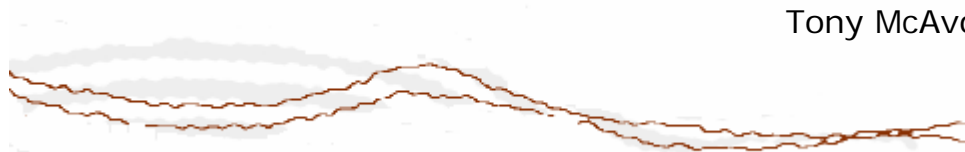


**Even as the Crow Flies, it is Still a Long
Way: Implementation of the Queensland South
Native title Services Ltd Legal Services Strategic
Plan**

Tony McAvoy and Valerie Cooms



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Abbreviations

ATSIS	Aboriginal and Torres Strait Islander Services
Draft LSSP	Draft Legal Services Strategic Plan
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FAIRA	Foundation for Aboriginal and Islander Research Action
GMI	Greater Mount Isa Region
ILUAs	Indigenous Land Use Agreements
LSSP	Legal Services Strategic Plan
Mabo	<i>Mabo and Others v State of Queensland and Others (No 2)</i> (1992) 180 CLR 1
NNTT	National Native title Tribunal
NTA	<i>Native title Act 1993</i> (Cth)
NTRB	Native title Representative Bodies
NTSP	Native title Service Provider
QSNTS	Queensland South Native title Services
QSRBAC	Queensland South Representative Body Aboriginal Corporation
Wik	<i>Wik Peoples v State of Queensland</i> (1996) 187 CLR 1

Abstract

This paper sets out the attempts by Queensland South Native title Services (QSNTS) to assist Traditional Owners to secure, at least, some recognition through the development and implementation of its Legal Services Strategic Plan (LSSP). It raises a number of best practice issues in authorising and progressing native title claims, identifies some of the issues that emerged in the implementation of the LSSP and examines the land summit processes, which were an integral part of the LSSP and which took place at Mitchell in October 2005 and Roma in June 2006.

Table of Contents

1. Introduction.....	1
2. Background to QSNTS LSSP- organisational instability and delays	2
3. Principles and objectives of the legal services strategic plan.....	4
3.1 Principles of the LSSP	5
3.1.1 <i>Litigation is the option of last choice.....</i>	<i>5</i>
3.1.2 <i>The law is now settled and failing amendment to the NTA will not change greatly regarding connection.....</i>	<i>5</i>
3.1.3 <i>The Native title process is unlikely to deliver substantial areas of land or water to the Traditional Owners of southern Queensland.....</i>	<i>6</i>
3.1.4 <i>The Native title process may deliver mechanisms through which recognition and substantial empowerment can be achieved.....</i>	<i>6</i>
3.1.5 <i>QSNTS is a service provider and not a funding provider.....</i>	<i>6</i>
3.2 Objectives of the LSSP.	7
4. Managing claimant diversity and sensitivities	8
4.1 Anthropological research and claimant sensitivities.....	8
4.2 The diversity of Applicants and their capacity	10
4.3 Developing legal and anthropological recommendations for the land summits.....	11
5. QSNTS Land Summits	11
5.1 Logistics.....	12
5.2 Use of Facilitators	13
5.3 Informed decision-making	15
5.4 Negotiating QSNTS recommendations.....	16
6. Post Land Summits.....	17
6.1 Building capacity through Incorporated Bodies	18
7. Review of the LSSP.....	20
7.1 Authorisation process issues	20
7.2 Certification issues.....	22
7.3 Deletion of reference to ‘Non Native title Processes’	22
7.4 Negotiation Frameworks and the Review.....	23
7.5 Regional Negotiations and Settlements	24
7.6 Future Acts Alternative Procedure.....	24
8. Conclusion	25

1. Introduction¹

In southern Queensland, every Aboriginal person was adversely affected by Government policies which removed Aboriginal people from their homelands and placed them on reserves and missions.

Those who were taken from their lands to settlements such as Barambah, Woorabinda, Taroom and Palm Island suffered the heartache and debilitating loss of being removed from their country. But those who were left behind equally suffered the loss of their family and communities. Although they had the benefit of remaining on their country, they enjoyed that benefit, often in isolation and, in many cases, clandestinely, in a land now populated by the *migaloo*², their beasts and their fences.

In 1992 when the *Mabo and Others v the State of Queensland and Others (No. 2)*³ decision was handed down, whilst a small number of Aboriginal people continued to live on their traditional countries, the majority lived in the city of Brisbane, or on the Aboriginal missions at Cherbourg or Woorabinda. Many saw the Mabo decision as their opportunity to achieve some recognition of their rightful place as the true owners of the lands and waters, and perhaps some reckoning of past wrongs.

However, as the processes prescribed by the *Native Title Act 1993 (Cth) (NTA)* which emerged out of the Mabo decision, unfolded, it became clear to the lawyers, politicians and others involved in the negotiations, that achieving recognition would not be easy and that there would be no reckoning. Many Aboriginal people saw native title as a means by which the Government and others could be held to account. The fact that this has not occurred, is, no doubt, a source of continuing frustration.

This paper sets out the attempts by Queensland South Native title Services (QSNTS) to assist Traditional Owners to secure, at least, some recognition of their native title rights and interests through the development and implementation of its Legal Services Strategic Plan (LSSP). It raises a number of best practice issues in authorising and progressing native title claims, identifies some of the issues that emerged in the implementation of the LSSP and examines the land summit processes, which were an integral part of the LSSP and which took place at Mitchell in October 2005 and Roma in June 2006.

¹ I would like to thank three anonymous peer reviewers for helpful comments on an earlier draft of this paper. Any errors or omissions remain my responsibility.

² 'Migaloo' is the Birragubba language word for 'white man', and also means 'ghost'. The term is widely used by Aboriginal people throughout Queensland and has been incorporated into non-Indigenous vernacular with the naming of an albino humpback whale seen off the Queensland coast as 'Migaloo'.

³ (1992) 180 CLR 1 (Mabo).

2. Background to QSNTS LSSP- organisational instability and delays

The NTA provided for the recognition and funding of ‘representative Aboriginal/Torres Strait Islander bodies’.⁴ In the Queensland South region, two representative bodies were recognised and received funding to represent Aboriginal people in native title processes including the authorisation and certification of claims: the Foundation for Aboriginal and Islander Research Action (FAIRA), which was a well established organisation, and Goolburri Land Council Aboriginal Corporation, which was established specifically for native title purposes.

In 2000, Goolburri became the sole Queensland South Representative Body Aboriginal Corporation (QSRBAC) under a new Federal Government scheme which emerged as part of 1998 amendments to the NTA. Under that scheme, ostensibly triggered by the decision in the *Wik Peoples v the State of Queensland and Others*, a new process aimed at clarifying claim application procedures was introduced.⁵

Prior to the 1998 amendments, individuals were able to make applications to the National Native title Tribunal (NNTT) claiming to hold native title rights and interests in their own right. In 1998, a threshold test for applications was introduced, with a procedural requirement that native title claim applications had to be made on behalf of a native title claim group.

