

MESSAGE STICK

MARCH 2019



YOUR WAY FORWARD FOR NATIVE TITLE

Contents.

03

Message
From The
Chair

05

Update
From The
CEO

07

Congrats
Dawul Wuru
Aboriginal
Corporation

08

The Story
of Four
Directors

09

ORIC:
Duties Of
Directors
And Other
Officers
(Pull Out)

13

Update:
Engagement
&
Development
Support
Team

16

Djabugay
Bulmba
Bama Plan

18

Notes on
Pate V
State Of
Queensland
[2019]
FCA 25



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Cover photo is of Edmund Busch of Tagalaka Tribal Aboriginal Corporation, taken at the December 2018 PBC Forum.

MESSAGE

FROM
THE

Chair



I would like to acknowledge the traditional custodians of the lands on which *our* land council, the NQLC represents. I would like to pay my respects to Elders; past and present. I would also like to acknowledge and pass on my condolences to families of those who have passed in our footprint, and acknowledge their contribution and input into their families, clans, tribe and organisations. Ensuring their legacy lives on through the foundations they have laid in native title and their determined lands.

Welcome to the first edition of Message Stick for 2019. In our last edition of Message Stick we mentioned the approaching PBC Regional Forum being held in early December 2018. We have since had the Forum, which was hosted by the Department of Prime Minister and Cabinet (PM&C), with support from the National Native Title Council (NNTC) and the NQLC. The PBC Regional Forum brought together

20 traditional owner groups across North Queensland. From the Board's perspective it was a wonderful opportunity to have conversations and hear other PBC approaches. There were presentations from PM&C, NNTC, ORIC, Indigenous Land Corporation (ILC) and Indigenous Business Australia (IBA). It was very positive for us to be receiving

the information first hand and it also gave us the opportunity to ask our own questions directly to these corporations. I suggested to PM&C it would be ideal if we could have six-monthly Forums to develop a working relationship where we could upskill and get familiar with what they have on offer in the way of funding and other projects.



Gary Mooney at the PM&C PBC Regional Forum, December 2018.



Patricia Dailachy at the PM&C PBC Regional Forum, December 2018.



Some of you may be aware that the Board of the NQLC is planning a Roadshow for 2019. This Roadshow is to present to you in person the services that the NQLC Board are able to provide you with; get to know *you*, *your* aspirations as a claimant or as a PBC and to be *your* voice in getting your interests fed back to the NQLC administration. There is often misunderstanding around the services that NQLC are able to provide and where certain responsibilities lay. Both NQLC and PBCs sit under ORIC and

the CATSI Act. Just as PBCs have limitations on what they can do or changes they can make, NQLC also have their limitations in accordance with our responsibilities as native title representatives. This Roadshow is an opportunity to have these discussions. The Board will travel to each individual ward from May/ June through to August. Once dates have been finalised we will contact you in the hopes of being able to sit and yarn with you during our visit.

Depending on the feedback we receive during the Roadshows, we may look into having a gathering on a larger scale, similar to NQLC's 2015 Land Summit, to provide information or address any areas of concern that are across the whole footprint. If this is something that you would like to see happen, please contact your Ward Representative with the topics in which you would like presented on, or come and yarn with us during the Roadshow.

In closing, I would like to send my love and support to our Townsville people after the recent floods. Many people experienced great loss and trauma and as they try to move forward I will have them in my thoughts and my prayers.

Kaylene Malthouse

Chair, North Queensland Land Council

| Ward | Ward Representative |
|------------------------|-------------------------------|
| Cairns Ward | Terry O'Shane |
| | Vana O'Shane |
| Innisfail Ward | Victor Maund |
| Mackay/Proserpine Ward | Gary Mooney (Corr. Secretary) |
| Mt Garnet Ward | Alwyn Lyall |
| Palm Island Ward | Arthur Clumpoint |
| Tableland Ward | Kaylene Malthouse (Chair) |
| | Tracey Heenan |
| Townsville/Ayr Ward | Angie Akee (Treasurer) |
| Tully Ward | Phil Rist (Deputy Chair) |
| Yarrabah Ward | Errol Neal |

UPDATE FROM THE

ceo



Hello and welcome to the first edition of Message Stick for 2019.

I sincerely hope that all of our readers enjoyed a lovely Christmas and New Year with family and friends and hopefully got the opportunity to slow down for a while from life's usual hustle and bustle.

I'm pleased to report that the NQLC continues to have quite a number of matters on the horizon for 2019. In the native title claims space, Gulngay is on track to go to consent determination in early April of this year and our priority claims Wakaman, Cairns Regional, Gurambilbarra Wulgurukaba, Yuwibara, Bindal and Warrgamay continue to make steady progress.

