



QSNTS

Queensland South Native Title Services

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National Native Title Conference 2015

“Indigenous governance building: beyond compliance”

Good Indigenous governance and effective
native title management: travelling companions
on the road to Self Determination

Presentation of Kevin Smith, CEO of QSNTS

Conference day 3 – Thursday 18 June



Overview

- Scene-setting
- Conceptual framework
- Good Governance
- Capacity-building
- Challenges
- Opportunities

1. Scene-setting

- The national native title operating environment has entered a complex transition zone
- The workload along the native title continuum has become incredibly diverse – from claim incubation to resolution; opting out via alternative regimes; unchartered ‘compensation’ phase; second and third generation issues around implementation, durability and enforceability, etc
- PBC viability is the ‘canary in the coalmine’
- PBC viability is not only a scorecard on the native title system but whether the promise of Preamble (NTA) rings hollow or true

2. Conceptual Frameworks - threshold questions

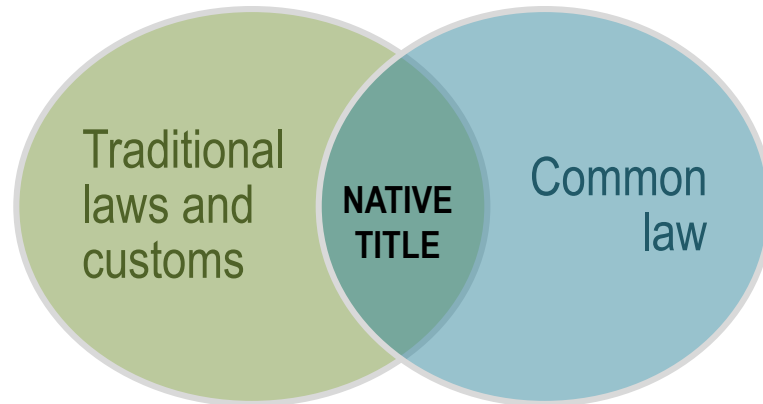
Self-determination is on a Nation level

- Is native title capable of delivering on the ultimate objective of Indigenous self-determination?
- Does native title enhance or detract from Treaty/Broader Settlement efforts?
- These are big questions that are best answered in bite-sized chunks:
 - What is native title – knowing the box before we think outside of it?
 - What are the native title structural and process imperatives?
 - How do we leverage those imperatives more broadly across an Indigenous Nation to strengthen its other institutions?
 - How do we galvanise regional networks of Indigenous Nations to strengthen regional negotiation positions as well as treaty and reconciliation efforts?



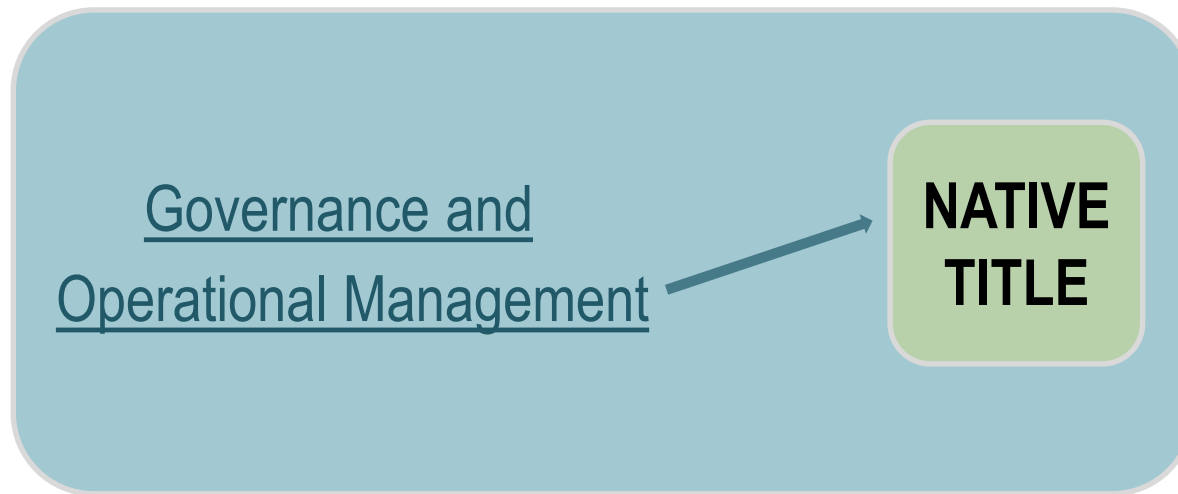
What is native title?