There are two ways in which native title Applicants can demonstrate that they are duly authorised to make native title applications on behalf of a native title group. One is via a traditional or agreed authorisation process; the other is for native title representative bodies (NTRBs) to ‘certify’ that the claim has been properly authorised by all those who hold native title.⁶

That is, the NTRBs which had been given the role of legally representing the native title holders were also given the conflicting role of being gatekeepers for aspiring claimants. This is an ongoing dilemma in which NTRBs continue to be required to faithfully represent conflicting interests, and to determine which applications are ‘certified’ and ultimately, which groups get funded.

The Traditional Owners of southern Queensland, who simply want recognition and some reckoning of past wrongs, are also placed in an unenviable position. They are given little real option but to seek representation and funding from usually under-funded NTRBs, whilst running the risk that an adjoining or

⁴ Section 202(1) *Native Title Act* 1993 (Cth) (as enacted, since amended).

⁵ (1996) 187 CLR 1. In *Wik*, the High Court recognised that native title rights and interests could co-exist with the interests of pastoral leaseholders to the extent that in the event of inconsistency the native title rights and interests would yield to the pastoral interests. The Federal Government of the day declared that the decision had made the NTA unworkable and that in the interests of ‘certainty’ amendment was necessary. The Prime Minister announced a ‘Ten Point Plan’ which would underpin broad reform of the NTA and which was the basis for the 1998 amendments to the Act.

⁶ Section 251B NTA 1993 (as amended 1998).

overlapping claim will be prioritised over their own claim and that their claim will not progress.

The Traditional Owners in southern Queensland had no substantive legal work provided to them over an 11 year period between 1994 and 2005, apart from some early evidence taken in the far southwest and in the central part of the region.⁷

By mid 2004, 29 of the 30 native title applications in the Queensland South native title region were wholly or partially subject to overlap with at least one other claim. This led to a stalemate with the State of Queensland refusing to give overlapping claims priority in the allocation of its resources. The Federal Court was also expressing serious concern at the lack of progress in the region, with the constant prospect of matters being set down for hearing, if meaningful mediation could not be achieved.

In October 2004, the Federal Court held a regional case conference, at which three Registrars of the Court who have carriage of native title matters in the South Queensland region, sat jointly. The purpose of the case conference was to ensure that the NTRB and all Applicants were aware that the presiding Judges were dissatisfied with the delay and failure to resolve overlaps. This created an imperative for QSRBAC to find a solution to progress the outstanding claims.

At that time, QSRBAC was struggling under the weight of 30 active claims with a single part-time legal officer, no anthropological expert, and a government appointed financial controller. Under considerable stress, it reevaluated the source of the conflicts and overlaps in the region and presented the Federal Court with its 'Draft Legal Services Strategic Plan' (draft LSSP). The draft LSSP set out the way in which QSRBAC would go about delivering services to the Traditional Owners of the Queensland South region and sought time from the Court to execute the plan. Most importantly, the draft LSSP process enabled QSRBAC to establish a truly representative structure in which Traditional Owner groups could pursue their native title aspirations.

The QSRBAC then had its funding withdrawn on 22 June 2005. On 28 June 2005, the Minister for Immigration, Multicultural and Indigenous Affairs, funded the replacement Queensland South Native title Service (QSNTS) under s 203FE of the NTA. The QSNTS, like Native title Services Victoria and NSW CORP (formely New South Wales Native title Service) became a company limited by guarantee and referred to as a 'Native title Service Provider' (NTSP). This change from NTRB to NTSP has both positive and negative dimensions. On the one hand, it frees the organisation from broader political representative issues through the appointment of directors rather through an election process. On the other, the lack of connection to the

⁷ The reasons behind this lack of action are not fully understood. However, some factors may have involved a substantial quantity of future act work in the area which required considerable resources, a lack of consistent anthropological material, and non-adherence to internal work plan policies.

communities through such representation can mean that NTSPs are vulnerable to government manipulation and can have their funding withdrawn at short notice in a way which is not possible under the NTA.⁸

On 25 October 2005, the QSNTS adopted the QSNTS Legal Services Strategic Plan, which had undergone further development since it had been presented to the Court in October 2004.

3. Principles and objectives of the legal services strategic plan

The primary objective of the LSSP was for QSNTS to set out a pathway for Traditional Owners to see their native title processes to conclusion. It remains unforgivable that they should have been involved in native title processes for 11 years without any advancement of their claims.

The LSSP approach creates administrative sub regions (Western, Central and Eastern), introduces progressive stages of preparation for claims and associated actions and services agreements, and allocates funds on the basis of claim group strength and claim merit.

Three Stages are involved. Stage One involves satisfying Queensland Government requirements in ensuring the 'right people' have been satisfactorily identified for the 'right country'. Stage Two involves preparation of comprehensive connection materials and negotiations with the governments and other respondents to achieve negotiated outcomes. Stage Three involves litigated proceedings which are limited to claims which are able to satisfy the requirements of the Department of Families, and Housing, Community Services and Indigenous Affairs (FaHCSIA) for special funding.

Initial cynicism regarding the LSSP was understandable and expected and expressed by Registrars, lawyers and unrepresented claimants alike at the time of its unveiling in the Federal Court, on 5 October 2004. The most substantial hurdle QSNTS continues to face is the reluctance of the Traditional Owners, and other individuals and organisations, who were involved with the former QSRBAC, to accept that QSNTS will apply the strategic plan in a fair and apolitical manner.

Bearing all of the legal, political and social considerations in mind, it was necessary for the LSSP to clearly and unequivocally set out the principles upon which the document was founded and the primary objectives of QSNTS in the implementation of the plan.

⁸ Section 203AH NTA provides that the Minister must be satisfied that the organisation is not performing satisfactorily before withdrawing funding. Notice is required and procedural fairness and natural justice must be afforded.

3.1 Principles of the LSSP

The underlying principles informing the preparation of LSSP are expressed in the LSSP as follows and are discussed below:⁹

1. litigation is the option of last choice;
2. the law is now settled and failing amendment to the NTA will not change greatly regarding connection;
3. the Native title process is unlikely to deliver substantial areas of land or water to the Traditional Owners of southern Queensland;
4. the Native title process may deliver mechanisms through which recognition and substantial empowerment can be achieved; and
5. QSNTS is a service provider and not a funding provider.

3.1.1 *Litigation is the option of last choice*

Contested litigation will only be considered by QSNTS when all other reasonable avenues have been explored and discarded. Although it is recognised that the very act of filing a native title application in the Federal Court commences litigation, this principle reflects a number of realities. Firstly, native title rights and interests continue to exist until such time as they are determined by the Court not to exist or extinguished by inconsistent acts of the Crown. Therefore, even though native title rights and interests are often ignored in the absence of recognition of native title by the Court (or registration of a native title application), unless there is relative certainty that native title will be recognised by the Federal Court after hearing all the evidence, the potential loss must surely outweigh the gain. Secondly, the cost of having matters heard before the Federal Court is not within the budget of the QSNTS and requires a special grant from the funding provider, who at the time of the adoption of the LSSP was Aboriginal and Torres Strait Islander Services (ATSIS). ATSIS policies in relation to funding matters to contested hearing required there to be some issue of regional, state or national importance likely to flow from a decision by the Courts.

