The anthropology of Registered Native Title Body Corporates

This annotated bibliography was produced by Susan Dale Donaldson for the Centre for Native Title Anthropology, at the Australian National University, as part of guided research placement in June 2016. Given the fast pace at which Registered Native Title body Corporates are being established, the ongoing changes to statutory requirements and the continuous development of associated anthropological analysis, this bibliography is arranged according to the year in which papers were written, rather than authorship. The bibliography includes published and unpublished materials such as conference proceedings and fact sheets, and has a clear focus on governance, and identifying ways anthropologists can positively contribute to the ‘Native Title arena’ and the broader context in which it exists.

The Native Title Act 1993 and the Native Title (Prescribed Bodies Corporate) Regulations 1999 require corporations to register under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) if they are determined by the Federal Court to hold and manage native title rights and interests. These corporations are referred to as prescribed bodies corporate or PBCs. Once a PBC is entered on the National Native Title Register it becomes a registered native title body corporate (RNTBC) or Native Title Corporations (NTC) [ORIC 2010:2]. The CATSI Act has tailored provisions for native title and RNTBCs to ensure there is appropriate interaction between the two laws and that obligations under each law don’t conflict.

The Native Title (Prescribed Bodies Corporate) Amendment Regulations 2011 improved the flexibility of the PBC governance regime by enabling an existing PBC to be determined as a PBC for subsequent determinations of native title, by removing the requirement that all members of a PBC must also be the native title holders (where agreed by the native title holders), by clarifying that standing authorisations in relation to particular activities of a PBC need only be issued once and by including native title holder consent, allowing PBCs to substitute their own consultation requirements in relation to native title decisions rather than follow the requirements in the regulations.

Peterson N 2016 ‘The Future of Native Title Anthropology’, convened by the Centre for Native title Anthropology, Queensland South Native Title Services and the Department of Anthropology at the University of Queensland, held in Brisbane on the 4th and 5th February 2016

An introduction conference paper canvassing the challenges for anthropology and anthropologists in the applied field beyond the preparation of native title claims, connection reports and disputes. Whilst other experts are engaging in this field, it is argued that anthropologists play an important role in understanding Aboriginal social and cultural realities and are equipped to effectively collaborate with Aboriginal people in social change and in achieving effective policy out comes.
Registered Native Title Bodies Corporate 2016 - Prescribed Bodies Corporate Summary AIATSIS; April 2016.

This is a regularly updated summary of Registered Native Title Bodies Corporate (RNTBCs) and includes Indigenous Land Use Agreements and Native Title Determinations. As at 27 April 2016, there are a total of 154 National Registered Native Title Bodies Corporate (RNTBCs) across Australia, of these 74 are agents and 83 trustees [some are both]. All 20 of the Northern Territories RNTBC are agents. The summary includes hyperlinks to determination from the National Native Title Tribunal (NNTT); relevant case law from the Australasian Legal Information Institute; corporate information from the Office of the Registrar of Indigenous Corporations (ORIC); and determination & corporation information on the Agreements, Treaties and Negotiated Settlements (ATNS).

Martin D 2016 Governance of Native Title Corporations: what are the common mistakes / issues?
Native Title Workshop convened by the CNTA, ANU and QSNTS [14-15.04.2016].

A workshop presentation describing the main functions of Native Title Corporations, the four Native Title Corporation ‘prototypes’ or structures, the four ‘arenas’ of governance associated with Native Title Corporations, the distinction between membership of the Native Title Holding group and that of the Native Title Corporation, key factors effecting decision making and the problems associated with codifying traditional law and custom.

For Martin, decisions about Native Title are governed by three key factors; traditional law and customs, the agent or trustee relationship, and the legal requirements to consult Native Title group and obtain consent before making decisions about Native title (PBC regs 8, 8a and 9). Martin highlights the need to understand the governance of Native Title Corporations, that is, the particular set of relationships, rules and processes associated with power distribution and decision making, amongst other elements [2016:3]. Martin identifies four ‘arenas’ of governance associated with Native Title Corporations, each one involving different forms of governance and hence requiring distinctive decision making processes:

1/ Governance within the native title holding group
2/ Governance within the PBC
3/ Governance between PBC and the native title holding group
4/ Governance between PBC and Native Title Representative Body

Martin highlights how the governance of Native Title Corporations directly relates to understanding the distinction between membership of the Native Title Holding group and that of the Native Title Corporation. Corporation membership is a subset of the Native Title Holding group given the native title group is a category of people defined by traditional laws and customs, whereas Corporation membership is a list of legally defined set of individuals [Martin 2016: 4]. Given the two groups don’t always correspond, especially when non-native title holders are corporation members, the broader Native title holding group [not just the ones who are Corporation members] must be consulted when the Corporation needs to make decisions about Native Title. In other words, Corporation members don’t automatically make decisions about Native Title because they are not all of the Native Title Holders [Martin 2016: 8].
McGrath P 2015 The work of rights: preliminary findings from the NYANGUMARTA NATIVE TITLE CORPORATE HISTORY PROJECT NTRU. Native Title Newsletter December 2014

This paper presents the preliminary findings of a longitudinal case study of Nyangumarta Native Title Corporation undertaken by Dr McGrath, investigating the time, the people and the tasks involved in the governance of Native Title Rights. McGrath found 55% of Nyangumarta’s time was spent in meetings, 15% doing Native Title Research, 7% associated with Future Acts, 9% heritage surveys and 9% other field work. In terms of people and organisations McGrath found that Nyangumarta dealt with more than 305 non-Nyangumarta individuals from over 85 different organisations including 53 representatives from 27 different mining companies, 100 different government employees from over 30 departments, and 103 different people from 3 different land councils. McGrath has demonstrated that the recognition of Native Title is the beginning of an immense amount of work, involving time, money and effort, associated with the management of Native Title Rights. McGrath does not describe which type of RNTBC the Nyangumarta Native Title Corporation is [agent or trustee, participatory or representative].


