



Message Stick

Your way forward

July 2019



Gulgay Native Title Consent Determination



Jirrbal's Betty Cashmere wins Wet Tropics Management Authority's People. Country. Culture. Award



Engagement and Development Support Team Update



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All participants of the Regional Forum

Message from

Madam chair

Kaylene Malthouse

I would like to acknowledge you, the traditional custodians of the lands on which our land council, the North Queensland Land Council represents. I would like to pay my respects to Elders; past, present and emerging. I would also like to acknowledge the passing of our people, your people, in our footprint and their contribution and input into their families, clans, tribe and organisations. Ensuring their legacy/our legacy lives on through the foundations they have laid in native title and their determined lands. Thank you.

In April of this year, I was so pleased to be a part of the Gulngay Native Title Determination in Tully. I truly appreciate the special connection I feel to the Gulngay People, and have a great fondness for Aunty Doris and Aunty Marjorie. It was such an extraordinary moment seeing this great mob be recognised as the traditional owners of their lands. Many fellow Rainforest People came along to join in on the celebrations, with several also taking to the microphone to extend their congratulations. I too was able to say a few words on behalf of the NQLC and I would like to again extend my blessings to the Gulngay People. Thank you to the staff of the NQLC, NQLC Legal Officer, Cheryl Thomson;

Staff Anthropologist, Kara Dunn; Legal Administration, Laura Burton and Project Officer, Marty Darr for their much-valued expertise and hard work bringing this claim to determination. May we continue to assist the traditional owners of our footprint to achieve the recognition they rightly deserve.

In our last edition of Message Stick, you would have read about the Djabugay Bulmba Bama Plan. I was so pleased to be invited along to the launch of this Plan, which happened in late March in Kuranda. I would like to extend my congratulations to the Djabugay



Kaylene Malthouse (NQLC Chair) with Marjorie Kinjun (Gulngay Elder)



Kaylene Malthouse (NQLC Chair) with Doris Kinjun (Gulngay Elder)

People and thanks Barry Hunter Jnr who worked tirelessly on the Plan for Din Din Barron Gorge National Park. May all your aspirations for the Park come to fruition.

The month of June has been an eventful one. The National Native Title Council and the Federation of Victorian Traditional Corporations jointly hosted the Native Title Conference in Melbourne, with the theme *Land, Rights & Recognition!* It was a productive conference; enabling participants to have conversations relating to the integration of land rights and native title movement with the development of First Nations



Treaties and Constitutional Recognition. It also gave us the opportunity to look at how the mobs in Victoria are doing things.

In June, the Wet Tropics Traditional Owner Leadership Group (TOLG), came together with a gathering of traditional owners at the Genazanno Centre on the Atherton Tablelands. The partners of TOLG are the Wet Tropics Management Authority, the NQLC and Terrain NRM. A number of stakeholders from both the State and Commonwealth were present. Resolutions from the floor of the meeting will direct TOLG forward.

In September of this year, the

NQLC will be holding its biennial ward elections in each of the ten wards. If you would like to re-elect your current ward representative or you know someone you think would make a valuable ward representative, you need to make sure that they are a member of the NQLC and have lived in their current ward for twelve months. Of course they (and those wishing to vote for them) must be present at the Ward booth on the day of the election. On page 18 of this Message Stick, the ward election process, eligibility criteria and the responsibilities of Directors, has been outlined. As long as a member meets all of the selection

criteria, they are eligible to be a Director. The exact date of the September elections is presently being determined and once confirmed, meeting notices will be posted to all members of the NQLC. If you have recently changed address, please do be sure to contact the NQLC office to update your records.

I hope you thoroughly enjoy this edition of Message Stick.

Kaylene Malthouse
Chair
North Queensland Land Council

Steve Ducksbury (NQLC CEO), Alwyn Lyall (NQLC Director) and Kaylene Malthouse (NQLC Chair) at the June Regional Forum.



Barry Hunter Jnr (Djbugay Traditional Owner) and Kaylene Malthouse (NQLC Chair) at the Djbugay Bulmba Bama Plan Launch.



Update from the CEO

Welcome readers, to our July 2019 edition of Message Stick. We're half way through the year already and it will be Christmas before you know it. I'll turn 62 this year and gee it's funny how one's perspective on the progression of time changes as one gets older!

Things are continuing to run full steam ahead both in the pre and post determination space here at the NQLC. Firstly I'm delighted to extend my congratulations to the Gulngay People on their Native Title Consent Determination in April of this year. For a fairly small claim group, I was overjoyed to hear that many neighbouring clans (as Risty put it – "the family") also attended

the celebrations in Tully, really reinforcing the close bonds that the Aboriginal People of the Rainforest share. It's always that extra bit special when a traditional owner group receives their first native title recognition so my congratulations go to the Gulngay People; and I must also say a very well done to the NQLC team that worked on the claim, Cheryl Thomson, Laura Burton, Kara Dunn and Marty Darr. What great work they've done working with the Gulngay People to get the recognition the People rightfully deserve.

Intensive work continues on our priority claims: Wakaman, Cairns Regional, Gurambilbarra Wulgurukaba, Yuwibara,

Bindal and Warrgamay, with steady progress being made. Research continues on claims for Manbarra (Palm Island), South Central Region, Southern Warra, Gia/Ngaro, Gugu Badhun and a sub-regional sea claim in the area between Townsville and Innisfail and we intend to progress the research into claims over the next financial year. Research will also commence shortly into the Jirrbal # 4 claim, which the NQLC recently accepted a request for assistance with, following a period of private representation.