3.1.2 *The law is now settled and failing amendment to the NTA will not change greatly regarding connection*

Native title jurisprudence has become significantly limited in terms of recognising Indigenous societies and their laws and customs and consequent connection to country. While there have been some Federal Court decisions in the period since the LSSP was adopted which may make some adjustment to

⁹ Queensland South Native Title Services, *Legal Services Strategic Plan*, 2005, viewed 10 December 2007, <<http://www.qsnts.com.au/documents/LSSP.pdf>>, [19].

the interpretation of section 223 of the NTA¹⁰, the requirements for the proof of a normative system of laws and customs derived from that of the original inhabitants of the lands and waters is unlikely to change in the near future. That is, whilst there have been a suite of changes to the NTA, none significantly affect the requirements of proof and the NTA continues to force Indigenous people to fit their own concepts of land tenure into an imposed non-indigenous conceptualisation of what their societies and traditional laws and customs should be.¹¹

3.1.3 The Native title process is unlikely to deliver substantial areas of land or water to the Traditional Owners of southern Queensland

This principle is premised on the knowledge that in Southern Queensland two centuries of development, expansion and upgrades of leasehold to freehold has extinguished native title rights and interests in all but those areas of land that remain under pastoral lease, national parks and other Crown reserves. Even then, the only rights and interests that will be recognised over all but the parcels of unallocated State land, which are few in number and tiny in size, are non-exclusive rights to access, hunt, fish and gather, and perhaps a right to care for sites. The subtext of this principle is that even though the native title process may not deliver land justice, it nevertheless can be used to achieve a range of other outcomes.

3.1.4 The Native title process may deliver mechanisms through which recognition and substantial empowerment can be achieved

This principle reflects the proposition that every traditional owner group should be able to expect some minimum outcome from the native title process. Most significantly, core outcomes should include recognition as Traditional Owners and the provision of a social and political platform from which other outcomes may be leveraged. Ancillary outcomes from native title processes might include: capacity development, social and corporate infrastructure, economic development, real property and political representativeness.

3.1.5 QSNTS is a service provider and not a funding provider

This is a statement of fact rather than a statement of principle but it underlines a number of subsidiary issues. The QSNTS exists to provide services to people

¹⁰ *Bennell v Western Australia and Others* 230 ALR 603 ; *Risk v Northern Territory of Australia* [2007] FCAFC 46 ; *Harrington-Smith on Behalf of the Wongatha People and Others v State of Western Australia* [207] FCA 31

¹¹ Note: The authors hold the view that the present state of the law regarding native title and the requirements for proof of its continued existence is inconsistent with international jurisprudence and unsustainable in the long term. A question is thus raised as to the effect of ILUA and other settlements in which native title rights and interests are surrendered in the belief that the existence of native title could not be proved, when, under amended provisions, proof was or may have been possible.

and is not a funding body. Many Traditional Owners will rightly point out that self determination is inextricably bound to their capacity to control their resources. However, this truism is not to be understood to mean that control of one's resources is the only means by which a community can develop and express itself in an autonomous manner. There are many services which are provided to Aboriginal people outside of the native title context. Traditional owner groups are often unaware of alternative processes and resources that are available to them and equally of the limitations of the native title process.

3.2 Objectives of the LSSP.

The LSSP also sets out the primary objectives of the QSNTS to:

- (i) work with the Traditional Owners of southern Queensland to achieve the best results possible within the existing legislative framework and the available resources;
- (ii) ensure that the available resources are allocated between claim groups in a fair and equitable manner;
- (iii) ensure that QSNTS service delivery process is transparent;
- (iv) ensure that the Traditional Owners of southern Queensland are aware of the policies upon which decisions regarding the management of Native title will be made by QSNTS;
- (v) ensure that the Traditional Owners of southern Queensland have access to information and understand their obligations and responsibilities arising from their participation in the native title process; and
- (vi) work with the Traditional Owners of southern Queensland to ensure any social infrastructure flowing from the native title process is complementary to the Traditional Owners' broader aspirations.

Raising awareness of and subsequently developing support for the LSSP has been one of the most crucial factors in ensuring its effectiveness. QSNTS distributed copies of the LSSP to all Applicants for claims in its area on numerous occasions. The LSSP has also been reinforced during QSNTS land summits, Applicant workshops and authorisation meetings where Applicants have been consistently reminded about QSNTS policies, the manner of implementation of the strategic plan and the obligations of claim groups.

QSNTS continually seeks and takes into account the views of the Traditional Owners in an ongoing review process. The core issues of fairness, equity and transparency which are highlighted in the objectives of the LSSP to a large degree have been addressed. As the results start to flow, the Applicants understanding of and respect for the adherence of QSNTS to its policies has been enhanced.

4. Managing claimant diversity and sensitivities

The immovable pillar in the whirlpool of law and policy which describes native title in southern Queensland has been the position of the State of Queensland. Development and implementation of the LSSP took place in a policy context where the Queensland Government would not give priority to resourcing applications that are the subject of overlaps, thus giving it substantial control over the matters in which it would engage in substantive negotiation. The impact of the policy on Traditional Owners in the Queensland South region, at the time of development of the LSSP was that, with the exception of the Quandamooka Peoples (North Stradbroke Island) claim, no claims had been able to commence substantive negotiation because all were overlapped.

QSNTS's LSSP took these issues into consideration, including the necessity to reassess and resolve overlaps, and set out to address them. One of its more innovative approaches, which is the focus of discussion below, concerns the role of anthropologists. Others involved the wide and public distribution of the LSSP, as noted, including its presence on the Federal Court website, the highly structured nature of the QSNTS sub-regional land summits, and the requirement that each claim group have an incorporated body whose membership reflects the claim group description.

There is a need in all of these to manage a number of claimant sensitivities particularly concerning claimant identities and connection to country and the diversity of capacity amongst claimants.

4.1 Anthropological research and claimant sensitivities

In Stage One of the QSNTS LSSP, each subregion is assessed to determine the baseline anthropological evidence which supports the claims of families and claim groups who have the strongest prospects of proving native title rights and interests, having regard to all the conflicting evidence.

Anthropologists are contracted by QSNTS to provide baseline reports and to make recommendations to QSNTS as to the 'right people' and the basis upon which claims should proceed. They are not guaranteed substantive contracts beyond these preliminary studies, thereby bringing some objectivity to Stage One of the LSSP. They were also given access to anthropological information and evidence which was available for neighbouring groups and asked to reconcile any conflicting evidence.

This approach, which differs from connection reporting requirements governed by the *Evidence Act 1993* (Cth) and rules applicable to expert evidence in the Federal Court, was met with reluctance by some anthropologists who were uncomfortable with what they saw as a shift in their loyalties from the claim group to the NTSP. The process did not sit comfortably with their view of anthropological practice requiring the building of relationships with a claim group as essential to gaining access to closely guarded information. Some thought that to write a report challenging the weight that can, or should be

attached to the information they had been given, would destroy that trust relationship.

However this was not the intention of the process. QSNTS' aim was to ensure that overlapping claims were reassessed, having regard to all conflicting evidence, with a view to identifying and articulating the relative strengths of the claims given the available evidence. Despite QSNTS's explanations of these intentions to both anthropologists and claimants on numerous occasions, claim group identification and boundary rationalisation caused great heartache in a number of instances, for both.