A detailed examination of gender and age as dimensions of Indigenous leadership and governance, with a specific focus on the gender and age of directors on the boards of prescribed bodies corporate (PBCs). The paper reveals that women’s representation on PBC boards is higher than that found in mainstream sectors. With a relatively low number of older people and growing number of young people in the Aboriginal and Torres Strait Islander population, the research found that the pool of potential PBC directors is likely to grow in coming years. As an increasingly significant sector, Buchanan argues that PBCs have the potential to contribute to and benefit from improved community capacity which is currently constrained and hence hindering the capacity of PBCs to meet their statutory obligations and pursue native title holder aspirations.

Buchanan found that PBC capacity is limited due to low levels of human, financial and physical resources. The paper highlights the need to ensure that the directors of tomorrow have access to education, employment and training opportunities today, which in the long term will act to support the intergenerational transmission of cultural knowledge underpinning native title.


Deloitte Access Economics was commissioned by the Australian Government Department of the Prime Minister and Cabinet (PM&C) in 2013 to provide a review of the roles and functions of native title organisations. Based on consultations and public submissions, the review found that whilst most RNTBCs struggle with the capacity to meet their regulatory responsibilities they also pursue wider community aspirations [2014:2]. The review suggest that in order to be in a position to function effectively at the core of the native title system, RNTBCs need (i) initial support to identify how they would like, and could feasibly, use their native title, and (ii) a base level of support to meet their compliance and governance obligations under the Act [Deloitte 2014:2].
The review highlights how the Act provides only minimal guidance about how Native Title holders can ‘enjoy fully’ their rights and interests and how NTRBs/NTSPs are well placed to provide assistance to RNTBCs in the area of sustainable use of benefits flowing from agreement and settlements and in partnering with RNTBCs and other groups in pursuing NTH broader social, cultural and economic development activities in their region [2014:3].


‘Living with native title’ is the outcome of a three-year AIATSIS case based research project examining the experiences of native title holders and the RNTBCs. Based on six case studies across Northern Australia the publication highlights the intercultural context in which RNTBCs operate and the critical role they have in the native title sector as the holders and/or managers of native title, as access points for multiple parties with interests in native title lands and waters, and as readily identifiable representatives of traditional owners [2013:2].

Chapter one ‘Navigating complexity: living with native title’ by Toni Bauman, Lisa Strelein and Jessica Weir identified the prescribed roles of RNTBC, that is, as the legal entity that holds and/or manages the native title rights and interests on behalf of native title holders and as the corporate interface for third parties seeking access to native title territories, are misunderstood and as a result the process is dominated by the legal regime, which has ‘imbued it with an inherent vulnerability rather than the enduring strength of the Indigenous connections to country on which it is based.’ [2013:6].

Bauman, Strelein and Weir also found it critical for RNTBCs to have the governance capacity to respond to changing social, economic, political and cultural contexts, and that ‘the most significant but undervalued regulatory functions of RNTBCs involve the consultation, decision-making and dispute management processes they employ with native title holders, including in obtaining their free prior and informed consent. Poor decision-making processes from which native title holders feel excluded inevitably lead to disputes...’ [2013:10].

Chapter two ‘An overview of the Registered Native Title Bodies Corporate regime’ by Pamela Faye McGrath, Claire Stacey and Lara Wiseman gives a demographic overview of RNTBCs, including their categorisation as small, medium or large under the Corporations Aboriginal and Torres Strait Islander Act 2006 (Cth) (the CATSI Act). The chapter highlights the diversity and commonalities amongst RNTBCs and how each RNTBC is ‘a product of the unique cultural and socio-political context from which it has emerged, and a range of factors influence its corporate character and organisational capacities’ [2013:30].

McGrath, Stacey and Wiseman found there to be many factors influencing the corporate design of an RNTBC, including the social composition of a native title group, its decision-making processes, how the group intends to hold and/or manage native title rights and interests, the kinds of rights and interests that have been determined and the aspirations of native title holders [2013:28]. They identified four broad areas of aspiration across RNTBC as independence, respect and recognition, caring for country, culture and people, and community development [2013:29].
Chapter three ‘Native Title Bodies Corporate in the Torres Strait: finding a place in the governance of a region’ by Lisa Strelein reviews the RNTBCs in the Torres Strait and how native title holders are negotiating a place in the regions complex governance arrangements. The chapter considers the potential for a regional native title management framework where native title is administered as part of the regional governance structure [2013:98].

