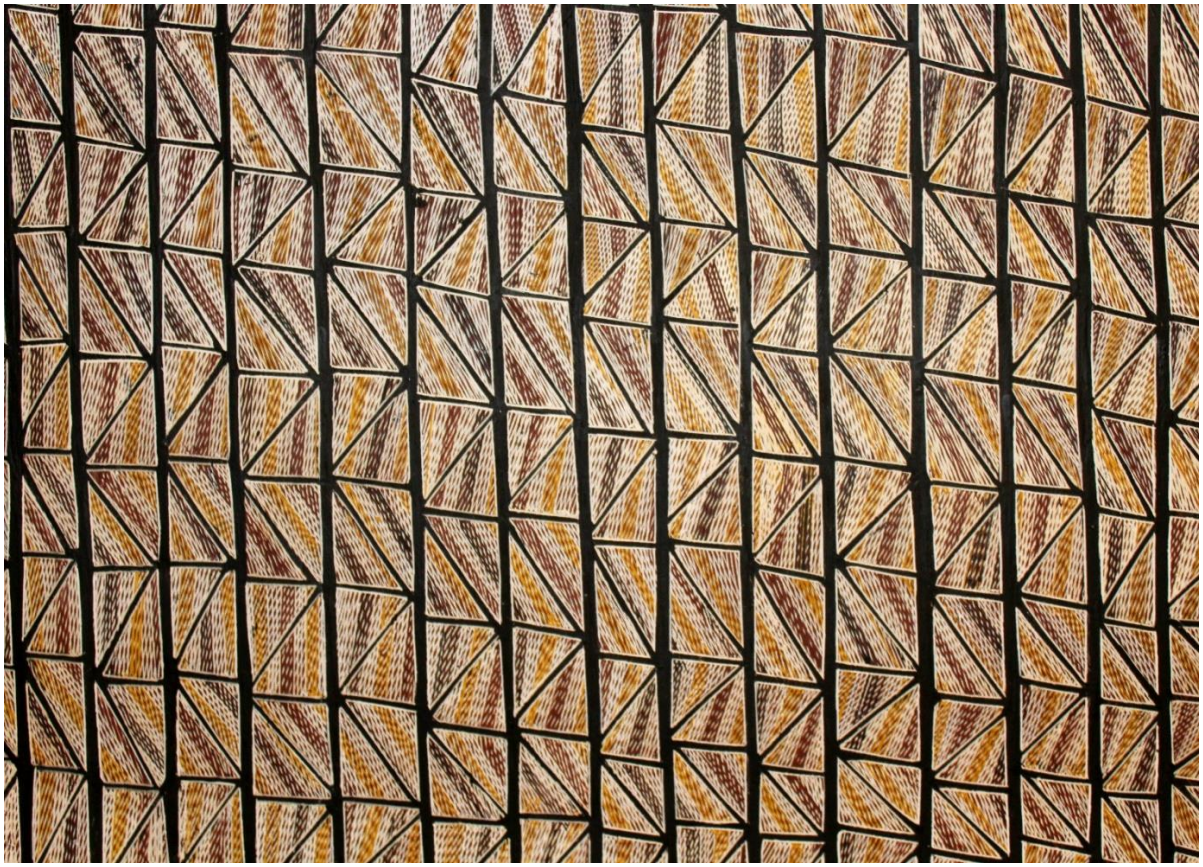

PEOPLE, PLACE AND PARTNERSHIPS: A MODEL FOR RECLAIMING INDIGENOUS SELF-DETERMINED GOVERNANCE OF DEVELOPMENT

D.E SMITH AND J. FIELD

Series note

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Professor Valerie Cooms Director, CAEPR Research School of Social Sciences College of Arts & Social Sciences The Australian National University, September 2023

Discussion Paper No. ##/2024

DOI XXXX
ISSN 1036-1774
ISBN XXXX

An electronic publication downloaded from <caepr.cass.anu.edu.au>.

For a complete list of CAEPR Discussion Papers, see <caepr.cass.anu.edu.au/research/publications/discussion-papers>.

Centre for Aboriginal Economic Policy Research
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Suggested citation:
Smith, D.E. and J. Field (2024), *People, Place and Partnerships*: A Model for Reclaiming Indigenous Self-Determined Governance of Development, Discussion Paper No. #/20##, Centre for Aboriginal Economic Policy Research, Australian National University. https://doi.org/#######

People, Place and Partnerships: A Model for Reclaiming Indigenous Self-Determined Governance Of Development

D. E. Smith and J. Field

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ACKNOWLEDGEMENTS

We would like to acknowledge the ongoing engagement and invaluable contribution of the Queensland South Native Title Service of Queensland who has been an Indigenous Partner in the two-year research project by CAEPR and AIGI into the Indigenous Governance of Development. During that time, QSNT staff and managers opened their doors to us and have been extraordinarily generous with their time, information, documents, data and honest feedback. They have shown a dedication to working through the complex issues involved in partnering with this project, and a passion for creating a new way of working with native title groups - as only someone working in a Native Title Representative Body can.

We would especially like to thank Kevin Smith, and his senior management team including Michelle McCann and Tim Wisehart, all the staff members in the Client Management Teams, Joyce Gehr and Carmen Cooms Delaney from the Client Development Unit, Guy Elliott from the TraKS Database unit, and Felicity Thiessen for her early work getting in our partnership relationship off the ground so well.

We would also like to acknowledge and thank the Boonthamurra PBC Board and their members, and the Butjulla Board and Elders group for welcoming us into their meetings and sharing their experiences. In spite of the epic struggles in their own native title journeys, they are resilient in their determination to create a better future for their families and futures.

Abstract

This paper argues Indigenous self-determined development is fundamentally a governance issue. It suggests that neither land rights nor native title determinations alone will deliver sovereignty, self-government status, or a guarantee of development outcomes. Rather such goals rely on the perseverance, governance capabilities, vision and hard work of Indigenous groups themselves, to translate often erratic rights and recognition into tangible development realities. Furthermore, native title and land rights is not available to all Indigenous people in Australia. And for those who have secured native title or land rights, many of their related agreements are poorly monitored.

The paper considers this continuum of rights, asking what happens to Indigenous groups with no native title or land rights. What are the development consequences for groups who have weak agreements, or none at all? Or for groups who hold a jigsaw puzzle of different legally constrained rights, or who emerge from a protracted rights struggle with significant potential opportunities only to find their collective and organisational governance are not fit for the purpose of getting development happening, let alone delivering desired outcomes? What are the development prospects for land-owning groups whose members are fractious and demoralised from antagonistic legal processes, or who are scattered widely and don't have sufficient resources to meet together to share a vision for a better future? Answers to these questions are critical, for such circumstances are the reality for many (if not the majority?) of First Nation groups and communities across Australia today. The paper examines the development dilemmas, obstacles, opportunities and aspirations Indigenous groups are dealing with in these diverse situations. It unpacks Western discourses of development that prioritise progress as 'constant improvement' and economic success, then explores the often different Indigenous understandings of what constitutes 'development', 'outcomes' and 'sustainability'. A direct connection is then made to the dilemmas First Nations face in building their collective self-governance and mobilising it for the purpose of self-determined development.

These issues are brought into focus through a case study describing the initiative of one Native Title Representative Body (NTRB) in Queensland - to do things differently by designing a practice model of *People, Place and Partnership* (PPP). The model advocates an organisationally integrated, multi-pronged strategy to support native title claimants and holders in diverse circumstances, 'to leverage their native title rights so as to promote their own resilience and reliable prosperity in the modern world'. Its driving force is a 'complex theory of change' where native title is 're-imagined as a vessel that is capable of navigating a course to different shores', and for exploring 'how recognised rights can be deployed within a broader Indigenous policy landscape' (Kevin Smith 2022, 5).

Foreword

In late 2020, the Centre for Aboriginal Economic Policy Research (CAEPR) and the Australian Indigenous Governance Institute (AIGI) commenced an exciting partnership with several First Nation partners, in a two-year applied research project –*The Indigenous Governance of Development*: *Self-Determination and Success Project* (IGD) Project) – to explore the ways First Nations in Australia are strengthening and exercising their collective self- governance so they are in the driver's seat for their development agenda.

The first year in 2021 was an extremely productive one for the Project. A high-calibre multi-disciplinary research team of Indigenous and non-Indigenous researchers was assembled, and the Project established a foundation of partnerships with First Nations and their representative organisations. Our research teams work alongside local communities, native title holders, leaders and their representative organisations. With the ongoing pandemic conditions we have been sensitive to the major COVID-19 pandemic stresses that continue to be faced by our First Nation partners. That has led to many conversations and collaborative innovations in how we do our research work together; we may have become adept at zoom yarns, but also met locally 'on country' when we could, to share experiences and insights.

At a time of great uncertainty and policy change in the national political environment, Aboriginal and Torres Strait Islander groups face major challenges in rebuilding their own governance in practically effective, culturally strong ways. This Discussion Paper is part of an IGD Project series, which presents evidence and analyses from the IGD Project's collaborative case studies. Our aim is to make this research count for First Nations, their leaders and community organisations across Australia, so they can use it for their own local purposes. The important matters raised in the papers also have direct relevance for industry and governments, who need to rebuild their own internal capacity and policy frameworks to better support Indigenous self-determined efforts to govern˜development.

This series of IGD Project Discussion Papers is a taste of the remarkable home-based solutions First Nations and their organisations are designing for their collective self-governance and futures. The papers capture a rich sample of changes, resilience and resurgence, describing examples where Indigenous practices of self-determined governance are being strengthened, and where development *with culture and identity* is a priority. We understand that the challenge on the road ahead is not merely to take control and put self-determination into practice, but to govern well and fairly on behalf of all the members of a First Nation. That way, chosen development has a better chance of delivering sustained outcomes.

We would like to thank the AIGI Board and staff, the CAEPR project team and staff, and the participating Indigenous nations and organisations who are working in partnership with us to carry out this applied research project. We believe our collective efforts will make a difference in informing constructive First Nations solutions for self-determined governance of development in Australia, and contribute to the formulation of more enabling government policy and industry engagement.

Professor Valerie Cooms
Director
Centre for Aboriginal Economic Policy Research

Valerie Price-Beck
Chair, Board
Australian Indigenous Governance Institute

PART ONE

1. INTRODUCTION: DEVELOPMENT- A RIGHT *AND* A GOVERNANCE ISSUE

Development involves change—by its nature it is unsettling and disquieting. This means the collective decisions of First Nations around future development are brave and risky. Also, what worked for people to get groups through protracted native title and land rights claims, or intense settlement negotiations, is not necessarily what will work to *implement* the rights and beneficial interests they have secured. This paper unpacks the discourses, dilemmas, constraints and opportunities for self-determined development by Indigenous nations in Australia. The research evidence and analysis progresses from a critique of the general issues and debates, through to detailed insights from an innovative initiative by the Queensland South Native Title Services (QSNTS). While 'development' can be understood as an Indigenous right and aspiration, the paper argues that it is fundamentally a culturally-centred *way of thinking and doing*. Specifically, this means that development must be collectively governed by First Nations in ways they determine, in order to achieve the outcomes they desire over time. In other words, rights and interest need to be well governed if they are to be realised in the real world.

In 1986, the United Nations General Assembly adopted its *Declaration on the Right to Development* (UNDRTD).[1] In it, the UN defined 'development' as:

> … a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

The UN confirmed in the Declaration that the right to development,

> is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations, [including] … the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development, … and the

1. Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development.

right to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources.

Two decades later, in 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), stated in its preamble that:

> … control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.

Well over a decade before the Declaration, far from the halls of diplomatic negotiation in Geneva, in the Kimberley region of Western Australia, Patrick Dodson, a senior Yawuru man, spoke at the first formal native title mediation conference convened by the National Native Title Tribunal (in September 1994), and raised the issue of rights underlying Yawuru people's native title claim to their land ownership, as equals in the legal process:

> The Aboriginal people of the Broome region have been asked to lay our interests in land before you so that you can mediate between our interests and non-Aboriginal interests. We will in due course make known our interests, but we prefer at the outset not to talk to you of interests, but of rights. Our interests arise from our rights. We have ancestral rights to this land that are now, after many years of neglect, recognised in white Australian law as native title rights. Our interests flow from this. They are not a narrow list of wants. Our interests are as deep and complex as our culture, our history and our Law (Cite in Yu 2022, 237).[2]

In 2012, five years after the Declaration, fresh from Yawaru people having persevered through an 'epic struggle' [3] to secure a major native title settlement agreement with the Western Australian Government (in 2010),[4] Dodson squarely posed the development dilemma arising from their securing legal recognition of native title rights:[5]

2. Patrick Dodson, Introductory speech to His Honour, Mr Justice French (NNTT President) at the first compulsory mediation conference convened by the National Native Title Tribunal in Broome, 19 September 1994. Cited in Yu 2021, p237.
3. Yawuru commenced their native title claim for recognition of their traditional connection and ownership of country in the region of Broome in 1994. Justice Merkel who made the final determination of native title twelve years later in 2006 described it as an 'epic struggle'. *Rubibi Community v State of Western Australia* (No 7) [2006] FCA 459, 28 April 2006, per Merkel J. 9.)
4. The Yawuru Agreement includes two Indigenous Land Use Agreements (ILUAs)—the Yawuru Area Agreement and the Yawuru Prescribed Body Corporate Agreement, registered by the National Native Title Tribunal on 6 August 2010. The signatories to the Agreements are the State of Western Australia, the Shire of Broome and the Yawuru Native Title Holders Aboriginal Corporation.
5. Dodson's presentation was made to a group of international Indigenous leaders meeting in Tucson to share how they were working to govern development. 'Yawuru Native Title and Development' to the 'Indigenous Common Roots, Common Futures Workshop', University of Arizona, Tucson Arizona 2012) (Smith 2012).