The dispersal of groups following dispossession created the imperative for the recording and validating of oral histories given. In many cases, it was the first time that the 'authenticity' of claimant oral histories had been assessed against written records or oral histories from neighbouring nations. Although a number of claimants in southern Queensland may not have lived on the country for which they had made native title applications for more than a generation, they continue to rely upon the stories told to them by their parents and grandparents in maintaining and asserting their connections to their country. A number of these Elders are now deceased and there is limited capacity for claimants to clarify relevant information by referring back to them. Further, deviation from the stories told by the old people is, for many of the current generation an act of disrespect.

An additional layer of confusion arises because, as is well documented, by the latter part of the 19th century, many Aboriginal people were moving around the countryside seeking work or alternatively escaping from frontier brutality and genocide. Many of the parents or grandparents of members of claim groups had also already been moved off their traditional countries onto stations or into town camps (*yumbas*), even before being removed to missions such as Cherbourg and Woorabinda.

Whilst oral and written records often show claimant ancestors as having been born at or coming from such stations or town camps, and a number of claims to country are made by reference to such places, this can be misleading. It is challenging and painful for a claimant who has been involved in a native title claim for ten years and self-identified as a member of the native title group or 'nation' associated with such areas, to be told for instance, that, whilst their grandmother may have been born within the claim area, the 'country' of her mother, through which assertions of claims are being made, was in fact 400 kilometres 'up the road'.

There is of course scope for adoption in determining the claimant group. But this is a factual matter depending on whether the group had laws and customs relating to the adoption of people from other nations, whether such laws and customs equip descendants of the adoptee with the right to inherit native title rights and interests, and whether there is evidence of an adoption having occurred.

These multiple layers of relationships and connections to country are demanding realities of the native title process in southern Queensland where removals were so pervasive. They challenge anthropological interpretations, give rise to conflict, and raise many problems for QSNTS in dealing with what can be highly emotionally charged issues for claimants.

4.2 The diversity of Applicants and their capacity

NTRBs and NTSP's should not second-guess or undermine the Applicants from whom their instructions are taken and it is important that the motivations of Applicants and the influences upon them are understood. The ability of Applicants or Steering Committees to function consistently as effective decision-making groups will be their chief asset during a claim process. The QSNTS experience has been that there are often three broad types of Applicants in claims, which are described below. These descriptions are to be understood as objective generalisations rather than in terms of any value-laden appraisals.

The first type consists of the older people who have had limited formal education and little or no involvement in the Boards of Management of Aboriginal organisations, but who are appointed as Applicants out of respect for their seniority and or knowledge of law and or sites. Such Elders have generally been happy to see that something is being done to progress their native title claims, but often don't fully understand the details of the process.

The second broad type of Applicant might be described as including those who, like the Elders have limited formal education, but who have also been exposed to a range of community politics and have developed a 'street sense' that equips them, to varying degrees, to get the most out of the native title processes as they are entitled and often expected to do. This second group can be further categorised into two subgroups: those who figure out how they can work with the program and maintain some of the benefits already harnessed under the previous 'regime', and those who figure out how they can stifle native title processes.

A third type of Applicant can be conveniently categorised as including the younger Applicants who have a good level of formal education and clearly see that collaboration and negotiation within the LSSP process is the most effective and efficient way forward for their claim. This group analyses the LSSP seeking ways of manipulating the system for a range of ends. It is often combative, but is also progressive and not obstructionist.

The challenge for QSNTS is working with and supporting such a variety of capacity and skill levels within a single group of Applicants, or Steering Committees and taking into account their sensitivities. This is often demanding and sometimes confronting. Nevertheless, when a group of Applicants or a Steering Group managing a claim successfully incorporates representatives of each of the groups described above, their combined skills can be very productive.

4.3 Developing legal and anthropological recommendations for the land summits

In preparing the LSSP, consideration was given to the way in which the claim groups would be provided with the opportunity to consider and act upon QSNTS anthropological and legal recommendations to ensure their best prospects of success.

It was decided to hold a series of land summits at which the recommendations could be put to Applicants for their consideration, following which they would be able to negotiate with the Applicants in neighbouring claims to resolve any conflicts. Applicants would then be required to provide instructions to QSNTS concerning the progression of their claims including the resolution of overlaps.

The anthropological recommendations were focussed on two primary issues: membership of the claim group and the boundaries of claims. They were based on, as noted; all available evidence including documents relating to neighbouring claims to ensure that contradictory evidence was taken into account. In almost all cases, the anthropological recommendations concerning claim group descriptions, overlaps and claim boundaries, were consistent with those which were made for neighbouring areas. QSNTS also required that assertions of ‘shared country’ had substantive evidence before they formed part of any recommendations.

The legal recommendations were developed by the QSNTS legal team. Their primary focus was to identify fundamental flaws in the applications and to identify technical issues if amendments were required.

Recommendations put forward by the anthropologists and the legal team were consecutively and separately considered and approved by the CEO and Director of QSNTS.

5. QSNTS Land Summits

At the time of writing, QSNTS had held two land summits at which similar processes to those described below were followed: the Western Sub Region Land Summit at Mitchell in October 2005, and the Central Sub-Region Land Summit at Roma in June 2006. The purpose of the first round of QSNTS land summits was to inform the Applicants of the current status of their claims, provide them with QSNTS recommendations, allow them to negotiate from an informed position to progress their claim, and finally, to give instructions to QSNTS as to their desired outcomes for their claim. It was clear in many cases, that, should the QSNTS recommendations be accepted, this would require amendments to existing applications, which would, in turn, require authorisation meetings.

Given that this was QSNTS’s first meeting of its kind, and in the light of the history of failure of the former organisation (QSRBAC) in the provision of relevant services to Traditional Owners, there was much confusion, scepticism

and criticism from all quarters - not just from the Aboriginal community. By the time the second summit was held, a range of stakeholders in the native title process had become supportive of the LSSP, even if many Applicants were still wary.

However, QSNTS's clear and consistent approach to the land summits supported a transparent and informed process that enabled space for the development of trust between QSNTS and Applicants. The land summits also provided an invaluable opportunity for the building of claimant group cohesion.

A major factor contributing to the success of the summits was the detailed planning and preparation they entailed. Significant time and effort went into the preparation of not only the content of the meetings, but also of their logistical requirements. The summits were also highly structured and closely managed.

5.1 Logistics

The LSSP encompasses not only legal, anthropological and social considerations but also involves a number of critical logistical requirements that need to be addressed. The location of meetings and how they are planned and run have a major bearing on how Applicants react to and are engaged in the LSSP processes. In preparing the land summit, much attention was paid to the emotional and physical needs of claimants as well as to substantive issues.

At the time of the first Western Subregion Land Summit (October 2005), it was difficult to secure a suitable venue in any small town in Western Queensland given that QSNTS was proposing to bring together about 100 Aboriginal people, many of whom had longstanding antagonisms between them. It was essential to the process that the venue had sufficient space, facilities and break-out areas. QSNTS thought it not only important to bring groups together, but to also have areas where groups could meet separately with lawyers, anthropologists, facilitators, administrators, staff and family members to discuss claim matters. Eventually, the Mitchell Sports Complex, which offered these facilities, was chosen. There was, however, some conflict and uncertainty around who would deliver the welcome to country and one of the many lessons learned at Mitchell was to ensure that future summits were held on 'uncontested' country to avoid disagreements about this.