We have a number of proposed matters being researched

including Manbarra, South Central Region, Southern Warra, Gia/Ngaro, Gugu Badhun and a sub-regional sea claim.

Things are running full steam ahead in the post-determination space and our Engagement and Development Support Team (EDST) certainly have their hands full. Current EDST matters include small scale miner ILUA negotiations; cultural heritage management agreements for large infrastructure projects; tenure resolution ILUAs; an aggregated carbon project; medium sized negotiations of tin, sand and gold mining; pastoral access ILUA negotiations; NNTC/CSIRO Indigenous land and water enterprise project; WTMA Statutory Plan review and Regional Agreement 'refresh'; and ILUA and agreement

implementation focusing on financial and cultural heritage non-compliance. EDST are also developing policy and procedure manuals; undertaking rule book reviews; tailoring strategic and business planning; and providing corporate structuring advice aligned to business opportunities for the region's PBCs.

But wait, there's more! In addition to the above, the EDST are also working on developing resource kits for PBCs to support best practice administration; developing template resources to support governance and management of native title rights and interests; broadening the scope of regional workshops addressing administrative, governance and financial positioning topics; increasing

*Image (L-R):
Jo Chapman, PBC Support Officer
Renee O'Neill, FAME Project Officer
Jasmine Clubb, Senior Project Officer*



direct, tailored, governance and enterprise development services; doing a broad base review of ILUAs and implementation support; and providing the regular support and capacity development activities and services requested by PBCs. Phew!

For more information on what is happening in EDST, see page 13 for their update.

Some of you will be aware that the NQLC has recently been subject to two reviews – one an examination by ORIC of the organisation's governance and compliance with CATSI; and the other a review of the NQLC's operations commissioned by our funding body the Department of the Prime Minister and Cabinet and undertaken by NOUS Consulting. I wish to stress that both of these reviews

were commissioned by the respective Agencies as routine and as part of regular reviews undertaken across their sectors. I'm very pleased to advise that both reviewers found very little to report with regard to the NQLC, with the few matters identified being easily addressed.

I'd also like to take this opportunity to congratulate the NQLC's Jasmine Clubb on her promotion to the role of Senior Project Officer in the FAME Unit. Jasmine is a long serving, dedicated employee of the NQLC and has definitely earned her promotion, not just through her hard work but also with her completion of extensive training in Indigenous leadership. I must too congratulate Renee O'Neill who has accepted the role vacated by Jasmine and

becomes an ongoing employee in the process.

It's pleasing to see NQLC employees progressing up the ranks and on that note I must also offer a belated congratulations to Jo Chapman who was promoted to PBC Support Officer last year – again due to her hard work and dedication as another long standing employee.

We've got quite a year ahead of us but with the hard work and determination of our region's Traditional Owners and the Staff and Board of NQLC I know that we will make 2019 another year of great achievements.

Steve Ducksbury

CEO, North Queensland Land Council

Congratulations

DAWUL WURU ABORIGINAL CORPORATION WINS ANZSOG'S INDIGENOUS STRENGTH AND LEADERSHIP VIDEO COMPETITION



Dawul Wuru Aboriginal Corporation with Adam Goodes at ANZSOG's Reimagining Public Administration: First Peoples, governance and new paradigms
(Photo credit: ANZSOG)

Congratulations to the deadly Yirrganydji mob for Dawul Wuru Aboriginal Corporations's recent win. Dawul Wuru Aboriginal Corporation (DWAC) were named winners of ANZSOG Indigenous Strength And Leadership Video Competition (along with New Zealand's Ngāpuhi Iwi Social Services). The competition recognised initiatives promoting Indigenous leadership in public administration.

The winners were announced on 20 February 2019, at ANZSOG's Reimagining Public Administration: First Peoples, governance and new paradigms at Melbourne's Federation Square.

"Too often the public debate about Indigenous affairs focus on deficits, on failures and has a sense that things are not improving," said ANZSOG Deputy Dean Associate Professor Catherine Althaus. "It is important that we recognise the strength and resilience of Indigenous peoples and the value of their knowledge and culture."

The Yirrganydji Tourism video outlines the local Indigenous community's role in preserving the Great Barrier Reef and the success in using tourism to create jobs. It also beautifully captures the rich traditional culture and respect for the lands and seas. The video helps teach people how to minimise their footprint on the Reef while still encouraging them to admire its beauty. *"Our People have been enjoying this part of Australia for generations and we invite you to enjoy its beauty with us."*

To watch the video, visit: <https://youtu.be/XMmrr9Od2ss>

Great work!



The Story of Four Directors

This is the Story of four directors named Everyone, Some one, Anyone and No-one

There was an important job to be done by the Directors and it was Everyone's job to do it.

