Chapter 5

Karajarri: native title and governance in the West Kimberley

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Introduction

In 2002 and 2004, Karajarri had their native title rights and interests recognised to over 31,000 square kilometres of land in the West Kimberley, south of Broome.\(^1\) This is an area about half the size of Tasmania, with pastoral stations, mining interests, coastal and desert lands, and the large Aboriginal community of Bidyadanga.\(^2\) Bidyadanga has a young and growing population of around 800 people, with pressing infrastructure needs, including housing. Karajarri live as a minority within the diverse Bidyadanga population.

Karajarri had one of the first native title determinations to be recognised in the Kimberley and had the first native title application in which applicants were represented exclusively by the Kimberley Land Council (KLC).\(^3\) Karajarri were thereby forging new ground in the Kimberley, as the Chair of the Karajarri Traditional Lands Association (KTLA) Registered Native Title Body Corporate (RNTBC), Mervyn Mulardy Jnr, said:

> No one in their wildest dreams could imagine getting beyond winning native title. Even KLC wasn’t prepared. All was focused on winning native title and getting the land, there was never a plan for after native title... So there was no structure for us. No way for us to go to the next level.\(^4\)

This chapter considers this ‘next level’.

With native title recognition, native title holders are formally included in a range of land and water decision-making processes, including community development issues. To manage these relationships, as well as to protect and hold their native title, the *Native Title Act 1993* (Cth) (NTA) prescribes that native title holders establish
Living with native title

an RNTBC.\textsuperscript{5} This very contemporary intercultural governance context involves the interplay of two distinct cultural traditions, and the innovation of new practices that draw on and combine different sources of cultural and legal authority.

Further, every RNTBC will face unique governance issues. Each native title holding group has its own traditional laws and customs; local land tenure history will determine the recognition of native title as exclusive or non-exclusive possession, or not at all; and governance is also influenced by the social–political context, settlement patterns, industry, ecological and geographic issues and so on. Often the work of RNTBCs takes place within the context of addressing the socio-economic disadvantage experienced by many Indigenous people.

\textbf{Figure 5.1} Karajarri native title determinations. Map by Brenda Thornley for AIATSIS

Where native title is recognised over the land tenures of Aboriginal communities, there is clearly a need to ensure that the new RNTBCs can work effectively with the pre-existing Aboriginal community councils.\textsuperscript{6} These councils were established to govern diverse Aboriginal communities in the 1970s under self-determination legislation.\textsuperscript{7} Subsequently, community councils in many parts of ‘remote Australia’ effectively became local governments.\textsuperscript{8} With native title, the specific legal rights of traditional owners are being identified within communities that were formerly treated, in policy and program terms, as having single and homogenous Indigenous identities.
This change obliges community councils and RNTBCs to identify and preferably agree on their governance roles in relation to each other, and then articulate such distinctions to other parties.

Because RNTBCs hold a key administrative role in the native title system, they necessarily work with the three levels of local, state/territory and federal government. Three aspects of these relationships are highlighted in this paper: the relationship between the RNTBC and local Aboriginal community councils; the influence of the NTA; and, the failure of state, territory and federal governments to invest in RNTBCs. Almost 20 years after they were created, there is still no explicit state or federal policy on RNTBCs.9 Accompanying this policy issue is the absence of funding for native title corporations. Despite recent initiatives,10 the prescribed management of native title is without a parallel prescribed funding mechanism. In addition to these challenges, native title holders also carry the expectations that the arduous native title application process, and the achievement of native title recognition, will deliver real benefits for their people.

In this chapter I begin with an overview of Karajarri country and Karajarri native title rights and interests. This provides the background for describing the Karajarri experience of holding and managing native title, including the key issues Karajarri face at their native title meetings; the challenges of running a native title corporation; and the effect of native title on social relations in Bidyadanga. I conclude by identifying some challenging issues faced by both Karajarri and governments, which affect the role of these RNTBCs.

I use the term ‘Karajarri’ to describe the Karajarri native title holders, a group of 700 people or more. However, the work of the RNTBC comes down to a few individuals who are motivated, skilled, and committed to find the time to do this work.11

Karajarri

Native title is a good thing. But I could not understand what was the meaning of it? ‘Win the country’? It’s already Karajarri country. We’ve been here all the time.

Wittidong Mulardy12

Karajarri country includes the West Kimberley coast, south of Broome, and stretches almost 200 kilometres east into the Great Sandy Desert. Karajarri have close cultural and social connections to the Yawuru, traditional owners of the Broome region to the north, Nyikina and Mangala to the east and Nyungamarta to the south.

