

RNTBC Working Group Meeting: 28 March 2011, Cairns

By Tran Tran, PBC Officer, Native Title Research Unit, AIATSIS

Registered Native Title Bodies Corporate (RNTBCs) are a key element of the native title system although the representative structures, policy context and institutional arrangements that affect them do not reflect this key land management role. On 28 March 2011 a meeting of representatives from RNTBCs was held in Cairns ('the Cairns Meeting') to discuss the establishment of a national RNTBC peak body following recommendations made at the Second National Meeting of PBCs held in Melbourne in 2009.

The 2009 recommendation arose from the need to build awareness and relationships within and amongst RNTBCs and also with their external stakeholders including government departments, agencies and other proponents who seek to do business on country. Many of the RNTBC representatives present at the Cairns meeting were concerned that there were still issues in terms of being able to access government funding programs in a way that does not involve high levels of administration relative to the level of funding received or in ways that did not restrict their ability to carry out work on country.

RNTBCs also raised concerns that proposal for the working group had lost considerable momentum. Some original representatives were unable to attend the meeting or no longer worked in their RNTBCs. AIATSIS is still in the process of seeking representatives from other jurisdictions. It is hoped



Gerald Hobbler, Tjaruwa Mary Anderson, Seriako Stephen and Ned David at the Cairns Meeting

Meeting participants:

Queensland – Alwyn Lyall (Western Yalanji) and Gerald Hobbler (Djabuguy)

Torres Strait – Seriako Stephen (Ugar Kem Le Ged Zeuber Er Kep Le) and Ned David (Magani Lagaugal).

South Australia – Tjaruwa Mary Anderson (De Rose Hill)

Western Australia – Franklin Gaffney (Mirruiwung Gajerrong)

that through the AIATSIS PBC Support Project progress can be made towards national RNTBC representation as way of generating greater cohesion in the RNTBC sector and influence policy design in a way that matches the needs of native title communities.

How to 'do' representation was the biggest issue discussed at the Cairns meeting. Given that there was a small working group (and potentially small representative organisation) and a need to access the right people there were many questions raised about representation and how it would be constituted. Some RNTBC representatives were wary of engaging in broader political arenas. Other delegates mentioned that there was a significant

difference in terms of remote and non remote RNTBC experiences and that representation should account for the diversity of native title holders Australia wide. The balance between diversity and representativeness while ensuring that a peak organisation remains feasible requires further consideration and further consultation both on the community, regional or state and territory level.

It is important for Traditional Owners to take every opportunity to make comment. We do this to ensure that people know that we are here and more importantly our aspirations as the first peoples. We need to work together, understand the different perspectives we bring to the group and work out how we can work effectively to help ourselves. I think for us it would be a magic exercise to come together and talk, so we can have a coherent voice with a clear position on all the issues that impact on our business

- Ned David

However, despite the many views presented, all meeting participants agreed that it was not for representatives to speak on behalf of people and country rather their role is to address the many common issues that are faced by all RNTBCs. What was common throughout the discussion was that there has been little emphasis on the resilience of native title holders, organisations and communities to adapt and continue with often voluntary and unrecognised work. The RNTBC Working Group will be meeting again at the National Native Title Conference 2011 to present its work so far to the broader native title sector. The formation of the working group creates an opportunity for all RNTBCs to have a voice and focus on the collective innovation and resilience of RNTBCs as a way of moving forward.

Copies of the first meeting report have been distributed through the RNTBC email network. If you are interested in being a part of the working group or would like to be on the RNTBC email network please contact the PBC Project Officer Tran Tran, tran.tran@aiatsis.gov.au, (02) 6246 1181.

What's New?

Recent cases

Mangarrayi Aboriginal Land Trust v Banibi Pty Ltd (No 2) [2011] FCA 173

7 March 2011

**Federal Court of Australia: Darwin Registry
Justice Mansfield**

Decision concerning costs in the decision of *Mangarrayi Aboriginal Land Trust v Banibi Pty Ltd [2010] FCA 1195*. The matter concerned the Banibi Corporation who was licensed to use Eley Station which was managed by the Northern Land Council (NLC) on behalf of the Mangarrayi Aboriginal Land Trust (the Land Trust). The Court considered the question of costs and noted that it has unfettered discretion to order costs under s.43 of the *Federal Court Act 1976* (Cth). Generally an order for costs follows the event and if the substantive issues have not been determined by the Court, it will usually make no order as to the costs of the proceeding (citing *L & A Maglio Pty Ltd v Commissioner of Taxation [2007] FCA 1365*). In this case, the corporation claimed that they were not liable for costs as the matter had not been concluded. Further, the sole shareholders of the corporation are traditional owners living around Eley station. The Court also considered the fact that the land trust did not support the action taken by the NLC as its representatives. However it held that the Banibi Corporation pay the costs and that it was up to the parties to determine internally how they should be recovered.

FQM Australia Nickel Pty Ltd v Bullen [2011] FCAFC 30

9 March 2011

**Full Federal Court of Australia: Perth Registry
Justices North, McKerracher and Jagot**

Appeal by State of Western Australia and FQM Australia Nickel Pty Ltd that the primary judge had erred in holding that there were registered native title holders in the mining lease areas of M74/169 and M74/172 (see *Bullen v State of Western Australia [2010] FCA 900*). One of the registered claimants was deceased and the primary judge held that the applicant in relation to a claim to hold native title in relation to land or waters continues to be the 'registered native title claimant' after the death of that person or persons. The appellants relied on s. 28 of the NTA, which states that 'the right to negotiate' provisions apply is invalid to the extent