QSNTS Native Title Handbook
A word from the CEO

Welcome to the QSNTS Native Title Handbook. This handbook is designed to give you a better understanding of our organisation’s work and about native title in our region.

The first half of the handbook aims to clarify QSNTS’ role and the way native title is at play within the QSNTS region. The second half is designed as a general overview of native title. We hope you’ll keep the handbook around to refer to in the first instance when you have a native title question.

Kevin Smith
Chief Executive Officer
Queensland South Native Title Services
About QSNTS

Queensland South Native Title Services (QSNTS) is the Native Title Service Provider for the southern half of Queensland. We aim to assist traditional owners in realising their aspirations to native title. To achieve this, our primary service is statutory assistance. We also seek capacity development opportunities and promote reform of the native title system.

QSNTS was founded in July 2008 following the amalgamation of representative bodies and land councils in the region. QSNTS is a company limited by guarantee, funded by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). Under s203FE of the Native Title Act 1993 (Cth), our role is to carry out the functions of a native title representative body as prescribed in the Native Title Act. That includes:

Facilitation and assistance (s203BB) Directly representing native title holders and claimants in native title related proceedings.
Certification (s203BE) Assisting with the certification and registration process of native title applications and Indigenous Land Use Agreements (ILUAs).
Dispute resolution (s203BF) Trying to resolve disputes between various native title holders and claimants, including facilitating agreements between these persons.
Notification (s203BG) Ensuring that notices made under the Native Title Act are brought to the attention of relevant native title holders and claimants.
Agreement making (s203BH) Participating in Indigenous Land Use Agreements on behalf of native title holders in appropriate circumstances.
Internal review (s203BI) Reviewing decisions made as a native title service provider and addressing all feedback through an internal process.
Other functions (s203BJ) A range of miscellaneous functions including making agreements with neighbouring native title representative bodies to deal with overlapping claims, identifying potential native title holders, and promoting an understanding of the Native Title Act amongst clients.

QSNTS is guided by a Board of Directors and headed by a full-time Chief Executive Officer (CEO). The QSNTS Executive is comprised of the CEO along with the Chief Financial Officer and Principal Legal Officer. QSNTS employs around 50 staff who work in legal, research, community relations, administrative and corporate service roles. We also engage a range of experts including anthropologists, historians, linguists, archaeologists and legal counsel.
Realising Traditional Owners' aspirations to land and waters through professional native title services

Reform
Capacity Development
Statutory Services

Our goals

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<th>To deliver a complete range of legal services to realise our clients’ aspirations.</th>
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<td>Organisational Capability</td>
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Our commitment

At QSNTS, we are committed to assisting traditional owners to realise their aspirations to land and waters. We do this by providing culturally appropriate native title services that are professional, accountable, collaborative and openly communicated.

In pursuing this goal, we aim to:
- treat all clients fairly and impartially;
- recognise and respect cultural and other diversity;
- provide explanations of the processes we must follow and standards we aim to achieve, and present these explanations in a form that our clients can understand;
- ensure that clients are able to discuss the decisions which affect them with someone who is able to understand and respond to their concerns;
- listen to clients when they suggest ways in which we might improve our service and give serious consideration to all the suggestions we receive.

We regularly communicate with clients through claim-specific newsletters, personal correspondence and our website.

QSNTS acknowledges that because of the nature of the native title system, conflicts arise concerning identity. We encourage confidential mediation for the resolution of intra- and inter-Indigenous disputes. Mediation assists complex and culturally-sensitive matters to be resolved in a structured, impartial and respectful manner. It is a statutory function of QSNTS to assist in conflict resolution.

We are committed to an evidence-based approach for pursuing native title claims. Within the sensitive environment of identity and connection, QSNTS does not make decisions about who is who but focuses on providing evidence to the Court for the ongoing progression of native title claims. We draw on the evidence of claimants and members of neighbouring groups as well as historical, documentary and other expert evidence.

Our clients

QSNTS’ most important stakeholders are our clients, the traditional owners. Traditional owners have many roles in a native title claim. They can be claimants, parties to Indigenous Land Use Agreements, groups asserting their native title and constituents.

As a general rule, a member of a claim group must be a descendant of a named apical ancestor. Claim group members are called claimants.

The members of the claim group who are chosen as the primary representatives of the claimants in a native title determination application are called the applicant. The applicant is authorised by the claimants to make the application for a native title determination and to deal with all relevant matters concerning that application. The applicant can be made up of one or many persons.