Karajarri speak about their country being passed down to them by their ancestral beings. Anthropologist Geoffrey Bagshaw has described how Karajarri language (muwarr), territory (ngurrarra), social institutions and customary law (wampurrkujarra) were created in the distant past by supernatural beings (pukarrikarra).13 Country
Living with native title

provides them with the resources for life by ‘lying belly-up’ with respect to the people. The desert country is sustained by a diversity of groundwater springs. At the coast, old shell middens, fish traps and the continued popularity of going fishing all speak of the sea’s fertility. The importance of relationships held between the inland and the coast is embedded in the word ‘Karajarri’ which means west facing/being; that is, west oriented (Kara = west, jarri = moving).14

Karajarri people were some of the first traditional owners in the Kimberley to experience the extension of the British Empire. A violent confrontation in the mid-1860s led to the deaths of three European explorers who were mapping country for sheep grazing; the Western Australian colonial government response resulted in widespread Karajarri loss of life. In the 1860s and 1870s Chinese and Malay pearlers traded and lived with Karajarri, and exploited their labour while diving for pearls along the coast. In 1899, the colonial authorities founded a telegraph station and more recently, in the 1930s, the La Grange ration depot was created and reserved lands were set aside for Aboriginal people.15 The flat coastal land appealed to pastoralists, and the stations of Shamrock, Frazier Downs, Nita Downs and Anna Plains were established. Many Karajarri people lived and worked on these stations.

In the 1920s, desert tribes moved into Karajarri coastal country in response to a harsh drought, the destruction of their hunting grounds by stock, and the murders and massacres of their people by pastoralists.16 In the 1950s, Catholic Pallottine missionaries established a mission at La Grange. With another drought in the 1960s, desert tribes were again persuaded to move west and take advantage of the amenities being developed, including a medical centre, a school, an airstrip and an improved road link with the highway to Broome.

Karajarri law includes customary requirements for strangers (walanyu) to seek and obtain permission to enter and move about in Karajarri country.17 As the new tribes moved in — the Nyangumarta, Mangala, Juwaliny and Yulparija — they would camp nearby and wait to be welcomed to country. KLC native title officer Anna Mardling, who was a volunteer at the mission in the 1970s, remembers the incredible singing and dancing that accompanied the ceremonies.18 As part of this welcome, Karajarri accorded walanyu permission to hunt and fish, as well as designated law grounds for their own ceremonial purposes.19 These practical gestures were critical for the political and social arrangements of living together. The new tribes have made their home on Karajarri land, bringing up their kids far from their traditional country, while their prolific dot paintings illustrate the importance of places left far inland.20 They have also applied for or have had their native title recognised to their traditional country.

In 1979, the Catholic lease was transferred to the Bidyadanga Aboriginal Community La Grange Inc (‘the Community Council’) — the new representative body for the diverse community that had been created.21 This was enabled by state legislation designed to support Aboriginal people to formally manage communities
mostly comprised of Aboriginal people. At that time, Karajarri renamed La Grange as Bidyadanga, a new word based on the Karajarri word for ‘emu’, to represent the new, inclusive community. As Karajarri woman Shirley Spratt said, “The community was built by the five tribes. Everybody was family.”

Bidyadanga is the largest Aboriginal community in Western Australia. According to 2006 Census data 57 per cent of the community were under the age of 24, 34 per cent were between 24 and 54, and people 55 years and older made up nine per cent of the community. This socio-demographic profile is typical of regional communities in north-west Australia. Many people were employed in positions centred on the Community Development Employment Projects (CDEP) scheme; however, in 2003 these positions were drastically cut from 260 to just 30.

In addition to Bidyadanga, there are various outstations on Karajarri country where Karajarri people live, including Wanamalnyanung (also called Mijimilmaya), Najanaja, Kuwiyimpirna (Frazier Downs), Malupirti (Munro Springs), Purrpurrnganyjal (Kitty Well) and Karlatanyan. Many Karajarri also live in Broome, Derby and elsewhere.

Karajarri activities extend over the breadth of their country, whereas the other tribes tend to hunt and fish close to Bidyadanga.

The authority and connection Karajarri hold with country stem from their beliefs about intimate relationships between creator beings, language, law and people. As one elder described this intimate relationship:

‘Pukarrikarra’ put everything in the country, everything in totality that is alive; this is true...In the hinterland, in the sea, the [game] food belonging to human beings was put in place by ‘Pukarrikarra’ — this is the truth, beyond which nothing more can be said — from long ago, these living things, to end the story, belong to us [so that] we may keep strong.

Karajarri sense of identity, purpose and place is passed on to each new generation. With the recent history of rapid social change, Karajarri ceremonies, laws, relationships and responsibilities with country have continued to be performed, respected and adapted. The observance of cultural protocols in accordance with Karajarri skin section relationships has endured to ensure that cultural authority, access to country, decision-making, social behaviour and familial links continue to be reflected in contemporary living arrangements at Bidyadanga.

The distinct authority held by Karajarri as traditional owners was apparent to anthropologist Geoffrey Bagshaw, who collected native title evidence in the mid to late 1990s. He noted the continued deference in Bidyadanga to the authority of Karajarri in matters that concerned Karajarri country. The political importance of Karajarri authority was also part of the creation of the Bidyadanga Community Council. When it was established, governance was organised to include equal representation from all five tribes, with an informal understanding that the Karajarri
Living with native title

held the position of chair. The recognition of Karajarri native title rights and interests has introduced another set of framings for social relations within the Bidyadanga community (discussed later in this chapter).

Karajarri native title rights and interests

In 2002 and 2004, Karajarri native title rights and interests were determined by consent; that is, by agreement. These native title rights and interests are to be enjoyed and exercised in accordance with Karajarri law and the laws of the state and the Commonwealth, including the NTA and Federal and High Court legal judgments.

