THE NEXT WICKED PROBLEM IN NATIVE TITLE: MANAGING RIGHTS TO REALISE THEIR POTENTIAL

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In July 2011, after a 17 year native title claim process, the Quandamooka community achieved two native title determinations over the land and waters surrounding North Stradbroke Island in Queensland.[1] The Quandamooka Yoolooburrabee Aboriginal Corporation was then established to manage the native title rights on behalf of the native titleholders as is required by the *Native Title Act 1993* (Cth) ('*NTA*'). The next task of the Quandamooka people, through this corporation, is to ensure that they realise the full potential of their native title and access the opportunities it presents.

Across the mainstream and Indigenous political spectrum there is almost unanimous consensus that while native title holds great potential for Indigenous Australians, its full benefits have not yet materialised. There are two key components to the challenge of realising the potential of native title – and each poses a completely different problem. Since the *NTA* was passed more than 20 years ago, there has been extensive debate around the attainment of native title – which continues to this day. In legal and cultural terms this is incredibly complex, but ultimately for native title claimants there is a definable answer – you either achieve a determination that native title exists, or you do not. Once a native title determination has been achieved, as with the Quandamooka people, the challenge of leveraging native title to reach its full potential presents a completely different problem. This is the *management problem*.

This management problem involves an unstructured but complex network of Anglo-Australian rules and regulations, Indigenous perspectives, and internal and

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1 *Quandamooka People No 1 v Queensland* [2002] FCA 259; *Delaney on behalf of the Quandamooka People v State of Queensland* [2011] FCA 741.

external stakeholder expectations. For a native title corporation, beyond mere compliance with the corporate rules, there is no common definable answer as to what success looks like – at least from the corporation's viewpoint. From the government's perspective both at Federal and State level, 'success' is measured through the attaining of the same economic and social benefits available to the wider Australian population through the mechanism of native title. This can be seen as part of the Federal Government's 'Closing the Gap' strategy.

Reading from a Federal Government statement made in November 2014 – announcing further funding for the native title system as part of the 'Closing the Gap on Indigenous Disadvantage' campaign, this strategy is clearly articulated:

> A review of funding in the native title system in 2008 found that the level of resources available to the system was inadequate for effective operation, and that additional funding was needed to increase the rate of resolution of native title claims. In particular, the review found that NTRBs [Native Tribunal Representative Bodies] were substantially under-resourced for the task they were expected to perform in the system.
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> The additional funds will improve the rate of resolution of claims by increasing the capacities of NTRBs, allowing them to negotiate effectively on behalf of their native title clients and leverage improved social and economic conditions for affected communities in the process.
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> In addition, the measure will support the development of new approaches to the settlement of claims with the States and Territories and increasing the quality and quantity of anthropologists and other experts working within the system.
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> These initiatives will harness the significant potential of native title to contribute to the Government's target to close the gap on Indigenous disadvantage and improve economic development outcomes.
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> The more timely recognition of native title can also help reset the relationship between Indigenous and non-Indigenous Australians and facilitate improved governance and leadership in Indigenous communities. In addition, the resolution of native title claims can remove barriers to investment and infrastructure and allow for the leveraging of native title rights and interests for economic development opportunities.[2]

My first comment on that statement is that even in 2014, it ignores the real problem – attaining native title is the first step, but managing the native title once it is determined is what will allow for leveraging of native title rights and interests for economic development opportunities. My second comment is to ask a rhetorical question – economic development opportunities for whom? Is it

2 Australian Government Department of Social Services, *Closing the Gap – Funding for the Native Title System* (November 2014) <https://www.dss.gov.au/about-the-department/publications-articles/corporate-publications/budget-and-additional-estimates-statements/closing-the-gap-funding-for-the-native-title-system>.

for native title holders or investors who want to have access to native title land? My third concern is that the 'Closing the Gap' strategy remains a 'top-down' approach, with policies set by government and then applied to Indigenous people.