QSNTS has a unique range of stakeholders. As well as our funding body, the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), QSNTS works closely with other native title representative bodies, the Federal Court, the National Native Title Tribunal, the State Government, and decision makers like the Attorney-General, various Ministers and other politicians.
Native Title in the Queensland South region

Native title was born in Queensland with the 1992 Mabo case for the Mer People in the Torres Strait. This landmark case triggered the introduction of native title legislation.

Since then, most native title applications in Queensland have been resolved by negotiation and agreement out of court, rather than by a ruling in court. Of the 63 native title determinations in Queensland to December 2011, 61 came about from a mediated agreement between the parties, indicating the strong agreement-making focus of native title in our state. Another sign of collaborative outcomes is that, to date, most of Australia’s Indigenous Land Use Agreements have been negotiated in Queensland.

In 2010, the Federal Court’s Queensland District Registry introduced an innovative prioritisation system for native title applications to address lengthy claim processes. The system assigns specific timelines for moving through the process of achieving a native title resolution. It also sets an ambitious ten year target for the resolution of current native title claims. When applying for funding, QSNTS will give priority to those claims that:

- have been on the Federal Court list the longest;
- are the subject of Court Orders requiring strict timeframes; and
- have reasonable prospects of success based on a senior barrister’s advice.

We welcome the Registry’s approach as an opportunity to focus resources and effort in order to achieve positive outcomes for clients.

The Queensland South region covers an enormous 515 000 square kilometres. We have divided this area into five regions based on geographical and resource districts so as to improve the opportunities for native title groups to engage in collaborative agreements and settlements with other parties who have shared interests in such resources and land.

Southeast Queensland is the most populous region in the state. It encompasses the World Heritage listed Fraser Island, Moreton Island, and iconic North and South Stradbroke Islands, as well as highly urbanised areas including Brisbane city. Traditional owner groups in Southeast Queensland include the Butchulla, Githabul, Gold Coast, Jagera, Jiniburr (Jinbar), Kabi Kabi, Tumbul, Ugurapul, Quandamooka and Yugambeh/Mununjali Peoples.

The South Central Region is home to the Central Queensland Highlands where the rivers are lined with Australia’s iconic eucalyptus tree. Flat cracking black soils dominate the rest of the region with Mitchell, Roma, Goondiwindi and Charleville as the main town centres. The booming resource sector is a significant feature here, particularly for natural gas. Traditional owner groups include the Bidjara, Bigambul, Darling Downs, Gunggari, Kamarlo, Kooma and Mandandanji Peoples.

Known for its mulga woodlands and red dirt plains, the South West Region neighbours the New South Wales and South Australian borders. A comparatively remote part of Queensland, the south west corner is sparsely populated, but contains some of the most expansive cattle stations in the state. That means pastoralists are an important party to claims. Its major towns are Cunnamulla, Birdsville, Quilpie and Eulo. Traditional owner groups in the South West Region include the Boonhamurra, Budjiti, Kullilli, Kunja, Mardigan, Mithaka and Wongkamurra Peoples.

Spanning from the Northern Territory and South Australian borders across to Winton, the North West Region is a vast area known for its mineral resources. It is centred on the Mount Isa-Cloncurry area and includes Boulia, Julia Creek, Middleton, Winton, Longreach, and Dajarra townships.
Also known as the ‘North West Queensland Mineral Province’, the North West Region holds a considerable amount of the world’s lead and zinc resources, as well as high-quality copper, gold, silver and phosphate deposits. The area is characterised by monsoonal savannah in the north grading to arid areas inland and Mitchell Grass Downs in the south.

Traditional owner groups include the Bularnu, Waluwarra & Wangkajjeru, Indjilandi, Dithannoi, Kalkadoon, Maiawali, Kurawali, Mitakoodi, Mithaka, Pitta Pitta, Yulluna and Wangkamanha (Wangkamahdla) Peoples.

The North East Region is one of the most diverse areas of Queensland with pristine beaches along the east coast, flat grazing lands in the west and eucalypt tablelands in between. The area is home to some of the largest mining interests in Australia with giant open cut mines scoring the landscape. Some of the major towns include Bundaberg, Rockhampton, Emerald, Blackwater and Clermont.