A crucial factor was collating Applicants' bank account details which enabled the payment of travel allowance, the amount of which was determined by QSNTS. The timing of payments was critical, and made more difficult by the fact that the payments were processed in Canberra, by the financial controller and that some banking institutions took longer than others to process payments. It was important that all payments were received prior to the summit to facilitate applicant travel, particularly for those who were travelling long distances.

The importance of serving quality wholesome food to claimants while they are making difficult decisions in a venue that is comfortable, accessible and without distractions cannot be overestimated. QSNTS's policy to pay travel allowance for authorised Applicants only, was accompanied by the strong message that everyone was welcome and that if non-Applicants attended; they would be provided with meals. At the first summit, around 45 Applicants were expected, but some 120 people were catered for (according to the cook who washed all of the plates!).

Leaving small country towns 'intact' after such huge meetings is of particular importance to QSNTS. The towns were about to be inundated by some 200 people which constituted a significant impact. It was important for the organisation to be seen to be acting responsibly. QSNTS engaged an Indigenous security firm who contacted local police and remained on 24 hour call to ensure people were cared for and to provide transport if needed. Although a number of Applicants have raised concerns about the presence of the security guards, there have been no incidents or arrests at any of the land summits and QSNTS is now welcomed back to these towns. As anyone who has attended previous meetings held by QSRBAC in south western Queensland can attest, the odds were against such a pleasing outcome.

Claimants' health was of major concern and the local Murri Health Service was contacted prior to the summit to request its attendance. The Service provided health checks for the many Traditional Owners arriving from out of town. In this way, people were able to easily access health care services, and medications if necessary.

Finally, in preparation for the second land summit, QSNTS having realised the value of memorabilia, provided QSNTS Land Summit T-shirts and caps to summit participants. Such symbolic memorabilia marks the summits as a critical moment in the advancement of claims. They are also important identity markers, a source of pride and of shared experience, and help to build group cohesion.

5.2 Use of Facilitators

Early in the development and design of the land summits, QSNTS realised that Applicants would be asked to digest substantial amounts of information, undertake a lot of work, and make significant decisions with long term implications over the short period of time of the summits (three days).

It became apparent that each group of Applicants would need the assistance of facilitators who understood the LSSP and native title processes. Facilitators could assist Applicants in gathering necessary information, present groups with QSNTS's recommendations and facilitate discussions around them, make arrangements for negotiations with their neighbours, and record group responses to QSNTS recommendations and the details of negotiations between neighbouring groups

The facilitators for the first summit were hand picked by QSNTS for their expertise and skills and their capacity to understand the process and communicate with Traditional Owners. They came from Canberra, Sydney, Darwin, Bourke and Brisbane. Some were lawyers; others were former NTRB officers; still others were Traditional Owners from other countries, and anthropologists. All were provided with comprehensive briefings on QSNTS's LSSP, after which, they were introduced to the Applicant groups they would be working with.

At first, a tension existed between the roles of the facilitators as assistants to and advocates for their assigned Applicant groups and their roles as 'messengers' in delivering often unwelcome and complex messages to and from the group. However, the integrity and impartiality of the facilitators meant that they acquitted themselves well, and QSNTS was surprised at the relative ease with which Applicants accepted the multiple roles of the facilitators. Applicants quickly moved on, putting their facilitators to work. There can be no doubt that every facilitator at a QSNTS land summit has well and truly earned his or her keep.

The use of facilitators proved to be a 'masterstroke' of the land summit process. Whilst having individual facilitators for each group may be seen to be an extravagance, QSNTS has come to the conclusion that the land summits would not work without highly skilled facilitators on hand to assist each group of Applicants. In particular, it was during the negotiations between neighbouring groups that their skills really came to the fore. They were able to identify what were often underlying issues and ensure that the opinions of individual Applicants with political prowess did not overwhelm the views of others in the negotiations, thus guaranteeing that outcomes were owned by the group.

At the second summit, QSNTS engaged only Indigenous facilitators, briefing as many of those who had participated in the first summit as possible. Where they were unavailable, younger tertiary graduates with relevant skills filled this role extremely well. The facilitators were provided with comprehensive written briefings prior to the summits, and further briefings on site the day before the summits.

During the course of the summits there were many occasions on which the Applicants challenged the anthropological recommendations. The presence of the anthropologists who made the recommendations meant that Applicants could ensure they had a clear understanding of the results of the research, the reasoning behind their recommendations and could discuss the findings with them. Though some were not convinced of the bases for their recommendations, many were. Those who were dissatisfied with a recommendation were invited to submit further documentation upon which QSNTS undertook to review the recommendation. Whilst numerous people sought review of recommendations, none provided QSNTS with any additional information.

5.3 Informed decision-making

One of the key elements of the QSNTS LSSP and associated processes is the adherence to the principles of transparency in decision making. The QSNTS has found that once Applicants have understood the process set out in the LSSP at the Land Summits, they have been generally satisfied with the process. QSNTS recognised that the more accurate and detailed the information about the process was, the more robust and reflective of claimant group needs, decisions would be. QSNTS was also concerned that the principle of informed consent should apply to decisions made by Traditional Owners about matters affecting their native title rights and interests and that this should not be mere rhetoric. It was also concerned that the principle would apply to government and developers, and other parties dealing with traditional owner groups including itself.

QSNTS determined that, within available resources, it would provide the Applicants with as much information as possible over the course of the land summits. Although, as noted, QSNTS had given copies of the LSSP to all Applicants in the claims in the Queensland South area on numerous occasions, it was not surprising, that few Applicants had read it before coming to the sub regional Land Summit. In the first instance, the Summits provided comprehensive briefings to participants about the LSSP and the processes it details, and provided opportunities for Applicants to ensure that they understood at least the central pieces of the policy.

QSNTS also provided a range of other information to the summits including:

- a detailed explanation of the LSSP;
- a clear explanation from the Federal Court of its view of the process and the status of the claims;
- information from the NNTT about the native title process, its view of the requirements at law to prove the existence of native title rights and interests, and the extent of extinguishment throughout the region (based on current tenures);
- evidence supporting a way forward from QSNTS on the appropriate claim group descriptions and boundaries;
- legal and anthropological advice; and
- expert digital maps showing current and QSNTS recommended claim boundaries.

The use of technical experts was also helpful in explaining information to the Applications. Additionally, Federal Court Registrars and NNTT case managers and mapping experts were invited to attend and their assistance proved extremely valuable in breaking down and explaining the native title processes so that QSNTS staff and Traditional Owners could discuss what needed to be done to progress claims. The presence of a Federal Court representative was

particularly useful because he was able to deliver strong messages about the view of the Court in relation to the progression of claims.¹²

At the second land summit, technical information was again provided by the Court and the NNTT, and added assistance was provided by having both the NNTT and an external consultant digital mapping expert present. These experts were able to quickly alter boundaries in line with the discussions and agreements and easily print fresh maps off to keep abreast with the discussions between and within Applicant groups. A range of maps could be overlaid marking pastoral properties and towns, claim overlaps, current tenure, watercourses and satellite images and proved to be a valuable tool in assisting the overlap mediation discussions.

At the second summit, the facilitators who had been engaged for the first land summit, realising the value of the digital mapping tools projected onto a large screen, jumped at the opportunity to book their respective groups in for mapping sessions as early as possible.