> The challenge for traditional owners, like the Yawuru, is how do we, as a people, leverage our native title rights so as to promote our own resilience and reliable prosperity in the modern world?

Under their native title determination, Yawuru became the native title holders of approx. 530,000 hectares of land in and around Broome following a Federal Court ruling in April 2006.[6] As part of their native title settlement agreements, valuable benefits and endowments were passed to Yawuru people including: monetary benefits for economic development, social housing, capacity-building, preservation of culture and heritage, and joint management of a conservation estate comprising significant areas along the coast, and a marine park covering much of Roebuck Bay. The agreements also provided land to the Yawuru for their own development purposes.

The challenge was indeed formidable. In 2020, Peter Yu another senior Yawuru leader was CEO of Nyamba Buru Yawuru Limited (NBY), the Yawuru Development and Investment Company established after the native title determination to generate long-term income for the Yawuru nation. Reflecting back on that native title time, Yu noted that,

> The shift from a political consciousness that arose from more than a decade of native-title claim advocacy and litigation, to one that seeks to build community assets and well-being was a massive one. *It began with a careful consideration of our governance structures [emphasis added]*.

He went on to describe the current dilemmas arising in their long journey:

> And herein lies our perpetual challenge as First Nations peoples. How do we achieve our ultimate goal of self-reliance and cultural integrity, when our future prosperity is dependent on our capacity to participate in the mainstream economy, an economy often at odds with the cultural values we hold in relation to land and natural resources?

The approach progressively asserted by Yawuru has been to negotiate future development in the region 'from a position of strength and in alignment with core Yawuru social and cultural values':

> Yawuru people are effectively engaging in an adaptive cultural process, one where we have reoriented ourselves towards our cultural knowledge and practices, but also embrace the reality of Western economic success. This is a hard balance for any First Nation to achieve in the real world. But we are finding that by making sure mabu liyan[7] is repositioned at the heart of what we

6. The Yawuru native title determination is available at: http://www7.austlii.edu.au/cgi-bin/viewdoc/au/journals/AILR/2006/5.html
7. Liyan (wellbeing) is a vibrant Yawuru philosophy that weaves people, culture and country together. The concept of mabu (good) liyan is the foundation of Yawuru's development approach. It is at the heart of the

do, we are building cultural resilience and integration into our economic development decisions and priorities. The challenge for Yawuru leaders is to work closely with community to pursue their goal of mabu liyan, by leveraging the capital value of cultural assets—to forge new partnerships that support sustainable development on our country in a way that promotes and protects country, language and our people. (Yu 2021, 247-248).

Without doubt, development rights and benefits are crucial. However, this paper argues that Indigenous *self-determined* development is as much a governance issue as it is a right. Neither land rights nor native title determinations, neither treaties, a Voice nor settlement alone will deliver sovereignty, self-government status, or guarantee desired development outcomes. Rather such future goals rely on the perseverance, governance capabilities, vision and collective work of Indigenous groups themselves, to translate often erratic rights and recognition into tangible development realities. Furthermore, native title and land rights are not available to all Indigenous people in Australia. And for those who have secured rights, many of their related agreements are poorly implemented and monitored. [8]

Our paper considers this continuum of rights, asking what happens to Indigenous groups with no native title or land rights. What are the development consequences for groups who have weak agreements, or none at all? Or for groups who hold a jigsaw puzzle of different legally constrained rights, or who emerge from protracted litigation with what look like significant opportunities, only to find their collective and organisational governance are not fit for the purpose of getting development happening, let alone delivering desired outcomes? What are the development prospects for land-owning groups whose members are fractious and demoralised from antagonistic legal processes, or who are scattered widely and don't have sufficient resources to meet together to build a shared vision for a better future?

Answers to these hard questions are critical, for the circumstances alluded to above are the reality for many First Nation groups and communities across Australia today. With this in mind, the paper examines the development aspirations, strengths, obstacles and opportunities of Indigenous groups in these diverse situations. It unpacks Western discourses of development that prioritise progress as

modern Yawuru economic and social agenda which is inclusive, supportive and committed to the principles of sustainability and community cohesion. Mabu liyan is healthy mind, spirit, body. See http://www.yawuru.org.au/community/mabu-liyan-framework/

8. The parlous state of implementation and monitoring the agreed conditions of agreements made with Indigenous land owners in Australia is not peculiar to the native title arena, but has been extensively documented under various statutory land rights regimes in Australia, decades before native title was recognised by the court. See for example Altman and Smith (1994, 1999); Campbell and Hunt (2013); Langton (2004); Langton and Palmer (2003); O'Faircheallaigh (2002, 2004, 2021); Smith (1998, 1999); Trigger, Keenan, de Rijke and Rifkin (2014)

'constant improvement' and economic success, then explores Indigenous understandings of what constitutes 'development', 'outcomes' and 'sustainability'. A direct connection is then made to the efforts being made by First Nations to rebuild and reclaim their collective self-governance and mobilise it for the purposes of self-determined development.

These issues are brought into tight focus through a detailed case study of one specific initiative of a Native Title Representative Body (NTRB) in Queensland to do things differently; by designing and implementing a long-term developmental model of *People, Place and Partnership* (PPP). The model advocates an organisationally integrated, multi-pronged strategy to support native title holders in their diverse circumstances, 'to leverage their native title rights so as to promote their own resilience and reliable prosperity in the modern world'. It is a model whose driving force is part of a 'complex theory of change' whereby native title could be 're-imagined as a vessel that is capable of navigating a course to different shores', and for exploring 'how recognised rights can be deployed within a broader Indigenous policy landscape' (Kevin Smith 2022, 5).

That grand vision needs to be realised if Indigenous peoples in Australia are to secure the tangible outcomes from land rights that will make their lives better in the ways they choose. The paper ends with a consideration of how the model is working in practice, and might be improved upon. Its value for change is assessed in the context of current government policy and funding frameworks. The paper concludes that the institutional architecture of government remains misaligned with Indigenous development goals, imposes unwieldy development constraints on their rights and interests, and instead promulgates opportunity costs to the nation as a whole by not optimising an enabling co-development partnership with Indigenous native title holders. In conclusion, the paper is tempted to make recommendations to governments as to how they might pivot their policy and funding to better support and scale-up innovative change models such as *People, Place and Partnership.*

2. DISCOURSES OF DEVELOPMENT – WHOSE CONCEPTS, WHOSE CONTROL?

The concept of 'development' when applied to Indigenous societies is a complex one, and has been the subject of considerable debate at national and international levels for years (for example, overviews in Blaser et al. 2004; Bulloch 2018; Harvard Project 2008; O'Fairchellaigh 2018; Sachs 1992; Sen 2014). The power of development to create social and economic progress is taken by many to be almost a universal truth. International institutions such as the United Nations Development Program, the World Bank and global NGOs operate on the premise that 'good' governance is at the heart of

sustainable human development, and a prerequisite for responding to poverty, environmental and social concerns.

But the Western concept of 'development' is heavily value-laden with standards and expectations that form a discursive field of actors, values and institutions where there is now considerable contestation over meaning—over what gets to be defined as a 'problem', a 'strength', an 'outcome' or a 'failure'; and by whom. A particular kind of engagement in economic 'development' is promoted as a necessity for progress and prosperity. The main focus has been on the quest of nation states' sovereign control over resources and industry for profit, promulgated on the purported basis that the benefits of economic development will somehow 'trickle down' and so yield flow-on development benefits in other spheres of life.[9]

As with many other British settler colonial countries, in Australia the concept of development was early thought to follow a social evolutionary process in which Indigenous societies were characterised as backward, primitive and uncivilized, with their only pathway to 'advancement' and 'development' being assimilation into the so-called 'civilized' world. It was repeatedly argued that Indigenous Australians had not attained the state of a collective civil society, due to the purported absence of European-style institutions of law and government (see Anderrsen 2022; Lloyd & Wolfe 2016). In effect, they were described as being in a state of *development nullius*; a condition intimately linked to Australia's other legal fiction, *terra nullius.* This false evolutionist paradigm also posed (and continues to) Indigenous societies as being antithetical to capitalist values of the market economy (emphasising as they do, individual accumulation of profit and competitiveness), and their cultures as 'obstacles' to their engaging in 'mainstream' development opportunities.

The concept's hegemonic premise of progress and advancement ignores the fact that 'development' is itself a cultural construct—and so not culturally neutral—which has been soundly critiqued by internationally, by asking 'from whose perspective and for whose benefit'? (Crewe and Harrison 1998; Esteva 1992, Escobar 2012; Jordan et al. 2020; Thornton et al 2012). Development paradigms of modernisation and Industrialisation have resulted in the destruction of indigenous governance, cultural and knowledge systems, and natural resources. More recently, a global Indigenous debate has questioned the concept's colonial legacies and implicit acceptance of particular kinds of economic growth at the expense of local cultural and social priorities. Calls have been made to depoliticise and decolonise 'sustainable' development goals, and to explore alternative and Indigenous models of development (Bulloch 2018; Escobar 2012; Jordan et al 202; Li 2007; OECD 2018; UNPFII 2010; Yarrow

9. The validity and over-estimation of this assertion has been critiqued in several countries. See for example, Akinci 2018; Saunders 2022.

2008). Accordingly, Escobar (2008) modelled development as a 'territory of difference' that is as much cultural as economic.

Following these debates, the *United Nations Permanent Forum on Indigenous Peoples* has recently reframed development as intercultural and relational: as being 'development *with* culture and identity' (UNPFII 2016), arguing:

> There needs to be a concept of development with culture and identity that reflects indigenous peoples' own visions, perspectives as well as strategies that respect their individual and collective rights, are self-determining, sensitive and relevant to their situation and communities.
>
> Indigenous peoples want development with culture and identity where their rights are no longer violated, where they are not discriminated against, excluded or marginalized and where their free, prior and informed consent is obtained before projects and policies affecting them are made and equitable benefit-sharing is recognized and operationalized. UNPFII, E/C.19/2010/14 PAGE 5, 6)

The so-called 'cultural turn' in international development has repositioned culture at its heart, to be taken seriously as a factor in development thinking, practice and policy (see Allen 2000; Clague &, Grossbard-Shechtman 2001; Davis 1999; Radcliffe 2006; Worsley 1999). Increasingly, development looks to culture as another 'resource' and as a significant variable determining the success of development initiatives. However, we argue that the 'cultural turn' in development thinking needs to be firmly embedded in understandings of governance itself, and how First nations *self*-govern development. The United Nations Declaration on the Rights of Indigenous People (2007) further places informed consent and self-determination as keys to Indigenous governance for sustainable development.

The design of indigenous peoples' own indicators of sustainability and well-being is still a work in progress. Though the Indigenous-led establishment of online *The Indigenous Navigator*[10] offers a valuable framework and set of tools for indigenous peoples to more systematically monitor the level of recognition and implementation of their rights (including by nation state commitments to sustainable development goals). In Australia, the innovative work of Mandy Yap and Eunice Yu (2016) with Yawuru people in Western Australia, and Ray Lovett's national Indigenous Mayi Kuwayu survey

10. The Indigenous Navigator Initiative (INI), begun in 2014, has been developed and carried forward by a consortium consisting of the Asia Indigenous Peoples Pact (AIPP), the Forest Peoples Programme (FPP), the International Work Group for Indigenous Affairs (IWGIA), the Tebtebba Foundation – Indigenous Peoples' International Centre for Policy Research and Education (TEBTEBBA), The Danish Institute for Human Rights (DIHR) and the International Labour Organisation (ILO). This consortium works in partnership with the European Commission. https://indigenousnavigator.org/

on wellbeing (https://mkstudy.com.au/about-mayi-kuwayu/), demonstrate robust culturally-centred approaches to designing Indigenous indicators for cultural integrity, health and well-being.

Indigenous understandings of development generally appear to embed the cultural and relational into their aspirations and initiatives (see Hunt & Bauman 2022; Jordan et al. 2020). An Indigenous lens on the concept of development thus means it can be understood as the *capability* of people to prosper and support themselves in ways they want, by sustaining their self-governance and providing their members with the opportunity to live productive, satisfying lives. Moreover, an integral component of this understanding is its emphasis on beneficial change or transformation that makes life better *in ways that Indigenous people choose for themselves*. This reframes development as a process where Indigenous communities and organisations have control over setting the direction and form of development, through their collective informed decision making. Furthermore, it emphasises that communities and organisations have internal strengths, endowments, knowledge and expertise to bring to bear for governing development. This in turn emphasises, the role of customisation and creating place-based development solutions—whereby local Indigenous aspirations, capabilities and circumstances shape local pathways.