Our Engagement and Development Support Team is continuing to achieve major milestones across both FAME



and PBC Support. Over the last couple of months the PBC Support Unit has organised and delivered three highly successful training forums for our regional PBCs, about which I've received very positive feedback. What's more the PBC team has worked hand in hand with regional PBCs to assist in preparing their 2019/20 funding submissions - and I'm very pleased to say that we have accepted 20 applications before (or very close to) the nominal cut-off date. A record for us! Further, the PBC team has encouraged and assisted three PBCs that haven't engaged with the NQLC before, or for a very long time, to submit applications and I understand that these PBCs have come to us as a result of seeing the great work we are doing in the PBC space. My sincere thanks to Jake, Jo, Rachel & Caitlin for their fabulous efforts. Well done!

The FAME Unit, through Jules

and John, continues to provide strong input and expertise into the refresh of the Wet Tropics Regional Agreement and the 10 year review of the Wet Tropics Management Plan. This has developed into a major area of work for the NQLC but I'm pleased to say that with the enthusiasm and constructive work of the parties, particularly the Traditional Owner Leadership Group (TOLG), WTMA & Terrain, strong progress is being made and an end is now in sight. Having assisted with the foundation work the role of the NQLC will now turn to representing the interests of our clients, the Rainforest Aboriginal Peoples, in negotiations around implementation of the Agreement and Plan

After a number of set backs due to potential cyclones, the NQLC finally had a Team Building Day – the first in my time as CEO, and in seven years for the

organisation. With so many new faces joining the team over the years, this gave us a chance to really get to know each other and connect as a team. I would like to express my gratitude to the Tjapukai Aboriginal Cultural Park for an exceptional day. From the onset the Tjapukai staff went above and beyond to ensure we had the best experience possible. Our two guides were filled with immense traditional knowledge, were thoroughly engaging and had a great comedic wit that we all loved. It gives us a huge amount of pleasure to support a locally run Aboriginal organisation and we thank the Djabugay Traditional Owners for sharing their knowledge and experience with us. If your organisation is considering a team building activity I can only highly recommend the Tjapukai experience to you (and the tucker was great too!).



You may recall that I have previously reported on the routine review of the NQLC commissioned by PM&C and undertaken by NOUS Consulting. Some of you may have been contacted by NOUS for input into the review – in which case thank you for your constructive input. NOUS's final report was provided to the NQLC by PM&C last month and I'm very pleased to say that overall the report was highly supportive of the NQLC's operations. Of course, as is always the case with such things, there were a number of matters identified in which the NQLC could lift its game and I'm very pleased to say that changes are now afoot to address those matters. We have in fact engaged NOUS to do further work on developing options around some of the recommendations about the NQLC's governance model and strategic planning moving into the post determination future. I

hope to be able to report more to you on the outcomes of this engagement in the next edition of Message Stick.

Speaking of new directions and the future some of you will have by now met the NQLC's Economic and Business Development consultant, Gary Kerr. Gary is assisting the NQLC Board to develop an economic strategy and supporting structure. You can expect to hear more from Gary and the Board as developments progress.

Finally, on the staffing front I'm very pleased to announce that Townsville based Legal Officer Cheryl Thomson has accepted a promotion to Senior Legal Officer; Townsville Legal Administration Officer Laura Burton, following her successful studies and recent graduation as a lawyer, has accepted a promotion to Paralegal Officer (to become a Legal Officer

once admitted as a Solicitor); Cairns contract Paralegal Officer Phoebe Mawby Smart has accepted an ongoing position (again to become a Legal Officer post admission); and Townsville Receptionist Tahlia Peckham will take on higher duties as a Project Officer while Sharon Charger enjoys some well-earned Long Service Leave over July and August. I find it very pleasing that we are able to offer staff promotion opportunities as a result of the hard work they do for the NQLC, as a fitting reward.

I hope you enjoy this edition of the Message Stick (thanks Michelle and contributors) and I look forward to catching up with you around the traps.

Cheers.

Steve Ducksbury

Chief Executive Officer
North Queensland Land Council



Jirrbal's Betty Cashmere wins Wet Tropics Management Authority's *People. Country. Culture.* Award

The North Queensland Land Council would like to congratulate Jirrbal Traditional Owner, Elizabeth 'Betty' Cashmere who was awarded the *People. Country. Culture.* award at WTMA's Cassowary Awards.

Betty is a strong voice for the Jirrbal people, advocating strongly for the aspirations of her people on country. She holds, and willingly shares, a great depth and breadth of knowledge about her beloved Jirrbal country within the Wet Tropics World Heritage Area. Betty plays a strong role in the region through her Aboriginal art and tour guiding businesses, fulfilling her role as cultural heritage officer for Wabubadda Aboriginal Corporation RNTBC and contributing to a wide range of committees, corporations and organisations. She is dedicated to protecting and caring for her country, while ensuring cultural knowledge is passed onto the next generation.

NQLC would also like to congratulate fellow nominees for the *People. Country. Culture.* award, Jenny Joyce-Daley and Barry Hunter Jnr. Jenny Joyce-Daley is a Mamu Traditional Owner and a passionate advocate in creating long-term and sustainable outcomes for all Mamu people. Jenny's specific passion is creating a future for Mamu youth, providing opportunities to participate at all levels of community, as well as opportunities for remaining on country for work, rather than having to move elsewhere to make a living.

Jenny volunteers her time and knowledge, progressing many projects for the Mamu people by developing positive partnerships with a focus on inclusiveness.

Barry Hunter Jnr. is a Djabugay Traditional Owner and cultural leader who has worked in land management and cultural development for over 26 years. Through his experience in a range of conservation planning processes including with Queensland Parks and Wildlife Service, Barry has fostered diverse networks across the community, the research sector, government and industry. Barry has taken a lead role in developing the Djabugay Bulmba Bama Plan to provide a path to joint management of the Din Din Barron Gorge National Park, ensuring genuine engagement with the Djabugay community throughout the process.