5.4 Negotiating QSNTS recommendations

At the end of the first day of each of the land summits, Applicants were provided with relevant copies of QSNTS's legal and anthropological recommendations pertaining to the way in which QSNTS thought their particular claims could be best managed. After they had been taken through the recommendations in detail by the facilitators (with the variety of experts assisting as necessary) they were asked to consider the issues. The recommendations were delivered late on the first day of the three day summit, so that their impact would not dominate other information sessions and be distracting. Applicants were also encouraged to discuss the recommendations amongst themselves overnight, following which they had one and a half days to negotiate with their neighbours if they chose, before responding to the recommendations.

As expected, in most cases, the Applicants had numerous questions of QSNTS arising from the recommendations. Some of the questions related to the legal recommendations, but most were directed at the anthropological recommendations. In most cases where recommendations resolved overlaps by adjusting claim boundaries, it was necessary to explain the methodology of the anthropological assessments in detail.

The time required for negotiations varied with all groups taking the negotiations very seriously. A number of groups ran out of time and were still negotiating at 5pm on the Sunday at the conclusion of the summits. For those groups, further meetings were scheduled and held and are discussed below. Other groups had completed their business and left the summit by lunch time on Sunday. It was notable that many of the issues required negotiations between Applicants and QSNTS, itself, as much as they required negotiations between neighbouring

¹² Deputy District Registrar Robson attended on behalf of the Federal Court of Australia

groups, highlighting the mistrust that had been created through past actions or inactions on the part of the NTRB.

Some groups tried to strike deals with their neighbours that were simply not sustainable on the anthropological evidence provided. They were informed that the deal they were trying to conclude was not something the QSNTS could support and in that respect they would be ineligible for consideration of Stage Two prioritisation and servicing. In a number of cases, Applicants involved in an overlap refused to accept the relevant recommendation. This was expected and a compromise was reached that further targeted anthropological research would be undertaken, which, if resulting in any revisions to the original research, would see claim boundaries being amended accordingly.

Applicants were given the option of taking the recommendations away from the summit and consulting with their claim groups before responding to them. However, many already had been given the authority to sign off on written responses by the groups they represented and were keen to progress their claim and have clear outcomes from the summit. Those who did take the recommendations back to their claim group were given a set period to provide QSNTS with a written response.

6. Post Land Summits

A major contributing factor to the success of the LSSP, and one which is often over-looked has been QSNTS's timely follow-up on Applicant instructions and requests. In the Western Sub Region, all the existing overlaps have been removed by amendment of native title applications as necessary, and all those applications requiring amendment have now successfully passed the native title registration test. Consistent follow-up has continued to build the mutual trust which had already started to form by the end of the three day summit. QSNTS has also continued to convey a clear consistent message of transparency, support and informative advice to progress claims forward.

In some instances, it was necessary to conduct some post land summit mediations where disputes were not able to be resolved at the lands summits. This consisted of bringing the Applicants in each of the claims to Brisbane, along with their facilitators from the summits if possible and utilising Federal Court or NTTT resources in employing external and independent mediators. In some cases further research was undertaken to isolate particular issues or areas of conflict. Some mediations were successful; others were not. The Applicants were again advised that, while boundary disputes remain, the groups were ineligible for funding to prepare the comprehensive connection materials which are required by the Queensland Government. For some at least, the prospect of being struck out appeared to provide an incentive to work to resolution.

One of QSNTS's key concerns in preparing the first Land Summit was whether Applicants would refuse to attend and what to do if this was the case. The answer to this question came in a very short and sharp reply from the Federal Court at a regional case conference held in Cunnamulla in April 2006. The

Court appears to have taken the view that failure of Applicants to attend the Land Summit would be seen as an indication that they were not prepared to mediate their overlapping claim issues. As a consequence, matters would be taken out of mediation and programming orders made.

As it happened, those Applicants who did not attend the first Land Summit were represented by legal representatives other than QSNTS. They were unable to meet the programming orders and their claims were consequently struck out. While the result may seem harsh, the alternative was that unnecessary overlaps would continue to impede the progression of claims over which the Applicants and QSNTS had agreed to a course of action at the summits which would allow all claims to move forward. It is also worth noting that, in the absence of the LSSP, the Court would have moved to strike out the overlapping applications in any event.

The Applicants in every native title determination application are authorised to make certain decisions regarding the management of the application. The land summits also created an opportunity to obtain legal instructions as to how to proceed with the claims and to obtain instructions to convene authorisation meetings where appropriate. It is doubtful whether in the absence of such instructions from the Applicants that their legal representatives could convene such an authorisation meeting.

The support provided to Applicants following the summits has also created an element of reciprocity between QSNTS and Applicants. To some extent, the existence of the LSSP allows the QSNTS to place the onus back onto the claimants to get their house in order. However, this shifting of the onus can only occur in the understanding that QSNTS will provide the Applicants with a degree of assistance to progress claims, following the summits.

The success of the LSSP also depends upon the support for and the level of trust between QSNTS, the Federal Court and the Land Branch of FaHCSIA in addition to positive relationships between QSNTS and the Applicants. There have been instances following the summits, where complaints have been made to agencies other than QSNTS by people with a range of self-interested agendas. These bodies have, to their credit, and to the best knowledge of QSNTS, redirected such concerns to the QSNTS to be dealt with according to its LSSP.

6.1 Building capacity through Incorporated Bodies

The need for and requirement to have an incorporated body which accurately reflects the negotiated claim group description before any group is eligible for funding from QSNTS is a threshold requirement for QSNTS' LSSP.

The philosophy underpinning such a requirement is that the capacity development that takes place on the way to the resolution of the native title proceedings is perhaps the most enduring outcome of the native title process. Involvement in establishing a corporation and settling upon well thought-out

and agreed decision making processes will also ensure that the claim group remains cohesive and that decisions are made according to a well planned process and are appropriately integrated into the structure of corporations. It can also ensure the inequities present in any other corporate structures with which members of the claim groups might be involved are exposed and rectified at an early stage.

In many cases, the most that claimants can expect from native title processes is the recognition of rights and interests that members of the claim group are already exercising. The income that is derived from native title and cultural heritage processes under the *Aboriginal Cultural Heritage Act 2003* (Qld) is also, in most cases, minimal, and will have little impact in improving the economic and social conditions of the claim group.

The capacity to operate a corporate entity that reflects the interests of the native title group and its claims to nationhood can facilitate lasting change. Such a corporation can manage its own cultural heritage matters, manage trusts into which compensation payments are made, hold shares, and be the party which represents the Traditional Owner interests in regional intra-Indigenous and external agreements. Additionally, it can hold land, engage in commercial contracts, participate in training schemes and, where required, be the registered native title body corporate under the NTA.

QSNTS aims to assist in the development of a network of incorporated bodies representing native title claim groups while remaining sensitive to the issues that accompany such an aim. There is a range of capacity amongst the groups. Some are already well equipped to use their nation status to drive political, social and economic change, and others may be dependent upon outside assistance for many years to come. There are a number of claim groups in which, the decision making capacity and skills require considerable improvement to arrive at sustainable unassisted self management. In others, the skills required to manage the business of an Indigenous nation are held by only one or two individuals within the group.