Chapter four ‘The Djabugay native title story: getting back in town’ by Toni Bauman, highlights a major issue confronting the Djabugay RNTBC in northern Queensland and other RNTBCs across Australia, that is, how to maintain tribal unity and simultaneously recognise and account for the interests subgroups have to local areas within the broader estate [2013:113]. Moreover, the Djabugay RNTBC case study reveals the challenges confronting native title groups with non-exclusive possession native title over protected areas, in this instance Barron Gorge National Park. Bauman notes that while conflict is embedded in structures and processes, generally, and addressing it can be time-consuming and resource intensive, with funding support and a management plan encompassing all of Djabugay country, beyond the determination area, beyond solely recognition, many of the issues can be avoided [2013:134 - 136].

Chapter five ‘Karajarri: native title and governance in the West Kimberley’ by Jessica Weir follows on from a 2011 AIATSIS research discussion paper about the experiences of the Karajarri RNTBC, who are responsible for exclusive possession native title holdings south of Broome, as well as non-exclusive possession native title holdings over coastal pastoral leasehold lands. This chapter examines how Karajarri people relate their range of RNTBC obligations to their other responsibilities; the role of RNTBCs in the provision of community infrastructure; and the way in which native title changes relationsh[2013:166-69].

Chapter six ‘The Ord River Stage 2 Agreement and Miriuwung Gajerrong native title corporations’ by Patrick Sullivan discusses the implementation of the Ord Final Agreement (OFA) and internal corporate governance issues such as the consideration of traditional practices in governance structures and issues associated with taking advantage of economic opportunities associated with large-scale developments [2013:188, 203].

Chapter 7 ‘Managing mixed Indigenous land titles — Cape York case studies’ by Paul Memmott and Peter Blackwood looks into the Wik and Coen areas of the Cape York Peninsula to show the issues associated with how RNTBCs integrate their native title rights with pre-existing statutory tenures and traditional forms of ownership. They identify different forms of organisational designs to accommodate the multiple landholding types held by Aboriginal people in the region, including taking a regional approach and pool resources and service of landholding bodies [2013: 235, 237, 239-40].

Chapter 8 ‘Working with Indigenous and western corporate structures — the Central Arrernte case’ by Manuhuia Barcham examines how the Lhere Artepe RNTBC, Alice Springs, has attempted to meet the challenges of establishing a governance structure to maintain culture as well as engage in economic development. Integral to this is the need of the RNTBC to accommodate the interests of the three estate groups that make up the native title group [2013:268].
Chapter 9 ‘Registered Native Title Bodies Corporate and mining agreements: capacities and structures’ by Ciaran O’Faircheallaigh discusses the implementation and management challenges of mining agreements. Drawing on an unnamed confidential agreement, O’Faircheallaigh identifies the types of rights and obligations RNTBCs are dealing with, the corporate structures that may be needed to manage them, and the capacities and skills required for success [2013:5].

Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘Prescribed Bodies Corporate – an example of effective Indigenous governance over lands, territories and resources?’ Chapter 3 in Native Title Report 2012, Australian Human Rights Commission, Sydney.

This chapter identifies the factors that enable PBCs to effectively govern native title rights and interests and considers changes that can be made to assist PBCs to achieve the social, cultural and economic aspirations of native title holders. The recognition of native title rights and the subsequent formation of PBCs are identified as playing a key role in enhancing the relationship between governments and Aboriginal and Torres Strait Islander peoples. It suggests that PBCs should govern in a way that is consistent with United Nations Declaration on the Rights of Indigenous Peoples, including, the right to self-determination and participation in decision-making (Article 32(1)), the right to free, prior and informed consent over projects on our lands, territories and resources (Article 32(2)), the right to maintain and protect our cultural heritage on and traditional knowledge about our lands, territories and resources (Article 31(1)) and the right to conserve and protect the environment of our lands, territories and resources without discrimination (Article 29(1)) [2012:101]. The factors identified to enable PBCs to effectively govern are:

- Aligning community governance and PBC organisational governance
- Adequate funding and resources
- Strong administrative, business and legal capacity
- Managing native title rights and interests
- Engagement with alternative land/resource management and cultural heritage processes


A fact sheet designed to provide PBCs with plain English information about PBC legal responsibilities associated with making decisions about Native Title. Three types of decisions are outlined, those made by PBC directors on their own, those made by directors with instructions from Native Holders, and those decisions made by Native Title Holders.


A fact sheet designed to provide PBCs with plain English information about the different types of Indigenous land use agreements [Body Corporate, Area and Alternative Procedure] and how a PBC can develop one.

A fact sheet designed to provide PBCs with plain English information about the right to negotiate process triggered by section 29 of the Native title Act [Future Act Notice] if relating to mining [including exploration etc] or the compulsory acquisition of Native title rights for the benefit of a third party.


A fact sheet designed to provide PBCs with plain English information about the future act regime under section 24 of the Native Title Act. A future act can involve pastoral activities, the management of water and air space, housing construction and the creation of national parks. Native title holders do not have a right of veto, but they do have the right to comment, to be consulted, to have an objection heard and the right to negotiate.

Martin, D, Bauman, T and Neale, J 2011 Challenges for Native Title Anthropology: practise beyond the proof of connection. Australian Institute of Aboriginal and Torres Strait Islander Studies, Research Discussion Paper no. 29. Canberra, ACT.