One of the enduring legacies of the top-down approach taken by numerous Federal, State and Territory governments in dealing with indigenous issues has been the removal of agency and ability of Indigenous peoples in Australia to shape their futures. In 1990, the House Standing Committee on Aboriginal Affairs tabled a report that was highly critical of the way that self-determination policies had been implemented in Indigenous communities. Some of the criticisms included:

- Programs, policies and structures had been imposed without adequate consultation, which was inconsistent with the notion of Aboriginal communities being self-determining and having the ability to influence and control their own affairs.
- The imposition of council management structures on Aboriginal communities ignored the existence of traditional decision-making processes.
- Aboriginal people had not been assisted to develop the capacity to manage their communities according to the government's requirements.[3]

In 2007, in his Social Justice Report, Tom Calma referred to this earlier 1990 Report and said this:

> The House of Representatives Standing Committee on Aboriginal Affairs as far back as 1990 suggested that governments should move from consultation to negotiation with Indigenous communities (HRSCAA 1990). However, some 20 years later, the report of the Northern Territory Coordinator-General for Remote Services states as follows: 'What is termed engagement by governments is often a largely passive, information session that does not allow sufficient time to engage communities in meaningful participatory planning or decision making. Dissemination of information does not constitute informed decision making by Aboriginal people and is not consultative'.[4]

My concern is that not much has changed today, despite the rhetoric about closing the gap and engagement with Indigenous communities. My other concern (and perhaps a primary concern) is that government seems to see native title as a barrier – and Indigenous disadvantage as a problem to be solved by throwing more money at it, rather than engaging with the root causes.

3 House of Representatives Standing Committee on Aboriginal Affairs, Parliament of Australia, *Our Future Our Selves: Aboriginal and Torres Strait Islander Community Control, Management and Resources* (August 1990) <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Committees?url=reports/1990/1990_pp137report.htm>.

4 Olga Havnen, Northern Territory Coordinator-General for Remote Services, *Office of the Northern Territory Coordinator-General for Remote Services report: June 2011 to August 2012*, 55.

I am reminded of the message of the Waitangi Tribunal to the New Zealand Government in 2011 when it released its report into the Mai 262 claim, 'Ko Aotearoa Tenei' ('This is Aotearoa' or 'This is New Zealand'). This claim concerned ownership of, and rights to, Maori knowledge in respect of indigenous flora and fauna – adapting their words, let me say this to our governments, and to all Australians:

> Unless it is accepted that Australia has two founding cultures, not one; unless Aboriginal and Torres Strait Islander culture and identity are valued in everything government says and does and unless they are welcomed into the very centre of the way we do things in this country, nothing will change. Aboriginal and Torres Strait Islanders will continue to be perceived, and know they are perceived, as an alien and resented minority, a problem to be managed with a seemingly endless stream of tax-payer funded programs, but never solved.[5]

The people of Quandamooka are well aware of the pitfall of the top-down, government funding approach, most clearly evident in the 'Closing the Gap' framework. For this reason, the Quandamooka Yoolooburrabee Aboriginal Corporation is designing its own strategy for using the proceeds of its native title success, taking that task away from the control of government and also attempting to make their own way, as far as they can, without reliance on government funding. It is an example, in a real sense, of native title holders self-determining their own future in managing their native title. But nevertheless, they face their own 'wicked problem,' [6] a socio-technical problem where there are no right or wrong answers; where stakeholders have radically different worldviews and different frames for understanding the problem; and where constraints and resources for solving the problem change over time.

This is a wicked problem, not just for Quandamooka, but much more broadly for management of native title by native title corporations (PBCs). There are now over 150 PBCs managing native title in Australia. This could be described as a 'new corporate sector', underwritten by traditional laws and customs but required to comply with Anglo-Australian corporate rules, which often are at odds or difficult to reconcile with those laws and customs. One example is the tension between corporate director's duties on the one hand and family obligations on the other, a tension that heightens the risk of conflict of interest in decision-making. The requirement in the *NTA* that native title holders use corporations to manage their native title has been described by the late Justice Selway, in extra-judicial

5 Ko Aotearoa Tenei, *A Report into Claims Concerning New Zealand Law and Policy Affecting Maori Culture and Identity* (2011) <https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356606/KoAotearoaTeneiTT2Vol2W.pdf>.