In the 2002 consent determination, Karajarri were recognised as holding exclusive native title rights and interests to ‘possess, occupy, use and enjoy’ their country ‘to the exclusion of all others’. This determination is largely over Crown radical title (or ‘unallocated’ Crown land). The Federal Court listed Karajarri rights and interests as including:

1. the right to live on the land;
2. the right to make decisions about the use and enjoyment of the land and waters;
3. the right to hunt, gather and fish on the land and waters in accordance with their traditional laws and customs for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs;
4. the right to take and use the waters and other resources accessed in accordance with their traditional laws and customs for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs;
5. the right to maintain and protect important places and areas of significance to the Karajarri people under their traditional laws and customs on the land and waters; and
6. the right to control access to, and activities conducted by others on, the land and waters, including the right to give permission to others to enter and conduct activities on the land and waters on such conditions as the Karajarri people see fit;

Karajarri can therefore continue to live on the land, make decisions about the use and enjoyment of the land, hunt, fish and gather, conduct ceremonies, protect important places, control others’ access to the land and control activities conducted by others on the land. Karajarri have exercised the right to live on their land through the allocation of outstations, also called ‘blocks’. The allocation of blocks allows people to spend more time living on country, teaching their kids, and keeping their own knowledge alive: enjoying native title and passing it on.

The right to control access and the activities of other people is important for Karajarri responsibilities to their country, including looking after law grounds, the
graves of their ancestors and other sites. Local people and people from Broome are used to accessing this land for fishing, hunting and camping and tourists who pass through have enjoyed what was previously largely unregulated Crown land. One tourist drove over and destroyed an important site, where human footsteps thousands of years old had been recorded in the hardened silt. Karajarri hold stories about these footsteps from their ancestors. Karajarri are also concerned about the impact of tourists on the coastal and marine creatures. Shirley Spratt thinks the tourists are ‘taking too many fish and crabs’. Karajarri are particularly concerned about tourists coming onto their country from the popular caravan park at Port Smith, a beautiful place with mangroves, a lagoon and beaches. Surrounded by exclusive possession native title land, Port Smith Caravan Park is on a special lease that was determined to be an exclusive possession act that extinguishes Karajarri native title.

In contrast to the 2002 determination, the 2004 consent determination was largely over pastoral leases and nature reserves, as these land tenures were excluded from the 2002 determination to await the much-anticipated outcome of the High Court decision in Miriuwung and Gajerrong. In line with the High Court judgment (in August 2002), the parties agreed that non-exclusive native title interests exist on the same land as pastoral leases, while nature reserves extinguish native title. With respect to Crown land leased for pastoral activities, Karajarri had their non-exclusive rights recognised to Shamrock, Nita Downs and Anna Plains stations. Under Western Australian legislation, Aboriginal people already have access to pastoral leases to seek ‘sustenance in their traditional manner’, but this native title recognition explicitly identifies specific people and specific pastoral leases. Non-exclusive native title rights were also recognised between the mean high water mark and the lowest astronomical tide. The non-exclusive native title interests were listed by the court as:

(i) the right to enter and remain on the land and waters;
(ii) the right to camp and erect temporary shelters;
(iii) the right to take fauna and flora from the land and waters;
(iv) the right to take other natural resources of the land such as ochre, stones, soils, wood and resin;
(v) the right to take the waters including flowing and subterranean waters;
(vi) the right to engage in ritual and ceremony; and
(vii) the right to care for, maintain and protect from physical harm, particular sites and areas of significance to the Karajarri people.

Karajarri hold many shared interests with pastoralists. Taking care of the country, the soils, trees, plants and waterholes is important both for pastoralists and native title holders. Pastoralists have particular responsibilities for the grazing pastures and native vegetation. With these shared interests, negotiations are now a necessary part of land management. An example is the role of fire in land management. In the
Miriuwung and Gajerrong decision, the majority found that the burning of land by traditional owners was probably inconsistent with the rights of pastoral leaseholders; however, this conclusion runs against evolving pastoral practice. Pastoralists burn land to improve pasture quality, suppress weeds and manage wildfires. Smaller, more regular fires also offset carbon emissions and this fire management could be part of the new carbon economy. There is therefore an opportunity for pastoralists and traditional owners to work together. Karajarri speak about how burning the land used to be done by the old people when they were walking through country, and are keen to see this practice continue.

Conflicts may arise where priorities differ. Indeed, different priorities led to the first Karajarri native title application. Karajarri became mobilised around native title when Karajarri elder Wittidong Mulardy became concerned about a fence built on Shamrock station that threatened access to the culturally significant Parturr hills. Where there is a conflict, the rights under the pastoral lease prevail over the native title interests to the extent of any inconsistency and without extinguishing native title.

Mervyn Mulardy Jnr talked to me about the importance of building good relationships with pastoralists to work out their own arrangements about how to manage country, rather than relying on what is prescribed by the law. Karajarri hold the lease to Frazier Downs (as discussed in the next section) and have a very good relationship with the manager whom they employ. This relationship includes the pastoralist’s support for the Karajarri dancers and basketball team. Relationships based on shared interests and shared lives form a good basis for working through different land management activities, as Mervyn said:

If we can do that kind of relationship building with station owners, we can build co-existence with them. We want to go hunting, and sometimes they ask us not to go hunting when they are on muster. It is a safety thing. They don’t want bullets flying around.