Whatever the future holds for the individual native title applications in the region, the future of these Indigenous nations is inexorably bound to the ability of each nation to manage its own affairs. This requires the development of appropriate representative structures within each claim group that allow for ongoing skills development and succession planning. QSNTS places a very high priority on the development and maintenance of effective decision making skills and systems within claim groups.

This is achieved by ongoing QSNTS Applicant workshops in which long term strategic goals are identified by each group. At these workshops, governance skills are also developed with assistance from the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations; financial options are considered with assistance from Indigenous Business Australia; and land acquisition programs are settled (with assistance from the Indigenous Land Corporation).

The most important factor is ensuring that the decision making processes match the rights and interests within and dynamics of particular claim groups. It is critical that corporations are designed with sustainability in mind rather than as simply meeting legislative and regulatory requirements.

7. Review of the LSSP

QSNTS's LSSP makes provision for review and a number of issues present themselves for particular consideration and in light of amendments to the NTA. These include:

- The authorisation process
- The use of the newly acquired certification functions
- The removal of reference to non-native title outcomes
- Frameworks for negotiations given the increased powers of the NNTT
- Opportunities for regional negotiations and settlements
- Alternative Procedure mechanisms for future acts

7.1 Authorisation process issues

QSNTS' review of its authorisation policy will include some discussion regarding the role of the authorisation process. At its most basic, the authorisation process is about ensuring that an application for a determination of native title is made on the instruction of those in whose name the determination is sought.

However, the reality of the dispersals of claimants across Queensland and beyond makes this a complex process. It is impossible to ensure attendance of all members of a native title group at authorisation meetings. Invitations to the descendants of the original inhabitants, no matter how they are delivered, and regardless of the degree of assistance provided to claimants to attend meetings, will inevitably result in the attendance of only a random sample of the group. Even if all native title holders were in attendance, Applicants are normally selected from the people present by nomination and election from the floor of a meeting. Opportunities to be an Applicant thus depend on a range of variables including the location of the venue and the limits on an individual's financial situation to attend.

Representation is also problematic in that Applicants do not always see themselves as representing the whole group. When an NTRB advertises a meeting, it will get a decision at the meeting that all the families present are to be represented by the named Applicants. However, in practical terms, once Applicants have been appointed their decisions are often influenced by perceived and real obligations to represent their own family's interests. Competition between families can also result in decisions being based upon the interests of a particular family rather than on the interests of the group as a

whole. The election of representatives can also be influenced by financial self-interest when cultural heritage rights and benefits are determined by the registered claimants who receive fees for cultural heritage clearances.

That is, authorisation is a political process which inevitably unfolds along family lines where, although the rhetoric is that Applicants should represent the whole claim group, this does not always occur. This is unsatisfactory and unrepresentative. Neither is it transparent, nor traditional. The result often is that the Applicants, as a group, require ongoing conflict management. Whilst representative processes may inevitably be political processes, this is not necessarily the case for authorisation processes which can be made more effective by removing elements of randomness. Achieving this through evenly applied regional policy built around a process that is as specific to each claim group, as the authorisation process necessarily is, is no mean task.

One viable alternative would appear to be the introduction of a much more heavily resourced preliminary process whereby information sessions are provided at a number of central locations to smaller family groups. Each family or descent group could be briefed and supported to put forward its views about how the decisions ought to be made in the knowledge that travel allowance will not be paid, and that meetings will be held on country wherever possible.

At present section 61 of the NTA is taken to mean that a native title 'applicant' must be one or more real persons. In our view, it would assist if s 61 was amended so that the 'applicant' claiming on behalf of the claim group may be *either* a single member of the claim group *or a corporation representing the claim group*. This would result in the directors of the corporation holding the decision making powers in accordance with its constitution, and eliminate the need for two representative groups - the Applicant group and the governing committee of the corporation. It would also mean that representatives of any corporation could be removed or replaced with greater ease (for example, by removal at an general meeting, or for breach of the rules of the corporation) than is currently the situation with the removal of Applicants under the NTA requiring Applicants to meet the requirements of s 66B of the NTA.

Other aspects requiring consideration in the review concern the fact that the LSSP currently provides that all meetings to authorise native title applications should be held 'on-country' wherever possible. This policy taken in conjunction with the policy of not paying travel allowances for authorisation meetings raises a number of issues.

Firstly, whilst the cost of authorisation meetings becomes exorbitant if travel expenses are paid, this has to be balanced against the fact that many of the Traditional Owners are welfare recipients and have no capacity to meet their own travel costs to go to distant locations for meetings. Secondly, and assuming travel expenses are not going to be paid, the effect of holding the authorisation meeting anywhere else but *on country* could disadvantage those Traditional Owners who live *on country*. This is particularly so where a group decides to determine Applicants by majority vote and the Traditional Owners

living on country are outnumbered, even though in many cases it will be those very people who provide much of the evidence of connection.

There are means by which the impacts of the QSNTS policy on authorisation meetings can be ameliorated and by which decisions are made which could assist Traditional Owners in determining effective decision-making processes. One of the outcomes of pre-authorisation workshops could be that, only one representative of each family need attend the authorisation meeting. Another alternative may be holding authorisation meetings with one or two remote locations connected by video-link. Holding the meeting in three locations at the one time has some logistical difficulties, but with a Chairperson chairing the meeting *on country* and a facilitator directing proceedings at each of the remote locations this alternative could prove to be productive.

7.2 Certification issues

The review of the LSSP will need to consider the capacity of QSNTS to ‘certify’ applications and Indigenous Land Use Agreements (ILUAs). The use of certification powers by QSNTS may allow Traditional Owners to avoid the present vagaries in the interpretation of the registration test by delegates of the Registrar of the National Native title Tribunal.

Section 203BE(2) of the NTA provides

- (2) A representative body must not certify under paragraph (1)(a) an application for a determination of native title unless it is of the opinion that:
- (a) all the persons in the native title claim group have authorised the applicant to make the application and to deal with matters arising in relation to it; and
 - (b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group.

In order for an NTRB or NTSP to exercise the certification power it must therefore be satisfied that the native title claim group has authorised the making of an application in accordance with s 251B of the NTA. This will in turn require recourse to and reliance on anthropological or other research reports to provide opinions as to whether a traditional decision making process exists and what would constitute the process.

7.3 Deletion of reference to ‘Non Native title Processes’

Having completed the first round of land summits and the post land summit mediations much of the difficult work in setting the foundation of the claims has been done. The end result should be that each claim has an identifiable claim group with identifiable rights and interests over specific lands and waters,

and that the claims are free from overlap except in those places where shared country can be proven to have existed.

Once the amended claims have been registered, there would appear to be few reasons for keeping those proceedings which are not funded before the Court. The act of filing carries with it the obligation to actively pursue proceedings.

The system which has existed to date has accommodated lengthy delays in proceedings while matters wallow in mediation. The delays in progression to determination do not however, remove the need to provide regular reports to the Court on the progress of the matters. In a region such as the area covered by QSNTS where there are approximately 29 active native title determination applications, the provision of reports on a standard six month cycle will require an average of one report per week. Unless a claim is actively progressing towards a litigated outcome, the only other reason for keeping a claim before the Court is to protect the area from claims by competing native title parties, who may attempt to involve themselves in responses to future act notices, cultural heritage matters or the management of natural heritage.