6 A *wicked problem* is a social or cultural *problem* that is difficult or impossible to solve for as many as four reasons: incomplete or contradictory knowledge, the number of people and opinions involved, the large economic burden, and the interconnected nature of these *problems* with other *problems*.

writing, as 'an aspect of the general failure of the *NTA* to address the relationship between that Act and the common law'.[7]

In *Mabo*[8] it was accepted that the common law recognises native title rights held by a community that is defined in accordance with Aboriginal or Torres Strait Islander law and tradition. This was a fundamentally important acknowledgment. And at least to the extent that Indigenous public law defined the political entity that held native title, that Indigenous law was recognised by *Mabo*. However, as explained by Justice Selway, the *NTA* seems to treat the traditional political entity as being no more than a conglomeration of its members; the role of the native title corporation (or PBC) is to act in substitution for the Indigenous political entity and, at least where it acts as trustee, to limit its rights. Justice Selway suggested:

> It may be that the failure of the *NTA* to deal with the relationship between the rights and structures created by that Act and the common law has the inevitable consequence that PBCs will have fundamental problems. The *NTA* did not leave the common law alone; nor did it replace the common law with a new structure for Aboriginal land holding. Instead it "meddled". PBCs are an example of that approach.[9]

Having had the chance to step back from the legal fray as counsel in many native title cases – acting for governments, other respondents and claimants, as befits a barrister – to a more reflective role as President of the National Native Title Tribunal, I am able to take a more holistic view of native title and indigenous issues. From that view, I am inclined to agree with Justice Selway's summation.

The first major research on native title corporations (or PBCs) was by David Martin (anthropologist) and Christos Mantziaris (lawyer) in their book *Native Title Corporations: a legal and anthropological analysis*, published in 2000.[10] The book is an expanded version of a shorter publication by the same authors called *Guide to the Design of Native Title Corporations* published by the National Native Title Tribunal in 1999.[11] Their description of some of the problems likely to face PBCs was prescient.

One issue which has emerged clearly as more and more PBCs are formed is the non-congruence of corporation membership and native title group membership. Regulation 4 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999*, with which PBCs must comply, requires that 'all the members of the corporation are persons who have native title rights and interests'. Regulations 6 and 7 stipulate that the functions of the PBC are to act as trustee or agent (as the case may be) for the native title holders. Pursuant to Regulations 8 and 8A, if the PBC

7 B M Selway QC, 'Native Title Corporations: A Legal and Anthropological Analysis By Christos Mantziaris & David Martin' (2001) 22(2) *Adelaide Law Review* 319, 322.
8 *Mabo and Ors v Queensland* (1992) 175 CLR 1; [1992] HCA 23.
9 Selway, above n 7, 323.
10 Christos Mantziasris and David Martin, *Native Title Corporations: A legal and anthropological analysis* (Federation Press, 2000).
11 Christos Mantziaris, David Martin and National Native Title Tribunal (Australia), *Guide to the design of native title corporations* (National Native Title Tribunal, 1999).

does any act that will affect the native title rights, it must consult with and obtain the consent of the common law holders of native title – either in accordance with traditional processes or an agreed alternative process in the constitution of the PBC. To ensure that common law holders understand the purpose and nature of the decision that will affect native title, the PBC must also seek the views of the representative body for the region. This is a body that is funded by the Commonwealth to assist Indigenous people in all aspects of their claims. The assumption behind the use of a PBC is that membership of the corporation and the holders of native title are the same. But this is not as obvious as the Parliament and the government may have assumed.

