

A proposal for a 2-day CNTA workshop – provisional title:

**Trustee corporations and their Indigenous beneficiaries: meeting challenges
in the sustainable utilisation of trust funds**

Background and rationale for the workshop

Prescribed Bodies Corporate are established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) ('CATSI Act'), comprising over 600 pages focusing almost exclusively on what the CATSI Act terms the internal governance of the corporations themselves. PBCs' functions are set out in the PBC Regulations¹ and include:

- for Trustee PBCs in Reg. 6(b), to hold money (including payments received as compensation or otherwise related to the native title rights and interests) in trust; and
- in 6(c) to *invest or otherwise apply money held in trust as directed by the common law holders.*

Regulation 7(c) and 7(d) set out the identical functions for Agent PBCs.

How this direction is to be implemented is a matter for each Trust.

That is, while the principles and mechanisms by which internal governance of the PBC is to be conducted are prescribed in detail in the CATSI Act, the governance principles by which the common law holders are to direct their PBC to apply the money held in trust, and how the PBC is to engage with the native title holder beneficiaries in determining how the trust funds are to be utilised, are left essentially unspecified.

Even where attention has been given to the objectives of a Trust and these have been negotiated with the Indigenous beneficiaries, as is the case with what are represented as best-practice mining agreements, it appears to be common that internal structures of the broader beneficiary group below the level of language-named 'tribes' or 'nations' are not reflected in Agreements and Trust Deeds or other corporate instruments which bear on how benefits from the Trust are to be accessed.

Yet, Native Title claims themselves illustrate that the common law holders for a given claim or determination, whether described as a language-named group or set of such groups, a community, or some other collectivising label, are highly complex in structure and are not infrequently beset by endemic disputation amongst constituent local groups. This is reflected in much of the politicking post determination in the internal governance of RNTBCs, and there is no reason to suppose that this conflict does not also impact on the way access to Trust funds is established.

This workshop will focus on this latter governance arena, not on the internal governance of RNTBCs and other Trustee corporations, with the objective of improving the practice of lawyers, anthropologists, and other specialists in this significant aspect of the post-determination arena.

¹ *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

Key workshop themes

It is proposed that presentations and papers on several key issues will be sought for the workshop. These could include:

- Is there a case to be made for more creative and effective governance of the interface between Indigenous Trusts and their beneficiaries, and if so, what is it?
- Are there means by which the ethical and political significance of 'localism' – e.g. as reflected in 'families of polity' (Sutton 2003) – can be productively brought into frameworks through which native title beneficiaries can access funding and other support mechanisms from their trusts at a level of inclusiveness which is seen as legitimate across the wider beneficiary group?
- Are there mechanisms which could transform what a cynical but insightful Indigenous observer has described as a move from Noel Pearson's 'passive welfare' to 'passive royalties', into truly Indigenous-led development?
- Are widely utilised development goals such as supporting increased equity (in particular, gender and intergenerational equity), maximising self-determination and self-reliance, and improving educational and general skill levels, relevant? Or are they impositions based on the assumptions and mores of the wider society?
- Is there a justification for outsiders such as community development specialists, lawyers and anthropologists to be involved collaboratively with the Indigenous beneficiaries in the processes of both establishing and managing such trusts? If so, what is that justification? What if anything can anthropologists bring to bear on these matters?

It is proposed that a select number of case studies of governance of this interface between Trusts and their beneficiaries will be presented, perhaps of both innovative and successful examples, and less successful ones.