Another complex part of living with native title is interpreting how the Federal Court recognition relates to Karajarri activities, as some of their traditional activities are recognised as native title rights and interests and other activities are excluded. Karajarri native title recognises their rights to continue to go fishing and crabbing at their favourite places and take advantage of the seasonal schools of salmon that migrate up the coast. However, they cannot sell the fish because trade and commercial activities are not recognised among their native title rights or interests. Fish and other natural resources within the native title determination area, such as timber, pearls and water, can be licensed by the state to commercial operators, in line with the entitlements under freehold title. The ownership of minerals is also excluded from native title rights, with the exception of ochre. However, Karajarri can negotiate and charge companies for access to land where the minerals are located.
While similar to freehold title, exclusive possession native title land is different in many ways. Native title is inalienable, it cannot be sold, and to many people this is recognition of sovereign title. However, native title has also been construed by the authors of common and statutory law as a vulnerable title. Native title can be impaired or extinguished by the rights of others and it can be lost if traditional laws and customs are not practised. While extinguishment is not possible under their law, Karajarri have to consider this in the decisions they make.

Native title rights are also different from freehold property rights because they include procedural rights about certain activities on native title land, both exclusive and non-exclusive, designed to protect native title into the future. In native title terminology, these activities are called ‘future acts’; they are developments that could affect native title rights and interests. With some future acts, Karajarri have the right to be consulted or notified about the activities, including water allocations and/or water infrastructure and the renewal of pastoral leases. With respect to larger developments, Karajarri have the ‘right to negotiate’, which is a procedural right to be involved in the development process, not to veto the development. Many of the future acts for Karajarri concern mining and petroleum exploration licences with companies interested in exploring for lead, zinc, silver and kaolin.

There is a specific process for advising native title holders and applicants about future acts. Karajarri (or the relevant native title holder) are notified about future acts by mail, and they have three months to respond if they wish to exercise the right to negotiate. If the relevant state government (here, Western Australia) considers that the future act will not have a significant effect on native title, then the expedited procedure applies — and native title holders are not required to be notified. Where there are disagreements about future acts, the National Native Title Tribunal (NNTT) arbitrates and makes a ‘future act determination’. Every year Karajarri, supported by the KLC, will lodge at least one future act objection application. Several times Karajarri have successfully contested the application of the expedited procedure to the granting of mining tenements and exploration licences.

The Karajarri Traditional Lands Association

‘Native’? Is it Aboriginal people? It could be trees? Our God what we believed in the Dreamtime? Our land? The sea? Everything our old people walked on?

Devina Shoveller

Realising the potential of their native title rights has a lot to do with how the Karajarri meet and make decisions as a native title corporation. In 1998, Karajarri established the KTLA as the legal entity for their Prescribed Body Corporate (PBC). Once their native title was determined to exist, and registered on the National Native Title Register, the KTLA became an RNTBC, although Karajarri and others continue
to refer to the KTLA as their ‘PBC’. As with many other RNTBCs, the KTLA was established without funding and committee members volunteer their time.

The federal government has identified two key roles for RNTBCs: to protect and hold native title, and to provide a legal entity for other parties with business on native title lands.\textsuperscript{58} In their 2006 review of the structures and processes of RNTBCs, the federal government noted the different expectations surrounding the roles of RNTBCs.\textsuperscript{59} The report identified that community expectations may be placed on RNTBCs to engage in issues that reflect their status as traditional owners, such as town planning, social harmony projects, cultural protocols, welcomes to country and interpretative and cultural signage.\textsuperscript{60} The report says that these expectations place additional responsibilities and pressures on RNTBCs; however, this work is secondary to the native title responsibilities of RNTBCs.\textsuperscript{61} This position reflects the split around different understandings of native title and, as policy analysts Michael Dillon and Neil Westbury argue, the tendency of governments to restrict their understandings of native title to a narrow legal regime.\textsuperscript{62}

Karajarri have expressed a broad understanding of the KTLA’s work, being responsible for five key activities:

- the PBC
- the rangers program
- Yiriman [youth] Project
- outstations
- the Karajarri Cattle Company.\textsuperscript{63}

This reflects the integrated business of the five Karajarri activities, with the RNTBC viewed by KTLA members as just one of their responsibilities. For example, the rangers and Yiriman projects work to support Karajarri country and Karajarri youth, which are both essential to the intergenerational sustainability of native title. The rangers undertake land and water project work for government and business, including a contract with the Australian Customs and Border Protection Service to check driftwood for insects and weeds.\textsuperscript{64} The Yiriman Project is a grassroots community initiative to look after young people and pass on traditional laws and customs. Yiriman was conceived by Niyikina, Mangala, Walmajarri and Karajarri elders who ‘saw the need for a place where youth could separate themselves from negative influences, and reconnect with their culture in a remote and culturally significant place’.\textsuperscript{65} Karajarri are working with the KLC Land and Sea Unit to build a Yiriman land management project around the beautiful Gourdon Bay and Port Smith areas. These activities extend across the work of Yiriman, the rangers and the RNTBC, with some individuals involved in all three groups.