At the outset, the interests may not be individual interests; in practice they are more likely to be group or communal interests. Native title is well understood to be communal title – one of the elements of proof of native title is for the group to establish that they are united, or bound together, by their system of traditional law and custom. These group or communal interests may not adequately be reflected in membership of a PBC based on an assumption of individual interests. Further, traditional laws and processes may not be reflected in the corporate model. The potential for conflict between the native title corporation and the interests it is intended to protect may be obvious. This is exacerbated by the role of the PBC as trustee or agent of the native title holders rather than as the holder of the title as occurs in some land rights legislation.

Martin and Mantziaris point out that under the trust arrangement, native title holders do not hold the native title rights, but have statutory rights against the PBC. On the other hand, under an agency arrangement, the native title holders have common law as well as statutory rights against the corporation. In either case, problems are created for the PBC and it cannot be assumed that native title holders will have the same interest or indeed the same rights as the PBC. This may well place the PBC in an impossible situation.

Given its status as a trustee or agent, it is unclear how the inclusive nature of its membership will necessarily protect a PBC from breaches of its various duties. By way of example, there are an increasing number of complaints coming to the Tribunal about membership of PBCs. The principal complaint is that a particular family (as opposed to an individual) has been denied membership of a PBC. The Tribunal has no arbitral role to play in this type of dispute, other than to offer to assist the representative body to resolve the dispute by mediation. Hence, more and more of these disputes over PBC membership are finding their way to the Federal Court. A recent case in the Federal Court which raises many of the issues canvassed by Martin and Mantziaris in 2000 is *Stevens v Wintawari Guruma Aboriginal Corporation RNTBC*.[12] This case dealt with the expulsion of family members of the named applicant in the original native title claim from a PBC.

12 *Stevens v Wintawari Guruma Aboriginal Corporation RNTBC* [2016] FCA 149.

Another rising area of discontent is board membership of PBCs, where family groups consider they are being disempowered within the group by not being part of the corporate decision making in respect of matters where they would traditionally have the right to make decisions. Tied up with all of these disputes is the distribution by the PBC of any benefits to native title holders. These are complex legal and socio-cultural issues and I query how well suited they are for resolution by courts, hamstrung by the *NTA* which recognises rights under traditional law and customs but has 'meddled' (to use Justice Selway's words) with the traditional polity holding those rights. More than 20 years on from the commencement of the *NTA*, the task faced by PBCs, is how to do their work best with their legal and cultural hobbles firmly in place. This is not assisted by the significant tension between governments, native title holders and others about what is and what is not native title, and the roles of PBCs. For native title holders, recognition of traditional rights in country is often hard won, euphoric and highly symbolic. It creates the expectation of positive outcomes such as greater involvement in decision-making and an improvement in social and emotional well being. The reality is much harsher.

There is likewise a pervasive tension and misunderstanding in the native title sector about the meaning of native title. This extends to how native title is expressed and interpreted in different laws and policies, in matters such as economic development and land use planning, and more generally in day-to-day business by, and with, native title holders. It also extends to different interpretations of the roles of PBCs.

Administratively, the *NTA* prescribes the roles of PBCs in two parts:

- as the legal entity holding and/or managing native title rights and interests on behalf of native title holders; and
- as the corporate interface for third parties seeking access to native title land.[13]

However, these roles are subject to interpretation and often viewed differently by native title holders and other stakeholders. Some external parties, including governments, take a narrow view of the statutory obligations and other roles of PBCs, which is often underscored by their narrow understandings of native title more generally – as being inherently *vulnerable rights*, rather than the enduring strength of Indigenous connections to country on which it is based. For other external partners, native title is an *anachronism that will eventually be extinguished* once the land is allocated to a presumed 'more productive' purpose'[14] – a deeply ingrained western view of property that for land to have any value it must be productive. This view allowed the early settlers/colonisers/invaders to take up the 'waste lands' of Australia and dispossess its Indigenous inhabitants, who could not

13 Toni Bauman, Lisa M Strelein and Jessica Weir (eds), *Living with native title: the experiences of registered native title corporations* (Australian Institute of Aboriginal and Torres Srait Islander Studies, 2013) 6 <http://nativetitle.org.au/documents/3%20Living%20with%20native%20title%20book%20interactive%20PDF.pdf>.