This AIATSIS discussion paper challenges anthropologists to broadening their native title work, beyond the production of expert reports proving connection, to include contemporary processes such as Aboriginal engagement with the wider society, development and transformation. It is understood that the Native Title ‘recognition space’, a particular legal phenomenon, is only one dimension of the complex field of social, cultural, political and economic interaction between Aboriginal and non-Aboriginal societies (Mantziaris and Martin 2000). Additionally, native title is considered a relatively weak form of property right, and hence there is a gap between contemporary aspirations of Aboriginal people and the capacity of native title to fulfil them. It is for these reasons and because the recognition space does not encompass the right to negotiate, contractual rights arising from an ILUA, or the legal and political processes by which these rights may be granted or negotiated, that the authors suggest the shift in focus [2011:6].

The term ‘native title arena’ refers to these broader social, political, economic and legal contexts in which native title lies, and that are in part established or impacted by claims for and the recognition of native title [2011:4]. Whilst proving native title focuses on documenting ‘traditionalism’ and connections with the past, work in the broader native title arena involves ‘looking forward’ and working with Aboriginal people to develop understandings of their contemporary circumstances [2011:7].

Working in the native title arena requires the application of anthropological analytical and methodological frameworks, rather than constructing legally-driven processes, to understand socio-cultural transformations including contemporary processes such as Aboriginal engagement with the wider non-Aboriginal society and political and economic development [2011: 2 - 3]. In order to achieve this, it is argued that an understanding of the ‘contemporary polity’, governance mechanisms, diversity of perspectives, contested identities, and competition and conflict is required, as well as consideration of ‘intercultural social fields’ and ‘socio-cultural transformation’ [2011:9]. The concept of intercultural social fields describes the space in which Aboriginal people give to and take from the values and
practises of broader society, whilst socio-cultural transformation is the way in which Aboriginal societies undergo socio-cultural changes. It is noted that both of these aspects of contemporary Aboriginal society are evaded when proving Native title [2011: 12]. The paper discusses two Native Title arenas where this challenge is played out; the development of native title agreements, and the management of native title related decision-making and dispute management. In both situations, an understanding of contemporary socio-cultural transformations rather ‘traditionalism’ is required.


**Interaction between the CATSI Act and Native Title Act.**

A background paper outlining how the Native Title Act 1993 and the Native Title (Prescribed Bodies Corporate) Regulations 1999 require corporations to register under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) if they are determined by the Federal Court to hold and manage native title rights and interests. These corporations are referred to as prescribed bodies corporate or PBCs. Once a PBC is entered on the National Native Title Register it becomes a registered native title body corporate (RNTBC) or Native Title Corporations (NTC) [ORIC PAPER 2010:2]. The CATSI Act has tailored provisions for native title and RNTBCs to ensure there is appropriate interaction between the two laws and that obligations under each law don’t conflict.

**Bauman, T & Ganesharajah, C, 2009 ‘Second National Meeting of Registered Native Title Bodies Corporate Meeting: Issues and Outcomes Melbourne 2 June 2009’ 500Kb, Native Title Research Report No. 2, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2009.**

This paper summarises the issues arising from the second National Meeting of Registered Native Title Bodies Corporate, held in Melbourne, June 2009. The meeting was facilitated by the AIATSIS Native Title Research Unit and was attended by 61 PBCs from across Australia [out of a total of 63 at the time]. Meeting aims included learning from each other; networking and supporting each other, exchanging information, developing strategies to move forward, learn about funding opportunities, inform government policy development and identify research issues for NTRU. A broad range of issues were discussed and priorities for action identified such as the need to support RNTBCs by self-strengthening/capacity building and creating a national peak body. The meeting identified challenges facing RNTBCs as the need to define the appropriate role for RNTBCs, concerns about the amount and distribution of funding and the ongoing lack of resources and capacity.

**Memmott, P & Blackwood, P, ‘Holding title and managing land in Cape York: two case studies’ Research Discussion Paper No. 21, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2008.**

This paper discusses the effectiveness of the design and operation of PBCs, and other types of corporate bodies utilized by Indigenous groups in Queensland to administer and hold different forms of Aboriginal land title obtainable under State and Commonwealth legislation.

This paper summarises the issues arising from the first National Meeting held for PBCs, in Canberra, April 2007, from the perspectives of PBCs themselves. The meeting was facilitated by the AIATSIS Native Title Research Unit of as part of a broader project designed to draw attention to PBCs and provide support to them and was attended by 23 PBCs from across Australia [out of a total of 48 at the time]. A broad range of issues were discussed and a number recommendations developed including the need for funding be provided directly to PBCs wherever possible; dedicated staff members within each agency who understand PBC structures and needs; funding for AIATSIS to provide opportunities for PBCs to network (eg national meetings and/or attendance at the national native title conference), co-ordinate information flow and resources and gather PBC data and develop PBC profiles; and for NTRBs/NTSPs to undertake PBC regional audits to establish their relative needs and organise meetings of PBCs from their regions.