There are many Rainforest people who work tirelessly for the benefit of Wet Tropics and its people, and these three are doing just that. They are leaders within their communities and they are a wonderful inspiration to all of us.

NQLC proudly sponsored the *People-Country-Culture* category of the Cassowary Awards for the second year running, giving our Chair Lady, Kaylene Malthouse, great pleasure in presenting the award on the night.

Around 250 guests attended the awards ceremony at Tjapukai Aboriginal Cultural Park. In addition to *People-Country-Culture*, there were nine other categories being celebrated. Thorsborne Award for Community Conservation & Rehabilitation; Tourism and Presentation; Innovation; Education; Community Champions; Local Government & Industry Initiatives; Climate Change Leadership; Young Cassowary Award and Chair's Award. NQLC congratulates all of the 50 nominees and especially the 10 award recipients, on their invaluable contributions to culture, conservation, community and innovation.

About the Cassowary Awards

The Wet Tropics Management Authority's Cassowary Awards were established in 1999 to celebrate and support the outstanding contributions made towards the conservation and preservation of the Wet Tropics World Heritage Area.

The Awards seek to recognise exceptional conservation efforts from a diverse range of individuals, groups and organisations including farmers, conservationists, students and educational bodies as well as scientists, artists and tourism operators.

Communiqué regarding the Uluru Statement from the Heart

Far North Queensland

May 2019

“

“We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.”



Redferendum Council co-chair Auntie Pat Anderson, 1967 referendum campaigner Auntie Ruth Henning and UNSW Pro Vice Chancellor (Indigenous) Professor Megan Davis.

On the second anniversary of the Uluru Statement from the Heart, First Nations representatives from across the country met in Cairns and gathered at the Tree of Knowledge in Yarrabah, to renew the invitation forged at Uluru.

We pay tribute to the men and women whose heroic efforts led to the successful 1967 Referendum 52 years ago. We met with two of those heroes – Ms Ruth Hennings, aged 85, and Mr Alf Neal, aged 94 – both of whom were awarded the Order of Australia in 2019 for their services to our people.

We thank the growing movement of Australians from all walks of life who have pledged their support for the Uluru Statement from the Heart. This is a movement that is growing and will continue to grow.

Australia has an opportunity to honour and build upon the legacy of 1967. The Australian people united then and we can do it again.

We welcome the Australian Government's commitment of \$7.3 million for the design of the Voice proposed at Uluru, and \$160 million for a referendum to achieve it. We seek to meet with the Prime Minister as soon as possible about how best to proceed. The way forward must be informed by Aboriginal and Torres Strait Islander people throughout Australia.

We invite all Australians to walk with us on this journey, thoughtfully and with purpose, and to support our voice being heard.

This communiqué is issued on behalf of participants at an Uluru Dialogue workshop convened in Cairns and Yarrabah on 24–26 May 2019 by the Indigenous Law Centre UNSW and the NSW Aboriginal Land Council.

NOTE TO MEDIA

Please direct any media enquiries regarding this Communiqué to Gemma McKinnon, Indigenous Law Centre (UNSW) on 0449 101 954.

Attributable Quotes from participants in the Uluru Dialogue workshop convened in Cairns and Yarrabah on 24–26 May 2019



"The will of the people in '67 was to be united as one, and we now seek a similar endorsement, inclusive of all Australians, with the aspirations of the Uluru Statement to carry us forward."

– Kaylene Malthouse, North Queensland Land Council (Chair)



(Picture © Chris Gundy/KLC)

"This is one of the most powerful chapters in our Australian journey with its Indigenous peoples."

– Nolan Hunter, Kimberley Land Council (CEO)



(Picture © @KirstieMParker)

"We asked the country to come and walk with us and we continue to say that. This is for all of us tjungu (together), we must be tjungu."

– Sammy 'Uluru' Wilson, Central Land Council (Chair)



Gulngay

native title consent determination

Congratulations are in order for the People of Gulngay Country. On Thursday 4th of April 2019 the Federal Court of Australia determined that almost 37,000ha of land and waters in and around Tully was and is, the traditional country of the Gulngay People.

The native title consent determination recognised 2,000ha of exclusive and 35,000ha of non-exclusive native title rights and interests to the Gulngay People.

The Federal Court Hearing took place on country at the Tully Country Club and was heard by Justice Robertson. There were approximately 120 people in attendance which consisted of not only the Gulngay People, but also people from neighbouring countries: Girramay, Mamu, Djiru and Nywaigi. For a claim group made up of only seven people, to see such a huge amount of support from neighbouring countries



cements the history and stories between the Rainforest People. In the words of traditional owner Mr Phillip Rist, *"they [the Gulngay People] may be a small group, but they have a big family"*.

On behalf of the North Queensland Land Council, congratulations to Marjorie, Doris, Clarence, Joanne, Tyson, Matthew and Joseph on achieving your consent determination.

Cheryl Thomson
NQLC Legal Officer





United Nations Permanent Forum on Indigenous Issues

NQLC is a member of the National Native Title Council (NNTC) and Rhonda Jacobsen (Jake), Manager of NQLC's Engagement and Development Support Team, was appointed as a Director on the NNTC in February 2019. In this capacity she was invited to attend the United Nations Permanent Forum on Indigenous Issues last April, in New York.

Below, Jake talks of her experience at the Forum.

It was an honour to be invited to attend the 18th session of the *United Nations Permanent Forum on Indigenous Issues* (UNFPII18) in the first week of the Forum - 22 to 26 April 2019. The theme was *Traditional Knowledge: Generation, Transmission and Protection*. It was my first exposure to the mechanics of the UN.