Thirty years ago, the World Commission on Environment and Development's 'Brutland Report' was influential in proposing that development would be 'sustainable' when it meets the needs of the present without compromising the ability of future generations to meet their own needs. However, as with self-determination,' sustainable development' is a direction and a process (a sustainable *journey* together) more than a final endpoint. This calls for judgements to be made about the preferred direction and speed of change. We suggest that an Indigenous principle of *sustainable* development rests on four interdependent and mutually reinforcing pillars: social development; environmental and natural resource development; cultural development; and economic development. Under this lens, development would be judged as being 'sustainable' when it delivers desired outcomes, reinforces cultural resilience, aligns with collectively identified directions and promotes the abilities of current and future generations to give effect to self-determined outcomes.

Nearly seven years after the United Nation's adoption in September 2015 of the Sustainable Development Goals (SDGs), the UN is approaching the midway point to their 2030 deadline. All 193 UN Member states launched the economic, social, and environmental objectives of the SDGs under a headline ambition of 'transforming our world'. While the development discourse has continued to be debated, the world has transformed itself independently of 'development'. Rapid technological changes, divisive nation state politics, climate change, a global pandemic and financial crises have combined to alter the conditions for sustainable development. In this global context, Indigenous

development aspirations, opportunities and dilemmas are being transformed as well and offer more locally sustainable options.

As they engage in a wide range of development endeavours today, Indigenous nations, communities and their organisations in Australia need to be able to: attract investment partners and capital; support their members to come together, make and implement decisions; persuade their dispersed members to return to their home communities and invest their skills and ideas there; build wider relationships with other economic actors; and make deals with other jurisdictions and industry. These combined challenges are causing groups to reconsider their governance arrangements and associated capabilities. Moreover, the additional test in doing this, is not only to gain more control over their development agenda, but to find ways to make that control meaningful within their own families.

A growing number of First Nations in Australia have been rejecting the limited, imposed models of development promoted by Western neoliberalism, and working to devise their own models as viable alternatives. They are also approaching the organisational and planning aspects of governing development from very different starting points. This is not to say people are inimical to their economic self-interests or economic development outcomes. Rather, they also give value to culture and knowledge, relationality and collective identities when doing economic development. In which case, what constitutes sustainable development for one Indigenous group will likely be different for another.

This approach positions Indigenous people as potential 'innovation agents' in development—not as cultural problems or capacity deficits. The implication is that sustaining Indigenous development is best viewed as a socially instituted process of adaptive change in which culturally framed innovation is a necessary element—that is, a process of proposing, gaining collective support for, and implementing, novel ideas and solutions to address collective development priorities.

3. DEVELOPMENT DILEMMAS OLD AND NEW

Across Australia there are remarkable development innovations and productive solutions being created by some Indigenous nations, communities and organisations who are leveraging their legal rights to establish community enterprises, businesses and joint venture enterprises, negotiate major resource development agreements, and sign land settlement packages.[11] Overall, however, while Indigenous peoples hold varied legal rights in more than 50% of Australia's landmass including waters,

11. See, for example, the several major economic development initiatives undertaken by Traditional Owners in the NT under their strong Land Rights regime; Noongar, Yamatji and Yawuru native title settlement in WA; the Victorian Taungurung, BGLC, Gunaukurnai settlement agreements; the formation of the Ngarrindjeri Regional Authority in SA; the Muurdi-Paki Regional Assembly in NSW.

their participation in Australia's economies is minimal (Jordan et al. 2020; Hunt & Bauman 2022; FNP 2022; PWC 2018). While Australia is among the world's wealthiest countries, Indigenous Australians continue to remain its poorest citizens. CAEPR's research over three decades has documented ongoing high rates of poverty, unemployment, early mortality, high levels of suicide, mental health concerns, and the lowest levels of income and education in the country.[12] Despite the feeble rhetoric of national governments about 'Closing the Gap', in many instances, the socioeconomic gaps have widened to a yawning chasm. Indeed some appear to have become entrenched intergenerationally (Dillon, 2021a, 2021b; Jordan et al. 2022).

In these daunting circumstances, Indigenous Australians and their organisations face a *common* set of development dilemmas. Some dilemmas arise from the restricted nature of their rights; the degraded condition of the lands and waters handed back by governments to their stewardship; and the small size and remoteness of many of their communities which have associated high living and infrastructure costs. There is also a limited pool of human capital and assets in many communities whose demographics are characterised by large number of young families and dependent children, with elders in ill-health. Compounding these conditions is the historical underfunding of infrastructure and essential services by governments in all jurisdictions (Dodson & Smith 2003; Hunt & Bauman 2022; Jordan et al. 2020). As a consequence, many Indigenous groups continue to face significant obstacles in raising investment on their lands from industry and governments who remain mistakenly resistant to collective tenure models, and alternative modes of development that go beyond the purely economic.

To simply accept this deficit lens implies that Indigenous socioeconomic disadvantages will remain unacceptably high without some form of 'sustained economic development' and inevitable 'inclusion' into the 'mainstream' economy. But such deficit-based solutions are premised on Western notions of progress, where development is seen as a form of economic evolution and salvation. To date, that answer has not worked.

A different lens adopted in this paper is to focus on existing Indigenous strengths and assets. In doing so, it reveals another set of development challenges that are actually the products of Indigenous relative *successes* in the fight for rights.[13] Over the past 40 years, Indigenous groups have secured

12. On a range of Western socioeconomic and health indicators, Indigenous Australians are much more disadvantaged than the non-Indigenous population. An internationally recognised measure of advantage and disadvantage such as the Human Development Index (HDI) is useful for placing Indigenous disadvantage in context. When last calculated using 2006 data, Indigenous Australians would have been placed 105th out of 177 countries, between the Occupied Palestinian Territories and Fiji, while the total Australian ranking was 3rd from 177. See OECD 2019; Markham and Biddle 2018; Jordan et al. 202; Yap and Biddle 2010).
13. We emphasise 'relative' because any account that describes the fight for Indigenous rights as 'successful' must be carefully qualified by the fact that Indigenous rights in Australia have proven to remain vulnerable, especially

substantive rights and interests in lands, waters, cultural heritage, and intellectual property (Jordan et al 2020; Smith et al. 2021). While those can be (and are) contested internally and externally, and may be less substantial than what people hoped for (See Ingram 2021; K. Smith 2022), they are precisely the kinds of 'endowments' that we are told should help deliver the holy grail of 'development'. Yet we continue to see groups who, having won land and native title rights, do not secure the kinds of development outcomes they are looking for. Why is this so? And today there are at least two generations of young Indigenous people whose lives and careers have occurred post-UNRTD and UNDRIP, and well after the explosion of Australian land rights activism by their grandparents in the 1970s. Not only does this generational distance give them a different viewpoint on history and what's possible, they are also impatient for tangible, positive benefits to be generated from their land rights and interests.

4. DILEMMAS OF NATIVE TITLE SUCCESS

Over the past two decade in particular, another set of development challenges have arisen out of Indigenous successes under the *Native Title Act 1993, 1998.* Those successes are many and interrelated. The Indigenous 'estate' in Australia today is made up of assets held by or for the benefit of Aboriginal and Torres Strait Islander people under a variety of legislative and regulatory regimes at national, state and territory jurisdictional levels. The estate includes tangible assets (such as lands and waters) as well as intangible assets (such as cultural heritage and intellectual property rights, and environmental and biosciences practices). The rights success story behind that is impressive. The agreement-making, development and governance story is another matter.

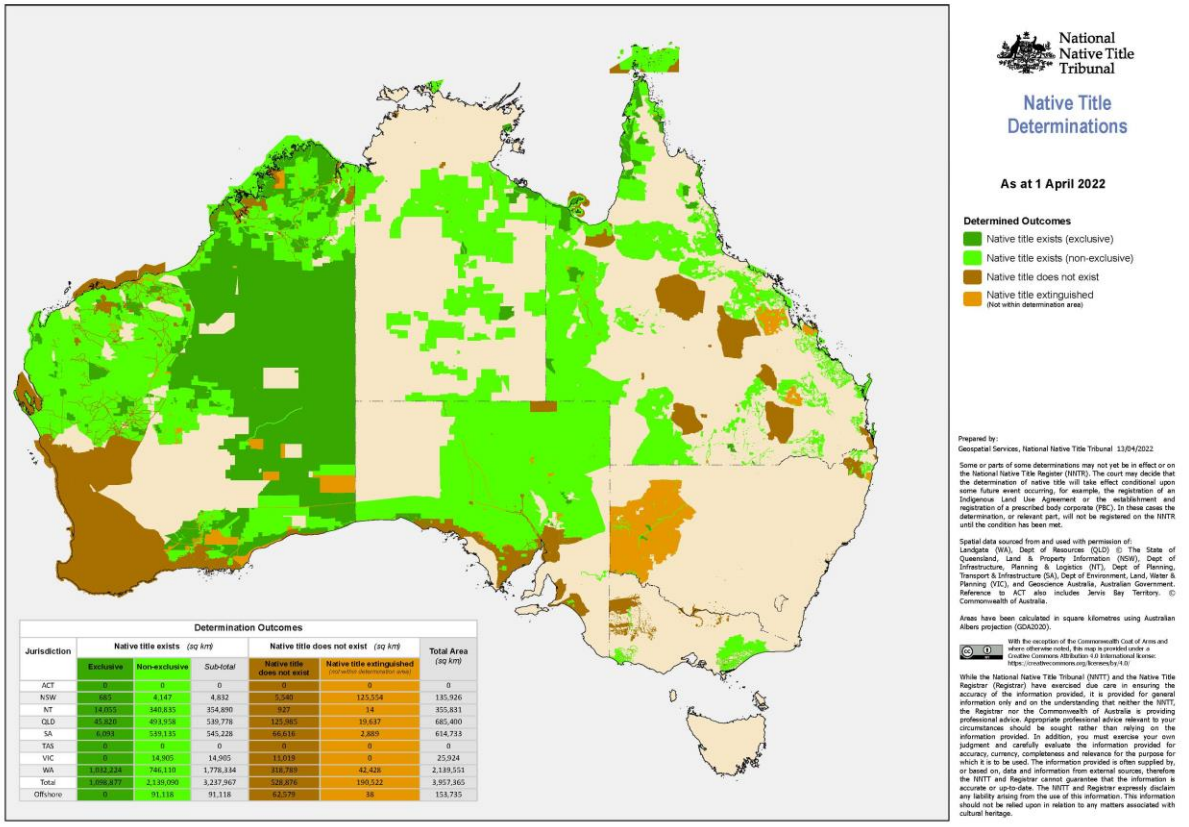
4.1 Native Title Rights and Agreement Making

As at 30 June 2022, a total of 588 determinations of native title had been registered with the Australian Federal Court. Of those, 487 native title has been determined by the court to exist in the entire area or in part. In 101, native title has been determined to not exist in the entire area. The registered determinations as at 30 June 2022 cover a total area of about 3,785,835 square kilometres or 49.2 per cent of the land mass of Australia and approximately 153,634 square kilometres of sea (below the high water mark) (see Map 1) (NNTT 2022, 85). The majority of pending native title claims fall mostly in those jurisdictions with weaker forms of state-based land rights

to legislative overturn and the political agendas of the state. It was not until the High Court's 1992 decision in the Mabo case—just twenty years ago—that Australia abandoned the doctrine of terra nullius, the idea that Australia was un-owned land when Europeans first arrived and that its Indigenous peoples had no Aboriginal right to it. Mabo affirmed Native title, although in the decision's aftermath, both Australian and state governments worked hard to limit its impact, making it difficult for Indigenous peoples to realise significant economic value from the title they hold.

legislation such as Western Australia (44% of currently claimed land), Queensland (28% of currently claimed land) or NSW (14% of currently claimed land). Additionally, there are another 139 registered native title claims and 11 native title compensation claims as at 2022 August.

Map 1. Native Title Determinations, Australia, April 2022.



Source: National Native Title Tribunal.

