

behind the determination's deceptively simple expression of native title rights will very likely require ongoing specialist legal advice, particularly when those rights intersect with those of other interest groups. (For example, the definition of 'Natural Resources' in the determination relies on definitions of 'Plants', 'Animals' and 'Forest Products' that are in turn defined by various interdependent sections of the *Forestry Act 1959* (Qld) and the *Nature Conservation Act 1992* (Qld).)

Given such bureaucratic and legal burdens, managing native title rights and interests into the future may prove to be as much if not more of a challenge than the process of achieving recognition in the first place. At the moment many PBCs receive crucial administrative support from local native title representative bodies. Others generate income through agreements with mining companies and other parties who conduct activities on native title land. Strategic economic development is encouraged by organisations such as IBA, but in many areas there are few viable business opportunities. Many PBCs are going to require alternative

income streams if they are to effectively govern and manage their peoples' native title rights in accordance with the expectations of Australian law. It is for these reasons that Ngan Aak Kunch are in the process of negotiating a Memorandum of Understanding with Aak Puul Nganttam Cape York, an incorporated community-owned company based in Aurukun which aims to provide support to the PBC, and is developing innovating programs to manage the Wik lands south of the Archer River.

Many individuals volunteer their time in roles such as PBC directors in order to assist with the management of their group's native title rights. But such involvement comes at a cost. Time spent in meetings is time not spent with family, out on country, enjoying its benefits and imparting knowledge to younger generations. It is also time not spent in a paid job. In short, time spent on governance of rights is time denied to the pursuit of customary activities or profitable employment. The obvious irony is that native title law requires traditional owners to maintain traditional law and custom if they are to

continue to be recognised as native title holders into the future.

So while there is much to celebrate in the Wik and Wik Way peoples' recent achievement, crucial questions remain about the long-term future of the post-determination native title system as it currently exists. The federal government is not indifferent to these issues. The Minister for Families, Community Services and Indigenous Affairs recently announced a review of native title organisations, which will pay particular attention to the needs of groups following a determination of native title. The review, due to commence in 2013, will seek the opinions of a range of stakeholders and communities including NTRBs, PBCs, the National Native Title Council, the Office of the Registrar of Indigenous Corporations, and state and territory governments. This will be an important opportunity for groups to speak frankly about the challenges and burdens of managing their native title rights and to provide some input into designing better policies. At the time of writing, a reviewer has yet to be appointed.

JOINT MANAGEMENT PARTICIPATORY WORKSHOPS



By Gabrielle Lauder & Toni Bauman

Joint management and/or co-management of conservation areas is a major, sometimes the only, native title outcome for many traditional owners. It is also an important means for incorporating Indigenous knowledge into land management and conservation strategies. Although the *Native Title Act* provides traditional owners with a negotiating position

for entering into joint management agreements, native title groups face ongoing challenges in negotiating joint management, including implementation issues on the ground. Traditional owners in the post-determination landscape have to contend with the general inflexibility of the *Native Title Act* and the lack of institutional and resource support for PBCs, or Registered Native Title Bodies Corporate (RNTBCs) as they are more formally known.

Participatory workshops such as the 'Traditional Owner Corporation Joint Management Workshop' held in Melbourne on 12 October 2012 and 'The Workshop on Indigenous Co-management and Biodiversity Protection' held in Cairns on 17 October 2012 provide an opportunity to address some of these issues by building a base of Indigenous knowledge and resourcing traditional owners to drive the joint management agenda.

Image: Joint management workshop for delegates of Victoria's Native Title PBC.

