAs and determinations. Previously there was an attitude by various respondents that their offer to consent to a determination was a package deal; a package that included native title holders having to sign up to an ILUA. Often these ILUAs were somewhat weighted in favour of the non-indigenous parties.

An example of this is the Protected Areas ILUA that the Crown was pushing. This ILUA has evolved over the years and was all about the native title holders not exercising their native title rights in such a way as to harm threatened or endangered species, or to damage habitat. It used to have a list of the species in question but has since evolved to follow the format that says native title holders will not exercise rights except in accordance with agreed, activity guidelines. This sounds fine until you realise that very few (if any) guidelines have been agreed and in reality the State could control the speed of negotiation. Now that the demand to sign an ILUA without guidelines in place can no longer be made, native title holders have a better bargaining position.

Another trend of concern is that the State seems to be failing to devote money and resources that a model litigant should when acting as a respondent. This is now beginning to impact the swiftness with which matters are able to be progressed. A further impact can be seen in the States attitude to tenure research. In some matters the State is still working through each lot by lot searching for extinguishment – a tedious and time consuming process which in the NQLC's view is unnecessary.

Our resident PLO, Martin Dore, continues to attend the working group on Lands Titles which is working to establish a process whereby native title determinations can be noted on titles. More importantly though, they are working to establish a process that ILUAs can be made to flow with the title when a property changes hands.

We have a number of projects and claims that are in the early planning stages and a fair amount of progress on our active claims, as discussed below:

- The Widi #1 claim tenure issues have been resolved with one exception, which we believe will soon be resolved. It is expected that this matter will proceed to a determination sometime in the first half of 2018.
- Research in the Wakaman claim has been presented to the group and described by the researcher as some of the strongest evidence he has seen. An authorisation meeting will be held soon to look at broadening the current claim, which was lodged specifically to ward off a non-claimant application.
- The public notification period for both Gurambilbarra Wulgurukaba and Bindal has closed and the connection material will be ready to go to the State by December.

- In Gulngay, despite the age of the applicants and the relatively small area, the State has refused to move this matter up the priority list. The matter is slowly progressing, connection material has been accepted and we are hoping for a determination in early 2019.

We have some small updates on our other claims including:

- A planned community meeting for the Gia/Ngaro claim to discuss Dr Palmer's anthropology report;
- The Bindal notification period has closed and anthropological work is expected to be finished by November;
- Cairns Regional Claim is awaiting a response from the State;
- Further anthropological research is underway for Warrgamay, Gugu Badhun and Gudjula;
- in the Palm Island claim - the long awaited lease agreement with the Manbarra People has now been registered and we are waiting on instructions from the Manbarra People to proceed with research;
- In the Silver Valley Resolution - whilst an initial research report has been received, further research continues;
- The Djabugay Yirrganydji Bulway Nyakali and Guluy (DYBNG) claim remains on foot solely to protect against a non-claimant application;
- In Nywaigi - connection material has been accepted, a draft determination to settle the claim has recently been received from the State, three ILUAs remain in negotiation and we anticipate a determination in March 2018;
- Girramay #2 – negotiations with the State are underway regarding tenure, connection material has been accepted, a draft determination has recently been received from the State and we anticipate a determination in March 2018;
- Bar Barrum #9 and #10 are listed for consent determination on 12 December 2017.

On a sad note, many of you will know our long serving and highly regarded Corporate Services Officer, Brian Cahill. Tragically Brian's wife Marg passed away unexpectedly this month. The thoughts and condolences of the NQLC Board and staff are with Brian and his and Marg's families as they deal with this terrible time in their lives.

Steve

Steve Ducksbury
Chief Executive Officer, North Queensland Land Council



PBC SUPPORT UNIT UPDATE

We started our last PBC Support Unit update with an acknowledgement of the start of the new 2017/18 financial year. We're now just 3 months into the new period and it's been jam packed with activities and other PBCSU initiatives. We'll go through them one by one in this update.

PBC SUPPORT FUNDING APPLICATIONS 2017/2018

At the time of writing, the NQLC had received advice from the Department of Prime Minister and Cabinet (PM&C) that their assessment of PBC Support Fund applications was complete. Subject to some final administrative requirements being met, it's likely that PBCs will have received official notification about the status of their applications by the time this edition of Message Stick reaches you.

PBC CAPACITY DEVELOPMENT ACTIVITIES

Our last update mentioned several initiatives that the NQLC was planning. Those activities are slowly but surely being progressed. This includes the development of a template policies and procedures manual, the establishment of a NQLC-PBC representative group, and of course the PBC Summit.

These were the most significant initiatives of the last period. We started with the design of the PBC Summit because of the importance of this event. The PBC Summit marked a 'first' for the NQLC, and no doubt, for many of the delegates who attended. We had to get it right as PBCs had been asking for this kind of opportunity for a long time. Consequently, high expectations were already in place. (See more about the Summit below).

A key outcome of the Summit was that delegates unanimously endorsed the establishment of a representative group, to be comprised of one representative from each PBC. The

development of a policies and procedures manual was somewhat overtaken by the PBC Summit project. However, our attention now that the PBC Summit is done, we can turn to this outstanding and important project.

INAUGURAL PBC SUMMIT 2017: 29 TO 31 AUGUST 2017 NOVATEL OASIS RESORT, CAIRNS

Thank you to all the delegates who attended the summit. Your contribution to the success of the forum was significant and appreciated.

The objectives of the Summit were met, and we're very keen to now follow through on the long list of 'to dos' that came about as a result.