Traditional owner groups in the region include the Barada Barna, Belyando-Dawson (Gangulu/Kangoulu/Ghangalu /Kanolu), Darumbal, Djaku-ndie & Jangerie Jangerie, Iman, Iningai, Karingbal, Port Curtis Coral Coast, Southern Barada & Kabalbara/Yetimarala, Wadja, Wakka Wakka, Wangan & Jagalingou, and Wulli Wulli Peoples.

What is Native Title?

The Australian Government recognises that Aboriginal people and Torres Strait Islanders have special rights and interests to land that comes from their traditional laws and customs. Native title is the name of that recognition under Australian law.

These rights and interests depend on the traditional laws and customs of the particular claim group. They include the rights to:

- access an area for traditional purposes, like camping or participating in ceremonies;
- visit, maintain and protect important places and sites;
- hunt, fish and gather food or traditional resources like water, wood and ochre;
- teach law and custom on country; and
- live on an area.

Generally speaking, native title must give way to the rights held by others. That means pastoralists and mining companies who already have rights to the land keep those rights even if native title is determined.

Native title can exist on:

- vacant (unallocated) Crown land;
- some state forests, national parks and public reserves depending on the effect of state or territory legislation establishing those parks and reserves;
- oceans, seas, reefs, lakes and inland waters;
- some leases, such as non-exclusive pastoral and agricultural leases, depending on the state or territory legislation they were issued under; and
- some land held by or for Aboriginal people or Torres Strait Islanders.

For most of the areas where native title is successfully claimed, the country will be shared by the native title holders and other people with rights and interests in the same area.

When nobody else has rights to the land, native title can include the right to own and live in an area. This is usually called exclusive possession and it can only be recognised over certain parts of Australia. In Queensland, exclusive possession native title has been determined in Far North Queensland and small areas in the Queensland South region.

For further insight into the goals of native title, refer to the Preamble to the Native Title Act on page 18.
Parties and negotiations – the State, mining companies and more

In native title, a “Party” is any person or organisation who either:

• enters into an agreement, such as an Indigenous Land Use Agreement, with another person or organisation; or
• is a participant in a legal action or proceeding such as an application for a determination of native title.

The native title claimants and the State are major parties to a native title claim. Other typical parties include mining companies, pastoralists and farmers, and local governments.

Because there are often a lot of parties negotiating native title rights and interests, final decisions over native title claims can take time. A system was devised to facilitate dealings that would affect native title both during the claim process and after native title is recognised. This is called the future act process.

A future act is a proposal to do something that will affect native title. Examples of future acts include the grant of mining or exploration rights, or the passing of legislation over a particular area. The Native Title Act gives native title holders and registered native title claimants procedural rights in relation to certain future acts. Depending on the type of future act, these rights include being notified, being given an opportunity to comment, or having the right to negotiate on an act. Claimants only gain this right if their native title claim satisfies all of the registration test conditions. QSNTS assists claim groups with future act matters on a case by case basis.

The National Native Title Tribunal administers the future acts processes that attract the right to negotiate under Commonwealth legislation - that is, generally, future acts relating to mining leases and some compulsory acquisitions. The Tribunal’s role in this process includes mediating between parties, conducting inquiries and making decisions (called ‘future act determinations’) where parties can’t reach agreements.

An Indigenous Land Use Agreement (ILUA) is an agreement about the use and management of land and waters made between people who hold, or may hold, native title in the area, and other parties. An ILUA can be a practical way to resolve native title issues. It allows people to make agreements about how land or waters are used without necessarily entering into the native title process.

Stats at a glance

The following statistics give perspective to the scope of the Native Title Act from a national viewpoint. They also highlight the challenges in the Queensland South region, particularly putting the impacts of urbanisation and early colonisation into context.

Since 1994 there have been 1962 applications made under the Native Title Act. Of those, 1488 of those applications were determined, dismissed or otherwise disposed of.

There are approximately 175 court determinations of native title - in more than three quarters it was found that native title exists (in all or part of the determination area) and the rest it was decided that native title did not exist. Determinations cover about 15 per cent or 1 166 368 square kilometres of the land mass of Australia.

There are approximately 585 registered Indigenous Land Use Agreements (ILUAs) which together cover about 16 per cent of the land mass. Many of the ILUAs are stand alone agreements negotiated before any determination of native title.

Native Title statistics are constantly changing. The National Native Title Tribunal website, www.nntt.gov.au, is a good resource for the latest information.