Everyone thought that Some one would do it

Anyone could have done it but No-one actually did it

So it turned out that No-one did what Anyone could have done but didn't because Everyone assumed that Someone would do it.....

DONT BE THESE DIRECTORS

Make sure that it is very clear and agreed who is to do what, when. The Chair should follow up with the person delegated to do a task. Remember there are often tight timeframes to comply with (28 days is common) and a failure to comply can seriously affect your members' interest. ORIC have created a Factsheet on the duties of Directors which we have included in this edition of Message Stick. The Factsheet can be extracted from the stapled centre and kept in your PBC office for your convenience.

Written By: Martin Dore
Principal Legal Officer



Duties of directors and other officers

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) sets out the duties required of directors and other officers. These duties are consistent with the duties under common law and in the *Corporations Act 2001*.



Did you know you can see a corporation's rule book on the ORIC website?

Use 'Search for a corporation' (this searches the public register), put in the corporation's name or ICN and look under 'documents'.

The common law (that's the law developed by judges) imposes special duties on directors and other officers of a corporation, such as a **duty of loyalty** and a **duty of care**. The CATSI Act also imposes duties on directors and other officers. Some of these duties overlap.

Directors and other officers owe these duties to the whole corporation—this means to all its members—and also to stakeholders (such as funding bodies and creditors).

Directors and other officers

The directors make up the governing body of the corporation. They are usually appointed by the members—the corporation's rule book will say how (always check the rule book).

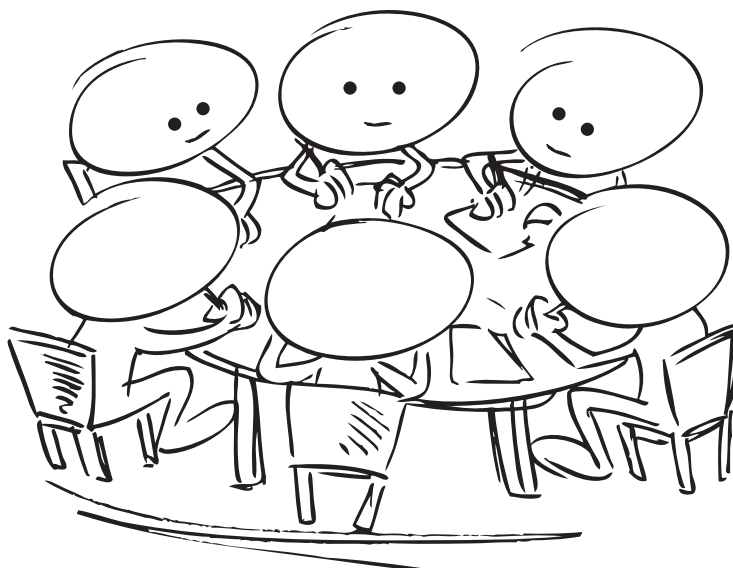
Once appointed the directors have full authority over the corporation and are ultimately responsible for its management. This is why the **directors' duties** exist. They are legal duties that keep the directors loyal and accountable to the corporation—in other words, answerable to the corporation's members—and also to stakeholders.

The CATSI Act also extends the scope of some directors' duties to the corporation's other officers and employees.

Other officers of a corporation are CEOs/general managers, secretaries (in large corporations), chief financial officers (CFOs), special administrators and liquidators—in short, the other people who are involved in making decisions that affect the business of the corporation.

The CEO/general manager is usually the most senior employee and is appointed by the board of directors to look after—or 'manage'—the practical day-to-day business of the corporation, including its property and financial administration.

The duties apply individually—that is to say, each director, officer or employee to whom they apply is personally responsible (and therefore accountable) for meeting them.



NOTE: Not every corporation has a CEO—some prefer the title of 'general manager' or 'executive manager'. In every case however, whoever fills this role follows instructions given to them by the board of directors.



LEGAL DUTIES

DUTY OF care and diligence

(CATSI Act: section 265-1)

Directors and other officers must exercise their powers and carry out their duties with reasonable care and diligence.

This means they take their responsibilities seriously.

Directors who act carefully and diligently are interested in what's happening at their corporation and are well prepared to make decisions. For example, they are across their corporation's affairs and:

- follow their corporation's rule book
- never miss a directors' meeting and always arrive on time
- read all the pre-meeting background papers
- know their corporation's financial position
- are not afraid to ask a lot of questions—especially if some of the matters presented to them are complicated or unclear.

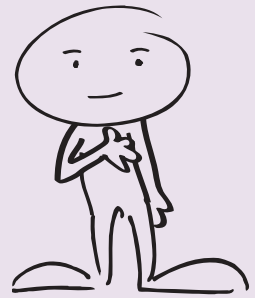
For other officers of the corporation, acting with care and diligence, could mean, for example, preparing accurate and timely reports for the directors so that they are well informed and in a confident position to make decisions in the best interests of the corporation.