This paper explores the codification of Aboriginal systems of land tenure within the Western legal framework and argues that anthropologists should work with claimant groups to document the system of Aboriginal land tenure and customary decision-making processes at the earliest possible opportunity [in anthropological claim research], and advise claimants’ legal advisers about the implications of this system for the design of Aboriginal corporations [2007:274-5]. The paper outlines structural options for PBCs in relation to Land Trusts and other Indigenous Landholding Entities across the Cape York region and sub regions, incorporating the pooling of available resources [2007: 294]. The authors describe PBCs as either ‘passive’ or ‘active’ in the following terms [2007: 280]:

A passive PBC is a minimalist structure, best suited to the agency PBC type since it will not itself hold the native title interests. The PBC’s role is to consult with and implement the group’s decisions, and its membership may be limited to that necessary to meet the minimal regulatory requirements; it may therefore have a ‘representative’ membership structure, rather than a ‘participatory’ model (which aims to include as many as possible of the native title holders as PBC members). The passive PBC will have limited demands for resources, but is likely to be reliant on the support of regional representative bodies. A passive/agency/representative structured PBC would have no role other than to ‘rubber stamp’ decisions (including non-native title decisions) made by the native title holders.

An active PBC assumes greater responsibility for the making of decisions within the determination area. The trustee PBC type is better suited to an active role, because it ‘holds’ the native title and has greater authority to make decisions on behalf of the native title holders. Active PBCs could adopt either ‘representative’ or ‘participatory’ membership structures. An active/trustee PBC, even with a minimal representative
structure, could make all decisions, including those involving native title rights and interests.

The paper also identifies a number of PBC design challenges including maintaining the integrity of traditional decision-making processes whilst responding to legal and administrative requirements; structuring the membership to reflect traditional social organisational arrangements; and having the capacity to deal with the politicisation of the native title group [2007:296].


This collection of twelve papers investigates the social effects of native title and is the outcome of a workshop held in 2005 at the Australian National University, convened by the Centre for Aboriginal Economic Policy Research. The aim of the collection is to highlight the effects native title has on the social lives of Aboriginal people and Australian society more broadly, which were found to fit into three overall categories:

Recognition - the ways in which the native title process establishes particular groups as native title holders; this aspect of native title, it is argued, is ‘partial and transformative’ and has social effects.

Translation – the way in which native title anthropology specialises in ‘cultural translation’, which transforms the subject given the lack of commensurability between the social systems involved. The ensuing social effects of ‘translation induced transformation’ relate to the codified and misrecognition native title rights and interests.

Coexistence—the ways in which different people live together vary from place to place and context to context and have been affected by the ‘native title era’, in both positive and negative ways [2007:4].

Chapter three of the collection ‘Claim, culture and effect: property relations and the native title process ’ by Katie Glaskin outlines how the formation of a PBC for Bardi and Jawi people, prior to their determination of native title, codified their property rights and forced implicit cultural practices to become articulated. The Bardi and Jawi aimed to ensure their PBC reflected their traditional laws and customs and thus worked hard to get the rules right [2007:70]. Glaskin argues that whilst these conscious decisions are cultural transformations, they are also an ‘index of their agency, a strategy aimed at ensuring their survival and cultural reproduction’ [2007:72].

Chapter five of the collection ‘We’re tired from talking’: The native title process from the perspective of Kaanju People living on homelands, Wenlock and Pascoe Rivers, Cape York Peninsula’ by David Claudie presents a native title holders view of coexistence [with the state government] and their concerns associated with the ability of the PBC system to recognise Kaanju governance and enable Kaanju decision-making about managing and developing homelands [2007:92]. At the time of writing the Batavia application had not been determination but Claudie predicted problems arising from the ‘differing opinions on who are the proper people who hold authority’ [2007:110]. It is noted that the group are hoping to identify an alternative way to hold and manage native title rights once determined.

Weir identifies PBCs as important new forms of Indigenous governance ‘thwarted by the complicated and cluttered PBC governance context’ and differing views on what a Native title determination means [2007:2]. Her discussion on Indigenous governance in the native title context canvases the then recent Federal Government reforms designed to support more efficient PBCs and identifies key issues associated with the initial establishment of corporations, including the lack of time for communities to workshop and design their priorities after determination [2007:8].

Weir describes the recognition of Native Title itself as a form of self-governance challenged by the absence of economic and commercial components [2007:6]. Regardless of this omission, Weir views PBCs as important vehicles for the aspirations of native title holders with the potential for local legitimacy. Moreover, because PBCs are likely to exist in perpetuity, Weir sees them as an ideal opportunity for both governments and Indigenous people to invest in Indigenous governance [2007:11].


This chapter investigates the relationship between two different kinds of incorporation among Bardi and Jawi peoples of Western Australia; one relating to the establishment of outstations which allows people to live on their country and the other relating to native title, the legal recognition of people’s relationships to country [2007:200].

Glaskin describes how the outstation movement highlighted the distinction between land using and land owning groups and ‘consolidated notions of the autonomy of these contemporary land-using groups’ given each outstation created a separate corporation to represent it [2007:211]. Glaskin observes that outstation groups often reflect estate groups but they are not of themselves equivalent to them and that outstation corporation membership tends to be based on the extended family group rather than encompassing all estate affiliates [2007:215]. Glaskin highlights how incorporation within the outstation context resulted in the formation of many incorporated outstation groups, but in the native title context, the requirement is for a single incorporated group [2007:216]. PBCs relate to ‘communal claim to native title’ based on a western model primarily designed to facilitate external dealings and native title-holding groups.

