

**Centre for Native Title Anthropology**  
***RNTBCs – trusts and agency – roles, risks and remedies***

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**Bush camp Badu basketball hoop**

**Contents**

Introduction .....	2
Concepts and definitions .....	3
Trusts .....	3
Agency .....	8
Power.....	9
Responding to problems.....	11
Litigation over breaches .....	11
Powers of the Regulator .....	16
Complaint mechanism .....	17
Recourse to the Native Title Registrar.....	20
Conclusion.....	21
Authorities .....	23
Legislation .....	24

## Introduction

Registered Native Title Bodies Corporate,<sup>1</sup> must be formed to hold native title on trust or as agent for the native title holders when the Federal Court determines their native title rights and interests exist.<sup>2</sup> They face significant challenges in carrying out their appointed role of holding and making decisions about the native title including, for example, whether to file an application for compensation. Where there are tensions amongst the members these challenges affect the PBC's capacity to function. The challenges stem, in part, from the intersection between the legal structures formed in accordance with the processes of the *Native Title Act 1993* (Cth) ('NTA') and the native title holders' traditional laws, customs and values. These are hard problems – they often arise from decisions about allocation of resources and benefits from native title and native title agreements,<sup>3</sup> and/or related issues of kinship and identity.<sup>4</sup>

The challenges are hard to solve internally, as the structures for governance established by PBC rules often may not directly address, or provide readily applicable solutions for, the kinds of conflicts that arise. External dispute resolution mechanisms are difficult to access and under-resourced and so are, in many respects, unreliable. Even though the collective evidence and experiences that supported the determination of native title may have united the group, the rules adopted by the PBC for how its decisions should be made about country do not necessarily provide guidance for resolving internal disputes about administration and governance of the corporation. If there is disfunction at this level, then the decision making for all purposes can be compromised or rendered effectively inoperative.

Recent amendments to the NTA and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) ('CATSI Act') focus on dispute resolution processes and some improvements to the regulatory environment within which PBCs operate. These are discussed below however it must be born in mind that changes to PBC structures and governance arrangements are not complete. The final report to the Minister<sup>5</sup> from the recent review of the CATSI Act was provided on 16 February 2021 and makes 72 recommendations which respond to concerns expressed by PBCs and their members about the operations of PBCs

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<sup>1</sup> 'RNTBCs' or the more commonly used 'PBCs' for prescribed bodies corporate.

<sup>2</sup> *Native Title Act 1993* ss.55-57.

<sup>3</sup> Such as authorising native title agreements and distributing royalty or contract benefits.

<sup>4</sup> Such as decisions determining membership of the PBC, or entitlement to participate in PBC business.

<sup>5</sup> Available at <https://www.niaa.gov.au/resource-centre/indigenous-affairs/catsi-act-review-final-report>

and the receipt and management of native title benefits. The Review supports the rights of members and common law holders to relevant and sufficient information about the management of their corporations and entitlements as outweighing criticisms about measures described as ‘paternalistic’ or administratively burdensome.

Amongst the changes being proposed for PBC management the Review acknowledges it is important that no particular cohort is disadvantaged and in particular that older and remote people have access to information and participation in the affairs of their PBCs in formats suitable to their needs. The Report acknowledges that effective decision-making power is critical to self-determination and growth.<sup>6</sup>

### **Concepts and definitions**

A cause of concern for both native title claimants who draft and adopt the Rulebook for their PBC and the native title holders who must work within those rules is understanding the structures available to them and making choices that are the best cultural fit for them and succeeding generations of native title holders. The language describing the rules and structures is impressed with layers of meaning which may be understood differently by group members, legal advisers, non-legal advisers or even the Court, and misunderstandings and miscommunication are rife. At the threshold is the choice to be made by a claim group in whose favour a determination will be made between trust or agency as the means by which their native title will be held in the future – it must be one or the other, s 55 NTA.

### ***Trusts***

What is a trust?

A trust is a type of legal relationship that arises where at least one entity, a trustee, holds property on behalf of another entity, the beneficiary. The trustee is subject to specific duties as a result of that role. The entity which gave the property to the trustee to be held on trust for the beneficiary is called the settlor. While the trustee may hold legal ownership of the trust property, the trustee is not allowed to apply that property for their own benefit. The trustee must apply the property for the benefit of the beneficiary/s. Often the trustee may be a corporation, but the trust itself is not a legal person. The trustee is required to act on behalf of the trust but has a right to recoup its expenses from the trust property.

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<sup>6</sup> The Final Report is available at <https://www.niaa.gov.au/resource-centre/indigenous-affairs/catsi-act-review-final-report>; Executive Summary p 5 et ff.

A trust is (usually) expressly created by executing a trust deed. The trust deed should specify how the trust is to be administered by the trustee, including the way in which the beneficiaries can benefit from the trust property. The rules about trustee action can include how the trustee is allowed to make distributions of cash assets of the trust as well as how the beneficiaries can otherwise utilise tangible trust assets. Both the trustee and the beneficiaries are obliged to comply with the terms of the trust deed.

The deed may specify a class of persons who are beneficiaries of the trust without being specifically named. The trust may be a fixed trust, in which all the beneficiaries benefit equally, or a discretionary trust, in which the trustee decides who to benefit from among a class of beneficiaries. The trustee can also be a beneficiary of the trust but they must, at all times, comply with their obligations as trustee, and the trust deed must specify the extent to which the trustee is entitled to give any benefit to themselves. The trust separates the legal interest in the trust property from the equitable (beneficial) interest in the property, and once this separation occurs, it continues to operate until the trust comes to an end. If the trustee dies or goes into liquidation, the Court can appoint a new trustee.<sup>7</sup>

The trust creates a legal relationship not a separate legal person, therefore a trust does not have any legal standing to take action in its own name. Any actions for the trust must be undertaken by the trustee on behalf of the trust.<sup>8</sup> However the trust will be subject to separate taxation and any distributions of trust property (income or capital) by the trustee to the beneficiaries may also be subject to taxation on the distribution.

Because the administration of the trust is entirely reliant upon action by the trustee, the law imposes stringent obligations upon a trustee in order to protect the beneficiaries' interests. These obligations are referred to as fiduciary duties. The consequences for breaching those duties is often severe. Trustees may be liable for breaches of fiduciary duty even if they act innocently or in good faith, as the duties protect beneficiaries who have limited control over the trustee's actions.

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<sup>7</sup> The Federal Court may exercise the powers under State trustee law to appoint a new trustee: *QGC Pty Limited v Alberts (No 2)* [2021] FCA 540 at [78].

