



CNTA Conference 2024

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Acknowledgement of Country

QSNTS acknowledges the Traditional Custodians and Elders of the Land on which we meet today, the Kurna People, whose cultures and customs have nurtured and continue to nurture this Land.

We pay our respects to the Elders past, present, and emerging as well as all Aboriginal and Torres Strait Islander peoples.



Registered Native Title Prescribed Bodies Corporate (PBCs)

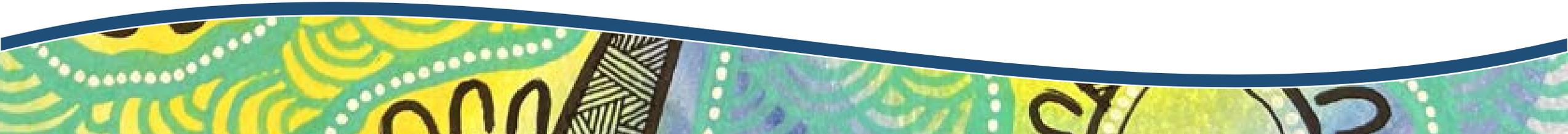
- Section 56 of the Native Title Act requires the Court to make orders regarding if and how the native title will be held by a prescribed body corporate.
- That is, the establishment and nomination of a PBC is a step in the making of a determination. And there's a whole lot of other steps. It's a very busy time for the native title claim group and the team assisting them.



Registered Native Title Prescribed Bodies Corporate (PBCs)

- Compliance with legislation:
 - Managing the native title rights and interests:
 - Responding to future act notices
 - Consulting with and securing consent of native title holders when a native title decision needs to be made.
 - Reporting (financial, annual)
 - Managing membership Applications
 - Holding directors' meetings and member meetings
 - Understanding “conflicts of interests” and managing them appropriately.
- On top of:
 - Developing and managing relations with stakeholders operating on country
 - Being the “Aboriginal cultural heritage party” (in Queensland)
 - Maximising and leveraging recognised rights to achieve the economic and other aspirations of native title holders
 - Dealing with tension between members, directors and native title holders.

All on a shoestring budget – many of the PBCs we work with are totally reliant on PBC support funding (approx. \$70K/year)



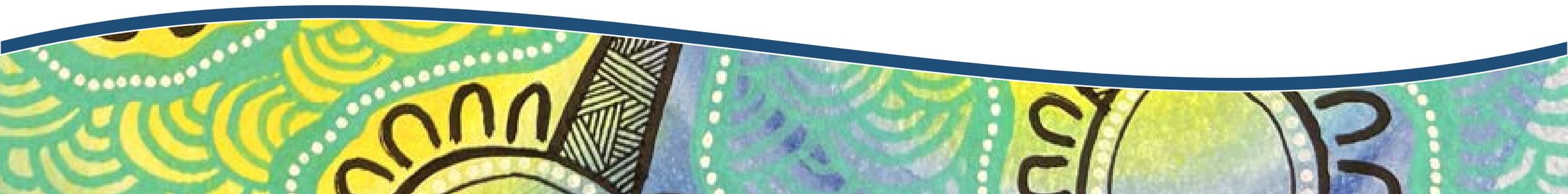
The old days...

Example 1:

- One particularly angry native title holder calls about a “secret” corporation.
- File search revealed:
 - PBC rule book was generally the “off the shelf” template produced by ORIC at the time
 - Was established 3+ years before the angry phone call, ie just before the determination.
 - Was set up at an Applicant meeting (a handful of members of the then claim group) with no consultation with the larger claim group.

Needless to say, for a long period of time:

- there was little engagement with the PBC by native title holders, as they didn’t know about it. Corporate knowledge was not shared amongst the group.
- PBC struggled to achieve quorum for AGMs
- Misunderstandings about the role of the PBC vs other established traditional owner corporations
- Constant power struggles between a handful of member/ directors due to long standing family feuds
- PBC achieved very little asides from “bare” compliance.



The old days...