L-R: Ray Ahmat, Yorta Yorta Nations Aboriginal Corporation; David Lucas & Sarah Jones, NTSV; Jeremy Clark, Eastern Maar Aboriginal Corporation; Gabrielle Lauder, AIATSIS; Michael Stewart and Jim Golden-Brown, Barengi Gadjin Land Council; Toni Bauman, AIATSIS; Barry Kenny and Lloyd Hood, Gunaikurnai Land and Waters Aboriginal Corporation. Credit: Drew Berick

Traditional Owner Corporation Joint Management Workshop Melbourne, 12 October 2012

On 12 October 2012, Native Title Services Victoria (NTSV) facilitated a one-day workshop to support an alliance of PBCs working in joint management in Victoria. The event aimed to provide an overview of joint and/or co-management regimes in Victoria and to facilitate the exchange of information between PBCs. It was acknowledged in introductions that PBCs have a significant stake in joint management, it being one of their key functions. Toni Bauman and Gabrielle Lauder of AIATSIS were in attendance and discussed research needs and the potential for research partnerships. David Lucas of NTSV commenced discussions with an overview of joint management in Victoria.

Joint Management in Victoria

The Department of Sustainability and Environment has overall responsibility for joint management in Victoria. The management of a conservation area is 'joint' in the sense that decision-making and day-to-day management responsibilities are shared between traditional owners and Parks Victoria. Under the Victorian Native Title Settlement Framework, traditional owners may negotiate directly with the state for the joint management of public land. Public land includes reserve land, national park, state forest, vacant crown land, nature reserve, and state wildlife reserve.

The Traditional Owner Settlement Act 2010 (Vic) (TOSA) gives legislative effect to the Victorian Native Title Settlement Framework. Under the TOSA, the Victorian Government may enter into a Recognition and Settlement Agreement (RSA) with a traditional owner group. The state makes a grant of 'Aboriginal Title' subject to the traditional owner group entering into a contract for the transfer to the state of the right to occupy, use, control and manage the land. This means that even where the state makes a grant of an estate in fee simple to a traditional owner group, the beneficial use and

enjoyment of the land remains with the Crown. A grant of Aboriginal Title is also subject to an agreement between the traditional owner corporation and the state to establish a Traditional Owner Land Management Board (TOLMB).

The principal agreement, the RSA, may be supplemented by ancillary land agreements, land use activity agreements, funding agreements and natural resource agreements. Funding agreements may provide funding for the traditional owner group to give effect to the RSA. An RSA may further provide for ongoing financial support for the TOLMB, community benefit payments for work done in jointly managed areas, and the costs of Indigenous ranger and other park positions. A majority of the members on the TOLMB must be traditional owners, nominated by the traditional owner group. The TOLMB is primarily responsible for the preparation and implementation of the joint management plan. The TOLMB is a stand-alone entity, distinct from the PBC, although the TOLMB may contract the PBC to conduct works in the jointly managed areas.

PBC Overviews

Each PBC spoke to a number of points concerning their current arrangements and who is involved in park management at a policy and operational level. Each PBC then gave a global assessment of the successes and challenges of joint management. Participants felt that joint management partners—both traditional owners and state players—were still coming to terms with exactly what joint management is and how it works.

Although TOLMBs were generally considered to be a positive outcome of joint management in Victoria, participants questioned whether the current regime unnecessarily duplicates responsibilities and confuses lines of accountability, as there is no requirement for the TOLMB to report back to the PBC. There was a concern that the general members of the TOLMB could exercise power over traditional owner members and, by extension, the PBC. Some PBCs voiced their concerns with the composition of the TOLMB and the fact that general members appointed by the Minister did not necessarily have

any knowledge of the land or other land management expertise to bring to the table. A number of participants involved in establishing the TOLMB and the election process found it resource and time intensive. There were also concerns that the funding duration is limited, meaning traditional owner groups will need to generate their own income to sustain the TOLMB.