The Forum was structured to hold plenary sessions in the morning and late afternoon and was complimented by an array of side events for participants to attend over the course of the day.

The plenary sessions comprised of a panel talking to the theme, and followed by an opportunity for delegates to make an 'intervention' to the UN. Interventions are an opportunity for the delegates to raise issues affecting them and request action/s of the UN. Not all requests for an intervention are approved and those that are approved are strictly limited to 3 minutes for presentation. There were approximately 30 Australian delegates and a number of interventions were accepted and delivered.

Whilst the experience of attending the Forum and witnessing first hand the mechanics of the UN, the substantive benefit of attending was in the information being shared and networks to be made. There were a number of side events that focussed on the implementation of various UN Conventions and Declarations, and delegates of communities spoke to specific actions they were taking. These were valuable to appreciate how our clients can embody the UN instruments into their way of doing business. This resonated as a theme that many of our clients have previously expressed the desire to reflect the instruments in such things as their policies/procedures; template documents such as a negotiation protocol and the like.

Most of the sessions I attended were related to biodiversity and food sovereignty. And again this resonated, as food security is a critical need of clients for traditional purposes (hunting, fishing etc); respect for and protection of traditional scientific knowledge to combat the ravages of climate change and previous poor land management where responsibility for management has been assumed by the State; and indeed the potential for their knowledge, practices and products to be of commercial value.



All in all, it was an incredible experience and reinforced the potential to further scope and maximise potential leveraging and implementation of UN instruments at a policy/advocacy level and supporting our clients implement them at operational/governance levels.

Further information on the Forum and access to the documents/papers that are published are available at: <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/18-2.html>

Rhonda M Jacobsen
Manager – Engagement and Development Support Team



NQLC WARD ELECTIONS

SEPTEMBER 2019

Date and venues to be advised

It's that time again when you get to have your say on who you believe should sit on the Board of the North Queensland Land Council.

The ward elections occur every two years, this year taking place in September on a date to be determined by the Board. As in previous years, there will be a ward election in each of NQLC's 10 wards (Cairns, Tablelands, Yarrabah, Tully, Palm Island, Townsville/Ayr, Innisfail, Mt Garnet, Hughenden/Charters Towers and Mackay/Proserpine). Notices will be posted to all NQLC members at their home address. Please ensure if you have recently moved addresses that you notify the NQLC.

What happens at the ward elections?

In order for each area of the NQLC footprint to be equally represented within the Board of Directors, the areas have been broken up into 10 representative wards: Cairns; Charters Towers/Hughenden; Innisfail; Mackay/Proserpine; Mount Garnet; Palm Island; Tablelands; Townsville/Ayr; Tully and Yarrabah. Based on the approximate percentage of members within each ward area, there is one representative for all wards except for Cairns and Atherton, which have two representatives.

On the day of the election:

On the day of election, members will need to sign the attendance record upon arrival and check their address to ensure that they are eligible to vote or stand for election.

As soon as there is a quorum (20 persons or 20% of the eligible electors - whichever is the highest) and the appointed start time has been reached, the meeting will be opened by the NQLC representative.

NB: There is no requirement to wait any period of time past the appointed time if all present have signed in and a quorum is present.

If there is no quorum by 30 minutes after the start time, the NQLC representative will postpone the meeting for another 60 minutes. Once the 60 minutes is up, the election will proceed whether or not a quorum has been reached.

The NQLC representative will state the number of directors to be elected, will read out the disqualification rules and call for nominations for director.

For a nomination to be counted, it should be seconded by another member other than the person nominated and the person nominated must accept the nomination.

Nominated members will then need to sign a Consent to Act as Director Form, giving their consent and declaring they are not disqualified.

If more than one person is nominated, a secret ballot will determine who will be elected based on the majority of votes received. If there is only one person nominated, they will be elected unopposed.

The successful candidate/s become Board Members at the close of the next Annual General Meeting following the election. The elected term expires at the second Annual General Meeting after that which is approximately two years.

Who can become an NQLC Director?

To be eligible to run for election to the board under the NQLC Rules:

- You must live permanently within the ward you are running for
- Be an Aboriginal person and a member of the NQLC

You are disqualified from election to the board under the CATSI Act if you are a person who:

Conviction

Section 1

- (a) is convicted on indictment of an offence that:
- i. concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of an Aboriginal and Torres Strait Islander corporation; or
 - ii. concerns an act that has the capacity to affect significantly the financial standing of an Aboriginal and Torres Strait Islander corporation; or
- (b) is convicted of an offence that:
- i. is a contravention of this Act and is punishable by imprisonment for a period greater than 12 months; or
 - ii. Involves dishonesty and is punishable by imprisonment for at least 3 months; or
- (c) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.

The offences covered by paragraph (a) and subparagraph (b)(ii) include offences against the law of a foreign country.

Section 2

The period of disqualification under Section 1 starts on the day the person is convicted and lasts for:

- (a) if the person **does not serve** a term of imprisonment -
5 years after the day on which the person is convicted; or
- (b) if the person **serves** a term of imprisonment - 5 years after the day on which the person is released from prison.

Bankruptcy or personal insolvency agreement

Section 3

A person is disqualified from managing Aboriginal and Torres Strait Islander corporations if the person is an undischarged bankrupt under the law of Australia, its external territories or another country.

Section 4

A person is disqualified from managing Aboriginal and Torres Strait Islander corporations if:

- (a) the person has executed a personal insolvency agreement under:
- i. Part X of the Bankruptcy Act 1966; or
 - ii. a similar law of an external Territory or a foreign country; and
- (b) the terms of the agreement have not been fully complied with.