The Summit was attended by the NQLC Board of Directors and over 50 delegates from PBCs within the footprint of the NQLC. Four representatives from each PBC were invited to attend and they were encouraged to nominate 2 youth delegates. This is a strategy aimed at engaging youth in PBC business and it has been successfully used in previous forums. PBCs were also encouraged to think about who they would nominate to be their representative in an ongoing PBC representative group to be facilitated by the NQLC.

DAY 1

The focus of day 1 was directed toward PBC Support Funding arrangements, the activities and services of the PBCSU to support PBCs and NQLCs capacity to support a representative body of PBCs in our region.

Highlights included a summary of PM&C's current approach to PBC funding arrangements, particularly noting that PM&C envisages that PBCs will achieve operational and financial independence over a four year period; the four year time limit on the availability of support funds to PBCs; and, the



requirement of PBCs to lodge a “PBC Development Plan” with PM&C.

In support of PBCs achieving such independence, Rhonda (Jake) Jacobsen covered the suite of services that have been available to PBCs via the PBCSU and canvassed proposed expanded services and activities. It was recognised that not all PBCs require all the services that were proposed and the PBCSU will work individually with PBCs to identify and prioritise their needs.

Then, Jake led the forum in a discussion about the proposed NQLC-PBC Representative Group. The proposed group will be a peak forum for PBCs to have their representatives raise their issues of concern and advocate for native title rights and interests and the aspirations of native title holders in operational, policy and legislative areas. It will also provide PBCs with a network that can be used to share information, knowledge and experience. There was widespread support and endorsement of the proposed model and the name “NQLC-PBC Representative Group”. A key message conveyed by Jake was that all PBCs are free to participate in the PBC Representative Group as or when they have the ability to do so. This approach acknowledges that some PBCs may need to observe their own protocols for consultation and decision making. It was agreed that the PBC Representative Group would hold its first meeting in October and all PBCs would be invited to nominate their representative before that time – if the PBC chooses to participate at this stage.

DAY 2

The focus of day 2 was on scoping a number of external policy and legislative matters affecting PBCs. The morning was jam packed with information about Fee for Service arrangements and the efforts of the Queensland Representative Body Alliance (QRBA) to negotiate some standards with the State of Queensland. This was a particularly illuminating session because of the direct relevance to the current approach of PM&C. Where PBCs are striving to become less reliant on government support funding, a discussion about potential revenue streams such as this was enlightening for many.

Julia Taylor, Senior Legal Officer-Coordinator, FAME Unit discussed a number of matters that the FAME Unit and the FAME Reference Group had been considering in the recent months. This included: the review of the Duty of Care Guidelines; reforms being undertaken by the Department of Environment and Heritage and impacts on water pursuant to the White Paper on Developing Northern Australia.

Special thanks to the members of the FAME Reference Group who were also present to talk to the issues. The FAME Reference Group is renowned within the NQLC for their commitment and their readiness to always go above and beyond!

One of the highlights of Day 2 was of course the opportunity to hear from Professor Megan Davis and Thomas Mayo. They shared their experiences with regard to the drafting of the Uluru Statement. They explained that the process leading to the development of the statement involved comprehensive consultation with communities across the length and breadth

of the nation. Importantly, they also mapped out the process moving forward.

DAY 3

In the morning the delegates finalised some outstanding matters, including the endorsement of a response to the White Paper on Developing Northern Australia. The white paper covers several topics including the development of the north's water resources. Through its line agencies the government is prioritising a couple of regions in Queensland, but is yet to effectively engage with Traditional Owners. The forum also noted that the development of water resources is an issue for all 'downstream' groups because every watercourse tends to traverse large swathes of country on its journey to the ocean. The NQLC is currently working on a more detailed report from the forum and it will contain the statement and position endorsed by the delegates at the PBC Summit.

THE NEXT STEPS – PBC DEVELOPMENT PLANS

The Summit concluded with discussion about the next steps in a number of processes that have tight timeframes. The matters that required some immediate attention, both from the NQLC and PBCs, also required some follow up meetings with each PBC. The immediate priority is the PBC Development Plans (PDPs) which is an assessment tool provided by PM&C for the PBCs to gauge their current capacities, consider priority areas of capacity building and envisaging what the PBC will be at the end of the four year period. The PBSCU will be contacting PBCs individually to progress the PDPs.

Also, we are currently undertaking the selection process for 3 additional staff for our "PDP Project", which will focus on delivering expanded services particularly in the areas of strategic management systems and enterprise development.

We anticipate that we will have the ability to re-commence some of our outstanding projects post-September 2017. Our last edition of message stick for 2017 will contain an update in this regard.

TRACKING AMENDMENTS TO STATE LEGISLATION

We encourage PBCs to track proposed amendments to State legislation. The following website provides links to all current submissions for the Queensland Government and is a good way to keep across changes that may affect your PBC.

Get involved web site: www.getinvolved.qld.gov.au

You can often make submissions and comments through 'survey monkey' without having to write a formal submission.



Written by Gary Lui
PBC Support Officer
Engagment and Development Support Unit

Traditional Hunting

hitting the media yet again...

By Greg Bell, Deputy Principal Legal Officer

It happens every six months or so...some politician or personality making comments in the media about Australia's native title holders hunting their traditional tucker.

Most recently the human headline himself, Senator Derryn Hinch, is in the news.

Senator Hinch recently visited Cairns and on 30 August 2017, The Cairns Post reported that he was in Cairns *"to meet wildlife activists, conservationists, traditional owners and legal experts to examine how he might be able to help reduce the amount of protected species being unnecessarily killed under the Native Title Act"*.

In the article, Sen Hinch is quoted as already having the support of Senator Cory Bernardi and that he would be *"working on"* the Greens. In another Cairns Post article (29 August 2017), Sen Hinch is quoted as claiming to have the support of Federal Member for Leichardt, Warren Entsch and other Members of the House of Representatives.