Breach of this duty may result in a civil penalty but not criminal liability.

DUTY OF good faith

(CATSI Act: section 265-5)

Directors and other officers must exercise their powers and carry out their duties in good faith in the best interests of the corporation.



This means they must be honest and loyal in their dealings with each other and with the corporation.

For example, directors and other officers who act in good faith never make a decision for their own personal advantage. Their one and only concern is to act in the best interests of the corporation as a whole.

A breach of this duty may lead to a civil penalty or criminal liability, if the breach is reckless or intentionally dishonest.

DUTY TO NOT improperly use position or information

(CATSI Act: sections 265-10 and 265-15)

Directors, other officers and employees must not misuse their position, or use information obtained as a result of their position, to gain a benefit for themselves, someone else or to cause harm to the corporation.

For example, they must never pass on personal details about members to other people nor give out information that might allow someone competing for a corporation contract an unfair advantage.

A breach of this duty may lead to a civil penalty or criminal liability, if the breach is reckless or intentionally dishonest.

DUTY TO disclose material personal interests

(CATSI Act: section 268-1)

Directors must tell each other their personal interests in matters relating to the affairs of the corporation.

This is so directors can avoid making decisions about the corporation which could personally benefit them or their family. 'Material personal interest' is better known as a 'conflict of interest'.

If not handled correctly, conflicts of interest may prevent directors from acting only in the best interests of the corporation.

It is very important to remember that *at all times* the corporation's interests come first.

To manage a conflict of interest, a director must declare 'the conflict' to the other directors. This disclosure can take the form of a 'standing notice' or a notice to a specific directors' meeting (where the issue causing the conflict of interest may be up for discussion).

Disclosing a conflict of interest does not automatically mean a director can't be part of a directors' meeting. It may just mean that for a certain part of the meeting (while the matter is discussed) that director steps out. This allows the other directors to talk freely and to make their decision in a neutral environment. Alternatively, the director may be invited to stay if they have 'the fully informed consent of the other directors to be present and vote' — see section 268-20(4) in the CATSI Act.

A breach of this duty may result in a criminal penalty.

There is nothing wrong with having a conflict of interest so long as you, as a director, disclose all of the information about the conflict of interest to the other directors and abide by their decision how it is managed.

DUTY TO NOT trade while insolvent

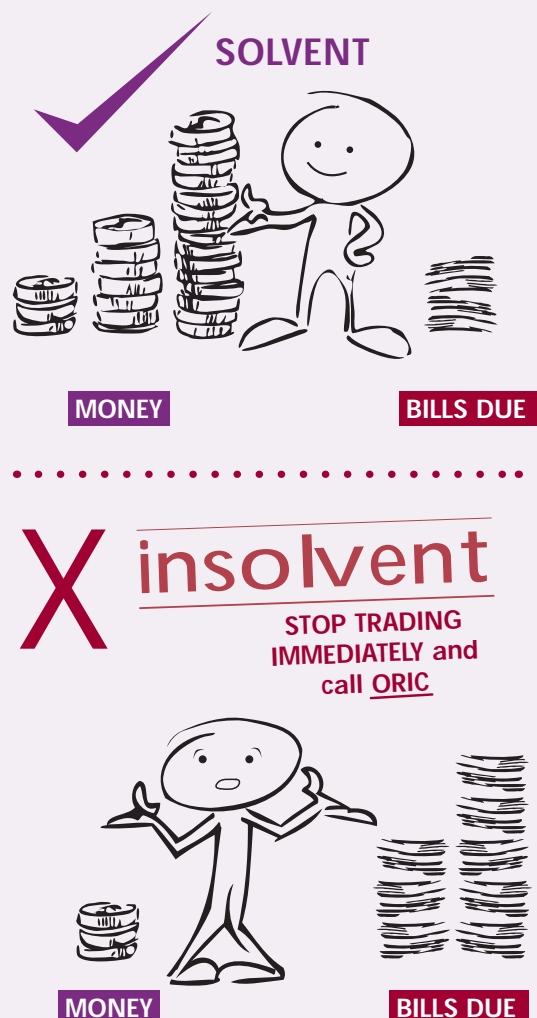
(CATSI Act: section 531-1)

Directors must not allow their corporation to trade when it does not have enough money to pay its bills when they are due.

To be 'insolvent' is to be unable to pay your debts when they fall due. If any one of the directors authorises a transaction, or makes a decision, which causes their corporation to become insolvent, they will have breached their duty to not trade while insolvent.