Disqualification under Corporations Act

Section 5

A person is disqualified from managing Aboriginal and Torres Strait Islander corporations at a particular time if the person is, at that time, disqualified from managing Corporations Act corporations under Part 2D.6 of the Corporations Act.

You are disqualified by the Head Agreement for Indigenous Grants and the Project Schedule thereto for general grants for native title representative bodies and service providers if:

- The person is an undischarged bankrupt
- There is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy
- The person has been given final judgment for a debt and the judgment has not been satisfied
- Within the last 5 years, the person:
 - Has been convicted of an offence/s against a Commonwealth, State or Territory law involving dishonesty
 - Has been released from prison after having been imprisoned for offence/s involving dishonesty
 - Is or was a director or occupied an influential position in the management or financial administration that had failed to comply with funding or grant requirements of the Commonwealth, the Aboriginal and Torres Strait Island Commission or its predecessors
- The person is otherwise prohibited from being a Director, employee or responsible officer of the Provider under Commonwealth, State or Territory legislation.

Director's responsibilities to NQLC

Being a Director is an important and high level role within the NQLC, and with it comes many responsibilities that need to be fulfilled.

- All Directors must have read the NQLC Rule Book and follow the rules at all times.
- The Board of Directors is responsible for setting policies and the priorities of the NQLC, and the strategic planning to achieve these.
- The Board of Directors is responsible for NQLC's statutory functions under the NTA which are facilitation and assistance, certification, dispute resolution, internal review, agreement making, notification and other functions.
- The Board of Directors is responsible for the appointment of NQLC's Chief Executive Officer to manage the administrative affairs of the corporation.
- The Board of Directors is responsible for the setting, running and record keeping of general meetings, annual general meetings and ward elections.
- The Board of Directors is required to represent the corporation at high level events including political forums and conferences.
- The Board of Directors is responsible for the review and

approval of budgets, and ensuring the requirements of NQLC's program funding agreement are being fulfilled.



Responsibilities to your fellow board members

Respect should be given to your fellow directors for the time they have taken out of their busy lives to travel and prepare for board meetings, by attending all board meetings, on time, and fully prepared.

The NQLC Board of Directors is required to meet a minimum of once each quarter, with additional meetings being held if required. In order to be a Director of the NQLC, you will need to make yourself available for these meetings.

Assistance with travel expenses to attend Board meetings is provided. Directors are not paid attendance fees (the role is voluntary) for Board meetings however can be reimbursed for lost wages and/or out of pocket expenses.

For a Board Meeting to go ahead, a quorum of at least seven directors is required.

Responsibilities to NQLC members within your elected ward

NQLC has in excess of 900 members throughout its 10 wards. As your ward's representative, you have a responsibility to be approachable to these members and to assist them with concerns about NQLC's operations or to pass on these concerns to the Chief Executive Officer and your fellow directors.



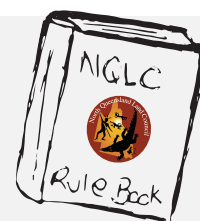
Why does the NQLC have a Board of Directors?

North Queensland Land Council operates as a Native Title Representative Body whose appointment is by the relevant Federal Minister. NQLC is a body incorporated under the provisions of the Corporations (Aboriginal and Torres Strait Islanders) Act, better known as the CATSI Act. The CATSI Act requires a body incorporated under the Act to have a Board of Directors.

Director's legal responsibilities

Duty of care and diligence

A director has a duty of care and diligence in all aspects of their role. This means they take their position seriously and have a genuine interest in the corporation and its goals. Directors must ensure that they are across all aspects of their role, including following the NQLC Rule Book, attending all board meetings fully prepared and remain focused on the corporation's vision.



A director must be honest and loyal in their dealings with each other, the corporation and its stakeholders. A director must always act in the best interest of the NQLC and its members and never use their position for personal gain.

Duty of good faith

Duty to not improperly use position or information

A director must never use their position or information they've gained as a result of their position to obtain benefit for themselves or anyone else; or to cause harm to anyone or to the NQLC. Information obtained through the role as director is to remain confidential at all times.



Directors must tell each other of any potential or perceived conflicts of interest in matters concerning the NQLC. By disclosing an interest, a director is not necessarily exempt from being a director or from attending a board meeting, however they may be asked to step out while certain matters are discussed.

Duty to disclose material personal interests

Duty to not trade while insolvent

Directors have a duty to ensure that the NQLC does not carry out its role as a native title representative body if it is unable to pay its bills, i.e. is insolvent.

Have a question?

Feel free to contact us on freecall:

1800 814 779



For more information please refer to the NQLC Rule Book which can be downloaded from the Directors page of our website: nqlc.com.au.

Compensation for the Extinguishment of Native Title



In 2011, the Ngaliwurru and Nungali people lodged a compensation application¹ for the loss, diminution, impairment or other effect on their native title rights as a result of compensable acts by the Northern Territory between 1980 and 1996. Almost 10 years and two court appeals later, the High Court has handed down its momentous decision to award the claim group \$2.5 million compensation. This amount consists of \$320,250 for economic loss, \$910,100 for pre-judgment interest on that loss and \$1.3 million for cultural loss. As a result of appeals by the Northern Territory and the Commonwealth, this amount was reduced from \$2.9 million in the Full Federal Court, which was reduced from \$3.3 million in the Federal Court.

Nevertheless, the High Court decision to compensate the Ngaliwurru and Nungali people has been described as the most significant Native Title decision since Mabo. The applicable principles decided in the case will be useful for informing the value of compensation determinations in the future. It is anticipated that the decision will likely start the process of dealing with many of the unresolved compensation liabilities owed by the Commonwealth and the States.