If Senator Hinch is to be believed, it is possible he could get numbers to put pressure on the marginal Federal Government to consider changing the *Native Title Act* to reduce the native title rights of Traditional Owners across Australia.

The Cairns Post states that Sen Hinch previously called for a total ban on traditional hunting of dugong and turtle. However, in the 30 August article, Senator Hinch states that, amongst his supporters *"none of us are against native hunting ... but when dugongs*

and turtles are being hunted by guys in boats with guns and spears, with an outboard motor outrunning the turtle, that's not the way it was meant to be".

From his comments, Sen Hinch now seems to be calling for laws that would both limit the numbers of protected species that native title holders can take and restrict how they can hunt these species.

Native title rights are subject to State and Commonwealth laws. Currently, section 211 of the *Native Title Act* provides an exception to this principle and ensures that Aboriginal and Torres Strait Island People who hold native title can hunt fish and gather protected species, for personal, domestic or non-commercial communal needs, from land or waters they hold native title in, without a licence, if non-native title holders would require a licence, permit etc and that licence or permit etc is issued only for research, environmental protection, public health or public safety purposes.

Section 211 currently ensures native title holders can hunt dugong and green turtle in areas where the hunter holds native title. Important to note is if, for example, you are hunting dugong in somebody else's country, where you do not hold native title rights, then you may not be protected by section 211 and could face criminal prosecution.

The Courts have recognised that native title rights are not frozen in time and that native title holders can exercise their rights to hunt and fish using motorised boats,

guns and nets etc.

Kuku Yalanji Elder, Mr Danny O'Shane, also an employee of the NQLC, has spent a lot of his working life on the ocean and states that *"Yalanji People do not need some white-fella like Derryn Hinch making laws about things that we have been managing and regulating ourselves for thousands of years"*.

Mr O'Shane says that *"in Yalanji sea-country there are areas where under our traditional laws and customs, we do not take dugong. Our use of resources has always been, and always will be, a sustainable one and does not need to be interfered with by Canberra"*.

"If we look at the ancient traditions of Indigenous Australians we see how, through having animals as totems and laws associated with the take of animals, those animals are managed throughout the Australian continent and its surrounding waters. The people who hold those laws and totems adhere to them. That is, there is a network of conservation zones across the length and breadth of Australia. They know the places in which the animals feed, when and where they breed, and the healthy numbers that the environment supports. We need to keep these animal numbers healthy to keep us healthy. European invasion of this continent has been devastating in many ways."

Mr O'Shane observes that *"European invasion not only reduced the number of Aboriginal People here, it has also had a massive impact on nature. Just look at the number of species that*

have become extinct over the last 200 years!"

Mr O'Shane believes that people like Sen Hinch should not be blaming Indigenous Australians who practice traditional hunting for impacts on nature that are in fact caused by practices, such as farming, mining and associated pollution.

In addition, Mr O'Shane believes that *"It's people like Hinch who presume we are savages, and ignorant of the well-being of animals like dugong and turtle. People like him perpetuate the lie that Aboriginal People are somehow less humane than others in this country. It's a hangover from the excuses and reasoning used to justify dispossessing us of our country"*.

Mr Henry Epong, Mamu Elder, agrees with Mr O'Shane and says *"It is not Indigenous Australians who put pressure on dugong and turtle populations. The real problem is things like pollution from farming and mining practices and other activities to do with economic development that has put these animals at risk"*.

Mr Epong, states *"Mandubarra Bara group runs a turtle rehabilitation at Coquette Point, and turtle monitoring on Mamu country. Recently, a nest at Kurrimine had been compounded by horses and quad bikes and had human intervention. We found the nest but didn't put a barricade around it, only our 'monitoring' sign. We only got about*

75% of the eggs. Cassowary Coast Regional Council has since supplied Mandubarra with signs with their Cassowary Coast Regional Council logo."

Mr Epong said the Mandubarra People are working with Great Barrier Reef Marine Park Authority towards a Traditional Use of Marine Resources Agreements (TUMRA), which would run for five years and is reviewed every 12 months.

Under the TUMRA, the Mandubarra would agree to suspend their native title rights to hunt and kill turtles and dugong for traditional purposes. .

Mr Epong explains the reason for the move towards a TUMRA is to *"build up numbers of turtle and dugong in our sea-country. In recent times, cyclones in and near our country have impacted badly on seagrass, their main food. After the most recent cyclone in the area, they were floating on top of the sea. There are not many dugong in the area, we've seen three in the last couple of years"*.

Mr Epong is very clear that the Mandubarra People would not surrender their section 211 rights. *"This would be a temporary arrangement and when numbers are back up to a sustainable level we will put our own system in place where native title holders can take a turtle for a ceremony like a wedding or a funeral."*