14 Ibid.

properly be regarded as owners of the land over which they roamed. This view persists to this day, requiring that native title produce economic benefits to be of any value.

For others still, native title is misconceived as merely another layer of regulation; see the description given by a state government representative of the relationship between native title and what he described as 'real' tenures.[15] These 'real' tenures – such as freehold, leasehold and Deeds of Grant in Trust (DOGIT) – were regarded as ownership of land.

Native title, in contrast, was presented as a 'layer of regulation', much like land planning regulation or environmental regulation. This is not only disrespectful to native title holders as traditional owners of land whose proprietary claim on the land has been recognised to have survived colonisation; it is also legally misleading. It suggests that native title can co-exist as a regulatory layer over freehold or leasehold land, which it cannot. It suggests that leasehold and DOGIT are somehow similar in their effect on native title – which they are not. This idea was repeated subsequently in a review that purported to allow and encourage native title holders to apply for the grant of a 99 year lease from the DOGIT so that they finally 'own their own land'.[16]

There are also misconceptions of native title prevalent in Indigenous groups, which are legally incorrect under Anglo-Australian law. For example, it is difficult to explain to a native title holder who has just celebrated a determination of native title why they cannot go and live wherever they like on their native title land. Their perception that they now 'own' the land does not allow for the co-existence of other interests which prevail over their native title; or for the existence of legislation, including planning and other regulatory laws which limit capacity to use the land – whether or not the native title is said to be exclusive. For example, after the Quandamooka determination, some of the elders wanted to go and live on some of their exclusive native title land but were dissuaded when it was explained to them in colourful terms that it was an exclusion zone under non-Indigenous law because of high levels of radioactivity from the mining of the mineral sands on Stradbroke Island. In another instance, I was asked by a native title holder in a northern New South Wales town why rates were now not paid to native title holders instead of the council following their native title determination. This was based on their view that their non-exclusive native title gave them ownership in that very real (to them) sense.

These misconceptions, misunderstandings and misleading views of native title held by native title holders, government agencies and others, make it very difficult for PBCs to work effectively with external agencies as well as with the native

15 Lisa M Strelein, 'Native Title Bodies Corporate in the Torres Strait: finding a place in the governance of a region' in Toni Bauman, Lisa M Strelein and Jessica Weir (eds), *Living with native title: the experiences of registered native title corporations* (AIATSIS, 2013) 84–5.

16 Ibid 85.

title holders for whom they manage the native title. Inevitably, there are conflicts when perceptions of native title are so diverse.

In order to understand the purpose of PBCs, and of native title itself, it is also necessary to appreciate native title as a distinct part of intercultural Australia. Native title is a creature of both Indigenous and non-Indigenous laws and practice, and is recognised and managed as such. It has a reference point external to common and statutory law in that it recognises rights and interests derived from and sustained by Indigenous societies and their laws and customs (though those laws and customs are not themselves recognised).

Despite this, Courts have determined that native title is a 'bundle of rights'.[17] The bundle of rights approach constructs native title as a defined and finite series of discrete rights. Each right, whether it is a right to control access to the land or a right to hunt on the land, is extinguished severally or jointly by the Crown's creation of inconsistent rights. There is no recognition in the description of the rights of an underlying relationship with the land which unifies these individual rights into a system of rights. In particular there is no recognition of an abstract or conceptual level within Indigenous culture which orders physical activities or presence on the land into a system of laws.