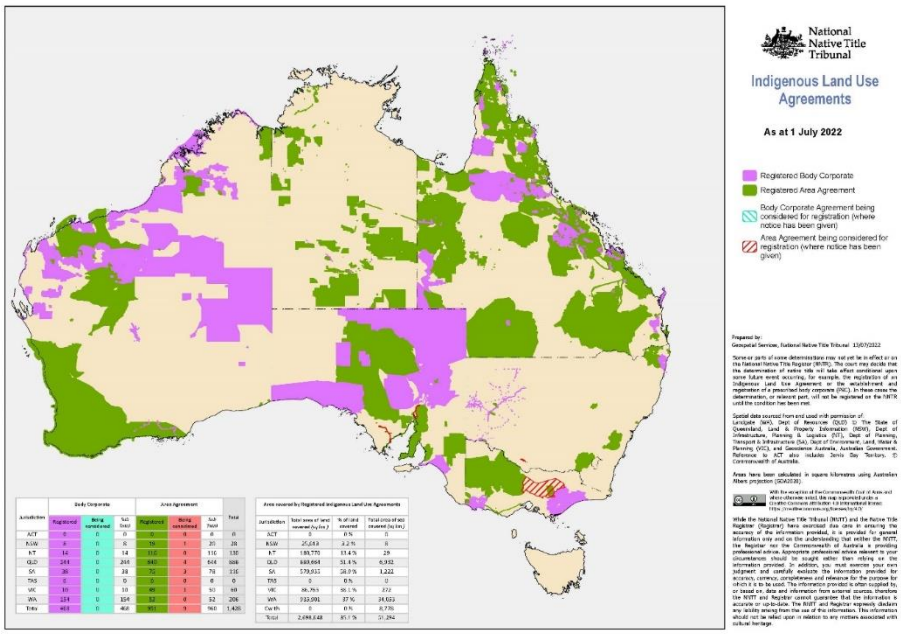
The magnitude of ongoing native title claims is important, not simply because it foreshadows future positive determinations, but because claimants whose applications have passed a Federal Court registration test are entitled to a number of procedural rights with regards to development on their claimed lands and waters. In particular, registered native title claimants are entitled to a 'right to negotiate' with proponents of minerals and infrastructure developments on their *claimed* land (Smith 1997). In addition, there is a total of 1,765 Future Act objection applications were lodged during the reporting period, 214 more than in the previous year. This is a significant rise in lodgements, following a 30 per cent increase in 2020–21 (NNTT 2022, 83-4).[14]

14. A future act is a proposal to deal with land in a way that affects native title rights and interests. Examples of future acts include the grant of a mining tenement or the compulsory acquisition of land. The *Native Title Act 1993* sets out procedures that governments have to follow before going ahead with the future act. These procedures vary depending on the nature of the act. The majority of future act activity is in Western Australia.

For native title claimants and holders, a valuable outcome of their 'right to negotiate' Future Acts has been the negotiation of hundreds of Indigenous Land Use Agreements[15] (Smith 1998). At 30 June 2022, there were 1,417 ILUAs registered on the Register of Indigenous Land Use Agreements. The majority of which are in Queensland (NNTT 2022, 85). Broadly, the ILUAs deal with a wide range of matters including the exercise of native title rights and interests over pastoral leases, local government activity, mining, state-protected areas and community infrastructure such as social housing.

These agreements cover approx 2,670,158 square kilometres or 34.7 per cent of the land mass of Australia and approximately 51,275 square kilometres of sea (see Map 2). Each registered ILUA contains commitment to related benefit sharing between an external party proposing a development and the traditional owners or native title holders of the lands or waters on which that development will take place. In addition to taking effect as a contract among the parties, it binds all persons who hold, or may hold, native title in relation to any of the land or waters in the area covered by the ILUA. Many hundreds of others rights-based agreements have been negotiated under different statutory land rights regimes; each with clauses on delivery of agreed benefits.

Map 2. Indigenous Land Use Agreements under the Native Title Act 1993, April 2022.



This is due, 'at least in part, to policies adopted by the relevant state departments concerning the use of the expedited procedure' (NNTT 2022, 83).

15. An ILUA is a voluntary agreement between native title parties and other people or bodies about the use and management of areas of land and/or waters. An ILUA can be made over areas where: native title has been determined to exist in at least part of the area; a native title claim has been made; no native title claim has been made. While registered, ILUAs bind all native title holders to the terms of the agreement, but clauses binding other parties do not necessarily 'run' with the agreement (e.g. such as if a company that is a signatory sells it business to another). ILUAs also operate as a contract between the parties.

Source: National Native Title Tribunal.

In Australia, Indigenous groups have negotiated agreements with the resource extraction industry, pastoralists, governments at all levels, tourism operators, businesses and other companies, NGOs and public institutions. The Minerals Council of Australia notes that, 'Much of the land on which mining occurs is covered by native title and lands rights regimes [and that] more than 60 per cent of operating mines are also located near Aboriginal and Torres Strait Islander communities'.[16] In other words while the remoteness of many Indigenous communities attracts adverse supply-side costs and investment disabilities, they are in prime locations for particular kinds of mainstream development, and hence for agreement making.

There is now a substantial body of robust research about agreement-making with Indigenous groups in Australia. Much of it presents evidence-based recommendations that native title and land rights procedures be made more equitable for Indigenous peoples (See in particular, overviews of common issues by Bauman et al. 2014; Langton 2004; O'Neil et al. 2021; O'Fairchellaigh 2021; Trigger 2014). Whilst the NNTT holds data on registered ILUAs, their contents are confidential to the parties and so cannot be evaluated. The only source of collated information in Australia on the wider range of varied agreements is that established and maintained in the *Agreements Treaties and Negotiated Settlements* (ATN) *Database*. This online resource gathers and review information from publicly available academic sources, online materials and documents provided by the organisations and agencies involved in agreement-making processes (https://www.atns.net.au/). In general however, there is lack of public transparency about such agreements, and hence constraints on undertaking independent evaluation and monitoring of them.

4.2 PBCs and the Self-governance Transition

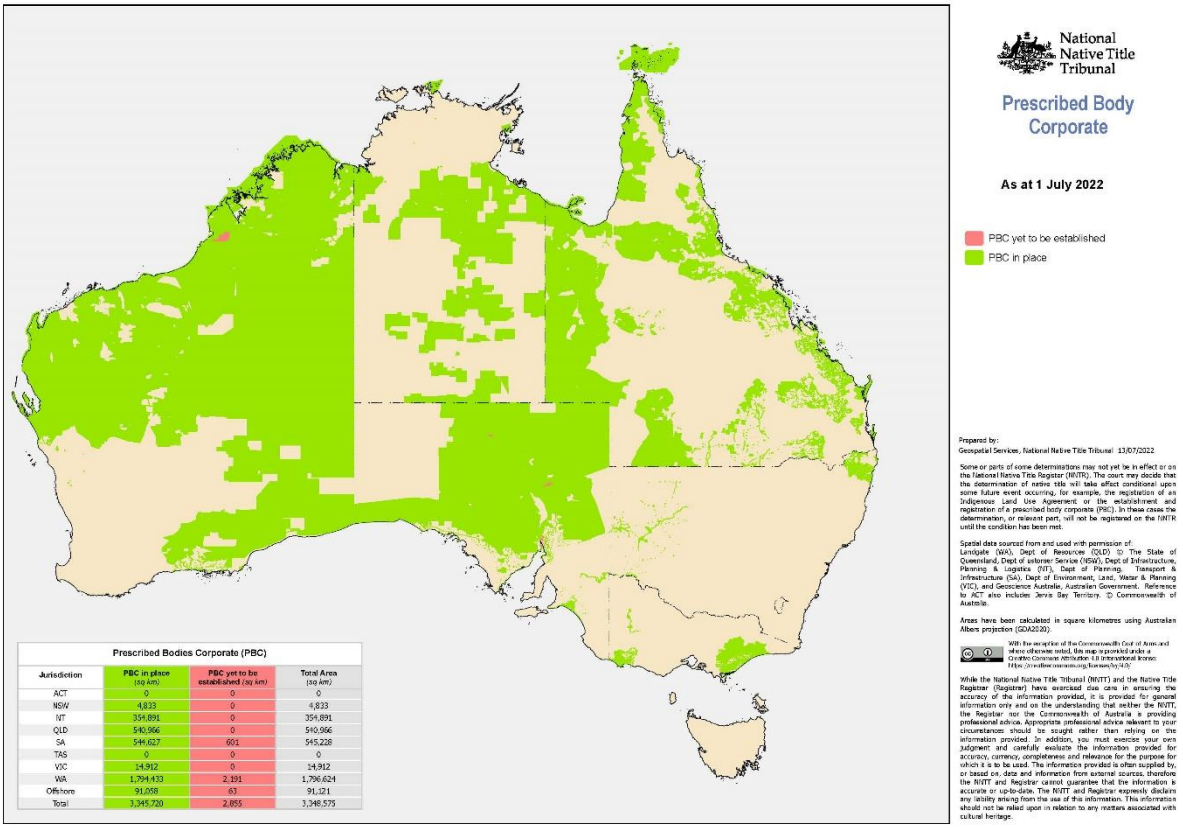
When the Federal Court determines that a group of Indigenous people have native title rights and interests in a particular area of land or waters, the *Native Title Act 1993* (NTA) requires the group to establish or nominate a legal entity to hold and manage those rights. These Registered Native Title Bodies Corporate, also known as Prescribed Bodies Corporate (PBCs), are incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) and have their performance monitored by the statutory regulatory Office of the Registrar of Indigenous Corporations (ORIC). (See Map 3).

16 . See https://www.minerals.org.au/first-nations-partnerships.

As legal entities, PBCs are tightly regulated by government and have specified roles and responsibilities to comply with under the NTA, the *Native Title (Prescribed Bodies Corporate) Regulations 1999*, and the CATSI Act, as well as a variety of other federal, state and territory laws. PBCs have obligations to all common law (native title) holders, whether they are members of the corporation or not. At the end of 2021, there were 232 PBCs established (See Map 3), and it is estimated there will be upwards of 300 by the time that most native title claims have been heard (Woods et al. 2021).

PBCs are the inheritors of the existing ILUAs negotiated by their members during the native title claims phase, as well as the negotiators of new agreements. This 'inheritance' in fact constitutes a mismatched jigsaw puzzle of agreements over different part of the native title determination area, made at different times, facilitated by different service providers, about different matters, with different parties, and containing different terms and conditions and benefits (see overview by O'Fairchellaigh 2021). The agreements do not constitute what you would call a planned or cohesive 'development agenda', let alone a collective vision for the future. Nevertheless, the bottom line, is that they have to be governed if benefits are to be realised.

Map 3. PBC and their native title determination areas, April 2022.



Prescribed Bodies Corporate (PBC)

Jurisdiction	PBC in place (sq km)	PBC yet to be established (sq km)	Total Area (sq km)
ACT	0	0	0
NSW	4,833	0	4,833
NT	354,891	0	354,891
QLD	540,966	0	540,966
SA	544,627	601	545,228
TAS	0	0	0
VIC	14,912	0	14,912
WA	1,794,433	2,191	1,796,624
Offshore	91,058	63	91,121
Total	3,345,720	2,855	3,348,575

Source: National Native Title Tribunal.

The success of developments and implementation of rights-based agreements on native title lands and waters depends greatly on the capacity and functionality of PBCs. The outcomes for native title holders, their communities and regional economies of the growing number of land/sea agreements and partnership are enhanced by PBCs that are functioning well; and undermined if they are not (Burbidge 2015; Burbidge et al 2021; Langton & Palmer. 2003; Langton 2004; Smith 1997, 1998; Woods et el 2021). As groups continue to have success in their claims to land rights and native title, a growing number are moving into an era of post-determination rights. This where several highly consequential matters immediately arise for them.

As a result of their native title recognition, many native title holders and their freshly minted PBC find themselves at a critical juncture that leads them back full circle to Patrick Dodson's incisive question: How do you use such rights and benefits effectively to accomplish the First Nation's goals? For some nations like Yawuru, this a transition into an era of planned revitalisation and the design of new ways of governing oriented towards a chosen development future. For many however, it is a tipping pointing (Drieberg et al. 2022 Elders) into frustration and development stagnation, into internal fights and litigation, or into frenzied 'deal making' to take up any opportunities on offer. The latter tipping point can quickly lead in to further critical development junctures, where groups and their organisations find the increased workloads and pressure involved are beyond their meagre resources and capability to govern.

This is the transition of political consciousness that Indigenous leaders such as Peter Yu, Neil Sterritt and James Anaya alluded to in different development contexts on several occasions (See Yu 2021; Sterritt 2021; Anaya 2021). It is also a transition of practical capability and representative credibility. In a nutshell it is, par excellence, a self-governance transition and challenge for PBCs and the native title holders whom they represent (see also K. Smith 2022; Ingram 2021; D. Smith 2012).

When groups and communities emerge from the maelstrom of the claims process, they inevitably have high expectations for their families to get outcomes happening. At the same they are presented with tempting opportunities, and find themselves taking on multiple complex negotiations with external parties. Unfortunately, the common scenario is that many groups and their new PBCs are poorly prepared to govern in the post-claim operating environment. Claimants are plunged into the world of holding native title rights and interests, without preparation, without resources, and perhaps most importantly, with ineffective or non-existent 'governance' arrangements.

The informal governance arrangements established for the native title claims process are generally not sufficient for post-determination governance and development purposes. Collective governance

during claims is exercised in the situational context of 'claim meetings', usually convened and coordinated by NTRBs. In effect it is governance by meetings—the native title group, authorised claimant, or sub-committee of leaders make decisions at meetings. But much of the strategic direction, planning, action, negotiation and followup is undertaken on claimants' behalf (acting under instructions) by NTRB staff, lawyers and consultants (see Ingram 2021). This mode of native title claimant governance usually evaporates when the last claim meeting ends.

This irregular and partial mode of collective governance is *not* fit for the purposes of later holding native title, creating a strategic collective vision for the future, and engaging in development on their own terms. In the post-determination phase, native title holders quickly need to be in the governance driver's seat, not 'at the back of the Rep Body's troopie' (native title holder, pers com). PBC's should be representing and being accountable to their native title holder members, setting the strategic direction, making the decisions, doing the planning, and taking action and responsibility. At a Northern Territory 'Strong Aboriginal Governance Summit' several years ago, David Ross (2013), then Director of the Central Land Council, challenged traditional owners about what he felt was a governance comfort zone:

> Governance is not just a matter of service delivery, organisational compliance, or management. It is about the self-determining ability and authority of clans, nations and communities to govern: to decide what you want for your future, to implement your own initiatives, and take responsibility for your own decisions and actions.

