The Future of Native Title Anthropology

Centre for Native Title Anthropology, ANU
&
Queensland South Native Title Services

Day 2, Session 3

Governance of native title corporations: What does anthropology have to say?

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PBC governance ‘arenas’

- **NTRB / NTSP**
- **Government & other funders**
- **PBC**
- **Native Title holders**

1. Governance within the native title group
2. Internal governance
3. Governance of the relationship between PBC and NTH
4. Relationships between NTRB / NTSP and other funders
Why different governance arenas?

- Governance is about people, relationships, and processes, the way people do things, the systems they are located in, interactions with government, and the way power is distributed and used.

- A governance arena involves a particular set of relationships, rules, and processes - where people do things in particular ways – eg football arena and different codes

- Decision-making is one part of governance: Need to adopt decision-making processes appropriate for each arena.

- Each ‘arena’ involves different forms of governance; for example
  – different matters about which decisions have to be made;
  – Differentials in knowledge about these matters;
  – different processes of making decisions;
  – different people who should make the decisions;
  – different people whose interests might be affected by a decision;
  – Differentials of power and authority.
PBC members and the native title holding group: IMPORTANT DIFFERENCES

- PBC members are native title holders who have applied for membership and been accepted by the PBC
- PBC membership is a **LIST** of legally defined set of individuals
- The list will never be complete, or accurate – people die and are born
- PBC membership is a subset of the native title holding group
- The CATSI Act and PBC Regs allow non-native title holders to be members (if Reg 8 followed)

Membership of the native title group is:
- recognised in a native title determination
- defined by traditional law and custom

For Reg 8, all the native title group members must be consulted and give their consent, **NOT JUST THOSE WHO ARE PBC MEMBERS**
- PBC members cannot automatically make native title decisions at AGMs: they are not all of the native title holders.
# The four basic PBC prototypes

<table>
<thead>
<tr>
<th>Character of membership</th>
<th>Agent PBC</th>
<th>Trustee PBC</th>
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</thead>
<tbody>
<tr>
<td>Participatory membership</td>
<td><strong>Type 1</strong>: Agent PBC with participatory membership</td>
<td><strong>Type 3</strong>: Trustee PBC with participatory membership</td>
</tr>
<tr>
<td>Representative membership</td>
<td><strong>Type 2</strong>: Agent PBC with representative membership</td>
<td><strong>Type 4</strong>: Trustee PBC with representative membership</td>
</tr>
</tbody>
</table>

Legal relationship between Native title group and PBC
Agent PBC with “participatory” membership (Type 1)
Figure 2: Agent PBC with “participatory” membership: membership classes (Type 1)
Figure 3: Agent PBC with “representative” membership (Type 2)
Figure 4: Trustee PBC with “participatory” membership (Type 3)
Figure 5: Trustee PBC with “representative” membership (Type 4)
Arena 3, Native Title Decisions

Government and NNTT and NTRBs

Directors
PBC

PBC Regs 8, 8A, 9

PBC’s Rules

‘Fiduciary duty

‘Trustee or agent relns

Free, prior and informed consent

Consensus building, community engagement, relationship building

Family 1
Family 2
etc
Family 3
Family 4
Codifying ‘law and custom’

Problems can arise from ‘codification’ of law and custom, and of informal social practice; e.g.

– Codification can only ever partially reflect the complexities of social process or social categories
  • e.g. using a corporation’s membership classes to reflect social categories, such as ‘families’ or ‘language groups’.
  • e.g. cannot reflect ‘epistemic openness’ (Merlan)

– It may concretise social processes in which complex and multidimensional interpersonal relationships are paramount (e.g. those within a kinship system)

– It may compromise the flexibility and negotiability inherent in many cultures (including Aboriginal ones)

However, codification may be necessary:

– e.g. when what constitutes ‘law and custom’ or ‘tradition’, and who has the authority to ‘declare’ it, is itself disputed.