The incongruity between Aboriginal social formations and western-style corporations concerns Glaskin and in particular how the dynamic political life within the Aboriginal domains is affected by the ‘static corporate entity they are being asked to maintain’ [2007:212]. Prior to the relevant determination the Bardi and Jawi people established a working group to identify the design of their PBC. During this process it became evident that, as a result of the political nature of social relationships, ‘consensual decision making in the context of PBCs (and their formation) will require time’ [2007:214].
In 2006 AIATSIS undertook a research and resource project to develop greater understanding of the Prescribed Bodies Corporate (PBC) environment, native title holder aspirations and to bring together resources for the benefit of PBCs. The first of a series of workshops was held in December 2006, and was attended by Native Title Representative Bodies, government representatives from the Department of Families, Community Services and Indigenous Affairs and Attorney General’s Department.

The report by Strelein and Tran outlines the major issues, themes and discussions that arose during the workshop, which related to the legislative framework, establishing a PBC [including the role of law and custom in the designing the PBC], defining the relationship between RNTBC and PBCs, and roles, aspirations and future directions of PBCs.


In this paper, Martin considers whether corporations provide appropriate institutional vehicles for Aboriginal self-determination. The issue is considered with reference to the concept of Native Title as a ‘recognition space’ where the particular indigenous system of traditional law and custom and the general Australian legal system overlap [2004:67 - 68]. Martin makes the distinction between native title and the system of connections an indigenous group has to its traditional country; the connections people have to country may not always be described as ‘rights and interests’ [2004: 68]. He advises that professionals working in Native Title need to differentiate between ‘the relations, which are the subject of the recognition process, and the legal rights and interests, which are the result of the recognition of these relations by the Australian legal system…..the fundamental role of a Prescribed Body Corporate under the Native Title Act is the management of the group’s native title, that is, the management of the rights and interests recognised by the court. Its role [in the first instance at least] is not the regulation of relations within the group, or between the group and their traditional country…’ [2004: 69].

Martin highlights that the three key requirements of Aboriginal corporations established to manage native title conflict, creating an unstable management regime; they are the need to be incorporated under the Aboriginal Councils and Associations Act, the need to act as either an agent or trustee for the Native title group and the way decisions making must involve consulting and seeking consent from Native Title holders [2004: 70]. Problems identified by Martin include attempts to correlate / match dynamic native title group membership with fixed corporation membership; the clash between Aboriginal people meeting their traditional duties to individuals or subgroups and the requirement of the corporation to meet the needs of the broader Native title group; difficulties in establishing organisational structures that reflect relevant groups under Aboriginal law and custom within the broader Native Title group when decision making is by way of a majority vote; and confusion over the fact that membership of a Native Title group is not ‘voluntary’ where as membership of a corporation is [2004: 71-72].
Having identified an array of problems associated with the way Aboriginal corporations represent Native Title holders, Martin goes on to argue that the role of PBCs should not be increased as a way to achieve the wider goals of the Native Title group or involve management of the relations between the group and its country or amongst the members of the group. He argues that management of Native Title should be structurally separate from the management of other assets and from the achievement of broader social and economic goals of the group and that that the central focus of PBCs should be on the relationship between the corporation and the members of the native title group, through the consent and consultation provisions, and the agent or trustee structure [2004:75].

Martin D 2003 Rethinking the design of indigenous organisations: The need for strategic engagement. AIASTIS Discussion Paper 248 / 2003

In this paper Martin argues that a fundamental issue confronting Australian indigenous organisations, including PBCs, is how they can develop the capacity to engage strategically with the general Australian society. Martin defines ‘strategic engagement’ as the ‘processes through which indigenous individuals, groups and communities are able to interact with, contribute to, draw from—and of course potentially reject—the formal and informal institutions of the dominant Australian society in a considered and informed manner that provides them with real choices as to where to go, and how to get there’ [2003:iv].

Martin identifies governance as one of the key factors effecting community capacity for strategic engagement, which, in the context of indigenous organisations, he defines as the ‘formal and informal structures and processes through which a group, community or society conducts and regulates both its internal affairs and its relations with others [2003:iv]. Martin argues that because Australia indigenous people inhabit complex and contested intercultural worlds, rather than autonomous self-defining and self-reproducing worlds, effective governance and strategic engagement must draw from indigenous values and practices, as well as from those of the general Australian society [2003:iv].

Based on these principles Martin suggests a number of ways indigenous organisations can achieve effective governance for strategic engagement, including by minimising the codifying of ‘traditional law and custom’ within formal corporate governance mechanisms; by utilising the skills of ‘outsiders’, be they indigenous or non-indigenous; by developing robust relationships between the organisation and its constituents; by separating corporate membership from the organisation’s constituency; by building in broad representational mechanisms to encompass constituent diversity; by establishing mechanisms to minimise the capacity for individuals and sub-groups to capture organisational resources; by nominating rotating Chair people; and by understanding ‘capacity building’ as a particular form of cross-cultural education [2003: 11 –13].


This report presents the outcomes of a NNTT initiated project focussing on the use of PBCs as a means of protection of native title in terms of land and sea management, and the relationship between PBC operations, and those of other indigenous land owners and managers and non-Indigenous land management bodies. Whilst the research utilised two case studies in Cape York, in the Coen and Wik sub-regions, it is anticipated that the project
outcomes will assist existing and future PBCs across Australia to operate effectively in relation to land and sea management, in order to protect and maintain native title rights and interests within a complex pattern of Indigenous interests, types of land tenure, and coexisting stakeholder groups [2003:v].