One means of overcoming this fear of ‘claim jumping’ is for QSNTS to assist properly formed claim groups to undertake any necessary proceedings to protect their lands and waters from improperly constituted claims. This might involve assisting groups to enter into an Memorandum of Understanding with the State of Queensland. Such a Memorandum might state that the State recognises that the claim group are the descendants of the original inhabitants of the area and, that subject to certification by QSNTS of the appropriateness of the claim group description, it will oppose application from any other groups for registration of either a recognised cultural heritage body pursuant to the *Aboriginal Cultural Heritage Act 2003* (Qld) or registration of any native title application.

7.4 Negotiation Frameworks and the Review

The review of the LSSP will provide QSNTS with an opportunity to engage with the State of Queensland to identify and agree upon some frameworks for negotiations.

The present situation where the State advises NTRBs and NTSPs that it will deal with matters on a case by case basis is inadequate. NTRBs and NTSPs set out in great detail their work plans for each claim yet the State is not required to publicly set out its priorities for the year. In the Queensland South region, the detailing of State policy and procedure regarding the negotiations of claims would be of great assistance in advancing the LSSP.

Such arrangements may include agreement as to the type and form of information the State requires to be satisfied that the Applicants have a reasonably arguable case and a checklist of issues against which the Applicant’s expert reports may be measured and peer reviewed. The State would only need to be satisfied that a reputable anthropologist had formed the necessary opinion.

In such circumstances, a time frame of around 28 days might be set for the State to consider the checklist and indicate its willingness to enter substantive negotiations. The substantive negotiations could be bound by an agreement to rely upon the current tenure layer in determining whether native title had been extinguished unless there are particular parcels of land about which the State wishes to undertake historical tenure searches.

It is difficult to see how the State could insist upon relying upon its *Guidelines to the Preparation of a Connection Report* when confronted in mediation before the NNTT with a proposal to conduct mediation in accordance with the above processes.

7.5 Regional Negotiations and Settlements

Assuming a group of claims has similar land tenure issues relating to extinguishment there would be much to be gained by taking a regional approach to negotiations. This 'regional approach' would very much depend on the ability of QSNTS to reach agreement with the major stakeholders in the area about a standardised settlement framework.

The non-exclusive rights and interests that are commonly recognised are the standard rights to hunt fish and gather for domestic purposes, the right to access, the right to camp, and the right to maintain sites. Some or all of these may form the basis for a regional negotiation framework.

7.6 Future Acts Alternative Procedure

The review of the LSSP will also provide the QSNTS with the opportunity to engage with the State in respect of an alternative procedure mechanism which will have the effect of directing the proponents of future acts through any ILUA processes.

This may be done by the introduction by the State of a requirement upon the proponents to show good reason why they should not obtain consent to their future act through an ILUA, in certain areas. Those areas would be identified by reference to schedules which contain maps of all areas in which a native title claim had passed the registration test after a specified date - for example, 2002.

The proposal would not be particularly controversial for the State in that the proponents would be aware that if a native title claim has passed registration since 2002, it would most likely pass the registration test again. However, the benefit for native title claimants would be significant. It would give native title Applicants much greater security and increase the incentive to remove their registered claims until such times as their matter was ready to proceed to substantive negotiation.

The progress of such discussions may be significantly enhanced by including representatives of the Federal Court, who would surely have an interest in

involvement in a process which would result in fewer applications before the Court.

8. Conclusion

Claimants need significant time and support to organise themselves and to represent themselves effectively in native title processes. Above all, the importance of due process must be recognised by all involved in building the relationships which are necessary for productive and timely outcomes.

In summary, a few of the things that helped make the land summits which are at the centre of the LSSP successful for Applicants were as follows:

Pre-land summit:

- Comprehensive planning and preparation of logistics as well as ways to manage substantive anthropological and legal issues;
- Holding the meetings over weekends with plenty of time for negotiations;
- Choosing suitable venues;
- Good food in large supply;
- Clear consistent travel allowance payment policies;
- High level research and understanding of each claims current status and potential way forward.

Land Summit:

- Highly skilled and well briefed Indigenous facilitators for each group (pay them well so you can utilise them again);
- Skilled provision of information about the LSSP
- Health services for the duration of the land summit;
- Indigenous security services that are not intrusive;
- Digital mapping facilities and high quality maps;
- Involvement of the Federal Court and the NNTT in process development and in the provision of information and advice;
- High quality legal and anthropological advice.
- Clear consistent and transparent rules of engagement
- Memorabilia

Post-Land summit:

- Timely follow-up on recommendations and instructions;
- Ongoing positive relationships between QSNTS and relevant Government Departments and between QSNTS and Applicants;
- Early establishment of native title corporations which have carefully thought-out decision-making processes;
- A range of capacity building assistance including in the areas of governance, finance and land acquisition and management.

There are also a number of broader conclusions that can be drawn from the three year process of development and implementation of the QSNTS LSSP. They include:

1. A clearly articulated and communicated policy framework benefits Traditional Owners.
2. Few people actually read a strategic plan until there is an issue which is out of the ordinary.
3. The certainty of process is increased with clearly set out and transparent process and policy.
4. The negative and obstructionist political strategies can be more readily exposed and managed with clear and transparent process and policy upon which all can rely.
5. The speed with which a NTSP or NTRB can develop and adjust policies to meet legislative and other changes in the landscape is much faster than that which the State, the NNTT or FaHCSIA can muster and is a real advantage that should be exploited.

Native title is not only about connection, it is first and fore-mostly about process. It is only once the process management battles with native title holders, the state, industry stakeholders and a range of other parties have been won, that connection becomes a relevant consideration. There are probably another three to five years of process battles in the Queensland South region. Who knows what attitude the State will take to connection in 2012?

Postscript

Since this paper was written, the Land Branch of FaHCSIA has been driving the amalgamation of Queensland South Native Title Services with the neighbouring Gurang Land Council and the southern areas of Carpentaria Land Council (the greater Mt Isa region (GMI)). It is also proposed that the Central Queensland Land Council be amalgamated with North Queensland Land Council and the northern portion of the Carpentaria Land Council be amalgamated with Cape York Land Council. This will leave just three bodies servicing native title holders in the whole of Queensland.

The administrative arrangements are currently unclear and it remains to be seen how the amalgamations will affect the continuity of QSNTS's service delivery pursuant to the LSSP - though they will clearly have a significant impact. While it is likely that there will be some minor administrative cost savings through economies of scale, it is difficult to see any short term benefits for the traditional owners in any of the areas covered by the three bodies. This is particularly important given the pressure by the Court to ensure native title claims progress, the eagerness of the Governments and the mining sector to extract and export gas, petroleum, coal, and iron ore, and the increased workload resulting from the substantial quantity of work required to satisfy the NNTT's application of the registration test following the decision in *Gudjala People 2 v Native Title Registrar*.¹³ In such circumstances, where time is of the essence and rights and interests are at stake, a period of delay and disruption to achieve some minor cost savings is not justifiable. It will also be interesting to see how long it takes before the similar amalgamation logic is applied to reduce the three remaining bodies into one State wide service as exists in New South Wales, Victoria and South Australia.

¹³ [2007] FCA 1167.