Essentially it is a **recognition space**:



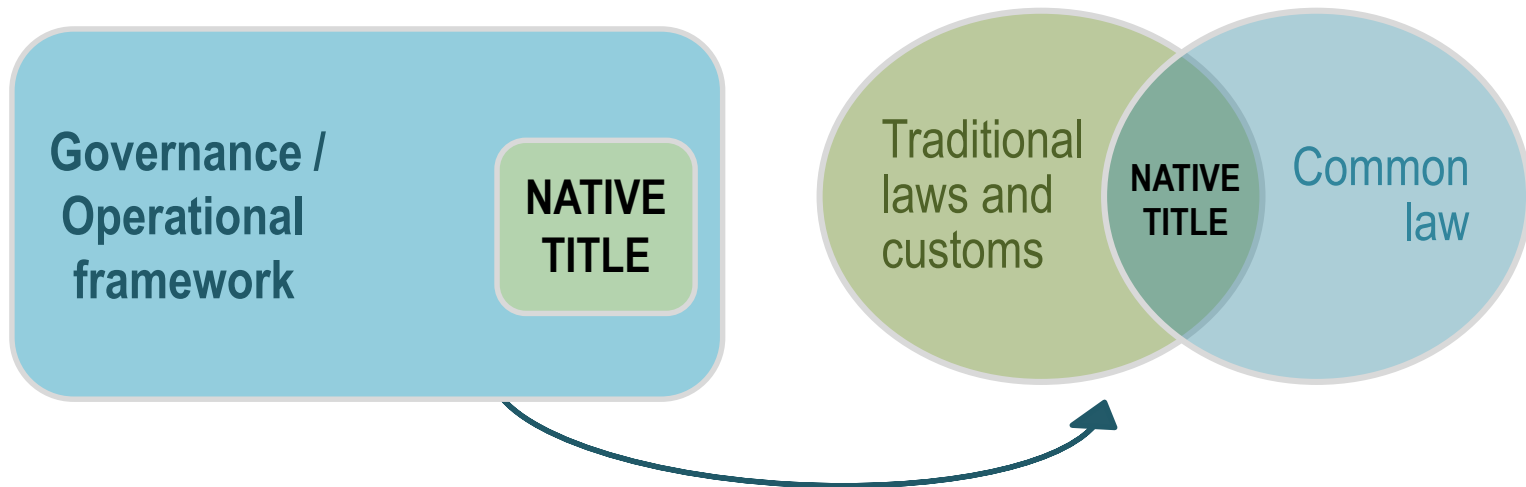
- Legal recognition is very powerful.
- It has its limitations – only relates to rights and interests in land and waters capable of recognition by the common law with the reality that future acts associated with modernity can amount to ‘death by a thousand cuts’
- Its potential power lies in its application as an organising and enabling mechanism with the truism that relationships with traditional land and waters sits at the core of Indigenous identity and hence other traditional institutions.

Tapping that potential lies in its structures applying good governance and operational principles:



- Design – always protect the native title and always put the People at the top of any structure
- Compliance doesn't have to be a 'dirty word' – the trick is to harmonise cultural processes with regulatory regimes (particularly around accountability, consultation and dispute resolution)

Strengthening the PBC in turn can strengthen the broader Indigenous nation:

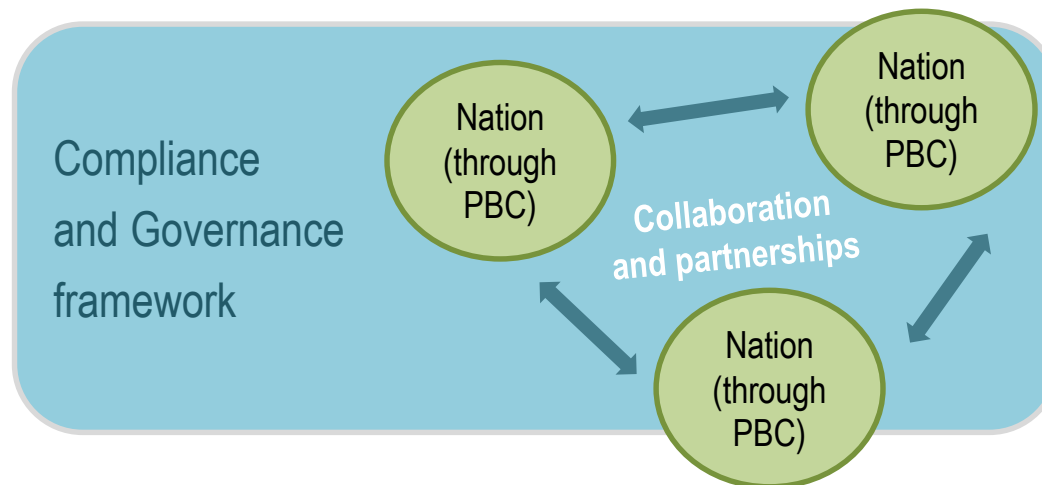


Good PBC governance and operational management:

- Strengthens and protects fragile rights and interests;
- Is portable to community-wide governance.

The key is strategic capacity-building across the entire nation.

Strengthening the entire Indigenous nation will segue into strong partnerships with equally empowered regional Nations.



- A strong network of Indigenous nations can be a 'game changer' in terms of educating broader Australian society from a reconciliation perspective
- Capturing the hearts and minds of non-Indigenous Australians is key to broader comprehensive settlements (treaties) – constitutional recognition is an important step also on that journey.

3. Good governance

- Good governance is about understanding the duality of compliance and performance;
- Compliance relates to the regulatory framework that governs decisions and decision-making processes;
- Performance is dependent upon:
 - Good planning (articulating a clear vision and strategy);
 - Implementing structures and processes to execute the strategy to realise the vision;
 - Developing skills, abilities, competencies; and
 - Securing resources.

Good governance leads to high Performance:

- Good planning (articulating a clear vision and strategy); implementing structures and processes to execute the strategy to realise the vision; developing skills, abilities, competencies; and securing resources)
- Performance is also about leadership, innovation, engaging responsibly with risks, problem solving, dispute resolution, courageous advocacy, stakeholder consultation, succession planning.

If organisations and communities don't understand, ignore and/or are unable to implement these basic fundamentals then governance will remain the biggest impediment to Indigenous self-determination.



Operationalise your native title – PBCs must know and be able to do the business

- Your rights are too precious and fragile to be contracted out for someone else to manage.
- PBCs must operate in a world of competition – Beware!
- Native title is an *in rem* right – those rights will continue long after the supporting entities have disappeared – so future-proof your rights
- Those PBCs that can operationally manage their native title will survive



4. Governance and native title management needs effective capacity building strategies

Effective capacity building strategies

- Capacity development is an oft-quoted, nebulous term – it is hard to measure and results are not readily discernible.
- International best practice suggests community capacity development initiatives bear the best prospects of success when:
 - Capacity is addressed in three dimensions: Individual, entity and environment;
 - Strategies address each dimension in an integrated manner – capacity efforts are dissipated if done sequentially or ad hoc;
 - Capacity effort is like painting a house – one coat only leaves it vulnerable to the elements, many coats make it durable



5. What are the external barriers/hurdles?

- Funding (insufficient; project Vs recurrent; eligibility criteria (hard for start-up PBCs); programme confusion; out-dated funding priorities);
- Lack of coordination – multiple service providers doing the same thing (or is this unhealthy, intentional competition?);
- Political – Federalism ('buck passing');
- Perception that native title is an impediment to economic development (COAG investigation currently exploring);
- Risk of unconscionable contractors;
- Antiquated tax regimes around charitable trusts (Indigenous Community Development Corporations – possible solution)

What are the internal barriers/hurdles?

- Volunteer fatigue - native title applicants tend to become the PBC directors and are heavily relied upon by their communities for support and leadership;
- Failure to embed planning early in the native title process – making the transition from claim to post-determination more difficult;
- Dispute management capability – internal politics will always happen, the trick is managing them;
- Succession planning;
- Choosing the right corporate structures for your Mob.



6. Opportunities (within your community)

- Start planning early in the claim process – the timeframe for claim resolution is reducing.
- Play to your strengths – draw on the diversity within your community.
- Identify dispute resolution processes.
- Succession plan – good governance practises can be transmitted inter-generationally just like traditional laws and customs are.
- When incorporating related corporate entities if the People are always at the top then can't go wrong.

Opportunities (within your region)

- Explore regional opportunities with neighbouring native title groups.
- Do region wide planning – identify collaboration opportunities; avoid duplication, promote region-wide benefits; strengthen your regional negotiation position.
- Keep an eye on region to region partnership opportunities.
- Harness in-kind support.