<sup>8</sup> There are some exceptions – for example beneficiaries may obtain the leave of the Court to bring actions in the name of the trustee if the trustee refuses to act or lacks capacity.

The most significant fiduciary duties are:

1. The duty to act in the best interests of the beneficiaries;
2. The duty to avoid conflicts; and
3. The duty to act in good faith.

Where the trustee has breached one or more of their fiduciary duties, the beneficiaries are entitled to commence a claim against the trustee to hold the trustee accountable for their breach. This includes remedies declaring trusts over property in the trustee's hands, obligations to account for profits received, or compensation for loss of trust property.

Transposing these concepts to native title, if the native title holders elect to hold their native title via trust the trust deed is, in effect, constituted by the orders of the Court which also settle the property to be held on trust. It is at the nomination of the PBC by the native title holders, and the PBC's acceptance of the nomination that the Court appoints the PBC as trustee, meaning the native title holders themselves are in the position of the settlor.

The powers and duties of the trustee are not contained in a trust deed but in the statutory scheme controlling the incorporation and functions of the PBC and, in other respects, the PBC's Rulebook. The common law holders are the beneficiaries, even if not all those beneficiaries are members of the PBC (for example children under the minimum age for corporate membership or others who are yet to be accepted as members, or who have not yet applied or do not intend to apply). The Court's orders determining the definition of the native title holders specify the class of beneficiaries.<sup>9</sup> The PBC may develop several entities to fulfill different purposes, for example a charitable trust,<sup>10</sup> or commercial subsidiaries which may or may not be a specific form of trust.

If there is a discretionary trust, the Rulebook of the Corporation may specify the class of beneficiaries in whose favour the trustee may exercise a discretion to advance income or

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<sup>9</sup> As to identification of classes of beneficiaries see *Wright v Stevens* [2018] NSWSC 548.

<sup>10</sup> It is not possible to constitute a valid trust for a purpose unless that purpose is charitable within the meaning of the Statute of Elizabeth. Broadly, this means that the purposes must be for the relief of poverty, advancement of religion, relief of the sick, or for purposes in the public interest. There are many different kinds of trusts arising from specific circumstances – express trusts, fixed trusts, discretionary trusts, charitable trusts, bare trusts, unit trusts, resulting trusts, constructive trusts and more to which centuries of jurisprudence is attached. It is beyond the scope of this paper to describe these trusts but native title holders will be faced with choices regarding the kinds of subsidiary trusts they may need to form so that their PBC can efficiently carry out its responsibilities and meet the objectives of the native title holders and the obligations of the trust such as distribution of assets and income, paying taxes or managing relevant exemptions from tax liability for its members.

capital of the trust. Often the Rulebook introduces procedures to be followed in administering the trust or distributing the benefits.

Once a trust is created, it cannot be revoked, unless that power was reserved by the person creating it. A private trust may not continue in perpetuity. In most cases the trust must vest – that is, the capital of the trust must be distributed among the beneficiaries – within a period of 80 years but a trust established by determination that a PBC hold native title on trust is a different creature to the standard private, fixed or discretionary trust. In the context of a PBC holding native title on trust, the asset at the heart of the trust is inalienable and, contrary to ‘ordinary’ trusts, a native title trust is perpetual, because the trust continues even if the PBC is wound up.<sup>11</sup>

Ordinarily trusts are regulated within the equitable jurisdiction of Supreme Courts of the States.<sup>12</sup> Under the Trustee Acts of the States and Territories, a trustee may apply to the Court for “an opinion advice or direction on any question respecting the management or administration of the trust property, or respecting the interpretation of the trust instrument”.<sup>13</sup> Although this jurisdiction is often invoked by trustees seeking advice on whether to defend claims affecting the assets of the trust, it is very broad, and extends to questions on distribution of assets,<sup>14</sup> and settlement of claims.<sup>15</sup>

Following the 2021 amendments to the CATSI Act all PBC related matters must be commenced in the Federal Court, s 581-30.<sup>16</sup> The Federal and Supreme Courts can transfer matters to another court if it is in the interests of justice, s 586-35. A Supreme Court may be required to transfer proceedings to the Federal Court, s 586-35(3). The exclusivity of jurisdiction with respect to native title matters was on the basis of the Federal Court’s native title expertise, case management tools and strategies for resolving disputes in relation to native title.<sup>17</sup> To the extent that Trustee Act applications are procedural, they will be picked

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<sup>11</sup> Section 546-25 CATSI Act provides that if a PBC is wound up and de-registered the Registrar continues to act as trustee and may apply to a court for the appointment of a new trustee.

<sup>12</sup> Under s 81 NTA the Federal Court has exclusive jurisdiction and also accrued or associated jurisdiction in respect of a native title matter and with respect to PBCs see the recent amendments to ss 581-30 and 586-5, CATSI Act conferring exclusive jurisdiction on the Federal Court regarding matters affecting PBCs.

<sup>13</sup> *Trustee Act 1925* (NSW) s.63.

<sup>14</sup> *Re Estate Late Chow Cho-Poon; Application for judicial advice* [2013] NSWSC 844; 10 ASTLR 251.

<sup>15</sup> *Re Italiano; Application for Judicial Advice* [2020] NSWSC 405.

<sup>16</sup> Proceedings under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) may be commenced by or in relation to a PBC in the Supreme Court, s 586-5(3) and also in the Federal Court.

<sup>17</sup> See the guides on the amendments to the NTA and CATSI Act prepared by the NIAA at

<https://www.niaa.gov.au/resource-centre/indigenous-affairs/changes-native-title-legislation-affecting-pbcs>

up under s.79 *Judiciary Act*,<sup>18</sup> and substantive jurisdiction can be exercised as accrued or associated jurisdiction.

One issue that arises in trust administration is the distinction between capital and income of the trust. A trust deed will usually contain provisions which permit the trustee to apply capital or income for the benefit of a beneficiary.<sup>19</sup> There may be a power to accumulate income rather than to distribute income (as otherwise the trustee may be obliged to make a distribution of income in a tax year) and the trustee may have a discretion about investing income so as to make it a capital asset of the trust. Often trust deeds will regulate the trustee's liability for loss to the trust and confine liability to decisions made or actions taken fraudulently, or with 'gross' negligence.