Yet immediately after they emerge victorious from the claims process, most native title holders are plunged into unknown waters. Many find they simply do not have the collective ability and authority David Ross spoke of, to govern their rights and interests. The issues at stake here are momentous. Without a strong collective and organisational (PBC) governance foundation and stable operational capabilities, the task of meeting the great expectations of their families is compromised from the outset. In these circumstances, they will be unable to move to the more opportunistic phase of native title development, or plan for aspirational nation-rebuilding and prosperity.

The native title transition currently experienced by many groups is more of an abrupt disconnect than a smooth transition. This highlights the critical need for deeper governance capacity building within groups and their leaders *during the claims phase*, to enable them to enter into the PBC phase of holding their title with greater self-governing confidence and capability.

4.2 The Nation-rebuilding Transition

Success in the struggle for rights often propels people from thinking about past grievances to 'future thinking'—to thinking about the needs of their children and great-grandchildren, and the direction and speed of change they prefer. It involves them in collectively asking and working together to answer a set of difficult questions:

- What kind of nation or collective identity are we trying to build, not only for ourselves but also for future generations?
- What kinds of development might be acceptable and consented to by our families now and in the future?
- What role should our own cultural play in our governance and development initiatives, and how might we do that?
- Who should benefit from development, now and over time?
- Moreover, who should make the decisions about these matters? How should 'we the nation' be governed to maximise the success of our chosen development agenda?

Answering these questions can themselves be unsettling, but also act as catalysts for renewal. Capable governance and solidarity to make decisions together plays a crucial role in managing the changes and unintended consequences ushered in by taking on new opportunities. Conversely, having poorly performing governance and fractious group relations, are quickly highlighted in the post-determination context, raising the need not only for urgent governance assessment and renewal, but also group relationships to be rebuilt.

Native title development is first and foremost a self-governance issue. Dodson & Smith's (2003, 1) conclusion made over twenty years ago remains relevant today,

> … it is only when effective governance is in place that communities and regions will have a solid foundation for making sound decisions about their overall goals and objectives, what kind of life they want to try to build, what assets they have or require, what things they want to retain, protect or change, the kind of development they want to promote or reject, and what actions they need to take to achieve those goals.

Today it is evident from many groups emerging out of the litigious native title claim process face that considerable work is required to rebuild internal relationships, trust and solidarity in order to create a platform for reasserting self-determination. In fact, this is beneficial work for nation-building; a process of enhancing peoples' *collective* abilities to exercise self-governing authority effectively as an organised political entity with a collective identity. It enables native title holders and traditional landowners to act as a polity with collective governance that will enable them to wield contemporary

authority for contemporary purposes. When group members engage in thinking about and doing development, it can be a motivator for just such a process of their own nation rebuilding.

National and international research (see overviews in Nikolakis et al. 2020; Smith et al. 2021; Jorgensen 2007) shows a nation-building strategy take many pathways, and often in circumstances of potential development opportunities. It has been kick-started through internal conversations about collective identity and relationships; through strategies to revitalise the participation of group members in decision-making about their development aspirations; exploring the valued role of culture in development, or rebuilding valued governing institutions. The consistent feature in these pathways is that their momentum has been uniquely Indigenous-driven, requires time, collective energy, and resources. These requirements are often in short supply when groups emerge from their claims determination process.

Given that nation-building—with its weighty workload of governance and relationship rebuilding—is an intergenerational project, adopting an incremental and adaptive approach is eminently sensible. However, native title holders and their PBCs can quickly find themselves involved in serial, high-pressured development negotiations. With few resources, little or no staff, and few targeted support programs (Woods et al 2021), nation and governance rebuilding are the inevitable losers. This creates a vicious feedback loop, especially given the research evidence base strongly suggests[17] that rebuilding the social and cultural fabric of Indigenous societies is a foundational component of sustainable development.

4.3 Native Title Development is Forever

Once established, PBCs are confronted with a herculean task. The beneficial purposes set out in the Preamble to the *Native Title Act 1993* state that '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… (Preamble *NTA*, p 3). Native title rights are inalienable, meaning they are in perpetuity and cannot be sold. Put simply, native title is forever. Accordingly, PBCs are established in perpetuity, having no legal or regulatory end date to their operations. This has major implications: the development role of a PBC is forever. Common sense suggests that governance rebuilding should begin early and be well-supported.

[17] See, the case study research in Australian Indigenous Community Governance Project (Hunt et al. 2008); the Harvard Project on Native American Economic Development (2002), the OECD Report (2019); Dodson & Smith (2003) and Smith et al. (2021).

The ‘forever’ functions of PBCs are multifaceted, complicated, highly regulated and continue to expand over time as the native title system itself evolves. PBCs are held accountable by ORIC for the adequacy of their financial and regulatory performance, and by their own native title holders whom they represent and work for. They have core functions enshrined in Australian Government legislation and regulation, and are obliged to comply with these. Beyond these particular compliance requirements, a growing list of other functions are arising for PBCs as they become recognised (including under state and territory legislation) as the ‘go-to’ organisations for consultation, engagement and legal representation in respect to their members. In other words, they are working to also satisfy the compliance needs of government agencies who are required to consult with native title holders. In addition, there is the entire suite of responsibilities that arise from the deeper rights and interest of their own group’s traditional laws and customs which, as Patrick Dodson noted above, ‘… are not a narrow list of wants. Our interests are as deep and complex as our culture, our history and our Law’.

Over the years, multiple reports have documented the expanding functions falling on PBCs, and the consequences of those for related capabilities and resources (see Bauman et al. 2013; Burbidge et al. 2021; Deloittes 2014; Langton 2015; Mantziaris and Martin 200; Strelein & Tran 2007; Webb 2016; Woods et al 2021).[18] These functions now include ‘basic’ regulatory compliance activities, future act management, negotiations and agreements, monitoring and implementation of agreements, management and distribution of benefits to members, conduct of meetings, consulting with, taking instructions from and reporting to their members, mediation of dispute, and so on. Such governance functions require expert skills and knowledge across areas of leadership, administration, decision-making, strategic and financial planning, negotiation, cultural heritage, and data governance. It is not surprising that most native title holders feel they have been thrown into the deep-end of development and governance when they emerge from their claims phase. Few have the staffing, expertise, resources and specialist skills needed.

4.4 Resource and Funding Disabilities

It has been widely acknowledged by a series of government-initiated reviews and inquiries that the diverse mandatory functions required of PBCs has led to a growing administrative burden. (Bauman et al., 2013; Burbidge et al., 2020, p. 43; Deloitte Access Economics, 2014; Dillon, 2017, 2021; Langton

18. In addition to a considerable body of research, government reviews and inquiries, and Indigenous submissions on PBC roles and responsibilities, there are valuable research and policy resources provided by:
1). AIATSIS which convenes a regular native title conference and has a Native Title Research Unit that has been conducting surveys and research with PBCs since 2007 https://aiatsis.gov.au/research/current-projects/prescribed-bodies-corporate.
2). The National Native Title Council also advocates on policy, funding and legal issues relevant to PBCs and is currently working on a project to support nation-building in the native title , and developing a national policy reform package for PBCs. See: https://nntc.com.au/our-agenda/pbc-policy-reform-nation-building/

& Frith, 2010; Productivity Commission, 2020, pp. 333– 334). It is further acknowledged that the funding and other human capital resources made available by governments to perform these functions is grossly inadequate for PBCs—the vast majority of which have little or no income.

The mismatch between mandatory duties and available funding has long undermined PBC capacity and development outcomes for native title holders. PBCs have to be able to govern well over the long haul. Yet there are substantial resource and funding constraints on them being able to do that effectively. As a consequence, they are operating under what can only be called a development disability.

A 2021 analysis by CAEPR of PBC funding, based on the most recent publicly available data from ORIC showed that 70% of PBCs self-reported only limited or no income, and that many of them are in that situation year after year (Woods et al. 2021). It is not surprising to discover from the 2019 survey of PBCs by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) that up to 67% identified an absence or lack of funds as one of the key challenges they faced in achieving their development goals. Consequently, the vast majority of PBCs continue to rely partially or wholly on support from a NTRB or NT Service Provider, who are themselves often under-resourced to carry out their own basic statutory functions and obligations (Burbidge et al., 2020, p. 43), let alone provide additional outreach services and support to PBCs. Yet that is what most try to do.

This point has been made repeatedly in multiple reports; including a government-commissioned review by Deloitte of the roles and functions of native title organisations (Deloitte Access Economics 2014), and again more recently in the report of the Select Committee on the Effectiveness of the Australian Government's Northern Australia Agenda (The Senate Australian Parliament 2021). The fact that funding has always been inadequate is unequivocal, yet the issue remains unresolved. The CAEPR analysis (Woods et al. 2021) further reported that the limited funding to PBCs by the Australian Government means only a small number of PBCs demonstrate the hoped-for 'development trajectory' where they gain sufficient capability and operational stability to start generating their own funding base, and so become progressively more independent of government funding. And some of those rely mostly on their own compensatory settlements and agreements monies to do their work. In fact, more than half of PBCs in the CAEPR study not only start small, they have remained small over the course of their existence. Indeed, 'some PBCs may well decline in their financial fortunes, not grow' (page ref). Roughly half of PBCs are likely to remain small into the foreseeable future. This suggests that rather than PBCs being able to grow and generate a stable development trajectory, many are caught in a frustrating development dead-end.

4.5 Implications for Generating and Sustaining Post-Native Title Development

There are several urgent consequences of the impoverished PBC governance and operating environment laid out above. They have been raised repeatedly with government (see Burbidge 2020; Woods et al 2021).

Two years after the enactment of the *Native title Act 1993*, ATSIC undertook the first comprehensive review of the operation of Native Title Representative Bodies, the new statutory organisations established across Australia to represent Indigenous groups in their claims to native title under the Act. Undertaken over 16 years ago by CAEPR and known as the 'Parker Report' (ATSIC 1996), the review committee pointed out that the newly established NTRBs would in the future

> …need to fulfil a number of indispensable functions on behalf of their constituents, including: … participating in the development of regional agreements; [and] eventually, assisting potential prescribed bodies corporations.

The review report further noted, 'There are already indications that it is indigenous interests which have recognised the strategic potential contained in the right to negotiate private agreements'; arguing that Indigenous Australians should not be regarded as obstacles to development, nor simply spectators or occasional beneficiaries of development (ATSIC 1996, 304-305). It recommended that: 'the potential needs of Prescribed Bodies Corporate and their relationship with NTRBs should be considered at an early stage'; 'regional agreement workloads should be incorporated into ATSIC's assessment of NTRB funding needs' and that 'NTRBs and ATSIC should closely monitor the funding implications of the establishment of PBCs'

Fast-forward twenty years later, the Deloitte review (Deloittes Access Economics 2014, 28-29) found that,

> … at present, most RNTBCs [*PBCs*] have yet to achieve even the most basic functionality and as a consequence, lack the capacity to pursue any potential viable opportunities….. Native title holders should have the capacity to consider their options and make informed decisions about their direction, based on their aspirations and opportunities. The Review found that this capacity is often lacking at present.

Native title claimants and holders have the potential to be influential catalysts of development at local community, regional, national and international levels. Well-documented research and review evidence over several decades indicates that potential is seriously jeopardised—for Indigenous people and the nation as a whole—by the ongoing constraints on their funding bases, staffing, and self-governance ability. The long list of existing research and this paper repeatedly points to the need for more targeted governance support mechanisms linked to an integrated package of resources, to

enable native title claimants and holders to rebuild their collective cohesion and organisational governance in order to maximise the development potential of their rights and interests. Given the economic, social cultural environmental potential of such rights and interest, it is critical that PBCs be properly funded, and that a high-quality program for the incremental building of self-governing capabilities is embedded within the native title process–right through the claim and post-determination phases.

Twenty-five years ago, in the early days of native title agreement-making, I concluded that,

> … a durable ILUA will only be achieved if the cost of its implementation is built into its terms. Experience in Australia and overseas has shown that worthwhile agreements quickly become unsustainable and hotly contested if implementation costs and responsibilities have not been assigned within the terms of the agreement itself….

I further suggested that the long-term viability of agreements,

> … will be greatly enhanced by … establishing adequate and co-ordinated levels of funding for all potential indigenous parties …. inclusion of terms and conditions that address the need for future dispute-resolution mechanisms, and possible future assignment of beneficial terms and mortgagee possession of relevant leases. Similarly, agreements should canvass agreed options for dealing with possible future determinations of native title and the establishment of Prescribed Bodies Corporate for the area. Parties should also make specific provisions for the ongoing costs of monitoring compliance obligations and liabilities, and of implementing an agreement's terms and conditions….. It remains to be seen, however, whether the right to negotiate will remain a robust one, and …. whether the potential economic benefits that arise from its operation actually flow to native title holders.