Directors should always know their corporation's financial position. Only then can they be sure that their corporation is not trading while insolvent.

A breach of this duty may result in a civil penalty and, if dishonest, a criminal penalty.



Consequences of breach

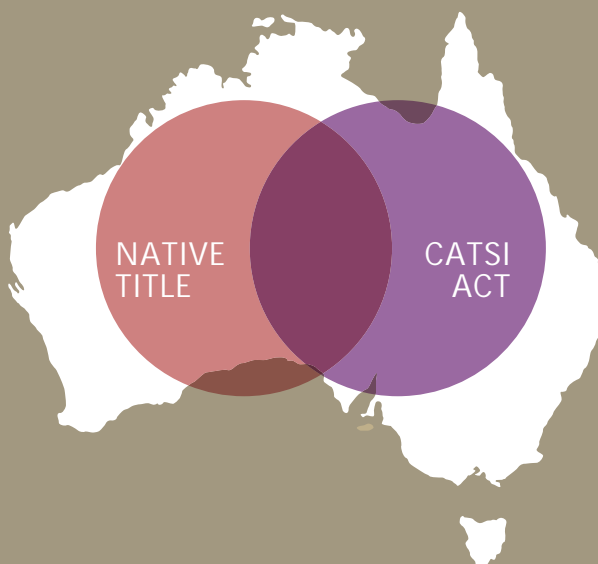
When a duty is breached the consequences will depend on the nature of the duty and the seriousness of the breach. For example:

- **Action by the corporation**—the corporation can take its own action to remove or dismiss the person involved in the breach. The corporation can also take its own civil action to restrain the person involved in the breach and recover compensation for any loss.
- **Civil penalty proceedings by the Registrar**—if a person breaches a civil penalty provision—for example, if a director fails to exercise reasonable care and diligence in carrying out their duties—the Registrar may apply to a court for a ‘declaration of contravention’. The court’s declaration provides conclusive evidence of the breach. If the contravention is serious a court may then order that person to pay a penalty of up to \$200,000 for each contravention to the Commonwealth. A court may also order payment of compensation to the corporation for the damage it has suffered as a result of the contravention and/or disqualify that person from managing a corporation.
- **Disqualification**—in addition to disqualification by a court for a breach of a civil penalty provision, in some circumstances a person is automatically disqualified from managing a corporation, including if they:
 - have been convicted of certain serious criminal offences (including fraud)
 - are bankrupt.The Registrar maintains a register of disqualified officers at oric.gov.au.
- **Criminal prosecution**—a breach of certain duties may attract criminal prosecution and heavy penalties. If a person is found guilty by a court of breaching a duty to the criminal standard and where a criminal penalty applies, the person may be fined and/or sentenced to imprisonment.

Modifications for native title obligations

Corporations that are formed to hold or manage native title are prescribed bodies corporate (PBCs). After their claim is registered they become known as registered native title bodies corporate (RNTBCs).

The CATSI Act makes sure that directors, officers and employees of these corporations are not put in a position where their duties under native title legislation conflict with their duties under the CATSI Act. For example, if you (as a director of an RNTBC) act in good faith and believe that what you are doing is necessary to comply with native title legislation you will not be in breach of duties that apply under the CATSI Act or their equivalent in common law.



NOTE: This fact sheet is not a substitute for legal advice. It is intended as a quick overview of the topic. For more detail see the CATSI Act or consult a lawyer.

CONTACT ORIC

freecall 1800 622 431

(not free from mobiles)

email info@oric.gov.au

website oric.gov.au

Update

ENGAGEMENT & DEVELOPMENT SUPPORT TEAM

The Engagement and Development Support Team (EDST) continues to provide co-ordinated delivery of services and advice to PBCs as the PBC Support Unit (PBCSU) and Future Act Mining and Exploration (FAME) Unit work jointly together in addition to the delivery of each Unit's ordinary functions.

Since our last Message Stick, there have been two staffing changes in the EDST:

- John Cecchi – John started in the FAME Unit (Cairns Office) as a Legal Officer in December 2018. John is a Cairns local and you can read more about him below.
- Gary Lui - who has been in the PBCSU for the last 3 years as the PBC Support Officer, resigned in January to pursue other interests. We are sad to say goodbye, but wish him all the very best for what the future may hold for him.

The FAME Unit has continued to provide direct advice and representation to many of our client groups in respect of future act notifications, negotiations and implementation of agreements. Additionally, it is providing support and advice on a range of projects, such as the re-negotiation of the small scale mining ILUAs operating in our region. Many of the activities were put 'on hold' over the Christmas/New Year period particularly as various proponents slowed their own operations over the period.

The PBCSU has been busy with the acquittal period for the 2018/19 PBC Support Funding during December 2018 to February 2019. We are pleased to report that most acquittals for the first period are completed and the second funding releases have been made.