The report makes 26 recommendations across a broad range of interrelated areas such as undertaking regional, economic, legal and environmental planning; ensuring the internal design of the PBC reflects available funding; co-ordinating the operations of land trusts and PBCs; formalising links with external entities; and ensuring PBC design be informed by an understanding of the social structure and decision-making dynamics of the group [2003:111–122].


A conference speech following the negotiation of the Nharnuwangga, Wajarri and Ngarla Native Title settlement from the perspective of one of the Native Title holders, Michelle Riley. Riley criticises the administrative obligations required under the Native Title Act 1993, the failure of government to fund Native Title corporations and raises concern over needing to take out public liability insurance as a condition of accessing lands leased by pastoral stations.


This paper was presented at the Yamatji Land and Sea Council and AIATSIS Native Title Conference in 2002 and identifies a range of issues facing native title-holders and Prescribed Bodies Corporates across the Torres Strait Regional Authority (TSRA) region which stretches 150km from the tip of Cape York Peninsula to the south-west coast of Papua New Guinea [2002: 163].

At the time of writing there were sixteen PBCs incorporated in the TSRA region, nine being associated with determined Native Title Applications and appointed by the Federal Court. The TSRA has identified the lack of support for PBCs post – determination as being the most significant issue affecting the protection of native title interests in the Torres Strait. Other issues identified by Murphy are associated with complex statutory requirements, a lack of funding to administer, the difficulty in consulting Native Title Holders who reside across a vast region, implications for noncompliance, and issues associated with roles arising from overlapping state and commonwealth statutes [2002: 163 – 165]. Overall Murphy found that ‘very little thought has been given to the sustainability of the system post-determination’ [2002: 165].

A comprehensive legal and anthropological analysis of the intersection between traditional laws and customs and Australian common law, in terms of who holds native title and makes decisions about the area where native title has been determined to exist. The publication is arranged in three parts; the character of Native Title, the legal framework for managing Native Title and designing processes for Native Title Institutions. Topics covered include the definition of Native Title, core and contingent rights, legal processes, policy deficiencies, incompatibilities between Aboriginal and common laws, an analysis of the four types corporations, and proposals for reforms.

Martin identifies four Native Title Corporation prototypes or structures arising from two basic design choices that must be made by every native title group; the first choice relates to the legal relationship between the Native Title group and the Corporation as either agent or trustee, and the second choice relates to the different membership systems as either participatory or representative [2000:329]. Hence, the four basic Native Title Corporation structures are [2000:332]:

1/ Agent with participatory membership
2/ Agent with representative membership
3/ Trustee with participatory membership
4/ Trustee with representative membership

A trustee PBC operates under defined rules and may be given a lot of decision making freedom, whereas an agent PBC will be subject to specific directions from the group members. Under the agency arrangement, native title continues to be held directly by the Native Title holders, rather than in a trust by a corporation [Mantziaris & Martin 1999: 52].

A participatory PBC has a membership base that extends as far as possible to all members of the native title group, aiming for a congruency between corporation and native title group membership and may reflect classes of interest within the native title group. A representative PBC is usually small with members representing classes of interest with the broader group. Membership of the corporation is identical to the governing committee [Mantziaris & Martin 1999:52].

Type one - agent PBC with participatory membership is appropriate for small well defined groups, and those with complex internal differences. Voting can accord to land affiliations as defined by laws and customs [1999:53]. Participatory membership attempts to include all adult members of the group, with the aim of being inclusive and fostering legitimacy within the indigenous system, compared with representative membership model. Martin highlights long term problems associated with the participatory model, including the ongoing need to update corporation membership to reflect changes to the makeup of the native title group [as a result of death, identification of new members who have come of age or have been incorporated into the group through non decent base criteria] [1999: 55]. Additionally, there may be political ramifications in instances where corporation
membership is incongruent with membership of the native title group, potentially impacting a ‘person’s status within the system of indigenous law and custom itself’ [Mantziaris & Martin 1999:55]. Agent PBCs can find it hard to define who they are acting as an agent for, ie, defining their principal. Is it individuals who make up the Native Title Group, is it the group as a whole or subgroups? Agent PBCs may face problems if they have multiple principals giving differing instructions on a matter. Overall the type one model is relatively cost ineffective, vulnerable to fracture from internal interest groups, but can offer certainty if principals are well defined [1999:57].

Type two - agent PBC with representative membership are usually small and all members of the corporation are also members of the governing committee. Members represent subgroups of the native title group. This model is flexible, time and cost efficient and robust in terms of it being less vulnerable to vote stacking and internal fracture [1999:60].

Type three - trustee PBC with participatory membership offers a high degree of decision making certainty, but is vulnerable to internal fracture compared with a representative PBC. Whilst trust PBCs have to consult and gain consent from Native title holders before making decisions, they can generate proposals independent of the native title group. Trust PBCs are required to maintain a high standard when making decisions about native title interests unlike agent PBCs which are bound to implement directions given by Native Title holders not matter how ill – informed [1999: 62].

Trustee PC with representative membership is the most robust PBC model able to ‘provide a fast and efficient native title manager’. As a disadvantage, this model fosters low levels of legitimacy given the native title group cedes decision making power over to a representative group [1999:63].