For most Indigenous people in Australia, native title is a set of relationships with land and with people, viewed holistically with implications for cultural, social and economic ties. For them, native title is a 'total social fact' that cannot be compartmentalised into a series of ticked boxes. The holistic approaches of native title holders suggests that the protection and promotion of traditional laws and customs that give rise to native title rights in land and waters are inextricably linked with other social and emotional well-being and economic outcomes. The holistic concept of native title was also accepted in *Mabo*, evident in its declaration that 'the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands.'[18]

A 2006 Federal Government Report on roles and responsibilities of PBCs acknowledged that PBCs are likely to be engaged in broader activities.[19] As well as economic development, it identified such additional activities as town planning, social harmony projects, cultural protocols, welcomes to country, and interpretive and cultural signage. It might be said that there is an element of a more holistic approach even in this list – but when you interrogate further, it might be argued that some of these activities are less for the benefit of the native title holders, than for other members of the community. Take interpretive and cultural signage, for example which particularly benefits those with a 'tourist' orientation, as well as having some educative role. Even so, these roles are considered by the Government and others as secondary to the primary roles of the PBC as described

17 *Western Australia v Ward* (2002) 213 CLR 1; [2002] HCA 28.
18 *Mabo v Queensland (No 2)* (1992) 175 CLR 1; [1992] HCA 23.
19 Attorney General's Department, *Structures and Processes of Prescribed Bodies Corporate* (2006), 10 [49].

in the *NTA* – which, simply put, is to hold and manage native title in accordance with native title holders' wishes, and to ensure certainty for government and other parties with an interest in accessing and regulating native title land and waters by providing a legal entity through which to conduct business with native title holders.

There is a very long (and dry) list of the 'key functions' of PBCs that are encompassed under the *NTA* and its regulations.[20] PBCs also have functions under other Federal, State and Territory legislation. They include land management obligations and cultural heritage functions. PBCs also are expected by the community generally to fulfil a broader role on indigenous issues, and there are separate demands from their membership. Most, if not all, PBCs place a high priority on intergenerational transmission of cultural knowledge.

Quandamooka focuses not only on this internal transmission, but on providing the opportunity for other young people to learn more about Quandamooka history and culture. This is an example of PBCs being engaged in issues that reflect their role as traditional owners more broadly than just being the native title corporate interface for those who see native title as a mere regulatory or compliance mechanism for seeking land use approvals. It is an understatement to say that PBCs need resources and they need effective governance. They cannot be run from a mobile phone of one board member.[21]

PBC governance is much more than compliance, tax, internal structures and accountabilities in the framework of the *NTA*, PBC regulations and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). It is also much more than the myriad of State, Territory and Commonwealth regulatory regimes that impact on the enjoyment of native title rights – from planning legislation to fishing regulations. It includes native title holders expectations that recognition of and respect for their authority and responsibilities as traditional owners will be realised through their PBCs, and that PBCs will further their priorities in looking after and being on country.

Good governance of a PBC is more complex, in my view, than governance of a multi-million dollar company beholden only to its shareholders. The many challenges facing these organisations have been well documented in recent reviews of the native title system, among them:

- chronic under-resourcing,
- a lack of access to appropriate skills and advice,
- the ongoing tussle between Federal, State and Territory government about who is responsible for supporting them, and
- limited access to infrastructure.

20 *Native Title Act 1993* (Cth) pt 2 div 6, s 55.

21 Leah Ginnivan, *'Native Title Newsletter: Funding for Prescribed Bodies Corporate'* (September/October 2010) <http://aiatsis.gov.au/sites/default/files/products/native_title_newsletter/sepoct10.pdf>.

In the words of the authors of a recent AIATSIS publication about the experiences of living with native title, native title corporations have 'against the incessant demands of third parties, carr[ied] out consultancies and negotiations, usually free of charge, and usually while dealing with dire community and family circumstances.'[22]

The Aboriginal and Torres Strait Islander people who govern these organisations deserve greater public recognition for the incredible contributions they make to their communities. With little training except what they bring to the job, they oversee the management of complex corporate structures with limited access to infrastructure or expertise, often relying on volunteer labour (often their own) and pro-bono legal advice to see them through from one AGM to the next, one grant to the next. On top of this, they must overcome the same social marginalisation facing other Indigenous Australians; lack of education, poor housing and premature morbidity. But they manage it, and for the most part they manage it remarkably well. Indeed, given all the challenges before them it is surprising that more don't fail.