Example 2:

- The hand over, “Just get the client their CD. Everything else is already done”.
- Lawyer reads the anthropological report. Kinda understands it.
- Lawyer (and I mean, “just” the lawyer) holds a claim group meeting.
- Lawyer proposes:
 - A representative board made up of 3 directors from 3 of the language groups that make up the native title claim group
 - That native title decisions are made according to the “groups traditional laws and customs”
- Claim group agrees on the basis that there is a consistent understanding about how traditional laws and customs operate with regards to decision making.
- Rule book is settled. PBC established.
- PBC is barely functioning:
 - There is no clear distinction between the people that make up the 3 language groups leading to constant disagreement about who is eligible to be a director representing a particular language group
 - No clear agreement about areas of association and who speaks for/ makes decisions for country according to traditional law and custom



A better approach

- Understanding the groups' traditional law and custom with regards to:
 - Land holding: patrilineal → particular areas of association. This will inform rules around native title decision making
 - Membership to the land holding group; this will inform the way in which membership applications are assessed by directors.
 - Representation: Elders? Consensus? This will inform rules around board representation
- Understanding the history of the group. Has removal history created tensions amongst family groups. This will inform what steps the group wishes to take to deal with these tensions before the PBC is established.
- Working with the whole group to develop, workshop and assess options that reflect the groups' way of "doing business". Generally done over a series of workshops well before the likely CD date.
- Increasing interactive participation into the workshops with the claim group.
- This knowledge and expertise goes beyond the skill set of a lawyer. Better outcomes are achieved when those with the right skills are involved.



A better approach

Example : Board Representation

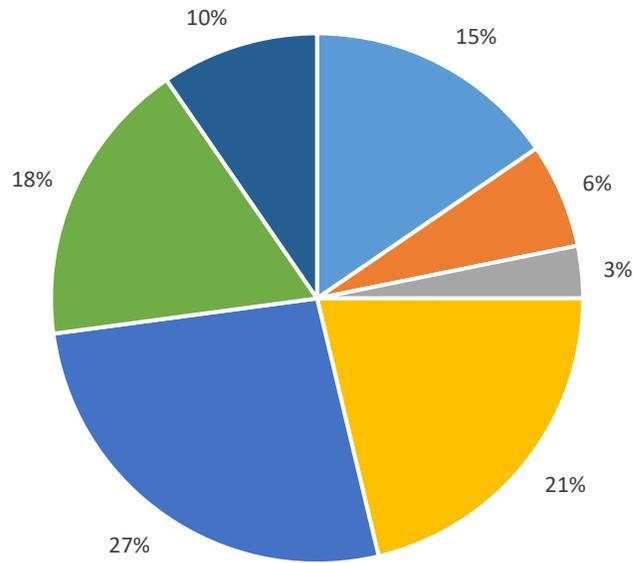
- 25 Apical ancestors. 1 Director per family groups would be unworkable.
- In house Anthropologist considered:
 - Traditional laws and customs re land holding
 - Areas of association
 - Recorded histories of upper generations
 - TO evidence about “speaking for country”
 - Grouped the 25 apicals into 6 main areas of association
- Workshopped different options with the group including possible composition on the board to ensure knowledgeable people for each part of the country are represented.