The High Court indicated that the assessment of compensation² payable as a consequence of the Northern Territory's extinguishing acts, required an assessment of both the economic loss and cultural loss suffered by native title holders. The particular compensable acts included construction of various public works and grants of leases and freehold titles. Historical grants of pastoral leases had partially extinguished native title so the claim group's compensation was assessed in relation to non-exclusive native title rights and interests.

ECONOMIC LOSS

To assess economic loss, there will need to be a calculation of the freehold value of the land to measure the economic value of exclusive rights. For non-exclusive native title rights, this amount will be subject to a percentage reduction depending on the particular claims group's rights and interests in comparison to exclusive native title. In Timber Creek, the majority judgement found that the People's rights were essentially '*usufructuary*' [meaning: an interest in the land that is not ownership], *ceremonial and non-exclusive*³ and so, were awarded 50% of the freehold value.

1 s 61(1) of the Native Title Act 1993 (Cth)

2 Ibid, s 51(1)

3 Griffiths v Northern Territory [2019] HCA 7, Majority Judgement at [106]-[107]



CULTURAL LOSS

Compensation for cultural loss is assessed by attempting to measure the loss of spiritual and cultural connection with the land, based on the traditional laws and customs acknowledged and observed by the claim group. A non-precise ‘*evaluative*’ monetary value will be calculated for the ‘*loss of attachment to country and rights to live on, and to gain spiritual and material sustenance from, the land*’⁴. The majority judgement described the extinguishing acts as ‘*punched holes in what could be likened to a single large painting – a single and coherent pattern of belief in relation to a far wider area of land*’. The judgement recognised that some of the compensable acts affected not only the precise locations of the cts but, in a more general way, related areas. This is in accordance with the spiritual and metaphysical relationship to country that views land as one indissoluble whole. The amount will also need consider what the Australian community would see as an appropriate, fair or just award without restraint or limitation.

PLO COMMENTS

Martin Dore, the Principal Legal Officer at NQLC notes that although there is much excitement about the outcome of this case, there are some important points to consider. Firstly, compensation can only be claimed for the extinguishment of native title after 1975 (the date the *Racial Discrimination Act* came into existence). In many claims, the extinguishment of native title by the States and the Commonwealth occurred before 1975.

Further, in the case of Timber Creek, the Northern Territory Government conceded that but for their improper extinguishment of native title, the relevant Ngaliwurra and Nungali People would have held native title over the area. Given that a determination recognises rights over land where native title rights have not been extinguished in the past, it is unlikely that this area will be subject to improper extinguishment. Thus, unless you can get a similar concession from the Government, claimants may face the possibility of running a mini trial before compensation can be awarded.

Lastly, it should also be noted that many of the more recent extinguishments of native title have dealt with compensation through agreements with the native title holders.

COMPENSATION FACT SHEET

The High Court's recent judgment¹ in the Timber Creek native title compensation case looked at some of the legal issues regarding native title compensation where native title rights and interests have been extinguished or affected. Significantly, the Court explained how the value of compensation under the *Native Title Act 1993* (NTA) should be calculated.

The High Court explained that you need to consider the economic value of the land where native title rights have been extinguished or affected, and the cultural loss suffered by native title holders as a result of the extinguishment or interference with native title rights.

COMPENSATION FOR THE ECONOMIC VALUE OF THE NATIVE TITLE RIGHTS AFFECTED

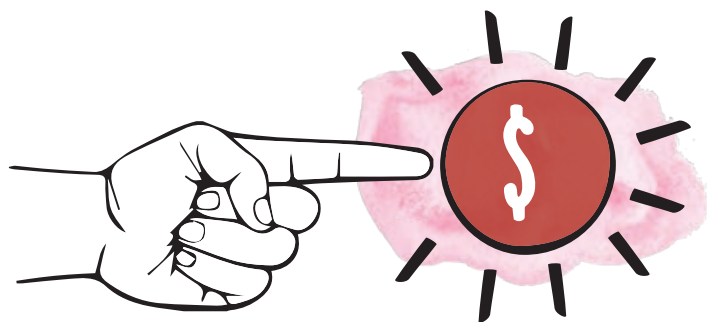
The High Court said that one part of the compensation is calculated by working out the economic value of the land on which native title has been extinguished or affected.

- The Court said that the starting point is that *exclusive* native title rights are comparable to the full freehold value of the land.
- In the Timber Creek case where the native title rights were *non-exclusive* the High Court said that based on the evidence about those native title rights, the claimants were entitled to compensation at 50 per cent of the freehold value of the land.
- The Claim Group was also entitled to be paid interest on the economic value they should have received at the date the native title rights were extinguished. The Court said that depending on the evidence, interest could be calculated on a simple interest basis (as was appropriate in this case) or on a compound interest basis.

COMPENSATION FOR CULTURAL LOSS

The High Court said that the other significant part of compensation under the NTA is compensation made on just terms for the cultural loss suffered by the claimants.

- This requires a Court to recognise the spiritual relationship claimants have with their country and the spiritual hurt caused to them when their native title rights and interests are extinguished or affected.
- The High Court said that the compensation provided to a Claim Group for the cultural loss they have suffered should be an amount that society would regard as appropriate, fair and just to compensate for the effect on their native title rights and interests.