The failure of an indigenous corporation will often make front-page news, with public allegations of misuse of monies, poor management and sometimes fraud. Non-indigenous corporations fail all the time, and for very similar reasons. But unless there is some other newsworthy or scandalous element to the story – perhaps the prominence of the people involved – it will more often than not go unreported.

Why are we so interested in the failure of indigenous corporations when we have become, dare I say, 'immune' to, but at the very least disinterested about, the failure of most non-indigenous corporations? Is it because so many non-indigenous corporations fail that we require that there be something sensational beyond mismanagement to attract our attention?

What I have described this far are just some of the components of this wicked problem. But instead of continuing with the negative, let me make instead some positive suggestions. Rather than focus on the failure of indigenous corporations, why not focus on success? We don't have to look far – there are numerous examples of successful indigenous organisations that have built strong governance structures and have creatively used information technologies to manage native title rights and support local cultural and development aspirations.

One such organisation working in this direction is the Quandamooka organisation. Another is the 'Knowledge and Wellbeing Project', initiated by Nyamba Buru Yawuru Aboriginal Corporation following the recognition of Yawuru people's native title rights around Broome in 2006. This project aimed to address an urgent need for information and data about Yawuru people and country in order to secure social, economic, cultural and environmental assets, and cement their place as a key player in regional planning. It involved a household survey of all

22 Bauman, Strelein and Weir, above n 13, 21.

Indigenous peoples and dwellings in the regional centre of Broome (located in the heart of Yawuru country), and research into local understandings of wellbeing (mabu liyan). Alongside this, the Yawuru undertook a project to digitally map places of cultural, social and environmental significance to inform future land use planning. Work has begun on creating a database of the legal documents, genealogies, historical information and cultural records from their native title claim to support a language revitalisation program.

Unique and ground-breaking in many respects, the Yawuru Knowledge and Wellbeing Project established an unprecedented approach to generating information about the circumstances of Aboriginal people living in Broome that has proven to be invaluable in the design of local social policy and decision making. Importantly, it is information that is owned and governed by Yawuru people themselves. For example, the information collected through the Yawuru household survey demonstrated the extent of the mismatch between the residential addresses of Indigenous households in relation to key urban services such as public transport. What followed was a collaborative planning exercise with the local Broome Shire to redesign services such as bus routes in order to provide more acceptable levels of access. Similarly powerful outcomes in the areas of environmental and heritage management are also being realised through the integration of a cultural management plan for Yawuru coastal country into a map-based digital platform, enabling the identification of a number of threats and pressures in particular areas.

In conclusion, it is timely to refocus the lens on:

- opportunities not barriers
- benefits not problems
- success not failure.

Importantly, the opportunities and benefits must be 'two-way', that is, there must be consideration of what both Indigenous and non-Indigenous people stand to gain through a more collaborative approach towards recognising and realising the potential of country.

Reframing the conversation starts with recognising that native title is old, not new; that native title is not a burden to our future prosperity, but a potential benefit. Rather than focussing on the barriers that divide us, now is the time to pool our collective experience and knowledge to generate some practical, achievable ideas about how to move forward, together. Most pressing is the need to collaboratively articulate our overarching national objectives and the regional approaches to support them. We all have a role to play in reframing the conversation about native title and indigenous issues. The National Native Title Tribunal's vision – shared country, shared future – is a fresh impetus to commit and maximise Tribunal functions to deliver relevant and sustained outcomes to the native title system. This has included the development of new and more collaborative approaches to the resolution of claims, working with governments,

the Federal Court and native title parties, as well as a renewed focus on capacity building and dispute resolution.

It is an exciting time to be President of the National Native Title Tribunal as it embraces the opportunity to contribute to the further development of Australia's joint cultural identity and the achievement of a just, fair and equal relationship for all Australians. We are making a difference as we work together with other organisations towards a more effective and efficient native title system with benefits for all. Let me share the words of a Yolgnu elder from Yirrkala as we sat under a tree talking about the issue I had been asked to inquire into by the Federal Government. She said, 'Raelene, if people come here to help us, we tell them to go away. If they come to work with us, they are welcome.'