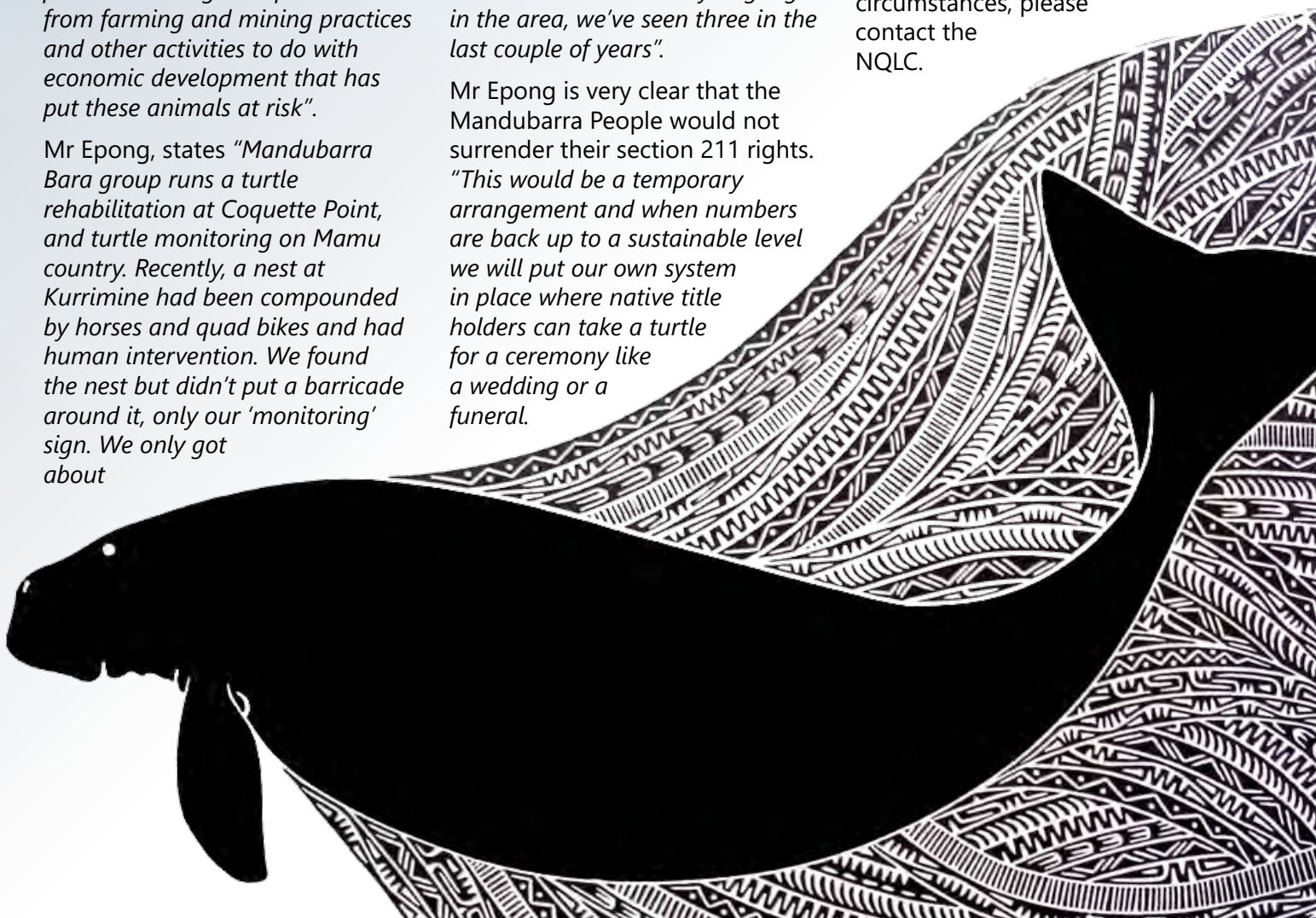
We will still take our young ones out and teach them traditional ways of mock killing turtle and teach them about sustainability. This is part of our catch and release activity".

On the suggestion that native title holders be limited in the way they can hunt certain species, Mr Epong says *"That is just laughable. Let Hinch go back to using a dug out canoe to get around"*.

Mr Epong said the TUMRA would be a formal way to give his people power and control over important traditional food sources and suspend traditional practices until turtle populations can recover from the impacts of invasion and recent cyclones.

The NQLC would make submissions against a Bill that proposes to reduce native title rights.

If you have any queries about your native title rights, for example, if section 211 applies to your circumstances, please contact the NQLC.



Researching your Family History

By Kara Dunn & Di O'Rorke, NQLC Research Unit

If there is one thing most people seem to enjoy, it is finding out about their individual and family history.

It would be difficult not to be aware of the interest in all things genealogical in Australia these days, from 'Ancestry' ads and websites, to publicly available DNA tests (sorry, typically unhelpful in native title matters). When researching ancestors who are not Aboriginal Australians, there are seemingly endless sources to search for clues, leads and about our parents, grandparents and so on. These people are our 'antecedents' or ancestors and we, of course, are their 'descendants'.

But for Aboriginal Australians, researching into family history can be a lot more challenging. The violence and extreme destruction caused by British invasion and colonisation is always brought into clear focus when trying to find family members, links or stories of loved ones.

Records about Aboriginal people have been created by a range of different organisations and individuals. These include, but are of course not limited to, pioneers, settlers, miners and churches, and under legislation such as *The Aboriginals Protection and Restriction of the Sale of Opium Act 1897 (Qld)* (the Act), government agencies, missionaries and police, to name just a few.

As most of you know intimately, people under 'the Act' were observed, studied and documented at every stage and every age of their lives. One outcome of this constant scrutiny is the large amount of written documents recording the life events of nearly every Aboriginal person in Queensland. The surviving records can provide a lot of information which, together with your oral family history, can be used to build your family tree.

Family history research can be difficult, it is time consuming and often has confronting information that may contradict your understanding of your family's stories.

If you want to do more extensive family history research, there are a number of organisations that have access to these sometimes

restricted records which relate to Aboriginal and Torres Strait Islander peoples. As well, many of these organisations have a support system in place to help you through this process.

For example AIATSIS provides a Family History Kit, with step by step advice on how to do your research. It includes really important things to think about when looking into Aboriginal people's history. They start by telling you that:

Most family research projects are complex, time-consuming and frustrating. Tracing Aboriginal and Torres Strait Islander family histories poses a unique set of challenges. Stories passed down through you family and interviews with family members are key sources of information BUT they may be different from information in the historical records (www.aiatsis.gov.au).