A particular project of the PBCSU in early December

Meet

John Cecchi
FAME Legal Officer

John is a Cairns born local and recently joined the NQLC team in December 2018 as a Legal Officer for the FAME Unit and has spent his whole life in North Queensland. His mother was born in Mossman to Italian parents and his father migrated to Australia from Italy in the 1950's and cut cane in Mossman, grew tobacco in Mareeba before settling in Cairns to set up his own cabinet making business.

To date John has had a varied career path working in both Cairns and Townsville in a number of management roles including hospitality, automotive refinishing and the building industry until deciding at the age of 40 to go to JCU and get a law degree. Since being admitted as a lawyer in 2013 he has worked on property and commercial matters but mainly as an Immigration Lawyer / Migration Agent where he assisted many New Australians navigate a complicated legal administrative process to realise their dream of migrating to Australia.

John decided it was now time to use his skills and gain new knowledge and expertise to assist the First Australians, being the Traditional Owners of the region where he grew up, to best assert and benefit from their native title rights.

When he is not working he loves spending time with his young family getting out and about and enjoying the best of what North Queensland has to offer.



was co-hosting the PM&C PBC Regional Forum with the National Native Title Council (NNTC) in Cairns on 4 and 5 December 2018. We had 19 of our 27 PBCs in attendance and one representative of a claim group whose determination is in the horizon. The Forum presentations included:

- **DEPARTMENT OF THE PRIME MINISTER AND CABINET (PM&C):** PM&C discussed its approach to developing and supporting PBCs to transition to self-sufficiency, noting that they may pursue funding from other sources such as the Indigenous Advancement Strategy. There are also other program opportunities available to maximise capacity to take advantage of commercial opportunities. PM&C also presented on the proposed reforms to the *Native Title Act*, focusing on the provisions most applicable to PBCs. This bill was introduced on 22 February 2019. A copy of the bill can be found here: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6304.
- **NATIONAL NATIVE TITLE COUNCIL (NNTC):** the membership of the NNTC historically has comprised of Native Title Representative Bodies/Services Providers, but in 2017 they amended its Constitution to allow for PBCs to become members. PBCs are currently not charged a membership fee.
- **ORIC:** was represented by Raymond Lennox, the Regional Officer based in the Cairns office and Lisa Hugg, from Canberra. In addition to discussing the range of services they are able to provide to PBCs, they discussed the proposed amendments to the CATSI Act.
- **INDIGENOUS BUSINESS AUSTRALIA (IBA):** IBA spoke to the breadth of funding options available for home purchase and starting, or expanding, a business.
- **INDIGENOUS LAND COUNCIL (ILC):** noting their commitment to expanding 'Indigenous Estate', Steve Smith of the Brisbane office spoke about their *Our Land Our Future* investment program, which is aimed at assisting Indigenous people to acquire and manage lands for cultural and commercial purposes.

In addition to co-hosting the Forum above, the PBCSU is also designing its Corporate Governance and Compliance Workshop – PBCs will be advised of the proposed date over the coming weeks.

Written by:

Rhonda M Jacobsen
Manager, Engagement & Development Support Team



PBC Forum (December 2018): Maureen Douglas - Tagadaka Tribal Aboriginal Corporation



PBC Forum (December 2018): Desley Mosquito, Wabbadja Aboriginal Corporation



PBC Forum (December 2018): Edmund Busch, Tagadaka Tribal Aboriginal Corporation





PBC Forum (December 2018): Lisa Hogg, ORIC



PBC Forum (December 2018): Steve Dicksbury, NQLC CEO



PBC Forum (December 2018): Wayne Beswick, PMBC



PBC Forum (December 2018): Rhonda Duffin, Djabugay Native Title Aboriginal Corporation



PBC Forum (December 2018): Christina Hart, Djira Warandjurrta Aboriginal Corporation