A Native Title Claim

A native title claim (“a Claim”) is an application made by Aboriginal or Torres Strait Islander people to have it recognised under Australian law that native title exists over a particular area of land or waters under the Native Title Act. The final decision is called a determination.

Native title claims will either be resolved in court or out of court. There are several potential outcomes and resolutions. The following diagram outlines the progress of a typical native title claim.
The Native Title Claim Process
- a brief outline of how a typical claim progresses

1. Decision by Traditional Owners to pursue native title claim
2. Discuss with native title service provider (QSNTS) to initiate the claim
   - funding, probability of success, etc.
3. Preliminary research
   - to identify and confirm claim group description, boundaries, law and custom, etc.
4. Authorisation of the claim
   - if research establishes that there is enough evidence
5. Registration test by National Native Title Tribunal
   - the registration test is a series of conditions to see whether a claim has enough basis to justify a claim
   - once registered, claim groups have the right to negotiate with other parties (e.g., mining companies through ‘future acts’)
6. Native title consent determination
   - Federal Court hearing legally recognising native title
   - agreements with the State Government and other interested parties
7. Send the evidence to the State Government
   - to see if they will accept the connection evidence and enter into negotiations towards a native title consent determination
8. Advanced research
   - if registered, comprehensive research is undertaken to confirm ‘right people for right country’
   - a Connection Report is produced by expert researchers

*Some other potential steps taken
- If research does not uncover sufficient evidence, more research may be undertaken or the claim group description may change.
- If the State does not accept connection evidence, the claim group may decide to take advice from legal counsel and progress the claim for trial in the Federal Court.
- A future act is a proposal to do something that will affect native title. The Native Title Act gives native title registered claimants and holders rights in relation to certain future acts.
Connection is a term used in the native title process to describe the ongoing relationship traditional owners have to the land and waters within the claim area. Connection to lands and waters can be physical and/or spiritual. To establish connection, the claim group must show they have continued to observe and acknowledge, in a substantially uninterrupted way, the traditional laws and customs that give rise to their connection with the claim area from the time of the assertion of sovereignty by the British to the present day (s. 223(1)(b) NTA).

According to the Queensland Government’s Connection Guidelines, a connection report should provide the following information in relation to the identification of a native title claim group:

- evidence that identifies the native title claim group as the descendants of the traditional owners prior to establishment of British sovereignty and/or first contact;
- evidence in the form of recorded information (archaeological, anthropological, linguistic and historical) relating to the native title claim group’s society;
- evidence relating to how the native title claim group defines itself;
- evidence from neighbouring groups, if obtainable, relating to the identity of the native title claim group and the extent of its traditional land and sea country;
- pertinent genealogical data.

The following evidence should be provided by the claim group to demonstrate the continuity of connection of a native title claim group:

- the native title claim group’s physical, cultural and spiritual connection;
- the native title claim group’s traditional concepts of land ownership and responsibilities to land and waters, including relevant decision-making processes;
- how the native title claim group’s responsibilities are transmitted within and between generations;
- how continuity of connection was maintained by the native title claim group, especially during any period of separation from the land;
- the continuity and transformation of the original Aboriginal land tenure systems into the contemporary Aboriginal land tenure systems adhered to by the native title claim group;
- how the traditional law and custom has been substantially maintained.

A goal of native title research is to establish “right people for right country”. The aim is to prove that claim group members have traditional ties to the land they are claiming native title on that dates to pre-sovereignty times (before British colonisation).

A major point of evidence is proving family lineage with a named apical ancestor. An apical ancestor is the common ancestor from which a family lineage or clan may trace its descent. For native title purposes, it must be established that this ancestor was a member of the original traditional society united in the acknowledgement and observance of a body of laws and customs at the time of first European contact.

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- evidence relating to how the native title claim group defines itself;
- evidence from neighbouring groups, if obtainable, relating to the identity of the native title claim group and the extent of its traditional land and sea country;
- pertinent genealogical data.