¹ *Griffiths v Northern Territory* [2019] HCA 7

SOME ISSUES TO CONSIDER WHEN PREPARING A COMPENSATION CLAIM

There are many important issues to consider when preparing, and before lodging, a native title compensation claim. Some of these include:

- Can you prove that members of the Claim Group had native title rights in the relevant area at the time native title would have been extinguished or affected? If the Federal Court has already made a determination of native title over the area and recognised members of the Claim Group as the native title holders, this threshold issue will have been satisfied. If there has not been a determination of native title you need to consider if you have good prospects of achieving a favourable native title determination.
- Compensation is generally only payable under the NTA if native title rights were extinguished after October 1975 when the Racial Discrimination Act commenced. Have you undertaken comprehensive historical tenure searches and expert analysis to confirm that native title was extinguished or affected after this time, and not before?
- Who should make the compensation claim and how will any compensation be dealt with? In most situations, a Claim Group will need to authorise and make a compensation claim and make decisions about related matters. There will also be circumstances where a PBC may be able to bring a claim for compensation over some areas of land within a determination area.
- Are suitable experts available to assess the economic value of the land where native title has been extinguished or affected?
- Are suitable legal, anthropological and other experts available to assist in preparing expert reports and other evidence required to show the extent of cultural loss that has been suffered?

CONSIDER ALTERNATIVE OPTIONS TO MAKING A COMPENSATION CLAIM IN THE FEDERAL COURT

It is apparent that preparing and successfully running a compensation claim in the Federal Court will take several years and require significant resources.

It is also likely that future compensation claims will raise legal issues that have not yet been decided by the High Court. Some of these issues will be appealed to the Full Federal Court, and possibly to the High Court, and this will add significantly to the cost and time required to resolve compensation claims.

For these reasons, and to ensure that most resources are used to compensate native title holders rather than pay for lengthy and costly court proceedings, it may be worth exploring other processes to resolve native title compensation matters. One option would be to consider negotiating comprehensive regional settlements with Commonwealth, State and Territory governments, as these settlements could:

- provide for the payment of compensation for government actions that have already extinguished or affected native title within a region.
- set up a process for compensation to be paid for future acts in the region.
- provide sufficient resources for PBCs so they can carry out their responsibilities and activities on behalf of native title holders.

For more information about compensation applications and the implications of the High Court decision contact your Native Title Representative Body or Service Provider.



National
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Council

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The National Native Title Council (NNTC) is the peak body for the native title sector made up of regional Native Title Representative Bodies (NTRBs) and Native Title Service Providers (NTSPs), and local Prescribed Bodies Corporate (PBCs) and Traditional Owner Corporations (TOCs). Our mission is to maximise the contribution of native title to achieving and improving the economic, social and cultural participation of indigenous people.

Judicial Review – the Mirvac Decision

Background

Preparing to develop the cultural heritage management plan

On 24 February 2017, Mirvac Queensland Pty Ltd (Mircvac) advised the chief executive of the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) of its intention to develop a cultural heritage management plan (CHMP) for a proposed residential development at Greenbank (Greenbank Project), pursuant to section 91 of the *Aboriginal Cultural Heritage Act 2003* (the ACHA).

Mircvac also provided a written notice to the previously registered Jagera People #2 native title claimant (Jagera People) as the native title party and Aboriginal party for the Greenbank Project area on the same day.

On 7 March 2017, the Jagera People were endorsed by Mircvac to develop the CHMP for the Greenbank Project.

On 6 September 2017, Mircvac provided DATSIP with an executed CHMP for the Greenbank Project developed with the Jagera People and requested that it be approved by the chief executive plan in accordance with section 107(1)(b) of the ACHA. All consultation parties agreed that the CHMP should be approved.

Loss of Aboriginal party status

On 4 August 2017, the Yuggera Ugarapul People native title claim was registered over a small portion of the Greenbank Project area.

On 14 September 2017, the Danggan Balun (Five Rivers) native title claim was registered over the remainder of the Greenbank Project area.

This meant that from this date, the Jagera People were no longer the native title party or an Aboriginal party for any part of the Greenbank Project area.

This raised the question – **Can an Aboriginal party who loses its native title party status remain the endorsed party to a CHMP?**

Refusal to approve the plan

On 30 October 2017, the chief executive determined that **at the time a decision was made to approve the CHMP**, the Jagera People were no longer the native title party for the CHMP area and the loss of this status resulted in the loss of their endorsed party status. The CHMP therefore could not be approved under section 107(1)(b) of the ACHA as, according to the chief executive, the relevant elements of this section did not apply.

The chief executive, having determined that there was no endorsed party for the CHMP, needed to consider the CHMP under section 107(2) of the ACHA. The chief executive refused to approve the CHMP as it did not make enough provision to avoid harming Aboriginal cultural heritage due to the involvement of a party that was no longer the Aboriginal party.

Judicial Review

On 21 November 2017, Mircvac filed an application for a statutory order of review of the chief executive's decision to refuse the approval of the CHMP under section 20 of the *Judicial Review Act 1991* (Qld).

The review was founded on the belief that the chief executive had erred in law by refusing to approve the CHMP.

On 7 February 2018, the matter was heard before Justice Bond in the Supreme Court of Queensland.

The Mirvac Decision

On 31 October 2018, Justice Bond delivered his judgment and ordered:

- the decision to refuse to approve the CHMP be set aside, and
- directed that the chief executive **must** approve the CHMP pursuant to section 107(3) of the ACHA.

The court determined that the elements described in section 107(1)(b) of the ACHA **did apply at the time the CHMP was submitted for approval**, namely:

- the Jagera People were still the Aboriginal party (and therefore the endorsed party), and
- all of the consultation parties agreed to have it registered.

Subsequently, and in accordance with section 107(3) of the ACHA, the chief executive **must** approve the CHMP.

Implications of the Mirvac decision

The decision has clarified the operation of section 107 and the obligations of the chief executive in deciding whether or not to approve a CHMP in circumstances where an endorsed party has lost its status as an Aboriginal party.

The Mirvac decision has made it clear that the relevant time to consider the factual circumstances described in section 107(1) of the ACHA is at the time the CHMP is submitted to the chief executive for approval – regardless of when the chief executive actually considers the CHMP for approval.