The beneficiaries are vulnerable to trustee's dealings with trust property but are not themselves liable to contribute to any losses of the trust. Although many of the beneficiaries of the trust may also be members of the PBC, there is a vast conceptual difference between the rights of the native title group as members of the trustee corporation, and as beneficiaries. Although the principle of limited liability applies to corporations, and shareholders are not normally liable for the company's debts, there may be obligations to contribute further capital in the company's constitution. Section 147-10 CATSI Act provides that a PBC's rulebook may exclude corporation members and former members from any liability to contribute towards the payment of the debts and liabilities of the corporation.

Private trusts often contain complex provisions to enable the beneficiaries to obtain a tax benefit by interposing a trustee's discretion between the income and the beneficiary.<sup>20</sup> One of the fundamental elements of a trust is that the income of the trust is trust property. For PBCs, that will mean that directors must be conscious of when the PBC is acting as a trustee of native title and in particular in respect of agreements which concern country including management agreements, rehabilitation, mining, future acts and compensation packages. PBCs (and their directors) need to keep careful track of the source of income and be mindful of the need to deal with it in accordance with the trust and taxation liabilities.

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<sup>18</sup> *QGC Pty Limited v Alberts (No 2)* [2021] FCA 540.

<sup>19</sup> Or a discretionary beneficiary – a person who is a member of a class of persons who the trustee may decide to benefit (or not) based on the criteria (if any) established by the trust deed.

<sup>20</sup> Discretionary trusts became popular in times when death duties applied as family assets could be held on discretionary trust and take advantage of the principle that a beneficiary under a discretionary trust does not have an interest in the trust property other than to require the trustee to perform the trust according to its terms, by considering whether to make a distribution, and in whose favour.

The PBC Rules must set out the procedures and mechanisms for managing the membership and decision making of the corporation. These requirements have been the particular focus of the recent amendments. The PBC Rules may be less likely to consider matters such as accounting for income and maintaining the integrity of the trust property, or explicitly confining the powers of the directors in respect of agreements that exploit or affect the native title held in trust.<sup>21</sup> While some breaches of fiduciary duty (considered in *Gebadi v Woosup* discussed below) present fairly straightforward scenarios of breach, directors who are self-dealing or acting self-interestedly in breach of a fiduciary duty are often adept at covering their tracks or dissembling to concerned members in a manner particularly affected by cultural norms and protocols, and so can be difficult to detect in time to prevent the PBC or its members suffering loss.

### **Agency**

What is agency and how does it differ from a trust?

Similarly to trusts, agency refers to the particular relationship between the agent and the principal. Agency arises when the agent acts on behalf of another, the principal. An agent owes similar duties to the principal as a trustee owes to the beneficiaries of the trust. However, the key difference to the trust arrangement is that where the PBC is appointed as agent, the native title holders (the principal) retain both legal and beneficial ownership of their native title. An agent is subject to direction by the principal whereas a trustee is not subject to direction by the beneficiaries who may not interfere with the exercise of the trustee's duties. Their control is limited to ending the trust in certain circumstances or suing to compel performance of the trustee's duties.

Whereas a trust cannot be revoked, unless that power to do so was reserved by the person creating the trust, in most cases, a principal may end an agency at any time. An agency relationship normally ends upon the death of either party. A trust is not terminated by death. An agency relationship is contractual, akin to a debtor-creditor relationship. A trustee derives their powers and duties by operation of law and equity, thus an equitable relationship.

Acts of an agent can affect the legal obligations of the principal. A trustee acts independently of the legal position of the beneficiaries or settlor. As a result, should an agent become

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<sup>21</sup> Noting that the CATSI act provides for assumptions that third parties may make – would they be any different with PBCs?



insolvent, the principal claims in line with other creditors whereas trust beneficiaries have rights to claim the trust property in priority over creditors.

Even though a PBC acting as agent does not have the express responsibility of trusteeship, the directors are likely to owe fiduciary duties in the same way, and to the same extent, as directors of trusts. The PBC is the gateway through which the native title holders exercise native title rights, and so the native title holders are at least as vulnerable to conduct taken by the PBC acting as agent as where the PBC is a trustee.

### ***Power***

One fundamental duty of the trustee is to preserve the trust property for the benefit of the beneficiaries. That means that a trustee cannot act so as to put the assets of the trust beyond the control of the beneficiaries, as ultimately the trustee is accountable to the beneficiaries for the management of the trust. The *Darkinjung* case<sup>22</sup> concerned land vested in a land council (a statutory corporation under s 50 *Aboriginal Land Rights Act 1983* (NSW)) which the land council had sold to developers for \$42 million in 2002. The Land Council transferred \$25 million to a private company constituted as a trustee under a trust deed. In 2004 that company, purportedly exercising the powers under the trust deed, then funded other companies, including a Cattle Company, a Funeral Company, a Housing Company, and a Projects Company. No person was a beneficiary under those trusts – they could only be sustained as charitable trusts.<sup>23</sup>

In 2006 the Minister appointed an administrator to the Land Council and the Administrator took proceedings to have the transfers to the trustee set aside and to recover the funds paid to the various companies, on the basis that the transaction was void as outside the power of the Land Council, and to wind up the various companies. The Companies argued that the trust was a valid charitable trust because it was constituted for the charitable purposes of relieving poverty and otherwise for the public benefit.

Justice Barrett decided that the acts of the Land Council were beyond power and void. The trust might have had some charitable objects, but the whole of the objects of the trust were not charitable. The actions of the Land Council were invalid because it was bound by the constraints on power in the ALR Act. His Honour held (at [72]):

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<sup>22</sup> *Darkinjung Pty Ltd v Darkinjung Local Aboriginal Land Council* [2006] NSWSC 1008; 203 FLR 394 ('*Darkinjung*').

<sup>23</sup> *Darkinjung* at [57].