To continue those native title rights and interests for which recognition is sought in a native title claim, a connection report should also outline the following:

- a list of the native title rights and interests claimed;
- a schedule of activities demonstrating the traditional law and custom of the native title claim group;
- an account of how the rights and interests claimed are derived from, and have their roots in, the pre-contact normative system of the native title claim group;
- an account of how the traditional law and custom have been adapted since European settlement and how they have continued into the present;
- where relevant, evidence should be provided of:
  - laws governing the use of flora, fauna and other resources;
  - how traditional decision making processes are exercised and transmitted through the native title claim group;
  - ceremonies, rituals, songs, designs, observances, knowledge, stories;
  - principles of succession and inheritance of land;
  - preservation of sites and places of significance.
Mediation is the process of bringing together people with an interest in an area (for example, overlapping boundaries) covered by a native title application to help them to reach agreement about such things as:

- whether or not native title exists;
- who holds the native title;
- what the native title rights and interests are;
- what other interests exist in the area; and
- the relationship between native title and other rights and interests.

Mediation allows everyone involved to explore the potential for agreement, including agreement about a consent determination or an Indigenous Land Use Agreement.

Once a determination that native title exists has been made, the decision is listed on the National Native Title Register and the native title holders nominate representatives to manage their native title rights and interests. These representatives make up a Prescribed Body Corporate (PBC).

Reform

The Preamble to the Native Title Act states that:

“The people of Australia intend: (a) to rectify the consequences of past injustices by the special measures contained in this Act… for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and (b) to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire.”

Almost two decades after the introduction of the Act, QSNTS believes these promises have not been realised.

QSNTS seeks to improve and reform the Native Title Act so that it delivers better outcomes to traditional owners. There are many ways the Act should be reformed, including streamlining the native title determination process, exploring broader land settlements (e.g. more beneficial Indigenous Land Use Agreements) and enhancing the capacity of Applicants to engage in the native title process.

Two important legislative changes that QSNTS advocates for are:

- Reversing the onus of proof; and
- Disregarding historical extinguishment.

Reversing the onus of proof

In native title, the term "onus of proof" refers to which person or group has to prove that native title exists. Currently, the Native Title Act requires native title claimants to prove the continuing existence of native title rights and interests.

QSNTS contends that the burden of proof should not lie solely with the native title claimants.

Shifting the onus of proof to the State would alleviate pressure from native title claimants. Resources available to the State could be used rather than exhausting native title service provider funds on researching information that the State may already possess.
It has also been suggested that a more inquisitorial approach to the claims process would be an advantage to the system and the parties involved. QSNTS insists that changing the onus of proof would have a dramatic effect on attitudes and behaviours to ensure that agreement options are more actively pursued.

**Historical extinguishment**

Currently, native title rights under the Native Title Act aren’t recognised if acts or decisions by the Government conflict with the continued rights and interests of traditional owners. This is called “historical extinguishment”. An example of historical extinguishment is where Crown land has been sold as freehold land. Freehold land extinguishes native title because it designates exclusive possession to the owner. Even if this land was only held as freehold for one year, and then converted to National Park, it would extinguish native title rights and interests according to the current legislation.

QSNTS contends that historical extinguishment should be disregarded in certain cases.

There have been a number of proposals put forward for an amendment to the Native Title Act that would enable historical extinguishment to be disregarded over Crown (Government) land or reserves of types where the native title applicants and the relevant State or Territory Government agrees it should.

Disregarding historical extinguishment would have a significant positive impact for traditional owners on many claims in the Queensland South region.

**Native title organisations review**

In June 2012, the Commonwealth Minister for Families, Community Services and Indigenous Affairs initiated a review of the role and functions of native title representative bodies and service providers to ensure they continue to meet the evolving needs of the system, and particularly the needs of native title holders after claims have been resolved.

The terms of reference for the review are available online at www.fahcsia.gov.au/sa/indigenous/porgserv/land/Pages/native_title_organisations_review.aspx.

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**A word from the Board**

On behalf of QSNTS’ Board of Directors, I thank you for your involvement in giving recognition to Australia’s Traditional Owners through the native title process. We hope you have found the QSNTS Native Title Handbook a useful resource.

The Preamble to the Native Title Act follows. These words inspire us to be committed to realising the aspirations of traditional owners to native title on land and waters.

Twenty years of working in Aboriginal and Torres Strait Islander affairs most especially with respect to cultural knowledge and responsibility to Land Law has made me passionate about preserving connection with our country for our descendants. Much of the knowledge we hold as traditional owners is used daily within our cultural practice and can be identified no matter where we live in this place many of us call Mother Earth. Cultural practice can be our old ways of doing things or, if we so desire, future cultural businesses that benefit our families. Native title is an important element of maintaining connections to our country, and if we are living far from our homelands it gives us recognition and place within this most unique land. In many cases we know where we come from and where we fit in the big scheme of things but native title lets everyone else know about our ‘place’.