Those recommendations apply equally, if not more so today, in light of the growing number of PBCs and their vastly expanded roles and responsibilities. Furthermore, 'if native title holders are now able to enjoy fully their rights and interests' as promised 30 years ago in the Preamble to the *Native Title Act*, then the insistence that ILUAs and other native title agreements remain 'commercial-in-confidence' to the parties arguably undermines Indigenous self-determined development. The resulting invisibility of agreement terms and conditions has been reported by Marcia Langton (2015, 70) who noted from her own extensive research on the Agreements Database Project that she had 'been able to identify and publish only 15 full or partial texts of agreements out of a total of 930 recorded on the database'. This 'invisibility' has several consequences. First, agreement terms and conditions are not available for public scrutiny, independent monitoring or evaluation. Second, there is no evolution of equitable financial (and other) standards across a group's agreements, or between

groups over time. Third, it is entirely unclear which contractual commitments have been honoured by parties to an agreement, and which have not. And when commitments *are* honoured, it is difficult to ascertain whether they delivered the outcomes hopes for by native title parties. And importantly, it means that Indigenous parties are often not across the status of their own agreements, let alone where those fit into any overall development vision. It is critical, now more than ever, that the terms and conditions of all agreements be open and subject to robust monitoring of commitments, standards and outcomes over time (Altman 2009; Langton 2004; O'Fairchellaigh 12004, 2021; Smith 1997, 1998).

PBCs operate at the cultural interface of a complex development environment. The majority are poorly resourced and under-prepared in their governance arrangements for taking on major development opportunities. It is not sufficient to have a 'Rule Book' or incorporation constitution. Self-governance of development is about working together to get things done. It relies on effective collective decision making and accountability. The expectations and needs of native title holders emerging from the determination process, often cause them to grab whatever development opportunities are on offer, as fast as they can. This lead some groups into poorly considered, poorly governed ventures, and creates a jigsaw puzzle of development initiatives that are not informed by any overarching strategy. In other words, groups get pulled along in the backwash of development agenda set by other parties. The consequence can be dire—boards implode under pressure, there is an exodus of CEOs and staff, valuable corporate knowledge is lost, community members become disenchanted even disputatious, business credibility is undermined with investors and funders. The trajectory of these tipping points is a race to the development bottom. From there, it is even harder to rebuild group solidarity and governing capability—a vicious loop.

This set of conditions leads us back to the critical questions: What form of development do native title and other land-owning groups actually want? How can they go about achieving that on their terms? How can groups better govern their collective development agenda? What information, support, expertise and resources are needed in order to plan, choose, implement and monitor development initiatives?

Below we examine a new model designed and being implemented by the QSNTS Native Title Representative Body, precisely to tackle these complex questions and development dilemmas.

PART TWO

5. PEOPLE, PLACE AND PARTNERSHIP: AN INTEGRATED DEVELOPMENT MODEL

5.1 An IGD Project Partner

The QSNTS and Boonthamurra PBC are partner Indigenous organisations in the *Indigenous Governance of Development* Project. Under an internal agreement, CAEPR and the Australian Institute of Governance committed to provide specialised research and 'applied practice' services in the subject area 'governance of development' to our Indigenous research partners, including QSNTS and the Boonthamurra PBC in Queensland.

The research on which this paper is based is drawn more widely from the author's previous research experience with Indigenous organisations and groups on land rights, native title and the governance of development (see overviews in Smith et al. 2021), and specifically from research undertaken with QSNTS around its operational practice, during a two-week period working in the QSNTS office in Brisbane.[19] That included participation in a three-day PBC workshop where elements of the People, Place and Partnership Model were implemented by one of QSNTs new interdisciplinary teams (see below).

5.2 QSNTS: The Context

The Queensland South Native Title Services (QSNTS) commenced operating on July 2005 and is funded by the Australian Government[20] to act as the native title representative body for native title claimants and holders. QSNTS service region was significantly extended in 2008 by an Australian Government operational amalgamation of smaller NTRBS that were found not to be workable in their scale, or ineffective in their performance. As a result, QSNTS has one of the largest footprint in Australia, covering nearly two-thirds of Queensland, and encompassing a diverse blend of remote, rural and urban locations.

The native title arena is an extremely challenging operating environment for claim resolution, and there were low expectations of success for many regions of Queensland at the time QSNT began its operation. Adopting a rigorous adherence to an evidence-based methodology and expert understanding of legal

19. During that period I was fortunate to have a room in the QSNTS office where I was able to work daily, attend multiple staff planning and debriefing meetings, participate in the work of the newly established Client Development Unit, be updated on the TraKS database and PPP Model, individually interview key managers and teams, and participate in a field-based workshop by QSNTS with a PBC.
20. QSNTS is funded by the Commonwealth Government represented by the NIAA, and is therefore accountable to the NIAA for its conduct and expenditure.

and statutory processes served the organisation and Aboriginal claimants very well. When QSNTS commenced operations there had been no native title determinations in the region since the NTA came into operation. Today in Queensland there are 41 positive, 28 of which have been achieved by QSNTS, with a further 12 claims pending determination and potentially an additional 18 to be represented by QSNTS (QSNTS 2020, 17).

As a native title service provider, QSNTS performs the full range of statutory functions prescribed by the Native Title Act at the request of Traditional Owners from its region of responsibility. Like all other NTRBs, the range of services is wide and commonly involves extensive field-based work, and extensive legal, administrative, financial and research advice and support. The focus of their work has been on providing legal representation and facilitation assistance to native title claimants to successfully gain formal recognition of their native title rights and interests. This includes seeking research 'connection' evidence to determine 'right people for right Country', resolving disputes that may arise in identifying the claim group, and certifying claim lodgement with the Federal Court of Australia. More recently, it has provided assistance to native title claimants and Prescribed Bodies Corporate to protect their cultural heritage through legal representation and the implementation of cultural heritage management plans negotiated under the *Aboriginal Cultural Heritage Act (Qld) 2003*. Agreement making is a core function, including facilitation assistance and representation in negotiating, resolving and implementing native title agreements, including ILUAs, on behalf of both claimants and several PBCs now established in their region.

While its forensic orientation to claims process was a proven success during the claim phase, the organisation acknowledged that something more was needed to assist its clients in what was rapidly becoming a multi-layered, post-determination context. QSNTS responded to these external factors by radically transforming its operations and engagement approach. In the recent historical context where groups had sought out private providers (legal firms) owing to the disarray of earlier smaller NTRBS, its first 'change strategy' was to re-engage with Indigenous groups across the region as being their first 'choice provider' of services,

5.3 '**The Provider of Choice'**

The organisation progressively adopted a more proactive stand, by offering a comprehensive range of services' … 'to help build capacity and maximise the opportunities provided through native title. These services include:

> Governance training; strategic planning; research products and assistance with grant applications; compliance; agreement implementation; corporate and administrative support in finance; human resources; and communications (QSNTS 2020, 17).

This strategy led to an incremental extension of support to PBCs, in areas such as facilitating: PBC group members' vision and strategy workshops; grant application and administration; capability building; research and geospatial expertise; legal advice on PBC statutory compliance with their complex operational conditions; internal conflict resolution; corporate finance, administrative and HR support; stakeholder communications and engagement; and often detailed logistical support for meetings.

IN 2020-21, QSNTS reported that their flow of work in future act and agreements alone, included managing 740 Future acts notices (received); 19 agreements (in development); 40 responses to future acts; 18 agreements concluded; and 2 ILUA negotiations commenced (QSNTS 2021, 29). A rapidly expanding workload was evident for both QSNTS and the newly established PBC in the region.

5.4 A Necessary Transition

In 2020, QSNTS noted that in light of the success in securing positive native title determination,

> A growing number of Traditional Owners are now moving beyond the claim process and into the era of governance that must follow every positive determination [with the result that QSNTS] …is evolving to ensure Native Title Holders receive the professional support they need to establish, understand and leverage native title rights and interests for the long-term benefit of their communities (QSNTS 2020, 15).

The organisation began looking to the longer term, with the strategic objective,

> to expand the range of statutory services to both native title claimants and native title holders to ensure that Traditional Owners can harness the economic and social opportunities associated with native title whilst protecting, practising and preserving their culture, rights and interests to land and waters for present and future generations (QSNTS 2020, 50).

The year before, QSNTS CEO Kevin Smith had given a presentation to the Minerals Council of Australia (MCA) on current and emerging issues in the area of native title agreement making, sending a 'strong message that while there were numerous extractive industry agreements in the QSNTS region, an analysis revealed very poor implementation of the contractual terms and little commitment to operationalise and proactively manage the agreements' (QSNTS 2020, 35).

One particular area of growing concern within the organisation was with development outcomes for native title groups. It became apparent that with the facilitation of agreement-making being in the hands of a variety of private sector legal firms (not all claimants having been historically represented by QSNTS), there was little robust data on the details and outcomes of the steadily increasing number of agreements being entered into by native title claimants and holders. Indeed, some groups had no clear sense of how many such agreements they had signed, nor their contents. For those that did, it was

unclear what outcomes had actually been achieved under their various agreements. Did groups even have copies of their own agreements? Were the benefits and commitments listed in each of their confidential separate agreements being met? Who was monitoring stakeholders' compliance with their own undertakings?

QSNTS investigated the situation and searched for the facts. Initially, they collated agreements they could on behalf of PBCs and checked with relevant native title holders and private-sector legal firms, then categorised the found agreements for each native title holding group in the region, and audited the contents. The search process was revealing for several reasons. For example, one client who had recently asked QSNT for representation on their behalf, are attempting to locate all their agreements that are housed in boxes, scan and save those onto a USB to provide to QSNTS. The concern about unmet commitments by external parties was fully justified. The organisation has estimated that currently a total $6,576,393.67 of cash commitments owing to five PBC clients has not been paid by the agreement stakeholder.[21] The largest amount for Client 3 comprised multiple unmet payment deadlines. As at August 2022, QSNTS is managing 426 agreements, with quite a quite a lot more to come, including for current native title claimants who have not yet had a determination made of their claims.

This is a critical issue for development outcomes, especially in the context of the beneficial aim of the *Native Title Act 1993* set out in its Preamble that: 'It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests'. For native title holders to enjoy fully their rights and interests, they need data – including data which they can use to monitor progress, make informed decisions (FPIC) and govern their development agreements and initiatives. The lack of data for Indigenous governance of rights and development interests has been raised repeatedly over many decades, in other legislative contexts such as the Northern Territory Land Rights regime, cultural heritage and resource negotiations (Altman & Martin 2009; Langton 2004; O'Fairchellaigh 2002, 2004, 2006; Smith 2008, 2009, 2016; Taylor 2009). There are significant economic consequences for native title groups of agreement commitments not being monitored and met. In effect, they are being held back from the full economic realisation of their negotiated compensation and benefit rights. Not just from receiving the cash payments, but also from the possible parallel loss of in-kind benefits and related multiplier effects of those. It is also a loss for the wider regional and national economies within which agreements and native title lands are situated.

21. This was comprised of amounts and clients as follows: Client 1 - $119, 922.85; Client 2 - $20, 598.77; Client 3 - $5,889,852.64; Client 4 - $40,648.30; Client 5 - $505,371.11. This does not include the loss of any other in-kind benefits also committed to and perhaps also not delivered by parties to agreements. (QSNTS Data).

The QSNTS audit has wider implications for small, understaffed and underfunded PBCs across Australia who also have agreements sitting with a range of firms as well as NTRBs. We currently do not know across Australia whether agreement monies and other commitments have been fully met or not. Might they also may be missing substantial funds and other contractual benefits? A very simplistic (but logical) mathematical exercise suggests that if 5 PBCs have been not paid approx $6.5million in agreement commitments, given a current total 130 PBCs in Australia, there could be in the order of $845million in unmet agreement monies to native title groups. This is simplistic as there are large PBCs who may have extremely thorough information systems for routinely tracking payment schedules and clauses of the agreements into which they have entered. The fact that several large NTRBs are in discussions with QSNT to adopt its data collection system suggests otherwise. Also, the great majority of PBCs are small and underfunded (Woods et al. 2021), and so unlikely to have such a capacity. A simplistic exercise is indicative, but has overall validity as to the general issue. It certainly indicates the need for full, accurate data in order that native title groups can govern all their development agreements. Groups would be well advised to insert into all agreements, the costs of post-agreement databases for monitoring progress, payment schedule and reporting on all commitments in their agreements, and ensure those terms run with agreement over their lifetime.

5.5 TraKS: A Database for Corporate Knowledge, Native Title Governance and Development

A central early initiative by QSNT was the establishment of TraKS – the Traditional Owner and Knowledge System – a purpose-built database by QSNTS in 2017. Not surprisingly, the organisation's commitment is that: 'TraKS allows you to focus on the management and protection of your legal rights and interests, and never miss out on what is owed to you' (https://qsnts.com.au/?qsnts=TraKS).

The TraKs database contains detailed information on hundreds of different kinds of native title agreements and contracts, with data on the commitments of all legally-bound parties. These agreement benefits are varied and precious, including not only monetary payments but employment, training, business initiatives, joint ventures, education scholarship, 'Caring for Country' and Indigenous Ranger Program resources, the building of infrastructure and so on.