The relationship between the Karajarri pastoral enterprise and the KTLA is an example of community expectations of the KTLA combined with the operation of a commercial enterprise. Frazier Downs station is exclusive possession native
Karajarri: native title and governance in the West Kimberley

title land. The pastoral lease had been run by the Catholic mission on Aboriginal Lands Trust (ALT) lands, over which the historical extinguishment of native title is disregarded because it is a form of land tenure with a dedicated purpose for the use and benefit of Aboriginal people.\(^{66}\) In 1976, the Frazier Downs pastoral lease was purchased by the Aboriginal Land Fund Commission under the direction of the former Commonwealth Department of Aboriginal Affairs. The Land Fund Commission vested ownership of the pastoral lease in the Bidyadanga Community Council, and a pastoral company known as ‘Quimbeena Pastoral Company’ (Quimbeena) was established by the Community Council.\(^{67}\) In 1998, the Bidyadanga Community Council agreed to transfer ownership of the Frazier Downs pastoral lease to a Karajarri legal entity, prompting the formation of the KTLA to hold this title.\(^{68}\) In December 2006, Quimbeena was amicably dissolved, with the sale proceeds (after costs) split between the Bidyadanga Community Council and the KTLA.

Karajarri do not run their own cattle on Frazier Downs but receive income from agisting cattle from neighbouring pastoral stations. Karajarri man Thomas King Jnr is the driving force behind a Karajarri pastoral business on Frazier Downs and, in 2008, the corporation ‘Karajarri Cattle’ was registered. Karajarri is good country for cattle and is close to the major highway in Western Australia and the port at Broome, but pastoral businesses need a lot of investment in infrastructure. The capital from the sale of the cattle and the income from the agistment are used to fund the maintenance of fences and bores, and for paying bills such as land taxes. However, some of this money is also used for KTLA costs, including meetings. The income stream from the cattle is not seen as separate to the KTLA native title work. Instead, many people make a strong connection between that income and the recognition of their native title rights. This is complicated by confusion when some people equate the cattle money with the type of ‘royalty’ money received under the Northern Territory land rights system. In the territory, the administration of land rights is funded via a royalty equivalent scheme, which provides for monies from consolidated revenue to be paid into a trust account — the Aboriginals Benefit Account. This in turn provides for the operation of Northern Territory land councils, for regular payments to traditional owners and payments for the benefit of Aboriginal people living in the Northern Territory. As stated earlier, there is no prescribed funding scheme for native title holders in the native title sector. There is conflict because some Karajarri expect native title to result in a royalty stream to fund Karajarri individual and collective priorities, and they look to the cattle money. How the relationship between Karajarri Cattle and the KTLA will work into the future is key native title business for Karajarri. More than just a business model, there are complex issues of communal lands and group and individual rights that require innovation beyond the categories of public and private.\(^{69}\)

The allocation of outstations or ‘blocks’ is also listed as key KTLA business. This is a long-term land use challenge as well as a political negotiation within the
Karajarri community. If KTLA committee members respond positively every time there is a request for an outstation, the incremental effect of this settlement has implications for access to hunting and fishing grounds, the maintenance of roads, pastoral operations and more. The development of an outstation policy has been discussed at Karajarri meetings. A policy would relieve the political and personal pressure of the allocation of blocks between families and individuals. Perhaps an easier route is to continue on an ad hoc basis but within a long-term planning perspective; this approach will narrow future options. Because of their popularity, an outstation policy and planning framework will have to be addressed one day. As Karajarri man Andrew Bin Rashid said, ‘otherwise in the future everyone will want a block... It’s a real problem and it is not going to go away. It is going to happen, somewhere down the track.’70

In addition to the rangers, the outstations, Yiriman and the cattle, the KTLA members have to undertake native title related work to ensure certainty for governments and other parties with an interest in accessing or regulating their native title lands and waters. This certainty is provided by having a functioning legal entity (the RNTBC) through which these parties can conduct business with native title holders. This work with governments and third parties can be an opportunity for the KTLA to negotiate benefits. These could include forming partnerships to reach shared goals, negotiating an income stream to support KTLA business or gaining individual employment in work such as heritage clearances.

By far the largest industrial project with interests in Karajarri land is known locally as ‘the gas’. Karajarri are one of many traditional owner groups across the Kimberley consulted on the location of an enormous liquefied natural gas plant to process gas from the Browse gas reserve 200 kilometres off the Kimberley coast. Many KTLA meetings and Karajarri activities were scuttled by the frenetic activity around the gas project timetable, as Gourdan Bay, next to Port Smith, was on the shortlist of locations.71 For Karajarri, the gas would have meant dramatic change, but it might also have brought economic opportunities. In the governance context, where native title funding is virtually absent and socio-economic disadvantage is common, the opportunities provided by a large development were taken very seriously. After much consideration, in December 2008, Karajarri decided to withdraw their support for a gas processing plant on their country.72

The Bidyadanga Community Council (discussed later in this chapter) is a key local external source of requests for KTLA meeting time. Bidyadanga was established on ALT land, which has been recognised as exclusive possession native title land. The ALT leased the land to the Community Council for 99 years, commencing from 22 October 1998.73 This situation is complicated by parts of the community not being physically located within the community lease area.74 Karajarri will be negotiating these inconsistencies in tenure and development and other related matters as part of a planned future ‘global’ Indigenous Land Use Agreement (ILUA) (discussed
Karajarri: native title and governance in the West Kimberley

later in this paper). The Community Council also request Karajarri to undertake heritage clearances for community development purposes.