A better approach

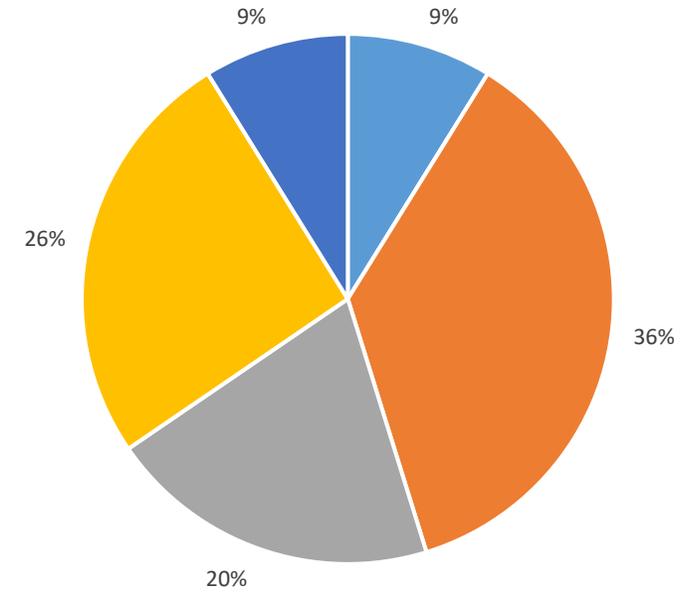
Example: Board representation

Family Group Representation

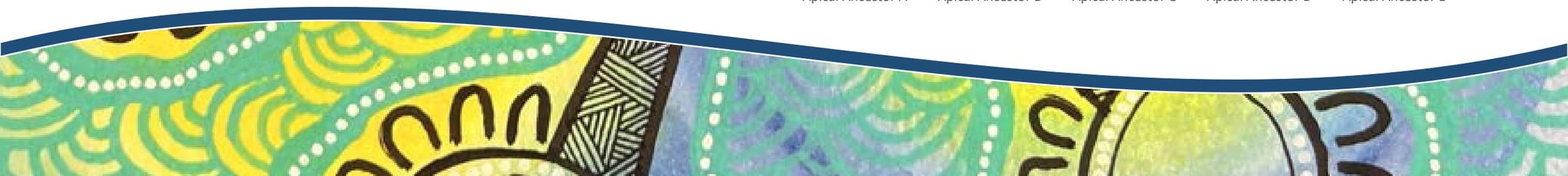


■ Family A ■ Family B ■ Family C ■ Family D ■ Family E ■ Family F ■ Family G

Apical Representation



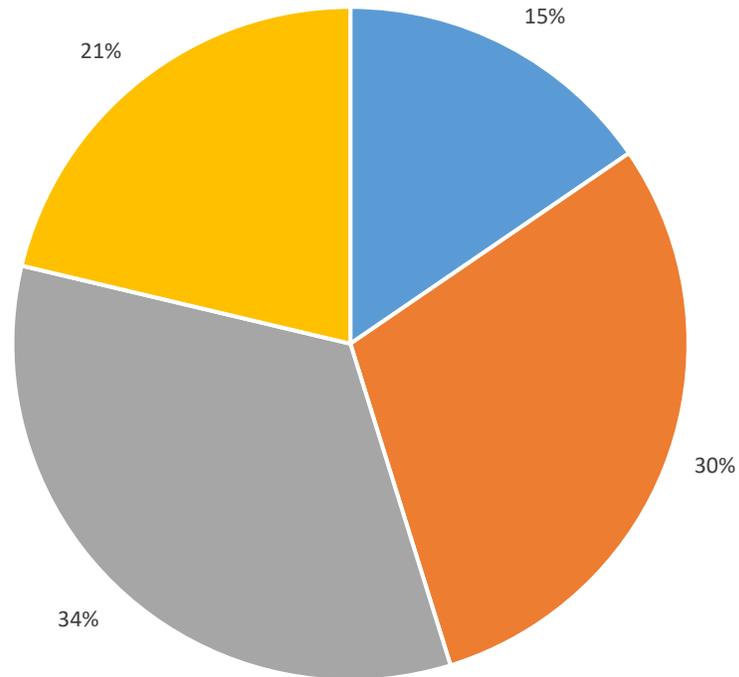
■ Apical Ancestor A ■ Apical Ancestor B ■ Apical Ancestor C ■ Apical Ancestor D ■ Apical Ancestor E



A better approach

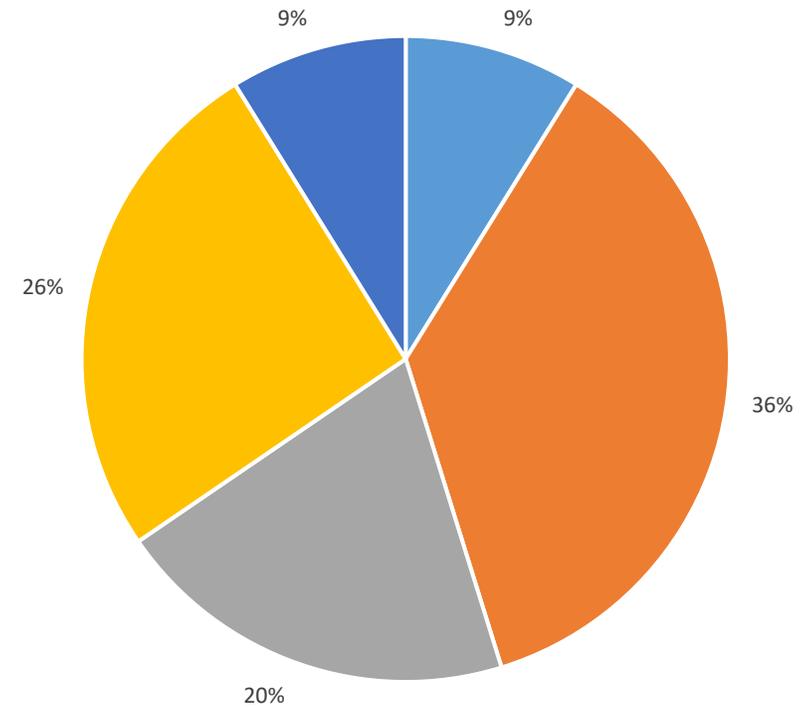
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Combined Chart