*In all cases where a corporation owes its existence to a statute, it is open to the corporation to do only those things that the statute contemplates are to be done by it. It is commonplace for a founding and enabling statute to contain express statements with respect to the purposes, objects, functions, powers and duties of the corporation. Those express statements, together with the necessary implications to which they give rise, are the source of the corporation's authority and capacity and the limits upon them. Where the corporation purports to act beyond the field of its authority and capacity thus defined, its acts are void.*

Ultimately, the powers given to a statutory corporation are ascertained by interpreting as a whole, the statute under which the corporation is constituted as a whole, including its rules and statutory functions. In *Darkinjung* the objects and functions of the Land Council limited its powers,<sup>24</sup> and the payments were not justified by any of the provisions of the ALR Act on which the recipient companies relied.<sup>25</sup>

Justice Barrett concluded that:

*The effect of the trust structure and the transfers of funds by DLALC to DPL for deployment within the trust structure were an impermissible abandonment by DLALC of its statutory duties and responsibilities with respect to a large part of its property. The transfers put that property beyond the controls and decision-making regimes to which Parliament intended that it should be subject. There was no attempt by DPL, in argument, to rely on the power of delegation under s.82. Nor could there be. DLALC did not purport to delegate any of its own functions. Rather, its objective was to put the property in question entirely out of its ownership and beyond its reach and to subject the property to a regime which, while in some respects contemplating applications of funds in ways corresponding with those open to DLALC under the ALR Act involved decision-making and control otherwise than by DLALC.*

Justice Barrett also noted that in respect of some transfers of funds to the various companies, those transfers were not done in accordance with the trust deed because the trustee did not impose on the recipients any of the conditions concerning use of the trust moneys which the trust deed required and so were not for charitable purposes.<sup>26</sup>

It seems clear that a similar analysis could be applied to a PBC. Although it is a corporation established under a regime that applies to all Aboriginal and Torres Strait Islander corporations, it has particular functions under the NTA, which arguably limit the power of

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<sup>24</sup> *Darkinjung* [89], [96]-[97], [104].

<sup>25</sup> These were (as at the relevant date) s.51(1)(m) - to promote the protection of Aboriginal culture and the heritage of Aboriginal persons in its area; 52(1)(k) - to protect the interests of Aboriginal persons in its area in relation to the acquisition, management, use, control and disposal of its land, or s.52(1)(g)(ii) - the acquisition, establishment and operation of enterprises (including enterprises that promote employment and employment training as a means of obtaining self-sufficiency for Aboriginal persons).

<sup>26</sup> See the conclusions of Barret J in *Darkinjung* at [218]-[223].

the PBC in similar ways to that considered in *Darkinjung*. In dealing with native title interests, or even with the fruits of exercising native title rights such as royalties or benefits under native title agreements, the PBC could have limited powers to deal with those benefits without the informed consent of the beneficiaries of the trust, or the principals in the agency relationship.

### **Responding to problems**

Having regard to the means of future dispute resolution and remedy and redress for maladministration and/or misconduct is critical when the PBC Rulebook is drafted and adopted, although at the time of its creation the structures about which and within which decisions are required, for example regarding trust and other entities concerned with financial management by the PBC, may not exist.<sup>27</sup> The primary options for dispute resolution and redress when PBC rules have not supplied the means are:

- litigation in the Federal Court;<sup>28</sup>
- applications to the Registrar of ATSI Corporations (commonly referred to as 'ORIC'); and
- the new option under s 60AAA NTA following the 2021 amendments, of complaint to the National Native Title Tribunal ('NNTT') Registrar, ('the Native Title Registrar').

This paper deals first with the shortcomings of the existing mechanisms of litigation in respect of breach of duty (directors or fiduciary), the difficulties of complaint to ORIC, and then the ways in which the Amendments might provide another (simpler) means of dealing with these issues by resort to the Native Title Registrar.

### **Litigation over breaches**

One of the most contested areas amongst native title claimants and holders, pre and post determination, are disputes about the definition and composition of the native title holders. These disputes have been pursued through litigation whether before determination or after

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<sup>27</sup> Following the 2021 amendments to the NTA a PBC must now include in its Rulebook arrangements for the resolution of disputes between the PBC and a person who claims to be a common law holder of native title regarding whether or not the person is a common law holder and the PBC's performance of its functions, for example a dispute about whether the PBC has invested money held in trust as directed by the common law holders.

<sup>28</sup> Prior to the 2021 amendments civil matters involving a PBC could commence in the State or Territory courts. Following the amendments all matters arising under the CATSI Act must commence in the Federal Court.

it.<sup>29</sup> In the context of pre-determination litigation, these conflicts often take the form of applications by members of the claimant group (or those who think they are wrongly excluded as claimants) for joinder to proceedings as respondents to the native title claim, including on the eve of resolution of a claim,<sup>30</sup> or for dismissal of such parties from the proceedings prior to their resolution.<sup>31</sup> Throughout these kinds of disputes the litigated cases concerning conflicts about membership do not show recourse to traditional forms of decision-making, or the normative system of the relevant society.<sup>32</sup> Disputes on these bases can stall progress in a native title claim pre-determination and prevent a PBC from functioning post determination. The bitterness of post determination disputes of this kind can make native title holders despair and regard the outcome of their traditional rights being recognised as illusory and destructive. It can mean proposed benefits of the determination cannot be realised while the PBC is paralysed.<sup>33</sup>

Despite the barriers (such as lack of funding, crippled decision making processes) some native title holders have commenced proceedings in the Federal Court driven by concern over the actions of applicants and/or directors in approving the payment of moneys paid under native title agreements out of the PBC and beyond the control of members.<sup>34</sup>

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<sup>29</sup> See for example the list of judgments provided by Rangiah J in *Pegler on behalf of the Widi People of the Nebo Estate #1 v State of Queensland* [2019] FCA 711 at [11]–[12] regarding joinder applications by Indigenous parties prior to determination and the recent decision of Griffiths J at [50] with a summary of the relevant principles in *Forrest on behalf of the Nangaanya-ku Native Title Claim Group v State of Western Australia* [2021] FCA 467. Post determination membership disputes were at the heart of *Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations* (2011) 195 FCR 318 and related litigation discussed below.

<sup>30</sup> For example *Barunga v State of Western Australia (No 2)* [2011] FCA 755 and see also *Aplin on behalf of the Waanyi Peoples v State of Queensland* [2010] FCA 625.

<sup>31</sup> *Starkey v State of South Australia* [2011] FCA 456 is a leading decision in this respect.

<sup>32</sup> *Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations* (2011) 195 FCR 318 is the leading example.

<sup>33</sup> For example, the proposed transfer of freehold parcels to a PBC, meant as compensation for extinguishment and a base for economic development for the PBC, may not materialise for years due to the PBC's inability to function and trigger the steps required before such transfers can occur. This is particularly the case in Queensland where compensation packages have been negotiated as part of a 'once and for all' resolution of native title processes for a claimant group. Where there is a deadline for the transfer, failure to provide the capacity to accept a transfer of the freehold can mean the compensation will be irretrievably lost.