The database operates as a secured, 'members only' portal to log in and access information through an internet based IT application. It includes information about agreement types, each party's contact information and historical data on the extent to which they have honoured previous agreements. It identifies all agreement commitments and aligns their conditions with date notifications and reminders linked to the key date alerts. It sends notifications for receiving and responding to Future

Act notices under the *Native Title Act* (that draw native title holders into possible agreement negotiation procedures).

It also has automated administration linked to Consumer Price Index for benefits, producing automated payment schedules, and generates real-time daily and annual reports on the status of all agreement clauses and commitments. Payment calculation reminders are provided for monetary benefits owed, and it tracks the non-monetary opportunities stipulated in agreements. The database offers an additional, valued service in simplifying complex legal and financial documents into plain English summaries, which are confidentially provided to native title holders.

The database enables the ongoing governance, protection and implementation of agreements negotiated throughout a native title group's full native title journey. It is one of the only indigenous digital initiatives in Australia that directly empowers native title claimants, holders and their PBC with *data governance* - to hold the signatories to their diverse agreement to account, by being able to monitor stakeholders' compliance to agreement terms, and then to action based on that information. Through the collation and provision of accurate timely data to Indigenous groups, they are able to make the informed decisions on which the UNDRIP 'free prior informed consent' is based.

Its immediate practical value for enhancing the exercise of Indigenous self-governance is apparent in the story told by a native holding group about their negotiations with one resource proponent – a company that had signed previous agreements them and was keen to initiate another resource agreement. Reports were run through TraKs by QSNTS on the status of the company's existing agreement obligations, revealing they had failed to deliver on some specific previous undertakings. Based on this data, the native title holders made the informed decision not to proceed with further negotiations until such time as the company met its previous commitments to them. This is a practical lesson in the power of *relevant* timely accurate data that is under Indigenous control – with Indigenous control over their own data comes genuine governing authority and informed decision-making power.

5.6 An Organisational Refocus

Armed with information and an awareness of emerging longer-term issues for native-title self-determination and development aspirations, QSNTS decided to implement a multi-pronged strategy of directed change. It was an ambitious plan, encompassing its core ways of delivering services and support to clients, its corporate information systems, professional practice, and policy and evaluation frameworks. There are few documented points in time when Land Councils and NTRBs in Australia have initiated radical internal redesign across their *entire* operational identity. One example, was in the NT when the two major Land Councils restructured and devolved their operations into regionalised hubs

(Altman et al. 2018). Such encompassing change takes leadership, a reshaping of internal culture, an openness to new knowledge and skills, and staff commitment across the organisation to invest in the new direction.

The first component of its overarching refocus was called 'Whole of Client, Whole of Organisation. This directed all staff to a method of service delivery 'ensuring that our legal, research, corporate services, and tailored programs, are used to support Traditional Owners at all stages of the native title journey, from native title recognition right through to self-determination' (QSNTS 219, 51). Rather than dissecting an Indigenous 'client' to fit the pieces into the organisation's compartmentalised work units, those units are coordinated around each single client's service needs. It means the whole organisation commits to accompanying the same client from the beginning of their claim application, through the phases of claim mediation, agreement making, court hearings and then out the other side of gaining a determination as a native title holder, to establishing a PBC, and then exercising their rights by being able to make informed decisions and govern well. Each of these journeys is unique, so each package of service support is tailored to that.

At first glance, the notion of adopting a 'journey lens' to native title seems so apparent as not to warrant special mention. Yet it has not been undertaken by any representative bodies to date (that the author is aware of).

5.7 Interdisciplinary Teams: A Unique Operational Redesign

To achieve this, an equally innovative restructure was carried out by QSNTS in its operational management and professional practice. Specifically, over the last two years, interdisciplinary work units – called 'Client Management Teams' – have been created, made up of staff from across professional areas (so that each team includes people with professional expertise in legal, anthropological, administrative and community development fields). A team is allocated a portfolio of native title clients and then provides all coordinated QSNTS services to each client, over their native title journey.

Staff continue to be supported and engage with their disciplinary peers, but work to do planning, reporting and debriefings together as a team. So a QSNTS convened meeting or workshop with a client will have team members who able to bring their different expertise to contribute to the client's diverse needs, at different points in their native title journey).

The idea was a simple but radical one for an NTRB. Like the majority (if not all) of representative bodies, QSNTS commenced its work with an operational structure that was hierarchical and professionally compartmentalised. It was a service model imported into early land councils and then NTRBs straight from Australian Government departmental architecture with its standardised public-sector functional

sections. And was especially influenced in the land councils by the early departmental structures of the federal and state Departments of Aboriginal Affairs.[22] The problem with this structure is that operational units work as silos (very much like government departments do). There is little sharing of information or insights arising from work carried out by different staff from the different units, with the same Indigenous people. In the hierarchical 'Rep Body' structure, its internal institutional culture is a strong legal one, with the CEO and Chief Legal Officer at the top of the decision-making tree.

The benefit of the QSNTS redesign for the client is considerable. They are not required to attend multiple different meetings, with different staff, in order to deal with their business. It also means clients become familiar in dealing with the same group of staff who are part of 'their team', and are able to build a relationship over time. For the organisation, it means staff deliver integrated service support to the same client, they are encouraged to share specialist knowledge and practice tips with each other from their professional areas of expertise, cooperate to meet delivery dates for the client. The organisation as a whole gains more holistic corporate knowledge and a more informed view of progress on matters for clients, and their outcomes.

As with all organisational change, alternative arrangements in one area have flow-on effects for others. Introducing a new way of working together requires a change of internal culture. To bolster the team approach to new service mode, QSNTS began the parallel introduction of a more developmental framework for how its staff work with native title claimants and holders – in the form of a Client Development Unit.

5.8 A new Client Development Unit

As noted above, the functions of PBCs are complex and varied, and over time have substantially expanded. In addition to their legal roles, PBCs can be a vehicle to drive the socioeconomic and cultural development aspirations of native title holders. It is widely acknowledged that government funding for PBCs is inadequate to fulfil their multifaceted functions, and that lack of resources significantly undermines the governing capacity of some. Furthermore, it is clear that a compliance/regulatory approach to PBCs is insufficient for meeting their real-world responsibilities. Yet without the solid foundation of stable operational capabilities and being able to practically exercise governance (as opposed to talking about it), it is doubtful whether many PBCs will be able to achieve development

22. For example, in the early establishment phase of the Northern Land Council when the author was employed (1982-83) as the anthropologist at the NLC, its senior managers and General Manager were retired DAA public servants who introduced associated information systems and bureaucratic work units into the NLC. Hence there was a legal unit, an anthropology unit, a HR until, a finance unit, a field staff unit, a land management unit, a claims unit and so on. In all NTRBs and Land Councils across Australia a version of this bureaucratic model can found. In every one, the next senior operational unit below the CEO is always the Legal Unit, and its chief lawyer.

outcomes and sustain those over time, let alone move to more aspirational phases of native title development such as nation rebuilding, regional economic alliances and so on.

A PBC needs a range of skills and systems to be able to govern and engage in development – decision making, strategic leadership, institution (rules and policy), internal unity and cohesion, financial, legal and management, meetings and logistics, dispute resolution, planning, negotiation, mapping, land tenure, research, and so on (see Burbidge 202; Woods et al. 2021). Being faced with growing numbers of newly established PBCs, QSNTS decided to build its own internal capacity to support PBCs in their new era of post-native title roles and responsibilities. In doing this they reached, and out and were informed by, the work of the Central Land Council in the NT, which had adopted a community development approach to its work with land rights claimants and traditional owners over two decades ago (CLC 2020; Campbell and Hunt 2013).

The QSNTS developmental practice approach has some notable differences to that of the CLC and NLC. For example, not having the base of traditional owners with decades of experience in land rights negotiations, many of whom have their own large royalty associations and development corporations operating across the NT. QSNTS operates under the NTA which is arguably a weaker property right than the inalienable freehold property of traditional owners under ALRA in the NT. In some ways, this has meant QSNTS and native title holders face a more immature 'rights environment' in Queensland, with fewer funds in Indigenous hands. But it has also led QSNTS to design an innovative developmental practice approach to maximise the leverage of those rights and that is 'fit for Queensland native title circumstances', and aligns with its restructured client management teams.

To reinforce the organisation's own capabilities to deliver an interdisciplinary teams, 'whole of client' model, the organisation embarked on building its in-house 'developmental practice' by establishing a modest 'Client Development Unit' in July 2020. The Unit of two staff provide professional skills and training across all teams, around the ways they work together, and with native title clients. In effect, the Unit's brief is to build team skills to facilitate and work in what is called a 'developmental way (Hunt & Bauman 2022; Stephens et al. (2013). This approach is informed by international participatory development practice, but is being refined so as to be 'rights based' and meaningful for native title contexts.

The principles which underpin client developmental practice and support are:

- Self-determination: groups and PBCs have the right to make their own choices and decisions.
- Empowerment: groups and PBC should be able to control and use their own assets and information to exercise and leverage their rights.

- Collective action: native title claimants coming together in groups or as PBC organisations strengthens their voices, and solidarity for taking action.
- Working and learning together: collaboration and sharing experiences are vital to self-determined governance and development activities and outcomes.

The Client Development Unit coordinates across teams to inculcate a way of working to adopt these principles in ways that are culture-centric. The Unit plays avital role in designing bespoke tools that all teams can use at meetings and for identified areas of work that all PBCs undertake. Its facilitation model used with each client is to identify, clearly describe the client's native title issues of concerns, related governance needs, their long and short-term goals via an initial in-depth 'situation analysis'. These will be different at different stages of the journey. The team then work with the client to consider options for solutions and to plan incremental implementation of the next logical steps. The tailored plan is then reviewed for progress, risks and outcomes.

The groundwork for this happens in a workshop convened with a PBC board and interested members. Post workshop the CMT and CDU meet to debrief, shared reflections and capture learnings. This style of iterative learning to improve the way teams of staff work together is one that many organisations (Indigenous and non-Indigenous) aspire to. QSNT has embedded the approach into the culture of the organisation through some straightforward operational, through scheduled times for planning, and debriefings after engagement with clients. And has designed an agenda tool (see Appendix 1) for teams to use and become familiar with that supports reflection, which in turn is documented and translated into 'lessons learned' for all staff. These reflection points are workable for staff, and also built solidarity and motivation, which further embed the new culture.

5.9 The People, Place and Partnership Model

All of the evolving areas of QSNTS' operational, service delivery and practice come to fruition in the overarching model of 'People, Place and Partnership'. Its goal is to facilitate the leveraging of the fullest range development opportunities through the implementation of native title rights and interests. It is the value-add package directly offered not only to native title holders and their PBCs, but potentially to native tile claimants as they move through their claim.

The model offers an integrated approach to governing and managing the native title estate that focuses on mapping human, cultural and social capital drawn from First Nations' two most important assets: People and Country. Again, it is framed within a rights-based methodology that draws upon each group's/PBC's recognised native title, future act, agreements and cultural heritage rights, and translates them into a practical model that enables them to steer the direction of their own development future. That is the work of governance and self-determination *in practice*.

The three key components and the method of implementation of the model are as follows:

- People (Skills Audit) - Information regarding the skills, experiences and aspirations, including in relation to PBC succession planning is collected through a skills and expertise audit, and collated as map of human capital to be linked with employment and other opportunities. It includes a review of the demographic characteristics of the group as well as an overview of the local economics in the areas of their native title lands.

- Place (Cultural Mapping) - A variety of electronic and hard-copy maps are then produced depicting the particular native title holder group and their Country, including cultural sites as well as products depicting the location of stakeholders doing business on their Country. Neighbouring Traditional Owners can also be involved in the mapped, with the intent being to work as neighbours to form a regional alliances and voice.

- Partnership (Stakeholder Engagement) - Stakeholder engagement plans and a PBC website are developed to promote awareness of the native title group and their PBC, their rights, and their aspirations for their Country and people. Here each group can upload their own strategic plans for a wide range of hoped for development, and ask for expressions of interest from others. In other words, set their own agenda rather than be reactive to whatever offer are made to them.

Key guiding principles of the Model are its strengths-based approach, identifying the actual skills, assets and capabilities within the native title group themselves; and planning for how people want to further build those. It is 'whole of Country' oriented, rather than defaulting to the jigsaw puzzle of scattered pockets native title land. The model is culture-centric and so mobilises the international 'cultural turn' in development best practice and the UN Indigenous Major Working Group's assertion that priviledges 'development *with* culture and identity'.

A valued function is that the model is adaptable and can be tailored to the specific interests and agenda of the group themselves. Importantly, it also emphasises workable incremental goals for groups in building their self-governing abilities. It reinforces governance capacity building by adapting tools to focus on specific scenarios and problem-solving issues that PBCs are going through. In these ways, groups are able to consider information, assess their options, plan and organise action for particular development outcomes they want. The end product is a tailored package of strategies that provides a foundation for the slower processes of nation rebuilding.