Some of the main organisations that provide these services are:

- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Family History Unit**
 Website: www.aiatsis.gov.au/research/finding-your-family
 Email: familyhistory@aiatsis.gov.au
 Freecall: 1 800 352 553
- The Queensland Community and Personal Histories (CPH) Team at the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA)**
 Community and Personal Histories Team
 Level 6A, 75 William Street,
 Brisbane QLD 4001
 Phone: (07) 3404 8375
 Toll free: 1800 650 230
- Link Up Queensland - provides family history research assistance to members of the Stolen Generations.**
 Free call: 1800 200 855
 Email: contact@link-upqld.org.au
 Web: www.link-upqld.org.au

WHAT IS THE NQLC FAMILY HISTORY FORM (SHORT VERSION)?

The Research Unit has developed this form so that you can tell us the information about your family that the NQLC needs in order to progress your native title claims. The information is important for several reasons.

First, to ensure you are included on our contact database for any claims you are described on. In the last edition of Message Stick we talked with you about the importance of us having your current contact details so we can keep you informed about your ongoing native title claims.

Secondly, by sharing your genealogies (that is, your family trees, and stories about your relationships and kinship ties) you allow us to provide the evidence the court need to help determine who the people are that hold native title in our representative area.

The genealogical information you provide will assist with the research relating to your family and their connections to native title claims in our area.

The form on the next page allows you to supply this information to us, as well as update your contact information, so that you can be kept informed on ongoing native title claims.

The NQLC requires permission from those concerned before releasing any family information. We won't talk with others about your family, but neither will we talk with you about other families. What we will do, on request by individuals, is provide that individual with your own 'Line of Ascent' letter which shows your personal connections to native title claims in our area, through your genealogical links. We are also happy to talk with your family as a group, or with properly authorised family representatives about your broader family tree at scheduled meetings; either at our offices, or in the community so together we can review and possibly add the younger generations to your family tree.

Returning your Family History Form to NQLC

Detach the form from Message Stick by pulling the two (back to back) pages from the centre staples. You should then be holding one piece of A3 sized paper which folds in half, making a 4 page form. Complete the form and return to NQLC either via email on aadmin@nqlc.com.au or via post. To post, simply fold along the dotted line on page four of the form and either staple or stick along the grey edges. This will form a C5 self-address reply paid envelope - NO POSTAGE STAMP REQUIRED.



Family History Form *(short version)*

We invite you to complete this NQLC Family History Form (short version).

Please fill in the form as completely as possible, with your current contact details so that you can be notified about native title matters.

Please provide all name variations for people in your family, including, but not limited to:

- traditional names
- married names
- nicknames

Also, if you know it, can you provide for each of your family members

- dates and places of birth
- (when relevant) dates and places of death
- dates and places of other relevant life events

If you need more space to write it all down, please attach extra sheets to this form. If you have any difficulty filling out this form please contact the NQLC Research Unit for assistance on (07) 4042 7000 or Freecall on 1800 814 779.

We will then input this information into the NQLC Genealogical Database. This information will be used for genealogical purposes to build and improve on our knowledge of people within the region. More specifically, it will assist with the research relating to your family.

Name: _____ Date of Birth: _____
Firstname Surname

Home Address: _____
No. Street Suburb State Postcode

Postal Address: _____
(If different from home address) No. Street Suburb State Postcode

Phone Numbers: _____ Email address: _____
Home Mobile

I would like to be added to the contact list for the following claim/s: _____

I, (name) _____ **DECLARE**
that the information I have provided is true and correct
to the best of my knowledge. I acknowledge that this
information will be used by the North Queensland Land
Council for the purposes of genealogical research.

Signature Date signed

OFFICE USE ONLY TO BE COMPLETED BY NQLC RESEARCH UNIT

Date Received: ____/____/____ Contact list/s updated: ____/____/____ Genealogical Database Updated: ____/____/____ Updated By: _____



Family History

(short version)

We invite you to complete this Family History Form (short version).

Please fill in the form as completely as possible, with your current contact details so that you can be notified about
This information will be used for genealogical purposes to build and improve on our knowledge of people within the

Siblings: (attach pages if more space is needed)

Name:

Date of Birth:

Father:

Father's Father:

Father's Mother:

Father's Father's Father:

Father's Father's Mother:

Father's Mother's Father:

Father's Mother's Mother:



History Form

(version)

native title matters. We will then input the information into the NQLC Genealogical Database.
e region. More specifically, it will assist with the research relating to your family.

__ / __ / __

Children: (attach pages if more space is needed)

Mother:

Mother's Father:

Mother's Mother:

Mother's Father's Father:

Mother's Father's Mother:

Mother's Mother's Father:

Mother's Mother's Mother:

Once folded, tape or staple along the grey edges. This will form the shape of a C5 envelope, which you can return to us (no postage stamp required).



Delivery Address:
PO Box 679
CAIRNS NORTH QLD 4870

No stamp required
if posted in Australia




NORTH QUEENSLAND
LAND COUNCIL
Reply Paid 679
CAIRNS NORTH QLD 4870

Once folded, tape or staple along the grey edges.

Once folded, tape or staple along the grey edges.

If returning by post, detach the form from Message Stick and fold along the dotted line above, ensuring the address is visible.



Gurambilbarra Wulgurukaba Traditional Owners with Premier Palaszczuk (Waverley Canendo, Esalyn Ambrym, John Wotton, Premier Annastacia Palaszczuk, Brenton Creed, Gail Ambrym & William Creed)

TOWNSVILLE CELEBRATES AS THE STADIUM TURNS THE FIRST SOD

On Friday 18 August, Gurambilbarra Wulgurukaba Traditional Owners joined Premier Palaszczuk, Assistant Minister for Cities and Digital Transformation Angus Taylor, Townsville Mayor Jenny Hill, NRL Chairman John Grant and Cowboys Chairman, Lawrence Lancinci for the ceremonially turning of the sod to mark the official commencement of construction.