<sup>34</sup> See for example *Weribone v Queensland (No 2)* (2013) 217 FCR 189 at [44]–[46] and Rares J in *Lampton on behalf of the Juru People v State of Queensland* [2014] FCA 736 at [33] – [34]. Rares J has been responsible for a number of decisions concerning conduct affecting PBCs and the interests of native title holders. The particular circumstances affecting the Yindjibarndi PBC and Mandandanji People, for example *Wybenga v Mandandanji Limited (Trustee)* [2014] FCA 861 and the various *Weribone* decisions are of interest and relevant to the topics considered here but are beyond the scope of this paper to explore. Depending on the conduct complained of litigation has been commenced in other jurisdictions, for example *Sandy -v-Yindjibarndi Aboriginal Corporation RNTBC [No 2]* [2016] WASC 75 in the Western Australia Supreme Court. As noted above following the amendments, proceedings commenced as a result of PBC disputes or complaints

*Gebadi v Woosup*<sup>35</sup> is an example of litigation brought by native title holders in respect of trust funds<sup>36</sup> paid under a future act agreement with native title claimants who subsequently obtained a determination of native title.<sup>37</sup> Greenwood J heard an application regarding alleged breach of fiduciary duties by Larry Woosup and Beverley Tamwoy owed to the Ankamuthi native title holders<sup>38</sup> in entering into an agreement described as the “Ancillary Agreement” with Gulf Alumina Limited (‘Gulf’) without obtaining the authority of the native title claim group and then misapplying the benefits secured on behalf of the native title holders.<sup>39</sup>

The questions before the Court were:

1. Whether Mr Woosup and Ms Tamwoy owed fiduciary obligations to the Ankamuthi native title claim group, that is to say, were they in a fiduciary relationship with the group?
2. If fiduciary obligations were owed by either of them to the claim group, what were the obligations owed? and
3. Had either of them failed to discharge those obligations?<sup>40</sup>

Justice Greenwood held at [20] that individuals such as Larry Woosup and Beverley Tamwoy, who were both members of the native title applicant and became directors of the PBC, owed fiduciary duties to the native title claimants, and the members of the PBC after determination:

*“Those individuals who become .. the applicant prosecute each application for and on behalf of all members holding the common or group rights and interest comprising the particular native title... In doing so, the Act contemplated that those individuals constituting the applicant act in the interests of the group members and also in their own interests but, in respect of their own interests, they do so only in their capacity as members of the group, and not in furtherance of their private interests which in any way conflict with the interests of the relevant group.”*

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concerning matters arising under the CATSI Act, must be filed in the Federal Court.

<sup>35</sup> *Gebadi v Woosup (No 2)* [2017] FCA 1467.

<sup>36</sup> As discussed above this problem is not confined to the native title context – see *Darkinjung Pty Ltd v Darkinjung Local Aboriginal Land Council* [2006] NSWSC 1008; 203 FLR 394 concerning a corporation with statutory functions evading its statutory responsibilities (at [129]ff).

<sup>37</sup> *Woosup on behalf of the Northern Cape York Group #1 v State of Queensland (No 3)* [2014] FCA 1148 and *Woosup on behalf of the Ankamuthi People #1 and #2 v State of Queensland* [2017] FCA 831 and 832.

<sup>38</sup> *Gebadi v Woosup* at [46].

<sup>39</sup> *Gebadi v Woosup* at [56].

<sup>40</sup> *Gebadi v Woosup* at [52].

At [96] Greenwood J held the applicable principles to be:

*“...the essential principles which determine whether a person has accepted or assumed fiduciary obligations to another. The context in the case of Mr Woosup and Ms Tamwoy, in accepting and undertaking to act as persons constituting the applicant, is the relevant context but the principles to be applied in determining whether they owed fiduciary obligations to the native title claim group are the same principles determined in our jurisprudence for deciding whether a person has, in all the circumstances, assumed particular fiduciary obligations to another.”*

In determining whether Mr Woosup and Ms Tamwoy owed fiduciary obligations to the members of the Ankamuthi native title claim group, Greenwood J held at [98]:

*“It is not because a person is a “fiduciary” or a “confidant” that a rule applies to him. It is because a particular rule applies to him that he is a fiduciary or confidant **for its purposes.**”* (Emphasis in original)

The matrix of fact and contextual circumstances will determine whether a relevant rule applies and if it does, the person will be a fiduciary for the purposes of the rule. Once a person is a fiduciary for the purposes of a relevant rule, equitable remedies apply, and they are primarily restitutionary or restorative rather than compensatory. The nature of the obligation will also determine the nature of the breach.

Greenwood J at [100] cited Brennan J in *Wik Peoples v Queensland* (1996) 187 CLR 1 where at pp 95 - 96 Brennan J held:

*“The doing of the action or the performance of the function must be capable of affecting the interests of the beneficiary and the fiduciary must have so acted that it is reasonable for the beneficiary to believe and expect that the fiduciary will act in the interests of the beneficiary ... to the exclusion of the interest of any other person or the separate interest of the beneficiary.”*

Greenwood J cited at length an earlier full Federal Court decision in a non-native title context (in which he formed part of the majority) which set out the relevant principles where fiduciary duties are owed by one person to another.<sup>41</sup> In *Gebadi v Woosup* at [102]-[103] his Honour held that the obligations Mr Woosup and Ms Tamwoy owed to the members of the Ankamuthi native title claim group while they were persons constituting the applicant included:

- a. an obligation to not place themselves in a position where their private or personal interests came into conflict with the interest of the members of the Ankamuthi native title group: a conflict of interests and duty;

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<sup>41</sup> *Oliver Hume South East Queensland Pty Ltd v Investa Residential Group Pty Ltd* [2017] FCAFC 141 at [236] et ff.

- b. an obligation not to pursue and secure a personal benefit: a conflict of interest and duty;
- c. an obligation not to make a profit from their position unless there is informed consent of the Ankamuthi native title claim group: a conflict of interest and duty, and
- d. an obligation not to place themselves in a position where their personal interests or duties conflicted with duties owed to the Ankamuthi native title claim group: a conflict of interest and duty, and a conflict of duty and duty.

Justice Greenwood held that Mr Woosup and Ms Tamwoy had failed to disclose the agreement to each of the other persons constituting the applicant and failed, before entering into the agreement with Gulf, to disclose to and submit the proposal to a meeting of the Ankamuthi People enabling them to decide whether to enter into the Ancillary Agreement with Gulf or not (see findings at [154]).

Greenwood J held that by well-settled doctrines of equity, a constructive trust arises whenever one party has obtained money which does not equitably belong to them and which they cannot in good conscience retain or withhold from another who is beneficially entitled to it as, for example, when money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust, or violation of fiduciary duty, and the like, at [161].