The PPP Model has been designed over a two-year period within QSNTS and only recently been rolled out since January 2022. It is very much in the early phases. . It clearly seems to be filling an important gap for PBC and native title groups, as QSNTS notes they are steadily receiving increased requests from groups once they hear about the approach from other groups. As at August 2022, 11 groups are trialling the model. With workloads and quality in mind, and the desire to ensure the model is robust and workable at scale, QSNTS has recently added a further refinement with two 'product offerings' – Foundation and Comprehensive (See Diagram 2). It recommends that groups and their PBCs do the Foundation with a view to adapting their own tailored menu of component activities (e.g a Cultural Code of Conduct, making and doing their own Policies and Procedures, an Aspirations Workshop, Strategic Planning) to meet their specific, *initial* goals. That process can later be linked to a more comprehensive suite of activities and products over a longer term. The latter may focus on a particular intersection of the PPP Model; for example, to focus on people and partnerships (such as initiatives with Local Governments, businesses, doing a land tenure analysis), or people and Country (such as heritage or site protection, genealogical or archival research). Each has its own menu of activities facilitated by the QSNTS teams.

It begins to be apparent how the other strategies in QSNTS are integrated into the PPP Model. TraKS gives robust data for different activities to inform decision making, to monitor the delivery of commitments and outcomes. The interdisciplinary teams build up relationships of trust and are themselves increasingly informed about the priorities and circumstances of the native title groups with whom they work. The organisation is currently in the process of designing an evaluation methodology for the PPP Model to use with groups involved. Having an evaluation process embedded into the Model will be critical so the lessons can be shared and applied among other native title groups within the service region but also across Australia. It will also provide a firmer evidence-based platform for anticipated future phases scaling up participating groups to form alliances, covering whole regions. A valuable additional QSNTS strategy is to roll out the model during the final phase of a native title claim. That would help ensure a more seamless transition from claims to recognition, and enable groups to more confidently on to governance of their estate and development agenda.

6. CONCLUSIONS: PRACTICE AND POLICY ISSUES FOR CONSIDERATION

The People, Place and Partnership Model is a bold initiative integrated into an even bolder strategy for organisational change. Its aim is to build and harness confidence, cohesion and capability of native title groups, and so over the longer term, bolster self-determined governance of native title rights and management of lands and waters in the native title estate. Given the familiarity of the challenges native title holders face across the country, this model could valuably be adopted by other NTRBs.

Any major practice and organisational change of this kind comes with immediate risk and challenges in order to reap the intended benefits. As a model of directed change, the People, Place and Partnership Model is supported by a suite of innovative tools, processes and professional practice within QSNTS. The object of that 'full model' – both within the organisation itself and amongst native title groups and their PBCs – is to build and harness confidence, cohesion and capability to get self-determined development happening by native title holders. If other NTRBs choose to adopt the model they would do well to do so in an equally integrated fashion as QSNTS. The model's cohesiveness is a strength, which means it will not suit a cherry-picking approach by other agencies or organisations.

It is too early in the model's implementation to assess its fuller outcomes. Its early implementation process is well considered, integrated and aligns well with addressing critical challenges in the arena of native title governance and development that have been discussed in the first part of this paper. The early mapping of native title 'Resources to Manage Country' project and roll out of a 'Cultural Code of Conduct' workshop a PBC both show significant promise toward becoming benchmarks for building and embedding practical governance capacity. The Skills Audit and participation of younger PBC Board and group Members in a Youth in Governance Masterclass also point to the value of having customised governance capacity-development firmly embedded into the model through real-world problem solving scenarios.

Early benefits of the PPP Model are already apparent, and some emerging risks:

6.1 External Benefits and Opportunities

- The most immediate success is that the model is clearly filling an important gap for native title claimant and holders. In particular, the model's operationalisation within QSNTS as being 'a whole of native title journey' is an invaluable reframing for native title groups of what is currently a disjointed disconnected process and turbulent transition from being claimants emerging into a post-determination world.
- The vision of 'whole of client on one journey' constitutes a radical improvement to the disjointed way native title groups have access to services. This arguably reduces the time and energy of everyone involved with multiple uncoordinated meetings, and enables trust and relationships to be gradually created between groups with QSNTS and its staff. Needless to say, this suggests that better outcomes will be delivered to groups.
- The model has the potential to ease the governance transition for groups and to begin the incremental process of building critical aspects of governance (such as collective decision-making, internal group solidarity, accountability and rules of behaviour, planning etc) that are

all fundamental skills for governing development. The model has great potential for this process to commence *during* the claim, not simply after a positive determination.

- The holistic integrated approach to development is innovative. In this aspect, its incrementalism can be considered a best-practice approach for native title groups building a development agenda.
- There is a valuable multiplier effect for groups using the model to 'scale up' e.g., where they work with each other to jointly govern regional development initiatives. This scaling up could be mobilised for native title groups even during their claims process.
- The model has valuable multiplier effects as a method of relational learning for governance building. For groups who have been through the Foundation or Comprehensive components they will constitute a cohort or peer group who can mentor others coming to it new. This kind of inter-group mentoring and relational learning has been shown to work well in other contexts.
- The model could act as a processual platform for nation-rebuilding process through gradual outcomes in rebuilding group solidarity of purpose and workable decision making.
- To that extent, the model encourages another important transition away from a focus by native title holders on externally imposed solutions, to their internal creativity and capability. It recentering agency and responsibility gradually onto the native title holders themselves.
- The benefits extend beyond the native tile group to other stakeholders in the region of the native title estates. For example, PBCs are encouraged to look holistically at leveraging their rights by Partnering with a wide cross-section of stakeholders. This should contribute to building greater resilience into local economies. Such outward-looking networking has been shown in other studies to enhance the longevity and effectiveness of Indigenous organisations
- The model builds a realistic strengths-based approach into identifying and governing development opportunities
- Its place-based approach acknowledges attachment to Country as well as the likely diversity of development interests of individuals, groups and communities.
- Native title groups' access to reliable data about their own agreements via TraKS, enables them to exercise FPIC and more effectively govern their development rights into the future.

6.2 External Challenges and Risks

- The level of internal tensions and disputation within native title groups emerging out of the litigious claims process has the potential to continue to undermine their own future self-governance and make it extremely hard to come to an agreed development agenda for the future. Many PBCs experience these circumstances over decades.

- The QSNTS model could valuably inform aspects of its work by exploring and designing a trauma-informed practice framework for these situations, as they *will* arise at some stage. Staff skills and tools for this aspect of working could be supported by the Client Development Unit. It is important to note that this should not be taken to mean staff become mediators or negotiators of disputes as that places them in a potentially problematic situation. Rather their skills and tools should beinfrom4d by better practices that can be undertaken to support groups to find their own way forward in these circumstances.
- The existing literature suggest that effective work by staff could be focussed: with leaders who are keen to promote group solidarity; with emerging younger leaders who see a different way of behaving; and oriented to enabling practical events where a group *physically* works together on Country to do remedial, renovation work for their lands and key places. This is powerful work of social repair and transformation that can promote healing for self-governance.
- A challenge for both QSNTS and a native title group is that the group and PBC remain still heavily reliant on the organisation. When PBC is small, underfunded and its members' are widely dispersed and long distance away from their estate, there is an intergenerational aspect to this reliance. The QSNTS should assess the timeframe aspects of its Foundation and Comprehensive services, identify possible points where participation (from both the organisation and the group) needs to be reviewed. Sometimes 'exit' timeframes motivate action and commitment to change.
- In this longer-term context, it is likely that QSNT will need to consider adding a planned 'Top-Up' component to deliver to groups who have been through Foundation and Comprehensive components and then later need additional support on a particular issue.

6.3 Internal Benefits and opportunities - QSNTS

- The entire model is being well integrated into operational and administrative procedures and tools so that these reinforce the change of internal culture required for roll out of the model.
- The incremental roll-out process and inter-disciplinary client teams are being well supported by a new Client Development Unit that coordinates the parallel enhancement of staff skills in facilitation and participatory practice with native title groups. This Unit will be a crucial part of the ability of QSNT staff to implement the model in the way intended. In particular its ability to continue to customise international developmental practice to suit the short term and longer goal's of the Model and diverse practice skills of members of the teams.
- The culture-centric lens for building PBC governance capabilities is a proven pathway for getting practical governance skills and understanding embedded within a group. QSNTS would benefit for auditing how the culture-centred lens might be further realised in the specific corporate, technical and compliance, policy requirements of PBC. That would provide a valuable

benchmark for staff as to ways they can then put the benchmark into practice during their particular meetings with groups.

- There are useful workable tools for encouraging an internal culture of iterative learning by staff within their teams so that better practice is capture and develops over time. These might serves as templates for extending into evaluation and reflection processes by native title groups.
- The remix of the standard NTRB hierarchical organisational structure into interdisciplinary teams is especially innovative and has the potential to make a fundamental change in the way NTRBs across the country deliver their services to native title groups and traditional owners.

6.4 Internal Challenges and Risks – QSNTS

- The entire model rests on a major change of internal culture for staff within a representative organisation that are commonly unstructured as silos of professions, with lawyers at the apex. If that cultural change is erratic or not sustained over time with incoming new staff, the model will be vulnerable. QSNTS should produce an induction for new staff that takes them through the model, its goals, practice and challenges. Some new staff may require fast-track development of culture-centred skills.
- The change to interdisciplinary teams may meet resistance, or simply produce 'mini silos', with the lawyer still at the apex of each team. Practical processes and tools can assist normalisation of the new culture; doing field visits together is one important way. Another is to rotate the work of key facilitator at meetings so that each member of the team has the opportunity to practice their skills. Confidence in this can be built by rotating the chairing of in-house team debriefing meetings, so that each team member experiences the role and responsibilities of chairing a meeting and facilitating discussion etc.
- The work with clients requires a strong shared understanding amongst staff of what Indigenous governance is, what self-determined development is. It also rests on staff acquiring a foundation of better practice tools and techniques for supporting groups to rebuild governance and a development agenda. QSNTS might benefit from designing an in-house schedule of professional development around governance skills and tools. Model could include governance and development professional development for staff at 1 day workshop each year.
- There is an intensive workload associated with delivering the different components of the model. Given the rising requests to participate from native title holders, the risk is that if QSNTS takes on too many clients too quickly, it will lead to burn out of staff. PPP is an optimistic model of change. It needs optimistic staff to support it. Team debrief meetings could include discussion and reflection on these challenging aspects of the work. QSNTS might also find value in doing an

internal audit of all staff workload hours involved with each client at different stages of the model.

- The Client Development Unit is very small. Its work is inwards facing with staff, and outwards facing with native title groups. If client number increase too rapidly, the current unit is likely to not have sufficient staff numbers and time to carry out both of those aspects of tis work.

6.5 Policy Implications for Government and Industry

When the Federal Court determines a group of native title holders have rights and interests in a particular area of land or sea, the NTA requires them to establish or nominate a legal entity to hold and manage those rights. These PBCs hold and manage native title in perpetuity, and so PBCs are established in perpetuity. The implications for government and industry wishing to engage with them, is that PBC self-determined governance and development capabilities need to be urgently invested in now.

Yet we see a long history of Australian Government's reviewing but then ignoring the rapidly expanding roles and responsibilities and associated funding and resources needs. A CAEPR investigation reported that current government funding for just the core compliance functions of PBCs meets only 10% of the actual cost of compliance. Given this entrenched underfunding and policy blinkers by government, the majority of PBCs are not on a trajectory to become financially self-sustaining, let alone contribute as they want to – and could – to local and regional economies across Australia. This underfunding should be a major cause for concern amongst business, entrepreneurs, and mining companies within the industry sector, as well as NGOs, other landowners who continues to want to engage and sign agreements with viable and well governed claimants and native title holders.

- Significant and stable ongoing resourcing by government is essential for the PBC sector, and will continue to be necessary to ensure an effective native title system, regional development, and thriving local economies. This is something that benefits not only native title holders but also non-Indigenous stakeholders and the publics
- Governments in all jurisdictions should contribute to the creation of a national PBC Future Fund (Woods et al. 2021) as an appropriate and cost-effective mechanism to secure ongoing PBC performance in perpetuity. Such a fund should include identified finding for agreed governance capacity building for PBCs. It should also include funding for Native Title Development Plans by PBCs to be designed via the QSNTS Model.
- PBCs urgently need access to targeted governance capacity building that adopts an incremental, relational learning and problem-solving pedagogy. This should be established as a standalone funded Indigenous-led service or program.

- Models such as the QSNTS 'People, Place and Partnership' with its intersection of innovative practice, operational systems, staff structure, bespoke database, and whole of organisation 'client development' offers a cohesive model of engagement and support for native title groups that is unique and has considerable potential to deliver outcomes with native title groups. This model should be fully funded for real costs, to ensure the model can be consistently sustained and scaled up as needed.
- Funding Governance rebuilding in a more longer-term way – delivered by Indigenous people
- The operating environment – there is no government policy framework for Governing Development, for post-native title development. lack of any *enabling* policy – all about regulation certainty for stakeholders.
- Finally, information is power. The TraKS database is an extraordinary contribution to native title claimant and holder being able to exercise informed decision making and govern their development. It could valuably be founded to be further developed, and other NTRBS should be advised to adopt the TraKS model if they do not already have a comparable system.
- Finally, all future agreements entered into by native title groups, at whatever stage of their journey, should contain funds committed by the signatory parties to monitoring the implementation, progress and outcomes. Unmet payments should be subject to legal action and accumulated interest payment that are lost to native title groups.

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