My homelands are Dauwa Kabi and when I cannot get back to country, I acknowledge our ancestors and their ancestral links through our ‘murung’ or body link to that country. My personal link is the yellow goanna, Ma’run, and my regional link is Dauwa, Stringy Bark. Our nation’s link is Kab’bvai, the Light Bee and its honey. Kabi is the English spelling of Kab’bvai.

My family have been taught to look at our land in a holistic way: the bee like the birds depend on the trees, likewise the goanna when using it for shelter and protection. All of them depend on the water. The major fresh water dreaming story that runs through our land needs to be revitalised – sung up, painted up or just talked up – to keep it alive. All things depend on each other. We are responsible for maintaining this connection. We are responsible for the life of our Land. Maintaining our Land Laws in how we behave and look after our ‘dependants’ is very important in the process of native title.

I am honoured to be working with such a knowledgeable network of people across this Land we call Queensland to revitalise our practices along our Pathways of most vital importance. These pathways connect us all, as do the Laws that travel along them. Working together to revitalise these Laws will not only benefit our Lands but benefit ourselves and our families for we are the ones responsible for this Land.

Colleen Ma’run Wall
Chairperson of the Board
Queensland South Native Title Services
We are proud to introduce the Directors of the Board:

Colleen Ma’Run Wall, President and Chairperson
Colleen is a Dauwa Kabi woman. In 1992, after years of working in the bush, Colleen left Mount Isa to work for Arts Queensland in Brisbane. There she managed the Aboriginal and Torres Strait Islander programs for fourteen years, creating groundbreaking initiatives including the Indigenous Regional Arts Development Fund, the Quinkin Regional Centre and the Gab Titui. Colleen also published ‘Reality of a Dark History’ and co-authored ‘Making Connections’. Colleen has delivered community, youth and arts training to Aboriginal and Torres Strait Islander students and delivers cultural training to Griffith University allied health and physiotherapy students. She was involved in ‘sustainable desert communities’ research through the Griffith University in partnership with the Desert Knowledge Centre Alice Springs and delivered arts programs in Birdsville.

Colleen is Executive Officer of the Aboriginal and Torres Strait Islander Women’s Legal and Advocacy Service and a Director of Nguin Warrup, an Aboriginal and Torres Strait Islander owned company that runs cultural programs and provides arts industry development in the Greater Brisbane area as well as select projects across Queensland.

Bernie Yates, Vice President and Director
Bernie currently works part-time as a volunteer or consultant, particularly with Indigenous organisations and government agencies to help improve how they work together. Before retiring in 2010 from the Australian public service, Bernie worked in a range of federal government agencies with policy and service delivery responsibilities including treasury; employment and industrial relations; and, from 2002 to 2010, in indigenous affairs with ATSIC and FaHCSIA.

In recent years Bernie was involved in developing the Federal Government’s Closing the Gap strategy and reforming how government agencies do business with Indigenous organisations with an aim of reducing red-tape and providing more certain and simplified funding arrangements. Bernie also represented the Australian government at the United Nations Permanent Forum on Indigenous Issues. He is currently an ex officio director of Miwatj Health Aboriginal Corporation in East Arnhem Land, Bernie comes from Broken Hill in western NSW and has four adult children and three grandchildren.

Michael Cawthorn, Director
Michael is also Deputy Director of the Museum and Art Gallery of the Northern Territory (MAGNT) Southern Region and the Strehlow Research Centre. He has previously worked as an anthropologist with the Strehlow Research Centre and the Ngaanyatjarra Council in Western Australia. Michael is the manager of the Return of Indigenous Cultural Property (RICP) Program for the Northern Territory and Vice President of Museums Australia (NT). His professional experience includes negotiation and land access agreements, management of research agendas, cultural heritage protection and digital repatriation.

Michael currently works part-time as a volunteer or consultant, particularly with Indigenous organisations and government agencies to help improve how they work together. Before retiring in 2010 from the Australian public service, Bernie worked in a range of federal government agencies with policy and service delivery responsibilities including treasury; employment and industrial relations; and, from 2002 to 2010, in indigenous affairs with ATSIC and FaHCSIA.

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Arabella Douglas, Director
Arabella is an Indigenous woman from the Bundjalung nation in far north New South Wales. Her professional experience includes native title law, housing policy, environment, local government and planning law, criminology, anti-discrimination work and Aboriginal education.