PBC Forum (December 2018): Reginald Morganston, Goondaloo Aboriginal Corporation



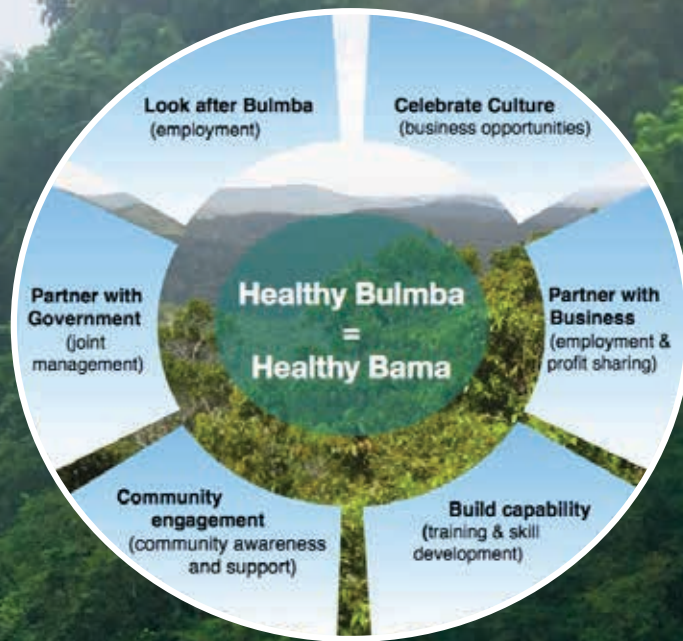
PBC Forum (December 2018): Matthew Storey, NNTC



PBC Forum (December 2018): Kathlene Malhouse, NQLC Chair, Steve Dicksbury, NQLC CEO and all attendees



PBC Forum (December 2018): Valentine Nona, Djira Warandjurrta Aboriginal Corporation



Djabugay Bulmba Bama Plan

(transl. Country) (transl. People)

In December 2004, more than 10 years after lodging their claim, the Djabugay People were officially recognised as the native title holders of Barron Gorge National Park. The native title consent determination was the first within the State of Queensland to determine native title over a national park, and the first determination by *consent* as opposed to a litigated determination.

The determination was granted on the condition that an Indigenous Land Use Agreement (ILUA) be registered. In the absence of a clear legislative framework for co-management, the Djabugay People negotiated an ILUA with the State of Queensland, agreeing in good faith to further negotiate to reach suitable management arrangements for the Barron Gorge National Park. This ILUA expired on 31 December 2010, without an agreement on management arrangements having been negotiated. As a result, there is currently no agreement between the Djabugay Traditional Owners and the State of Queensland regarding the joint management of Barron Gorge National Park, nor any mechanism requiring negotiation of the same.

Therefore, the Registered Native Title Body Corporate for the Barron Gorge National Park determination, the Djabugay Native Title Aboriginal Corporation (DNTAC), has taken the first step to starting a discussion about its aspirations with the State of Queensland. After a series of workshops and community involvement, including the native title holders, DNTAC developed what is now known as the *Djabugay Bulmba Bama Plan* (the Plan).

DNTAC are currently obtaining final feedback and input from the community and the Department of Environment and Science and Wet Tropic Regional Authority.

The 60 page Plan outlines what the PBC want to achieve in regard to on-country actions, as well forecasting its intention to formally enter into a dialogue relating to an ILUA and the structures for joint management of the Barron Gorge National Park. The Plan proposes 14 projects which would see Djabugay People having a say in on-ground decisions, ensuring that they are consulted on major projects for the Park, that the Djabugay Bulmba Rangers work hand in hand with the Queensland Parks and Wildlife Services Rangers and that management and budget decisions are made jointly going forward.



Djabugay Vision

By building upon traditional knowledge and past achievements we lead change for our people.

We achieved Native Title recognition over the Barron Gorge National Park.

We now want to take up our responsibilities as custodians and become actively involved in the operational management of the Park and use our culture and the natural beauty of the Park to create business ventures.

The Djabugay Bulmba Bama Plan is an invitation to the Queensland State Government to work towards achieving a shared vision for the Barron Gorge National Park determination area. The Djabugay People are passionate and eager to take up their customary responsibilities for this culturally significant area.

For many years Djabugay People have expressed concerns about the existing arrangements of the management of Barron Gorge National Park, specifically in relation to the lack of meaningful involvement by traditional owners and Indigenous park staff, restrictions on traditional use of natural resources and the high numbers of tourists and certain tourist activities.

Despite the Djabugay Native Title Determination being the first consensual native title determination over a national park in Queensland, Djabugay People are yet to attain the kinds of joint management arrangements being implemented elsewhere in the state, such as on Cape York and North Stradbroke Island (Bauman, Hayes & Lauder 2013). As noted in the Bulmba Bama Plan, a decade has passed since a Djabugay person has been employed in a park management capacity.

Djabugay People want to take up their responsibilities as custodians and become actively involved in the operational management of the Park and use their culture and the natural beauty of the Park to create business ventures.

Next Steps

Once the Plan is finalised, DNTAC intend to present the Bulmba Bama Plan to the Queensland State government for recognition and endorsement. In the mean-time Djabugay will continue to strengthen relationships with key stakeholders (including QPWS) and tourism industry (including Skyrail and Kuranda Scenic Rail) in order to involve their Rangers in the day to day management of the Park through fee for service arrangements.