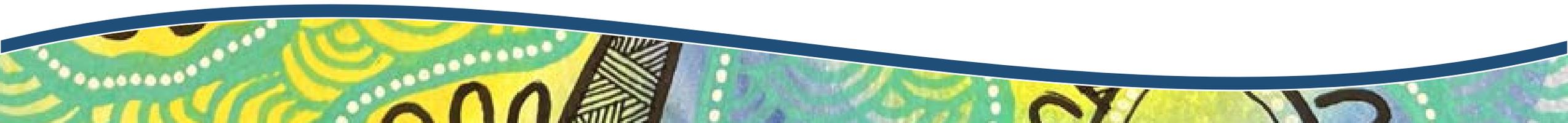


■ Family A ■ Family C, E ■ Family B, G, F ■ Family D

Apical Representation



■ Apical Ancestor A ■ Apical Ancestor B ■ Apical Ancestor C ■ Apical Ancestor D ■ Apical Ancestor E



Other options for a more representative PBC board?



A better approach

Example: Decision making

- Cross border claims. Notionally the same landholding group but QLD and NSW families have particular areas of association.
- Proposal informed by in-house anthropologist and consultation with the group;
 - cultural mapping based off TO statements and anthropological report and workshops with the landholding group.
 - Native title decisions affecting the QLD country, are deferred to “QLD families” however the whole landholding group would be informed and aware.



A better approach

Example: Decision making and Quorum

- Analysis of composition of the claim group.
- Understanding the importance of consensus decision making and inclusion following one of the worst removal histories in our region.
- Descent from Apical ancestors broken down into smaller descent groups.
- Quorum requires at least one member from each descent group to be present.
- Decision making, 1 vote per descent group so that smaller descent groups are not overwhelmed by the numbers of the larger groups.



A better approach

Example: Membership (Adoption)

- Membership eligibility reflects description of native title holders, but what does this actually mean in practice when the words “adoption/ rearing up” are used in the determination?
- Workshop with the group by:
 - Providing examples (with permission) of people within the group by way of adoption.
 - Providing a space for particular families to “hash out” what this looks like for them.

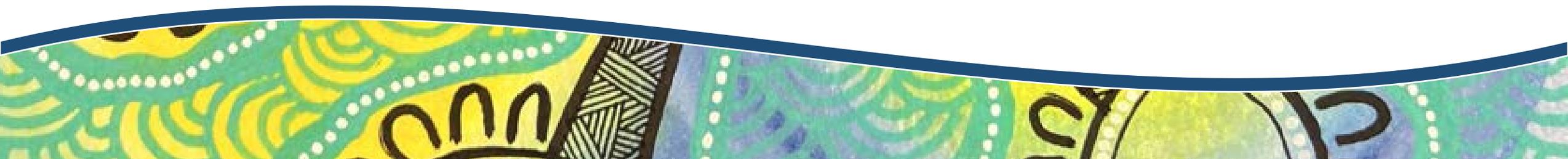
Example: Membership (Age)

- Two classes of membership (15+ and 18+) to reflect the passing of traditional knowledge



What does this look like in practice?

- Group A recently experienced a part hearing of a trial. While the outcome of the “positive”, the trial process exacerbated:
 - Existing tensions amongst the claim group
 - Existing tensions within particular families
 - Existing trauma and belief that certain members “don’t know enough”
 - Disagreement about rules around adoption
 - Anger about the way the State viewed the group and the way the State wanted these issues addressed.
- FNEA provided unambiguous advice that these issues needed to be addressed if a PBC was to be effective in the future.
- A CD is loosely scheduled for July 2024. Work on establishing the PBC commenced in September 2023, 10 months in advance.



What does this look like in practice?

- Several options presented to the group on the issue of rearing up/adoption:
 - Elder endorsement in the membership form or consultation with an Elders group/family group
 - Mediation with the family group in question
 - Reflecting responsibility within the rule book



Constant Improvement...

- What other rules / issues cause challenges for PBCs?
- What other ways can anthropology guide the design of PBC rules and policies?
- Is there a risk that shaping PBC rules based loosely on element of traditional law and custom, alters the way traditional law and customs are practiced?