The decision also dispels a widely held assumption that an Aboriginal party will remain the endorsed party regardless of whether it loses this status prior to submitting the CHMP to the chief executive for approval.

The decision clearly states that an endorsed party that loses its status as the Aboriginal party for the CHMP area cannot be described as an endorsed party.

Therefore, in circumstances where an endorsed party for a CHMP loses its Aboriginal party status **prior** to a CHMP being submitted to the chief executive for approval, then the CHMP may not be approved under section 107(1) of the ACHA as the mandatory duty imposed by section 107(3) would not apply.

The decision does however raise the question of whether the formalised process for sponsors – to notify and endorse Aboriginal parties **at the time of notification** – reflects the original intention of Part 7 in the protection of cultural heritage under cultural heritage management plans?



Engagement and Development Support Team

The last quarter of the financial year is always a busy time for the Engagement and Development Support Team (EDST) and some of the key activities are updated below.

FAME Unit

In addition to the ongoing delivery of legal and support services directly to individual client groups, the FAME Unit has been working on a number of future act projects that involve more than one group. They have also provided important support and contributions to the workshops and other activities of the PBC Support Unit which is discussed further below.

PBC Support Unit

May was an extremely busy period for the PBC Support Unit (PBCSU) where we held three workshops over three weeks and processed the PBC Support Funding applications.

PBC Administrative & Financial Governance Support Workshop

This Workshop was a brand new workshop which was offered to administrative staff and the treasurers of PBCs to strengthen their skills and knowledge of the administrative, financial and reporting requirements to support the Board in their governance.

The workshop included hands-on training (delivered by Sutherland Training) in the Microsoft Office Suite and the accounting program MYOB, we could only have 15 participants at each session. We held the training in two sessions over two weeks, 7-9 May and 14-16 May in Cairns.

Having 15 PBCs represented over the two weeks was fantastic and we received some wonderful feedback on the workshops. The PBC administrative officers also expressed an interest in further upskilling and opportunities



Edmund Busch, PBC Administrative & Financial Governance Support Workshop



Janet Freeman, PBC Corporate Governance & Compliance Workshop



Shane Carroll at the PBC Corporate Governance & Compliance Workshop



Ange from Sutherland Training, PBC Administrative & Financial Governance Support Workshop

to network, so we are working toward offering another workshop just for administrative staff to further advance their Microsoft Office and MYOB skills.

PBC Corporate Governance & Compliance Workshop

This was held on 21-23 May 2019 in Cairns. Designed to strengthen director's knowledge and skills of corporate governance and compliance requirements, the objectives of the Corporate Governance and Compliance Workshop were to:

- strengthen an understanding of corporate governance requirements and legislative frameworks
- further develop director's capacity to examine their role in the decision making for native title decisions

- scope strategies to equip PBCs to meet governance requirements
- provide an overview of funding opportunities available to PBCs
- explore the economic and business development opportunities available in the NQLC region

One and half days of the workshop were delivered by experienced barrister and consultant, Shane Carroll, on 'Corporate Governance for Prescribed Bodies Corporate (RNTBC)'. Shane Carroll has presented several governance workshops for NQLC and as with previous occasions, this one was very well received. Participants were able to have a number of in-depth discussions regarding PBC governance issues and concerns.

Other presenters of the workshop included NQLC's:

- Julia (Jules) Taylor, Senior Legal Officer-Coordinator of the FAME Unit, presented 'The PBC Regulations and Native Title Decisions';
- Gary Kerr, Economic & Business Development Consultant, presented 'PBCs and Economic Development – the WHY, HOW and WHAT'; and
- Rhonda (Jake) Jacobsen, Manager – Engagement & Development Support Team presented on 'Fees for Services' and the 'NQLC-PBC Representative Group'.

Representatives from the Department of Prime Minister & Cabinet (PM&C) presented on 'PBC Support' and particularly scoped the various funding sources available to PBCs, including:

- PBC Support Funding;
- PBC Capacity Building Funding;
- Indigenous Advancement Strategy – Community Led Grants; and
- Indigenous Entrepreneurs Fund.

For further information on the work of PM&C and for a pathway to these funding sources, see www.pmc.gov.au.

2019/20 PBC Support Funding - Applications

The Department of the Prime Minister and Cabinet administers the PBC Support Funding program. In early May, they invited applications for 2019/20 to be lodged with their native title representative body for assessment and submission to PM&C, for their further assessment and approval. We will confirm with individual PBCs of the outcome of their application once PM&C have advised us.

2018/19 PBC Support Funding - Acquittals

We are coming up to that time of year again where PBCs are required to acquit the January to June and end of financial year (EOFY) 2018/19 PBC Support Funding. Over the coming weeks, the PBCSU will provide individual PBCs with their acquittal template for the period. The acquittal and supporting documentation will be required to be submitted to the PBCSU by Friday 19 July 2019.

Written by:

JOANNE CHAPMAN & RHONDA M JACOBSEN
PBC Project Officer EDST Manager/
Snr Legal Officer



Hazel Illin, Patricia Kennedy and Lisa Reid at the PBC Administrative & Financial Governance Support Workshop



Ian Collins at the PBC Corporate Governance & Compliance Workshop



PBC Corporate Governance & Compliance Workshop



Jeanette Owens at the PBC Administrative & Financial Governance Support Workshop



It is with sadness that we advise that Dr Rosalind Dawn Glass, passed away earlier this year.

Dr Dawn Glass, was an anthropologist who worked extensively with Traditional Owners throughout North Queensland. She was employed as an anthropologist by both North Queensland Land Council and Cape York Land Council, and also worked as a consultant anthropologist in the region.

She was instrumental in collecting native title evidence which progressed numerous native title determinations throughout North Queensland.

Her passing is a great loss to North Queensland people, and the study of anthropology.

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