Participants emphasised that it is important to allow sufficient time in the negotiation process and to revisit issues where necessary. An example given was the issue of whether rangers would be housed with the PBC or with Parks Victoria. Some corporations felt it was crucial that those ranger positions be housed with the PBC so that traditional owners could delegate work directly, such as site protection. Another PBC said they were seeking to defer the transition of those roles to a later stage when they will be better positioned to effectively contribute to the joint management agenda. They want to ensure that Parks Victoria is confident with the methods employed by traditional owners in park management, including fire ecology and cultural audits. In this sense, joint management has provided those groups with the opportunity to develop their skills base and their ability to manage country. This discussion highlighted that there is no blanket approach to joint management, even within a given jurisdiction. Within Victoria, joint management arrangements are subject to a number of factors and dynamics particular to the traditional owner group, their relationship with the responsible government authorities, the country that is being jointly managed, and the knowledge and financial resources available.

The Yorta Yorta Nations Aboriginal Corporation has an ongoing Indigenous Protected Area (IPA) co-managed consultation project as part of the 'Caring for our Country' initiative. This group was therefore interested in whether this was an effective pathway to joint management. This conversation was taken up by Toni Bauman, who discussed the key features of IPAs, the challenges for co-management IPAs, and the potential for multi-tenured IPAs. The participants also expressed

interest in pursuing cross-border discussions with South Australia in the future, possibly facilitated by AIATSIS. This could benefit groups with protected areas extending across state borders and could also facilitate knowledge sharing around the management of similar country, for example, catchment areas. The participants recognised the potential opportunities and pathways joint management offers, including the opportunity to develop a cohesive lifestyle in the vision of their elders and the opportunity to engage the broader community.

The Workshop on Indigenous Co-management and Biodiversity Protection Cairns, 17 October 2012

The Workshop on Indigenous Co-management and Biodiversity Protection was co-hosted by CSIRO, co-research partners and the Tropical Ecosystem Hub of the Australian Government's National Environmental Research Program (NERP), and was facilitated by Toni Bauman of AIATSIS. The event aimed to revise and further develop a draft joint management framework to analyse progress towards Indigenous co-management and biodiversity protection in the wet tropics.

Traditional owners made the following comments in response to the development of the draft framework:

- There are many pathways to co-management and many vehicles by which to get there
- Co-management is not about two parallel pathways or an 'us' and 'them' approach. The paths of the traditional owner party and the government party intersect and overlap
- The aspirations of traditional owners are to care for and manage country effectively and to transmit that knowledge on to young people
- Formal co-management will always involve the local-level traditional owner groups with the customary law authority for decision making
- Co-management is best driven by effective traditional owner organisations with strong governance and board, and principles



The Workshop on Indigenous Co-management and Biodiversity Protection.

Back row L-R: Bruce Lawson, Nigel Hedgcock, Joann Schmider, Andrew Maclean, Alf Joyce
Second back row L-R: Tony Hobbs, Susan Medway, Toni Bauman, Leah Talbot, Robyn Bellaquih, Vince Mundraby, Lisa Sarago

Second row L-R: Sarah Hoyal, Phil Rist, Judi Enoch, Hurriyet Babacan, Petina Pert

Front row L-R: Dionie Johnson, Whitney Rassip, Sandra Levers, Ro Hill, Carla Wilson.

Photo credit: Julie Tsatsaros (CSIRO)

- Change to mainstream organisations is required: cultural self-awareness and development of intercultural awareness
- Clarity in government policy around co-management is required
- The case for government support needs to highlight the connection between how investment in cultural values, in protecting and transmitting Aboriginal cultural knowledge and land management practices, can deliver outcomes in terms of health, wellbeing, education and employment

The workshop highlighted the need for greater knowledge transfer between co-management stakeholders. Workshop participants concluded that the co-research process is about social

learning, and about knowledge being developed through networks.

The overarching aim of the NERP Tropical Ecosystems Hub Project is to identify the means for effective engagement of Indigenous knowledge and co-management for biodiversity and cultural protection in the region. Toni Bauman represents AIATSIS on the project co-research group, which includes: the Rainforest Aboriginal Peoples' Alliance (including Girringun Aboriginal Corporation, Jabalbina Yalanji Aboriginal Corporation, Central Wet Tropics Institute for Country and Culture), Mandingalbay Yidinji Aboriginal Corporation, as well as a number of government agencies and NGOs.