The sod turn is the official start to construction for the stadium and also kicks off further opportunities for the local community and the broader North Queensland region.





Nikita Sellin

From Yarrarie to Canberra

Nikita Sellin is a Yindji, Wakaman and Bidjarra woman born in the Yarrabah Shire, where she grew up with her parents and three sisters. Nikita attended the local Yarrabah Primary School before completing her secondary schooling at Woree State School in Cairns. She is a mother of two and has recently completed a Bachelor of Law at James Cook University. She currently works in Canberra for the Australian National Audit Office (ANAO) within the portfolio of the Department of Prime Minister & Cabinet.



You are currently employed as a Graduate with the Australian National Audit Office (ANAO) within the portfolio of the Department of Prime Minister & Cabinet in Canberra. This is a huge distance from your home town of Yarrabah. Were there any people who influenced you to head into the legal profession?

The story of my rewarding career started when my mum and dad moved out from the Yarrabah community when I was 15 years old. I stayed in Cairns for three years living with family members before my parents decided to move away from Yarrabah. This was the hardest part of learning to live, being away from my family and my community. I could have chosen to attend boarding school in Townsville where most of the Yarrabah girls went, but I chose Cairns. My parents supported my decision to finish Year 12 in the mainstream education system at Woree State High School.

After finishing Year 12, I had a slow start to my career. Two years after finishing Year 12, I had my daughter. Once she turned one, I realised I needed to study in order to support her. After all the effort, sacrifice and struggles I faced to finish my Year 12 Certificate, along with the support I was given, I knew that I had to do something to continue paving the way to a brighter future. I had no idea what professional career I wanted so I picked up the Cairns TAFE Course Booklet to find a course. In the course booklet, I saw the Justice Administration Diploma course and decided, without any hesitation or thinking twice, that this could lead me to something bigger. I enrolled myself and in time paid off the course. My parents watched my daughter while I completed my Diploma. I had support and encouragement from my parents, sisters and family.

The Diploma opened my eyes to the opportunity that I could gain a higher education in obtaining a Bachelor

Degree of Law. If it wasn't for the support I received from my TAFE teacher, who encouraged me that I have what it takes and that I was smart enough to get into university and study Law, I would not be where I am today.

For those hoping to work within ANAO, what was the application process for your current role? Tell us a bit about what you do at the ANAO.

I entered the Public Service as an Indigenous Graduate. Once you complete a University Degree you can apply for any Graduate jobs in the Public Service, either State or Commonwealth. The Australian Public Service Commission (APSC) has an Indigenous Pathway program. If you are Indigenous and coming to the completion of your Degree, you can apply through the APSC, who complete the application process, interviews and testing. Once that is all completed your profile goes out to all the Commonwealth or State Agencies who consider your application. I was lucky that the Australian National Audit Office (ANAO) wanted me. I got a few interested agencies that wanted to talk to me, but ANAO offered me a contract without hesitation.

For those having not completed a university degree, you can apply for the APSC Indigenous Traineeship. The traineeship requires you to move to Canberra and complete the 1 year program. In successfully completing the program the Commonwealth Agency can assist to pay your university degree if it relates to your work.

What was the process of completing your Law Degree and what challenges did you face while completing your studies?

I used my Diploma of Justice Administration to get a spot at James Cook University. The Diploma credited all my first year elective subjects.

The most difficult challenge I faced during my entire



Image: Nikita (far right) with her family in Yarrabah.

four years at university was the loss of so many family members from my community. I couldn't attend all funerals, due to not wanting to get so emotionally exhausted. I remained focus as much as I could. One of the biggest losses was losing my Dad, this was during my mid exam period in my second last year. I did not defer any of my law subjects at that time. Even though I was so hurt, full of anger and planning a funeral, I still managed to pass my entire law subject and get through. He was my motivation to keep going. He instilled to me a motto to live by: *"If you are going to do anything, get it right the first time, so you don't have to go back and do it again"*. I try to live by it till this day.

Studying full time with two kids as a single parent was another challenging factor that I faced for four years. I was always broke however with the support from my mum, sisters and family, I got through. Your biggest challenge is convincing your mind you can do it, no matter what is against you in your circumstances.

What has kept you motivated on the long journey of becoming a Lawyer?

The continuous learning and understanding of the law is something I am passionate about. I have a 3-5 year plan which includes becoming a lawyer, gaining experience in the courts; either in Criminal, Family and/or Native Title. I want to achieve my career plan so that I can pass on my knowledge and experience to assist others who may one day want to become a lawyer.

Being the eldest gives me a responsibility and keeps me

motivated to look after my mum, sisters, and families. I look to my friends for encouragement and support, especially when I need uplifting when I'm feeling down. I have developed professional relationships with people, including mentors in the public sector, JCU colleagues, law lecturers, non-governmental organisations (NGOs) and work colleagues. I find that having a variety of professional relationship with people from different backgrounds gives you a different perspective of life. Their stories of overcoming struggles can help in remaining motivated.

In 2015, NQLC were lucky enough to have you complete your Aurora Internship with them within their Native Title Claims and Future Acts Mining and Exploration Units. What was the process for getting on the program and how did your internship help you with your career goals?

I applied through Aurora who helped me find a suitable work experience placement during my university summer breaks. I knew I was interested in native title and that applying for the internship could give me experience and open up further opportunities down the track. The native title internship experience assisted me with addressing selection criteria, having it on my resume, and a point of reference.