Karajarri native title business does not fit neatly within the legally prescribed native title system. The KTLA committee manages several expectations: their integrated land and governance activities and their functions as an RNTBC. The KTLA committee members find that KTLA business ends up competing with the business of resourced parties with interests in Karajarri land. Indeed, responding to the priorities and timetables of persistent others is often the trigger for holding a KTLA meeting.

Corporate governance

It’s about time that the government trust us. They gave us the land back, now they need to trust us to manage it.

Thomas King Jnr

Corporate forms have been central to the exercising of Indigenous peoples’ land rights and native title because of the communal profile of these rights and interests, and the practical necessity of forming a legal entity to participate in transactions with governments and others. As an incorporated body, the KTLA is required to conduct business in a particular way to ensure compliance with corporations’ legislation. This includes formal rules about who can be members of the KTLA, how and when meetings are held, quorum numbers, annual general meetings (AGMs), taking minutes and an executive committee which meets and holds roles, such as chair, deputy chair, treasurer and public officer.

However, since these corporations proliferated when self-determination policy was introduced in the 1970s, there have been problems with the governance requirements and other rules for Aboriginal and Torres Strait Islander corporations. Aboriginal corporations negotiate two quite different cultural traditions. Research into Indigenous governance has found an interplay of the influences of western corporate notions, which place a priority on accountability, representation, compliance, equity and capacity, and Indigenous people’s understandings of culture as fundamental in organisational processes. RNTBC members have significant work adapting mainstream governance structures to facilitate their own laws and customs. This is part of the challenge of legitimacy or ‘cultural match’ — in which corporate institutions must meet local expectations if they are to be considered legitimate by their membership.

The Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSI Act) provides more flexibility for Aboriginal corporations to negotiate issues of legitimacy and cultural match. It is possible to include traditional laws and customs in corporation constitutions or rule books. For example, in their rules Karajarri can include that decisions are to be made by consensus or that such decisions can be
Living with native title

referred to the authority of the elders. The CATSI Act also has special provisions making it clear that a director acting in good faith with the belief that they are complying with native title legislation obligations cannot breach their obligations under the Act.\textsuperscript{82} Further, the CATSI Act reduces the reporting requirements for ‘small’ corporations (defined according to income and staff numbers), which benefits the vast majority of RNTBCs in this category — including the KTLA. Previously, all Aboriginal corporations (approximately 2600) had the same reporting requirements.

The capacity of the KTLA to manage their native title rights and interests was an issue for the Federal Court when making the 2004 consent determination. As Justice North wrote at the time:

\begin{quote}
It would be an absurd outcome if, after the expenditure of such large sums to reach a determination of native title, the proper utilisation of the land was hampered because of lack of a relatively small expenditure for the administration of a PBC.\textsuperscript{83}
\end{quote}

The establishment and operation of the KTLA was not funded after the native title determination. Members of the Karajarri RNTBC have contributed their work voluntarily, without an office, and the committee meet without administrative support. In managing this situation, KTLA have had a temporary arrangement with the KLC in Broome, including a desk, computer and filing cabinet. Very rarely, grant monies or a volunteer have enabled the desk to be staffed. Without staff, there is no one to be a point of contact or to answer the phone, the email or other correspondence.

Lack of an office in Bidyadanga has put pressure on the homes and workplaces of local KTLA committee members. During the field work period, Karajarri woman Fay Dean worked at the Kimberley Regional CDEP office, which is centrally located across the road from the Bidyadanga Telecentre where KTLA meetings are usually held. With a telephone and internet connection, it often fell to Fay to be a point of contact for the KTLA. She also held the position of KTLA Secretary in 2008. She spoke about how unsatisfactory the KTLA administration situation was for her:

\begin{quote}
We need decent pay to get somebody in there. It needs to be done. It’s all a jumble, with paperwork everywhere. I can’t do up any minutes [at my work] because it isn’t private. We need our own office. I get abused if I don’t put out flyers, but I’m not paid to do it. It is frustrating.\textsuperscript{84}
\end{quote}

Looking after the paper stream associated with being a native title corporation requires office management skills to ensure valuable information is not mislaid, disregarded or forgotten. For example, where matters have been formally worked out between Karajarri and the Bidyadanga Community Council, there can still be confusion about the particularities of agreements in meetings. This situation
is not easily resolved at Bidyadanga meetings when most of the KTLA paperwork is in a filing cabinet in Broome. The uncertainty can either stall or railroad the meeting’s agenda.

At a KTLA meeting in April 2008, the committee were considering the specifics of an outstation request. Nyaparu Hopiga wondered about the size of the block and what it looked like on site, and whether it conflicted with a stock route, while Karajarri man Joe Edgar expressed his frustration about meeting to discuss matters without the necessary maps and computers. Lack of administrative support regularly places KTLA committee members in the uncomfortable position of making decisions without the relevant information. Without support staff, the board is responsible for both making decisions and implementing them. Joe Edgar described this arrangement as problematic:

> When it comes to making decisions the whole process falls away. The follow-up is all over the place. We need to bring it all together to get direction. Otherwise things don’t happen.86

The capacity to organise and respond to various paperwork, or *mili mili* as Karajarri call it, is central to Karajarri engagement with the mainstream community. Without the paperwork in order, it can be very difficult to access government grants, services and other opportunities, including employment. Compliance with the rules of being an incorporated body, including having financial records in order, is important when applying to potential funding bodies. If the committee members do not do the paperwork, the KTLA is listed as ‘non-compliant’ by the Office of the Registrar of Indigenous Corporations (ORIC).