The court granted declaratory relief that Larry Woosup and Beverley Tamwoy breached the duties they owed to the native title claim group and that financial benefits paid by Gulf pursuant to the Ancillary Agreement were at all relevant times, benefits held by Mr Woosup (on constructive trust) for and on behalf of the native title claim group for the Ankamuthi.

Greenwood J concluded at [173]:

*“the jurisdiction in equity to do right in the interest of the beneficiaries is sufficiently broad that such an order can and ought to be made to protect the interest of the native title holders where there is a basis for believing that a person may act in breach of duty owed to the native title holders. To the extent that the beneficiaries are potentially exposed to the adverse consequences of any conduct by Mr Woosup, by reason of his position within the PBC, which may provide him with an opportunity to act to the detriment of the native title holders, the jurisdiction in equity is sufficiently broad to enable the Court to protect the interest of the beneficiaries.”*

This decision makes clear that directors of PBCs are, apart from the statutory duties owed to the PBC under the CATSI Act, also personally responsible for actions which prefer their own

interests to those of the members of the corporation. The result is likely to be the same whether the PBC acts as agent or holds the native title on trust, as in each case the fiduciary duty will arise through the power of the directors to control the operations of the PBC in entering into agreements – particularly where the authorisation mechanisms for ILUAS do not require evidence of authorisation by the members of the PBC.

The decision also shows that directors will be liable to make restitution of the benefits which they receive in breach of duty, including by declaring a constructive trust over any assets into which the proceeds of the breach can be traced, or by equitable compensation. That does assume, though, that the directors retain assets into which the benefit can be traced or hold property which can be the subject of execution for any money judgment.

Quite apart from directors breaching their duty to the PBC by causing the PBC to enter into agreements which are otherwise within power, the directors may cause the PBC to act beyond power. Where the PBC holds the native title on trust, it will be subject to constraints imposed by the legislation, its rules and the PBC Regulations on dealings with the trust property. But these Rules cannot comprehensively cover all situations in which a conflict might arise and might not explicitly confine the authority of the directors.<sup>42</sup>

### **Powers of the Regulator**

In theory, a party concerned about the administration of an ATSI Corporation may seek recourse to ORIC to exercise regulatory or enforcement powers under Part 10 and 11 of the CATSI Act. These divisions are primarily directed to compliance with financial and management obligations, and not to inter-group disputes within the corporation, although these disputes may result in cross-allegations to the Registrar. A PBC's Rulebook must set out a process for dealing with disputes (whether about membership or administration) but often due to the group's dynamics and politics and the cultural standing and identity of principal disputants, the members (the native title holders) fail to follow the prescribed process. This is due to a variety of factors including being incapable of enforcing or complying with the rules or the cultural stature of figures involved in the dispute.

The Registrar is equipped with powers to monitor and regulate corporate entities formed under the CATSI Act<sup>43</sup> for the purpose of holding native title rights and interests either as

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<sup>42</sup> Noting that the CATSI Act allows third parties to make assumptions about the authority to affix signatures.

<sup>43</sup> Chapter 10 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* ('CATSI Act') deals with



trustee or agent. The Registrar has power to do all things necessary or convenient to be done for, or in connection with, the performance of their functions (s 658-10, CATSI Act).

The ORIC site contains useful guides to the Registrar's powers<sup>44</sup> including for example, how to make a complaint, the Registrar's powers to intervene, deregister and reinstate corporations, the power to put a corporation into special administration.

The Registrar must exercise their powers to facilitate and improve the effectiveness, efficiency, sustainability and accountability of corporations, while taking into account Aboriginal and Torres Strait Islander traditions and circumstances and provide certainty for members, officers and employees of a corporation, in their dealings with the corporation and with each other; and people outside corporations in their dealings with those corporations. The Registrar must administer the CATSI Act and related legislation effectively and in a way that eases the burden on corporations and ensure information is available as soon as is practicable for access by the public.

Of particular relevance to members of PBCs where problems are occurring is the Registrar's power to intervene. The Registrar's goal when carrying out an intervention is to deal with issues "early, flexibly and simply", in order to maintain, amongst other things public confidence in corporations, improve their governance, prevent or minimise the risk of fraud, dishonesty and misconduct, take action when there are serious breaches of the CATSI Act;<sup>45</sup> protect innocent parties and deter or punish those who cause or might cause harm to others. In principle the intervention powers are particularly engaged in responding to complaints and assisting with the resolution of disputes.

Certain decisions of the Registrar made under the CATSI Act are reviewable by the Registrar (s 620 CATSI Act) or under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) or by application to the Administrative Appeals Tribunal (ss 620-5 and 623-1 CATSI Act).

### ***Complaint mechanism***

Members of a PBC experiencing problems with maladministration or want of probity or outright fraud may want to take advantage of the second mode of dispute resolution –

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regulation and enforcement.

<sup>44</sup> <https://www.oric.gov.au/resources/policy-statements>.

<sup>45</sup> There were two successful civil prosecutions by the Registrar in 2018 – see *Registrar of Aboriginal and Torres Strait Islander Corporations v Taylor* [2018] FCA 900 and *Registrar of Aboriginal and Torres Strait Islander Corporations v Taylor (No 2)* [2018] FCA 1234; three persons civilly prosecuted in 2016 – see *Registrar of Aboriginal and Torres Strait Islander Corporations v Monaghan (No 2)* [2016] FCA 1143. There have been 2 criminal prosecutions in 2020 and 7 in 2019.

complaint to ORIC. Those complaints would invoke the Registrar's capacity to deal with complaints about the internal operation of an Aboriginal and Torres Strait Islander corporation under the CATSI Act—section 658-1(1)(g)(i) or involving Aboriginal and Torres Strait Islander corporations— section 658-1(1)(g)(ii).

There is no restriction on the persons who may make a complaint to the Registrar. Complaints may include, but are not limited to, breaches of the PBC's Rulebook and/or CATSI Act by the PBC, a director, officer, employee or member of the PBC. There are provisions to keep complaints confidential, including protection for whistle-blowers.

The Registrar has a suite of powers for handling complaints set out in ss 453,<sup>46</sup> 439,<sup>47</sup> 490,<sup>48</sup> and 526.<sup>49</sup> Section 576 provides that the Court may excuse defaults by corporation officers but may also grant injunctions and prohibit transfers of property. If there is no administrative action by the Registrar, however, the persons affected will need to find the resources to apply to the Court in any event. A new ground has been added to the circumstances in which the Registrar may appoint a special administrator to a PBC - when there is a serious failure by the PBC to comply with its native title legislation obligations.