What does native title mean to you?

Having a law background gives me the legal understanding of native title, and being Indigenous I can use this knowledge to explain to Indigenous

people the law and process of native title. I am a firm believer that Indigenous people are the custodians of the land. The land, the Dreamtime stories, language and our culture makes us who we are today. Having native title in place is a step forward in recognition as First Nation people of the land, compared to the pre-Mabo era where Indigenous people's continued connection to the land was not recognised. The *Native Title Act* is a starting point, however changes to the Act are needed. Especially changing the onus to the Crown, by disproving the land was not occupied and that connection was lost. I am hoping one day I could be involved in submissions to changing the *Native Title Act*.

Being Indigenous is a blessing, working with Indigenous people in giving their oral testimonies about culture in native title claims is amazing. It reinforces to me that our culture is not lost. I am hoping one day I get the opportunity to work in native title.

What were you doing five years ago, and what do you hope to be doing five years from now?

Five years ago I was working at Wuchopperen Health Service as a Foster and Kinship Support Worker at Savannah house. The work I was doing involved recruiting Indigenous foster and kinship carers. I really

enjoyed this role however it was during this time that I found the courage to apply through Queensland Tertiary Admissions Centre (QTAC) to studying a Bachelor Degree of Law. A few months later I received my letter of offer from JCU, and I never looked back.

Thinking where I was five years ago reminded me that if I had not decided to apply to study at JCU, I wouldn't be a Law Graduate. I'd likely be contemplating what could have been.

I see myself in five years' time as successfully working somewhere as a Solicitor; maybe in Family Law, a Defence Criminal Lawyer and/or in Native title. I am looking forward to seeing where life takes me.

What advice do you have for anyone who is about to embark on the challenges of studying or who is thinking of starting the journey of becoming a lawyer?

Just do it, take a leap of faith and go for it. You owe it to yourself in becoming a better you than yesterday. Ask for help, there is nothing wrong with seeking direction or assistance in whatever you may be facing. Life is not a competition, each individual journey is unique. Seek to educate yourself in knowledge, and continual learning. In time, you will get there.

The Incalculable Imponderable or This Week's Discount?

Timber Creek compensation claim (Northern Territory v Griffiths [2017] FCAFC 106).



Photo: The escarpment stretches for kilometres around the tiny Northern Territory town of Timber Creek. (ABC News: Avani Dias)

The full Federal Court, North ACJ, Baker and Mortimer JJ handed down their joint judgement in the Timber Creek appeal case on 20 July 2017.¹

In many respects it brings us no closer in any practical sense to knowing how to advise what the likely compensation award would be in any given matter, for loss of Native Title rights.

It must be remembered that compensation claims are only possible for extinguishment occurring on or after 31 October 1975 [the commencement date of the *Racial Discrimination Act* *cth*].

Solatium

The primary judge awarded \$1.3M.

Solatium is money paid to recognise hurt feelings, emotional pain or anguish. In this case, it is the hurt and/or anguish suffered by the traditional owners for having their land taken away - taking into account their unique and spiritual connection to the land.

The appeal court described trying to fix a value on solatium was like determining an *incalculable imponderable*.

The Appeal Court ruled that contrary to the arguments of the Commonwealth and the Northern Territory, the Judge did not act on any wrong principal of law in calculating this.

¹ Northern Territory of Australia v Griffiths [2007] FCAFC 106

The appeal judgement discusses at length the factors that should be taken into account, but no formula is given.

In accordance with well-established legal principles that an Appeal Court was not to interfere unless the single Judge's exercise of discretion resulted in a figure that was *demonstrably wrong or manifestly excessive*. The fact that another Judge² might have awarded more or might have awarded less was not grounds for interfering.

The Appeal Court did not overturn the Solatium figure of \$1.3M.

Which valuer to rely upon?

At Trial three (3) valuations were presented to the Court by different valuers hired by the native title holders, the Commonwealth Government and the Northern Territory Government.

On appeal, the choice of the Judge to primarily act on advice of one particular valuer was attacked.

The Appeal Court found that the Trial Judge's choice to prefer one particular valuer based on them having more experience in the Timber Creek area, was a valid choice.

The Appeal Court did not interfere with the value of the different blocks that the Trial Judge had accepted based on the evidence of this valuer.

² The hint here is that the appeal judges may well have fixed lower amounts but were not prepared to say that the trial judges figure was demonstrably wrong or manifestly excessive

Interest

The issue of whether *compound* interest or *simple* interest should apply to the compensation was raised. (NB: Simple interest is only based on the principal amount, while compound interest is based on the principal amount and the accumulated interest.)

Under ordinary principles of compensation law, interest would be payable on the awarded damages from the date of the incident that extinguished native title, to the date of judgment. The Trial Judge made an award of simple interest accordingly.

Whilst the Appeal Court went through various cases that allowed compound interest in certain situations, the Appeal Court said the applicants had not shown in the evidence that any of those situations applied. Therefore the Trial Judge was right to award only simple interest.



Photo: Timber Creek native title holder Alan Griffiths (left), with his son Chris and grandson. (ABC News: Avani Dias)

Value of non-exclusive rights v freehold value

The Trial Judge had fixed the value of **non-exclusive native title rights and interests at 80% of the freehold value** of the land in question.

The Appeal Court said the Trial Judge had “overvalued” the non-exclusive native title rights and interests.

In particular the Appeal Court said that it was necessary to “discount” the value of the claim group’s rights and interests as those rights and interests were “inalienable” (i.e. undisputable).

The Appeal Court also found what they thought were errors in applying known principles of valuation.

