

David Martin, Day 2, Session 3
Hypothetical: the Wangkangana-Bunjida PBC

Scenario:

Somewhat unexpectedly, the State and other parties have agreed to a consent determination of native title over an area comprising lands claimed by two distinct albeit closely interrelated groups identifying through language affiliation, the Wangkangana people and a subset of the wider Bunjida people. The claim is conventional in many respects. For example, the anthropology indicates that each language group is constituted of a number of 'families' tracing descent through either or both paternal and maternal pathways from identified forebears held to be associated with particular locales and areas within the lands of the respective language groups. Both groups have lands in the same river basin, with those associated with Wangkangana families lying downstream and extending as far as the coast, and those with Bunjida families upstream. There are significantly more Wangkangana claimants than there are Bunjida.

Available genealogical information over several generations demonstrates not only that Wangkangana and Bunjida people have married into other groups across a wider region, but that there has been intermarriage between Wangkangana and Bunjida people, and as a consequence there are several contemporary families with links to both. Indeed, key instigators of the combined Wangkangana-Bunjida claim include a prominent man who identifies as Wangkangana but has close Bunjida maternal kin.

The Connection Report and Preservation of Evidence hearings indicate that contemporary laws and customs of Wangkangana and Bunjida people relevant to native title enquiry are largely similar, although there is early ethnographic evidence which indicates that in the past there were a number of differences between them—for example, types of initiatory law, and indications that the section system of the inland Bunjida people may have been adopted around the time of colonisation by Wangkangana people and their coastal neighbours. Nonetheless, the State has not taken the view that this should preclude a combined determination of native title being made.

However, a major issue which has emerged concerns disputation concerning the location of the boundary between Wangkangana and Bunjida country. This was flagged in the Connection Report but has increased in intensity over the course of the claim and has been seriously exacerbated by competing claims between Wangkangana and Bunjida people over who should conduct clearances for mining exploration in the disputed area. Intensive work by the Representative Body has enabled the establishment of a *modus operandi*, if not really agreement between the main protagonists, which involves teams of equal numbers of Wangkangana and Bunjida participants in surveys over a defined "shared" area, but exclusively Wangkangana and Bunjida individuals in their respective lands outside of this shared area.

Issues to consider:

The Representative Body is working with the claim Steering Committee (involving equal numbers of Wangkangana and Bunjida participants) to gain agreement for the establishment of a PBC. Assume that even the more disputatious claimants have accepted that the State will not agree to two separate PBCs. Keep in mind the following key design and implementation issues discussed earlier in this session, that is:

1. How much of Wangkangana and Bunjida 'law and custom', or of what might more accurately be understood as contemporary practice which may not be seen as 'traditional' under native title law, should be codified in the PBC's Rules or in other legal or administrative instruments (ILUAs, procedures manuals etc) ?
2. How much and how should differing interests as between Wangkangana and Bunjida, or amongst families, or reflecting generation, gender or other such factors, be reflected in the structure and governance of the PBC?
3. What measures might be taken to minimise the risk of the PBC's statutory functions and legitimacy with Wangkangana and Bunjida native title holders more broadly being compromised by strategic and self-interested actions by Board members?
4. What measures might be taken to increase the likelihood of (a) effective corporate governance, and (b) effective and accountable management of Wangkangana and Bunjida country in the determination area, especially holding or managing the native title and heritage surveys, or as a basis for economic and other development?

The task for each group:

In working with the Steering Committee, what options or advice would you give in relation to the following matters (summary principles only):

1. What membership structure would be the most appropriate? Should it be an inclusive or a representative membership?
2. What would be the most appropriate mechanism/s (e.g. in the Rules, or elsewhere) for dealing with the overlap area, including for native title decisions (as defined in the NTA), heritage surveys, and other land management matters?
3. How would you recommend structuring the various categories of decision-making the PBC would be undertaken (native title decisions, other sorts of decisions)?
 - a. In the case of native title decisions, would you recommend that alternative provisions be developed to be put to the native title holders for their consent?
 - b. If the answer to (a) is yes, these have to be included in the PBC's Rules. Where would you recommend that other forms of decision making should be dealt with (e.g. in the Rules, or some other legal instrument or document)?

In considering these questions, attempt to work as a group, with each person contributing in terms of your own specialist knowledge – e.g. the lawyers in terms of your understanding of native title law and the CATSI Act and other relevant areas of law, and anthropologists in terms of your understandings of Aboriginal social and political process.