The complaints scheme cannot operate effectively unless the Registrar exercises the powers under the legislation when there is a complaint. Where the problem for the community is a rogue director who wields both financial and social influence, delay by the Registrar only entrenches the perception that such individuals are above the law. The range of powers of the Registrar does not permit peremptory intervention – the Court, not the Registrar, has power to restrain dealings.

If PBC members cannot get the attention of the Registrar, or induce speedy and effective action, they are either without a remedy or need to seek help elsewhere.<sup>50</sup> If the community is divided and lacks the resources to take proceedings the resources of the PBC can be leached away over years without any sanction for the perpetrators.

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<sup>46</sup> Inspection of books and records.

<sup>47</sup> Calling meetings of the Corporation.

<sup>48</sup> Appointment of special administrator.

<sup>49</sup> Winding up.

<sup>50</sup> Statistics on prosecutions by ORIC are published at <https://www.oric.gov.au/prosecution-outcomes>. In relation to criminal prosecutions there were 2 in 2020, 7 in 2019, 11 in 2018, 12 in 2017, 16 in 2016. In the same date range for civil prosecutions there were only 2 in 2018 and 3 in 2016.

The case of the Dughutti PBC shows how the resources of a PBC can be depleted in protracted litigation over process issues even if the Registrar does exercise their powers under the CATSI Act. In this case a dispute about membership of the PBC sparked a series of complaints leading (after years of complaint) to intervention by the Registrar, who issued a 'show cause' notice to the PBC for reasons why an administrator should not be appointed.

In *Dughutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations* [2011] FCAFC 88 the PBC commenced proceedings in the Federal Court seeking declarations that the show cause notice was invalid, and for an order restraining the Registrar from making a determination that the PBC be put under special administration. Ultimately the Elder's Corporation was unsuccessful, but not before a number of cases (and appeals) had depleted the funds of the corporation to a pittance. The proceedings did not get to any examination of the merits of whether the PBC *should* be put into administration; rather that the process commenced by the Registrar's show cause notice should be halted due to defects in the procedure followed, such that any decision by the Registrar as a consequence of the notice would be invalid.

The PBC's case failed at first instance and on appeal but a great deal of litigation was pursued over matters of process until the PBC was put into special administration. The case shows that if the PBC is controlled by persons willing to risk the funds of the corporation on process-driven litigation, even the Registrar's willingness and ability to exercise the statutory powers will not result in the assets of the PBC being preserved.

Also illustrative of problems with the Registrar's efforts to exercise power arising from concerns about the governance of a PBC were the proceedings in *Onus v Registrar of Aboriginal and Torres Strait Islander Corporations*.<sup>51</sup> As with *Dughutti* rather than being a substantive inquiry into the misconduct of directors, the proceedings involved challenges to the process relied upon by the Registrar to issue show cause notices why the PBC in question should not be put under special administration. However, relevant to the failings in corporate governance which were of concern to the Registrar, was delay in the regulatory response to the conduct of the corporations. The outcome of the CATSI Act review may

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<sup>51</sup> *Onus v Registrar of Aboriginal and Torres Strait Islander Corporations* [2017] FCA 1498, O'Callaghan J, 28 November 2017. Other examples of directors' misconduct which ought to have drawn intervention by the Registrar include the decisions of Rares J *Henry v Sandlewood Aboriginal Projects Limited (No 2)* [2019] FCA 2061; and *Henry v Western Downs Group Limited* [2018] FCA 1168.

affect how ORIC carries out its regulatory functions.

Although an application to ORIC to investigate allegations of maladministration appears to be simple and straightforward, in practice ORIC does not provide a workable dispute resolution mechanism because it is hopelessly under-resourced and overburdened. As it is, the Registrar has limited resources which are apparently now dedicated to a very few high-budget investigations. The Registrar's office is not well resourced. Many PBC members have their own stories about lack of response, sometimes even lack of acknowledgement by ORIC in respect of what may turn out to be serious breaches of fiduciary and prudential duty, if not outright fraud. In many respects complaints from members of PBCs with few resources are at least as significant as complaints regarding PBCs with significant resources. In those PBCs with a meagre capital base and no royalty stream the risk to its resources can be acute and annihilation of those resources occur pending decisions by the Registrar about whether or not to intervene.

### **Recourse to the Native Title Registrar**

The long-awaited reforms to the NTA enacted on 3 February 2021<sup>52</sup> provide a third option for dispute resolution for conflicts within PBCs. These amendments introduced measures concerning PBC governance and accountability and conferred on the Native Title Registrar a dispute resolution function to assist PBCs and common law holders to find agreement about native title issues and the operation of the NTA.<sup>53</sup> The disputes may include the conduct of the PBC. This function is intended to assist in the prevention and management of post determination native title disputes.<sup>54</sup> The recent amendments mean PBCs must change their Rulebooks to include new rules specifically responsive to disputes between the PBC and persons who claim to be but are not (or have not been accepted as) members of the PBC. PBCs have two years to amend their rules from 25 March 2021 when the amendments came into effect.

The PBC targeted amendments seek to address post determination disputes in two ways: by strengthening accountability of PBCs and providing additional mechanisms for resolving disputes about governance. Whether this third mechanism will provide a new way of dealing

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<sup>52</sup> The amendments commenced on 25 March 2021.

<sup>53</sup> Section 60AAA

<sup>54</sup> *Replacement Revised Explanatory Memorandum* ('RREM') circulated by the Attorney General, Schedule 7 [249].

with these problems is yet to be seen – it is to be hoped it will, but the lack of any additional resources for the NNTT to carry out this function is of concern.

In summary amendments to the CATSI Act which will have some bearing on the matters likely to come to the Native Title Registrar include:

- changes to membership provisions to better protect common law holders of native title by ensuring that a PBC's rule book reflects the relevant native title determination, and includes dispute resolution pathways for persons who are or who claim to be common law holders;<sup>55</sup>
- provision for all the common law holders to be directly or indirectly represented in the RNTBC,<sup>56</sup> and removal of the discretion of directors of RNTBCs to refuse certain membership applications;<sup>57</sup>
- measures preventing PBCs from establishing idiosyncratic or restrictive membership criteria apart from that contained in the determination,<sup>58</sup> or from refusing or cancelling membership in a way that disenfranchises a section of a native title group;<sup>59</sup>
- requirements that the PBC Rulebook provide a pathway for resolution of disputes between common law holders and PBCs.<sup>60</sup>
- Measures specifying that the Registrar may place a RNTBC under special administration in certain circumstances.<sup>61</sup>

## **Conclusion**

As the cases reviewed above show, it is possible to hold Applicants and directors accountable for misconduct and for failure to act in accordance with their fiduciary duties. However PBC members can be reluctant to act in relation to their concerns when it involves standing up to a dominant figure and/or closely connected person who may have strong experience and skills which led to their nomination to office on behalf of the group. This is where the role of ORIC is crucial and the new role for the Native Title Registrar may assist. PBC members will now be able to turn to the Native Title Registrar for assistance and need to be able to rely on ORIC to exercise their powers to ensure good governance and, not least, to save the

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<sup>55</sup> Section 141-25(2) CATSI Act.