Mantziaris and Martin raise the profile of Pearson’s diagrammatic concept of native title as a ‘recognition space’, as a way to describe how two systems of law intersect [2000: 9] whilst concurrently adopting a broad analytical framework investigating Prescribed Bodies Corporates as legal entities, in recognition that they are one of many organisations that play significant roles within the contemporary indigenous polity [2000: 258–348]. Whilst there has been legislative and regulatory changes since 2000, this publication provides the most detailed analysis of Native title corporations to date and a technical base for understanding the complexities of Native Title Corporations.

This practical guide is a companion to the legal and anthropological analysis also authored by Martin and Mantziaris. Factors to consider in relation to PBC design include the size and internal complexity of the group [does the structure attempt to reflect this and should consent and consultation procedures be stated in the rules]; the geographical dispersion of group [minimise high meeting costs by having membership on a representative rather than participatory basis]; and the cohesion of group [if internal fighting consider establishing mechanisms to cater for them] [1999: 27-28].

Trust and agency are both legal relationships that define roles, the fundamental difference between them, in terms of Native Title, is that a trustee PBC holds the Native Title and manages it, whereas an agent PBC merely manages the title [1999: 16]. A trustee PBC operates under defined rules and may be given a lot of decision making freedom, whereas an agent PBC will be subject to specific directions from the group members. Under the agency arrangement, native title continues to be held directly by the Native Title holders, rather than in a trust by a corporation. Native title holders may see the latter as enabling individuals sitting on a board to make decisions about their country [1999:18].

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Participatory membership attempts to include all adult members of the group, with the aim of being inclusive and fostering legitimacy within the indigenous system, compared with representative membership model. Martin highlights long term problems associated with the participatory model, primarily concerning the ongoing need to update corporation membership to reflect changes to the makeup of the native title group [as a result of death, identification of new members who have come of age or have been incorporated into the group through non decent base criteria] [1999: 55]. Additionally, there may be political ramifications in instances where corporation membership is incongruent with membership of the native title group, potentially impacting a ‘person’s status within the system of indigenous law and custom itself’ [1999:55].


This paper identifies a number of key issues of concern associated with establishing Native Title Corporations, including the complex and uncertain legislation and regulations, and the need for incorporation under the ACA Act 1976 [1997: 4]. Given the holders of native title are a social community group, and their land holding is part of territorial political structure, corporations used to dealing with property are not able to regulate asocial community owning territory [1997: 4]. Sullivan argues that the size of the claimant group is important
for the claim process and for the future management of the land. Accordingly, he suggests that groups incorporate at the ‘largest practical level’ and have their particular rights met through representative structures rather than through the conflict of competing structures [1997: 6]. Sullivan argues for a ‘social and political structure that will unite once more the system of custom with the fact of land holding. The assumption that native title is a property right bearing with it no political rights, and that it therefore need only be administered by a corporation established by the general law, is manifestly contradictory’ [1997: 25]. The system required, according to Sullivan, should reflect post-colonial self-governance, rather than European corporate practises.


Finlayson highlights the problems associated with representation for RNTBCs involving Aboriginal people who live on ancestral lands and Aboriginal people who don’t. With an understanding of the characteristic of the broader political domain Finlayson identifies ways in which anthropological thinking can assist in managing and indeed avoiding conflict within RNTBCs, particularly those associated with arguments about defining ‘tradition’ and group membership. Finlayson highlights localism and autonomy as key features of Aboriginal political processes, including decision making, and suggests that because the ‘local focus of members overshadows the concerns of the regional constituency’, political tensions arise as do tensions between local and regional perspectives [1997:150].


Martin discusses the distinction between ‘traditional’ and ‘historical’ people in relation to the formation of RNTBC and how the dynamic between the two is complicated by traditional owner disputes, the distinction between urban and rural residency, political links, and access to development profits / distributions [1997: 157-8]. Considering these factors and the statutory requirement for RNTBC to be "broadly representative", Martin argues that RNTBC should primarily be service delivery organisations, part of that service being advocacy in native title matters. For Martin, the issue is not about ensuring that every grouping in every region has a place in a representative structure, but establishing processes which ensure effective, equitable and accountable provision of native title related services to the organisation’s constituencies [1997: 159].

This CAEPR discussion paper was written 3 years after the Native Title Act was introduced and 2 years before the first Native Title application was determined and RNTBC established [Mer Gedkem Le Corporation est. August 1998], when Native Title existed as a future potential rather than a reality [1996:4]. Whilst the discussion paper relates to Aboriginal organisations generally, it is vitally relevant RNTBCs.

The conceptual framework proposed for understanding and enhancing the accountability of Aboriginal organisations links ‘organisational self - determination’ [the capacity of Indigenous people to realise their goals through various kinds of incorporated bodies] with ‘internal accountability’ [the accountability of an organisation to its Indigenous members, clients or constituency]. Further, it is argued that ‘internal accountability’ is linked to ‘public accountability’ [the accountability of an organisation to funding agencies and ultimately the wider public] [Martin and Finlayson 1996: 2].

Martin and Finlayson consider a range of important issues concerning the accountability and self-determination of Aboriginal organisations including the policy climate; the ‘Aboriginal domain’; the interrelationship between self-determination, self-management and accountability; membership, constituency and ‘cultural appropriateness’; and the importance of an organisations ‘representative’ structure in relation to internal accountability. Martin and Finlayson argue that ‘organisations which have developed structures and processes which maximise their internal accountability are more likely to be externally accountable’ which can have positive effects on self-determination processes [1996: 22].