Joe Edgar worries about how their governance context affects the ongoing commitment of the KTLA committee. Committee members regularly speak about their frustration. They absent themselves from other responsibilities to fulfil committee roles on a voluntary basis, while also having to bridge the gap created by lack of basic administrative support. A lot of energy is expended just in organising the meetings and ensuring there is a quorum, before even getting to the meeting’s agenda.

For Karajarri, the paperwork and their compliance status is just a small part of whether the KTLA is being properly governed. Karajarri are working through how to manage their recognised native title rights and interests with respect to Karajarri laws and customs. Early on, the KTLA committee ruled that anything to do with land had to go through the elders. Joe Edgar, Deputy Chair of the KTLA, sees a need for KTLA policies about ‘how we spend our money — personal loans, looking after our elders, cultural business and the land’. Without resources, a coordinated, planned approach to land does not take place, and things get done wherever and however they can. Reliance on ad hoc income from small projects has become a management issue in itself.88
Making decisions without a broad framework to guide those decisions is a complex and uncomfortable task. There is some discussion at KTLA meetings about developing a comprehensive land management policy and plan so that decision-making can occur within a framework developed around long-term considerations. Planning would also reduce the burden of responding to issues one by one.

Business mentor Edgar Price sees the role of the KTLA as fundamental to allowing a range of other activities to progress. The cattle station, business ideas and land and sea management all share the same problem of under-resourced decision-making around native title. The under-resourcing of the KTLA has an impact beyond frustrating the responsibilities of the RNTBC; Karajarri capacity to address a host of other Karajarri business is frustrated by the lack of support for KTLA governance and administration. While income does not lead to good governance, a lack of income certainly undermines it.

In Bidyadanga, uncertainty and inefficiencies around native title have aggravated local politics and social relations, and this tension is generating additional obstacles to good governance. This was acute in 2007, when Karajarri were deeply dissatisfied with their relations with the Bidyadanga Community Council.

**Bidyadanga: the new social relations of native title**

In Bidyadanga, prior to the recognition of Karajarri native title, established political and cultural processes respected Karajarri as the law people of country, which facilitated their relationship with the broader community. With the recognition of their native title, Karajarri found that their relationship with the Bidyadanga Community Council was challenged by the formal distinction of Karajarri rights and community disquiet about what those rights may be.

Karajarri have exclusive possession of ALT land where Bidyadanga is sited and many community people are worried that the Karajarri will move them out of the town, or not let them go hunting and gathering on the other native title land tenures, despite a 99-year lease between the ALT and the Bidyadanga Community Council, and Karajarri assurances to the contrary.

To add to this tension, the Community Council governance arrangements changed around the same time as the native title determinations; the outcome was that the chair was no longer a Karajarri representative.

The position of Karajarri in relation to the rest of the Community Council was further muddied when the council voted for a change in membership rules, whereby outstation residents were ineligible for voting on the council, partly because they did not reside in Bidyadanga or pay rates. The effect was to remove the voting rights of Karajarri who live on outstations. Meanwhile, the Aboriginal and Torres Strait Islander Commission (ATSIC) was abolished and the resources to maintain outstation infrastructure became scarce.
Fay Dean spoke about how their native title recognition related to their relationship with the broader Bidyadanga community:

It didn’t seem like a win for anything, because we lost all our rights in the community... It wasn’t a win-win situation, it was a win-lose. We lost entitlements here: memberships, voting rights... It was all in together before, with the elders holding everything in place. The chairman was always a Karajarri person. As soon as we won native title we lost that. 92

A report about the future of Bidyadanga is revealing, showing how the different aspirations between Karajarri and the rest of the Bidyadanga community for Bidyadanga are expressed in town planning priorities. In it, the Bidyadanga Aboriginal Community La Grange Inc identifies the priorities:

- maintain land for intensive orchard activities
- develop a cyclone shelter
- find a new tip site
- find land for sewage pond extensions
- develop a new arts and cultural centre
- find land for new community housing
- resolve disputed no-go areas
- resolve community boundary
- include airport within community boundary
- allocate land for pool manager’s house
- correct and proper process for all future development and land use within Bidyadanga. 93

Whereas, the KTLA identifies the priorities:

- resolve compensation for development at Bidyadanga
- be consulted in future development of Bidyadanga
- identify a Karajarri Office site
- make sure land is given back to the KTLA
- allocate land to Karajarri for future commercial development
- more houses for Karajarri people. 94

When Karajarri centres were consulted on the future development of Bidyadanga and on ensuring specific outcomes for Karajarri, their list of community aspirations reflected their concerns about being marginalised in Bidyadanga, and that their native title rights and interests should be accorded due process.