<sup>56</sup> Section 141 CATSI Act.

<sup>57</sup> Section 144 CATSI Act.

<sup>58</sup> Section 150-15 CATSI Act.

<sup>59</sup> Section 150-22 CATSI Act.

<sup>60</sup> Section 66-1 CATSI Act.

<sup>61</sup> Section 487 CATSI Act

PBC from spending resources held for the benefit of the native title holders. It is hoped the government's response to the CATSI Act review will add to the capacity of ORIC to utilise its functions and exercise its powers to assist PBCs cope with the challenges of holding native title rights and interests for its members. It is hoped the amendments and the new role for the Native Title Registrar will provide better accountability in the management of native title rights and interests whether held on trust or as agent and may serve to triage matters which allows ORIC to better carry out its functions.

## Authorities

Name	Date	Citations
<u>Aplin on behalf of the Waanyi Peoples v State of Queensland</u> [2010] FCA 625	18 Jun 2010	1 citation
<u>Barunga v State of Western Australia (No 2)</u> [2011] FCA 755	25 May 2011	1 citation
<u>Darkinjung Pty Ltd v Darkinjung Local Aboriginal Land Council</u> [2006] NSWSC 1008	3 Oct 2006	7 citations: Para <u>57</u> , <u>129</u> , <u>218-223</u>
<u>Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations</u> [2011] FCAFC 88	21 Jul 2011	5 citations
<u>Forrest on behalf of the Nangaanya-ku Native Title Claim Group v State of Western Australia</u> [2021] FCA 467	6 May 2021	1 citation
<u>Gebadi v Woosup (No 2)</u> [2017] FCA 1467	7 Dec 2017	5 citations: Para <u>46</u> , <u>52</u> , <u>56</u>
<u>Henry v Sandlewood Aboriginal Projects Limited (No 2)</u> [2019] FCA 2061	13 Sep 2019	1 citation
<u>Henry v Western Downs Group Limited</u> [2018] FCA 1168	13 Jul 2018	1 citation
<u>Lampton on behalf of the Juru People v State of Queensland</u> [2014] FCA 736	11 Jul 2014	1 citation: Para <u>33-34</u>
<u>Oliver Hume South East Queensland Pty Ltd v Investa Residential Group Pty Ltd</u> [2017] FCAFC 141	1 Sep 2017	1 citation: Para <u>236</u>
<u>Onus v Registrar of Aboriginal and Torres Strait Islander Corporations</u> [2017] FCA 1498	12 Dec 2017	2 citations
<u>Pegler on behalf of the Widi People of the Nebo Estate #1 v State of Queensland</u> [2019] FCA 711	13 May 2019	1 citation: Para <u>11-12</u> , <u>50</u>
<u>QGC Pty Limited v Alberts (No 2)</u> [2021] FCA 540	29 April 2021	1 citation
<u>Re Estate Late Chow Cho-Poon; Application for judicial advice</u> [2013] NSWSC 844	26 Jun 2013	1 citation
<u>Re Italiano; Application for Judicial Advice</u> [2020] NSWSC 405	3 Apr 2020	1 citation
<u>Registrar of Aboriginal and Torres Strait Islander Corporations v Monaghan (No 2)</u> [2016] FCA 1143	20 Sep 2016	1 citation
<u>Registrar of Aboriginal and Torres Strait Islander Corporations v Taylor</u> [2018] FCA 900	14 Jun 2018	1 citation
<u>Registrar of Aboriginal and Torres Strait Islander Corporations v</u>	17 Aug 2018	1 citation

Name	Date	Citations
<u>Taylor (No 2)</u> [2018] FCA 1234		
<u>Sandy v Yindjibarndi Aboriginal Corporation RNTBC [No 2]</u> [2016] WASC 75	9 Mar 2016	1 citation
<u>Starkey v South Australia</u> [2011] FCA 456	9 May 2011	1 citation
<u>Weribone on behalf of the Mandandanji People v State of Queensland (No 2)</u> [2013] FCA 485	23 May 2013	1 citation: Para <u>44-46</u>
<u>Wik Peoples v Queensland</u> [1996] HCA 40	23 Dec 1996	1 citation: Page <u>95</u>
<u>Woosup on behalf of the Ankamuthi People #1 v State of Queensland</u> [2017] FCA 831	26 Jul 2017	1 citation
<u>Woosup on behalf of the Northern Cape York Group #1 v State of Queensland (No 3)</u> [2014] FCA 1148	30 Oct 2014	1 citation
<u>Wright v Stevens</u> [2018] NSWSC 548	3 May 2018	1 citation
<u>Wybenga v Mandandanji Limited (Trustee)</u> [2014] FCA 861	1 Aug 2014	1 citation

## Legislation

Name	Date	Citations
<u>Aboriginal Land Rights Act 1983 (NSW)</u>	6 Dec 2019	1 citation: Section <u>50</u>
<u>Administrative Decisions (Judicial Review) Act 1977 (Cth)</u>	10 Dec 2020	2 citations
<u>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</u>	18 Feb 2020	30 citations: Chapter <u>10</u> , Part <u>10</u> , <u>11</u> , Schedule <u>7</u> , Section <u>147-10</u> , <u>546-25</u> , <u>581-30</u> , <u>586-5</u>
<u>Dubbo Local Environmental Plan 2011 (Amendment No 19) (2020-446) LW 31 July 2020 (NSW)</u>	1 Jan 2020	1 citation
<u>Native Title Act 1993 (Cth)</u>	9 Dec 2020	13 citations: Section <u>55</u> , <u>60AAA</u> , <u>81</u>
<u>State Environmental Planning Policy (Sydney Region Growth Centres) Amendment (Hawkesbury Growth Centres Precinct Plan) 2017 (2017-728) LW 15 December 2017 (NSW)</u>	1 Jan 2017	1 citation
<u>Trustee Act 1925 (NSW)</u>	28 Sep 2020	1 citation: Section <u>63</u>