Aspirations

- Barron Gorge National Park is universally known as part of a wider Djabugay Cultural Landscape.
- Djabugay Bama to work side-by-side with QPWS to manage and protect the cultural and natural values of the Park.
- Bama Plan and the *Nature Conservation Act 1992* jointly inform the operational plan for Barron Gorge National Park.
- Management and commercial exploitation of Barron Gorge National Park provide long term employment and successful business outcomes.

How to get there

- We will create a Bulmba Plan for the management and interpretation of Barron Gorge National Park.
- We will present the Bulmba Plan to the Queensland State government for recognition and endorsement.
- We will strengthen relationships with key stakeholders (including QPWS) and tourism industry (including Skyrail and Kuranda Scenic Rail) in order to involve our Rangers in the day to day management of our Country through fee for service arrangements.
- We will use Barron Gorge National Park to establish cultural based businesses.

NOTES ON:

PATE V STATE OF QUEENSLAND [2019] FCA 25

18 JANUARY 2019
J REEVES

BACKGROUND

In this matter the Court refused *as a matter of discretion* to grant a non claimant application.

The parcel of land in question was on a Rolling Term Lease.

There had been a total of three separate native title determination applications covering the land at different times. There were two on behalf of Barada Barna Kabalbara & Yetimarla People in 2000 and 2001, and one for Koinjmal People in 2015.

The first did not pass the registration test and was subsequently withdrawn. The second passed the registration test but was subsequently struck out for failure to comply with orders. The third did not pass the registration test and was discontinued.

Accordingly, there were no native title claims at the time the non-claimant application was made and none had been filed within the notification period.

The State did not oppose the non-claimant application.

The Court noted that the formal preconditions set out in 86G in the *Native Title Act (1993)* (NTA) had been met:

1. the application is after the end of the notification period in section 66
2. the Court is satisfied the Order within the power of the Court
3. the making of the order is unopposed.

The Court then noted that if the three preconditions are met the Court may, if it appears appropriate to do so, make the orders sought.

The Court then reviewed the power to make orders. It said that if section 24FA protection arises then the effect will be that native title may be extinguished forever [with the non-extinguishment principle not applying] and replaced by a *right to compensation*.

Further the Court said that if it were to make a negative determination then that will in practical terms stop a claim for compensation.¹

The Court then notes that this seems to, on its face, be inconsistent with one of the main aims of the act namely to *protect native title*.²

1 Paragraph 39 of *Pate v State of Queensland [2019] FCA 25* judgement
2 Paragraph 41 of *Pate v State of Queensland [2019] FCA 25* judgement

Written by: Martin Dore
Principal Legal Officer

The Court concluded that it cannot find a clear expression in the NTA to extinguish the native title it is supposed to be protecting and finds it cannot make a negative determination consistent with the objects of the NTA.

BURDEN OF PROOF

Noting that the leading authority in *Worimi v Worimi Local Aboriginal Land Council [2010] FCAFC 3* confirms that the extent of the evidence will vary depending on the facts and circumstances of each matter but that the burden of proof was on the Non-Claimant¹. This contrasts with the prevailing view that existed before *Worimi*, which was to the effect that if the preconditions were met then that was sufficient².

The Non-Claimant had not adduced any real evidence in this matter and the Court said the application should be refused.³

ROLE OF NATIVE TITLE REPRESENTATIVE BODIES

In criticising the application in regards to lack of evidence, the Court also noted the following reasons why the application should be refused:

1. caution about making in rem orders that would bind the whole world.⁴
2. the non-claimant applicant had not given:
 - i. evidence about the history of the land, the presence of or absence of native title or any Aboriginal connection to it.
 - ii. evidence from the Native Title Representative Body (NTRB) for the area expressing its views as to whether native title rights and interests are likely to exist.

The Court noted that this view from the NTRB was important as one of the functions of an NTRB under section 203BJ of the NTA was to “as far as is reasonably practicable, identify persons who may hold native title” in its area⁵ and that “given the function of an NTRB it is likely the Body will be able to shed some light on the issue”.

3. Noting that in its letter to the non-claimant the State had suggested two alternative options; a Non-Claimant Application or an ILUA, yet the applicant had given no evidence why they had not taken up the most appropriate course of an ILUA⁶.

1 Paragraph 43 of *Pate v State of Queensland [2019] FCA 25* judgement

2 Paragraph 47 of *Pate v State of Queensland [2019] FCA 25* judgement

3 Paragraph 56 of *Pate v State of Queensland [2019] FCA 25* judgement

4 Paragraph 57 of *Pate v State of Queensland [2019] FCA 25* judgement

5 Paragraph 58 of *Pate v State of Queensland [2019] FCA 25* judgement

6 Paragraph 60 of *Pate v State of Queensland [2019] FCA 25* judgement

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