They concluded that the non-exclusive native title rights and interests should be put at **65% of the value of a freehold title**.

Compensation for invalid Future Acts

Various structures had been built in reliance upon acts found to be invalid.

The Appeal Court found the claim for damages on this aspect **lacked a clearly articulated basis and the primary Judge erred in awarding damages on this basis**. The Court did however leave the door open by saying that as they had not ruled on the merits, the “*applicant may be able to bring a properly based claim in the future*”.

Order that the compensation be paid to the PBC for them to administer

The Trial Judge had ordered that the compensation be paid to the PBC who would decide how it was to be paid out.

The authority of the Judge to make this order was attacked.

The Appeal Court not only said it was within the Judge’s power, but it was required under *section 95(b) and (c)* of the *Native Title Act*.

Conclusion

The Trial Judges orders were to be changed:

1. To take account of the conclusion that the economic value of the non-exclusive native title rights and interest were to be fixed at 65% of the freehold value
2. To provide for a consequential re-calculation of interest.

Comment

- Why you should discount the value of native title on the basis that it is inalienable makes no sense to the writer. True it is that you can’t wonder down to the local real estate office and list ‘Native Title for Sale’, but as we all know, groups whose native title lands stand in the way of a major development (such as a large mine or transport corridor) have made millions in deals which surrender the native title in order to allow such matters to proceed.
- As there was no formula set out as to how value solatium we are likely to see future judgements that simply say:

Taking all of the [factors as set out by the full Court] into account I fix \$xx as the figure.

Therefore it is likely that we will have to wait until there have been many more judgements so that we have a databank of decided cases that we can turn to for comparison with a new matter, in order to get some indication of a likely result. This could take many years.

- At the time of writing it is not known if a further appeal to the High Court is likely.

**WRITTEN BY:
MARTIN DORE, PRINCIPAL LEGAL OFFICER**





Yarrabah Seahawks

maiden CDRL A-grade premiership over Innisfail puts 17 players into folklore

FAIRYTALES really do come true and the 17 players who won Yarrabah the 2017 CDRL A-grade decider will be people future generations look to as living proof they are possible.

The Seahawks captured their **first A-grade premiership in the club's 17-year history** with a 31-22 victory over Innisfail Brothers at Barlow Park on Saturday night, sparking emotional scenes at full-time as fans stormed the field to celebrate with their heroes.

Milton Mossman was breathless, Hezron Murgha cradled the premiership shield, King Vincent Schrieber cried, coach Eddie Prior was chaired around the ground, all while the Leprechauns wondered how a title shot went begging.

Yarrabah players were awe-struck from the first whistle and it showed when Innisfail shot to a 12-0 lead after 10 minutes.

Once they realised they were here to play footy, boy did they put on a show.

It was through the middle with footwork and direction changes where they wreaked havoc for the usually stoic Leprechauns defence, while Yarrabah themselves muscled up when it counted.

Milton Mossman scored the first try running an angled inside line and Hezron Murgha did the same to score in the shadows of halftime, cutting Innisfail's lead to two just before the break.

Yarrabah maintained the momentum to start the second half and took the lead, but Innisfail countered when Edward Morrison-Sailor scored his second of the night in the 57th minute to level the scores.

Discipline was lacking on both sides and tempers began to flare – the main protagonist a lazy high shot from Sam Bann, who coathangered a runaway

Tim Savage in the 65th minute. Innisfail could not find touch from the penalty and they were made to pay just a few minutes later.

A stroke of individual brilliance from player of the match Coleridge Dabah, a chip and chase from 40m out, led to Hezron Murgha, who was earlier laidbare on the ground, breaking the deadlock.

The frustration led to uncharacteristic ill-discipline from the Leprechauns, who allowed Yarrabah to march upfield and put the result beyond doubt with a Charles Murgha field goal.

Yarrabah captain Milton Mossman said it was all down to heart from his Seahawks as they rode the crowd to victory.

Seventeen years, five years of captaining Seahawks, so much volunteering with the juniors, being a role model, looking after our seniors, being a big brother, uncle to my people, nephew, son, they all had faith and they said one day we're going to get it, just play with your heart. I honestly cannot describe how I feel right now.

They'll call me a champion, but in the end I'm just one of those players that tried to achieve what happened tonight.

Mossman paid tribute to those "that never got a chance to put a Seahawks jersey on" and many of them led the team out in a procession, which even caught out the Gold Medal winner.

"It took me 10 minutes to get into the game I was so emotional about it," he said.

Yarrabah winger Hezron Murgha, who scored a double, said it was a special moment.

"I knew if we were disciplined enough to hold our emotions for the full 80 we'd come out with something special," he said.

I'm lost for words. It's special. It's very, very special. Credit to the these boys. We just hung in there and turned up for each other when it really counts.

The A-grade win was Yarrabah's fifth premiership in all grades on top of reserve grade titles in 2012, 2015 and the curtain-raiser on Saturday night.

This article originally appeared in the Cairns Post on 18 September 2017. Full credit for this article and accompanying images are given to the author Jacob Grams, the publisher Cairns Post and photographer Justin Brierty.





Cairns – Head Office

61 Anderson Street Cairns Qld 4870
PO Box 679 Cairns North Qld 4870
Tel: 07 4042 7000 / Fax: 07 4042 7070

Branch Office - Townsville

Suncorp Tower, 61-73 Sturt St Townsville Qld 4810
PO Box 5296 Townsville Qld 4810
Tel: 07 4421 5700 / Fax: 07 4421 5717

Branch Office - Mackay

Suite 2 Level 1, 38 Macalister Street
Mackay Qld 4740
Tel: 07 4898 6700 / Fax: 07 4898 6777