Arabella is a lecturer at Sydney’s University of Notre Dame, Director of Regional Services for the NSW Department of Human Services’ Aboriginal Housing Office, and she owns an Indigenous accommodation and events company called Connecting Dots Pty Ltd. Arabella is also currently undertaking an MBA with the University of New South Wales.

James William, Director
James is a Kulkalgal man from Brisbane with more than fifteen years of engagement experience working with Aboriginal and Torres Strait Islander people and communities. He has worked extensively in the public sector in key portfolio areas including public housing, vocational education and training, employment, economic development and Indigenous enterprise development. Previous private sector experience focused on the development and delivery of customised consulting services for the Indigenous services sector.

James currently consults to companies in mining and civil construction in Indigenous employment. He is an inaugural member of the Queensland Aboriginal and Torres Strait Islander Advisory Committee and a committee member of Reconciliation Queensland Incorporated.

The Queensland South Native Title Services Board of Directors provides strategic direction and support for the pursuit of QSNTS’ organisational goals.

QSNTS’ Constitution outlines specific instructions for the composition of the Board:
• at least one third must be of Aboriginal and/or Torres Strait Islander descent; and
• the Board should reflect a thorough approach to native title in Queensland South by consisting of traditional owners and people from legal, anthropological, government and corporate backgrounds.
Native Title Act 1993 - Preamble

This preamble sets out considerations taken into account by the Parliament of Australia in enacting the law that follows.

The people whose descendants are now known as Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement.

They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal peoples and Torres Strait Islanders concerning the use of their lands.

As a consequence, Aboriginal peoples and Torres Strait Islanders have become, as a group, the most disadvantaged in Australian society.

The people of Australia voted overwhelmingly to amend the Constitution so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race.

The Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms through:

- the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and
- the enactment of legislation such as the Racial Discrimination Act 1975 and the Australian Human Rights Commission Act 1986.

The High Court has:

- rejected the doctrine that Australia was terra nullius (land belonging to no one) at the time of European settlement; and
- held that the common law of Australia recognises a form of native title that reflects the entitlement of the indigenous inhabitants of Australia, in accordance with their laws and customs, to their traditional lands; and
- held that native title is extinguished by valid government acts that are inconsistent with the continued existence of native title rights and interests, such as the grant of freehold or leasehold estates.

The people of Australia intend:

- to rectify the consequences of past injustices by the special measures contained in this Act, announced at the time of introduction of this Act into the Parliament, or agreed on by the Parliament from time to time, for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and
- to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire.

The needs of the broader Australian community require certainty and the enforceability of acts potentially made invalid because of the existence of native title. It is important to provide for the validation of those acts.

Justice requires that, if acts that extinguish native title are to be validated or to be allowed, compensation on just terms, and with a special right to negotiate its form, must be provided to the holders of the native title. However, where appropriate, the native title should not be extinguished but revive after a validated act ceases to have effect.

It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests. Their rights and interests under the common law of Australia need to be significantly supplemented. In future, acts that affect native title should only be able to be validly done if, typically, they can also be done to freehold land and if, whenever appropriate, every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate. It is also important that the broader Australian community be provided with certainty that such acts may be validly done.

A special procedure needs to be available for the just and proper ascertainment of native title rights and interests which will ensure that, if possible, this is done by conciliation and, if not, in a manner that has due regard to their unique character.

Governments should, where appropriate, facilitate negotiation on a regional basis between the parties concerned in relation to:

- claims to land, or aspirations in relation to land, by Aboriginal peoples and Torres Strait Islanders; and
- proposals for the use of such land for economic purposes.

It is important that appropriate bodies be recognised and funded to represent Aboriginal peoples and Torres Strait Islanders and to assist them to pursue their claims to native title or compensation.

It is also important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert native title rights and interests and that a special fund needs to be established to assist them to acquire land.

The Parliament of Australia intends that the following law will take effect according to its terms and be a special law for the descendants of the original inhabitants of Australia.

The law, together with initiatives announced at the time of its introduction and others agreed on by the Parliament from time to time, is intended, for the purposes of paragraph 4 of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and the Racial Discrimination Act 1975, to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders, and is intended to further advance the process of reconciliation among all Australians.
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Cover image: Amy Humphreys, Wangan & Jagalingou country