Issues of difference and equity within a heterogenous Aboriginal community are at the heart of the native title tensions in Bidyadanga. 95 As one of the five tribes Karajarri are part of the Bidyadanga community. However, as traditional owners,
they have always had authority over matters to do with land. These issues of difference and equity have been highlighted by native title. For example, Karajarri are now formally consulted about the gas and other mineral and petroleum exploration projects on their native title lands. Future acts may also have consequences for the community of Bidyadanga, but the Community Council may find that they are not as involved in the consultations as they would expect. It is important that Karajarri manage relationships with the Community Council and other land use interests sensitively. However, as I have pointed out, the KTLA is not sufficiently funded to undertake its many responsibilities, which is likely to undermine its relationship to all the organisations it has dealings with — including the Bidyadanga Community Council. The Community Council receives funding from the state government to maintain an office, employ staff and deliver services to the community, while the KTLA is starved of funds by both federal and state governments.

During the case study research period, the state government was required to take the interests of the native title holders seriously in the building of community infrastructure, no matter what administrative challenges faced the KTLA. The rights of native title holders vis-a-vis state and local governments were confirmed in a 2003 case, Erubam Le (Darnley Islanders) No. 1 v Queensland (‘Darnley’), which clarified the provisions of subdiv J of the NTA. Until that judgment, the Western Australian Government had interpreted subdiv J as permitting it to construct public works (mainly housing) on Aboriginal reserves, without seeking traditional owner consent and without agreeing that their actions did not extinguish native title. The Darnley case, by clarifying the obligations of governments to native title holders, caused changes in government practice, whereby the construction of such public works now involves an investment in land use negotiations with the native title holders.

In 2007, when the state government wanted to build several developments in Bidyadanga — 16 houses, a basketball court, a cyclone shelter, a rubbish tip, an arts and culture centre and additional sewerage infrastructure — it initiated an agreement-making process, whereby all parties could sit down and agree on the community development priorities. Until this time, KTLA committee members had been expected to respond to future act requests from the Community Council on an ad hoc basis and without funding. The new process has resulted in the KTLA, the Bidyadanga Community Council and the state government agreeing to arrange the relevant matters into two sequential ILUAs. The housing, sewerage facilities, tip, cyclone shelter and other pressing infrastructure needs were allocated to an initial, smaller ILUA process, which has been substantively negotiated and is awaiting registration to become a legal agreement.

Significantly, the smaller ILUA provides for an office and administrative support for the KTLA by the state government. It is a one-off arrangement for the Karajarri RNTBC, specific to the ILUA negotiation.
A bigger, ‘global’ ILUA is scheduled to follow, to address issues more comprehensively, including inconsistencies in tenure and development, as the rubbish tip, nurses’ houses and part of the oval are located on both Frazier Downs and the De Grey Stock Route.99 This global ILUA will include the resolution of current development beyond the extent of the leased land, the identification of the future land requirements of the Bidyadanga community, the transfer of the Management Order from the ALT in accordance with the findings of the Bonner Report in 1996 and state government policy, and the issuing of a new lease from the KTLA to the Community Council for the extent of the community area.100 This ILUA will require all parties to make much more investment in time and decision-making.

The motivation for each party to enter into this agreement-making process reflects how good governance processes and achieving outcomes are intertwined. The two ILUA processes in Bidyadanga are opportunities to clear the air, to improve local politics and to get moving on the development of key infrastructure for the community.

Joe Edgar has written about the importance of this agreement and agreement-making process:

To be successful and to form a best practice precedent, the ILUA must be open, friendly and transparent to the ‘historical’ people of Bidyadanga and the Karajarri traditional owners, with all parties provided ample time for reflection and to seek independent advice. Adequate resources must also be provided to the KTLA for the conduct of negotiations over the ILUA and for future management of Karajarri traditional lands. Evidence of good faith is clear from the offer by Bidyadanga Council to the traditional owners of a meeting space at its Telecentre throughout 2009, and a building to establish an office, and the commitment by DIA WA [the Department of Indigenous Affairs Western Australia] to fund office refurbishment and possible administrative positions in light of the lack of national funding for Registered Native Title Bodies Corporate (such as the KTLA). These are steps in the right direction which, it is hoped, will build a better social, political and economic environment for all at Bidyadanga.101

The willingness of parties to sit down together to agree on an ILUA in Bidyadanga reflects a pragmatic shift towards native title being accepted as part of land use planning in Australia.102 ILUAs bring parties together to negotiate issues directly and find common ground, rather than relying on what is or is not possible under legislative regimes. In Bidyadanga, this process has brought the state government, the Bidyadanga Community Council and Karajarri to the same meeting room to work through the disagreements between Karajarri and the broader Bidyadanga community, and the concerns the KTLA members have about governing and administering their RNTBC work.
Living with native title

While agreement-making has become a trend in doing native title business, in 2010 there was a setback in the impetus for governments and others to enter into ILUAs with native title holders to build public housing and other community infrastructure. The NTA was amended to reduce the future act rights of native title holders. These amendments again raise the parliamentary preference of addressing native title issues through technical legal frameworks, as argued by Dillon and Westbury, rather than addressing the bureaucratic and policy issues, and other blockages that persist around community development, such as the failure to include native title considerations at the outset of a project.

Entitled futures

It’s been a mixture of feelings and emotions getting native title. You are happy in one sense that you have achieved this milestone and recognition, basically from the white law; a battle since colonisation. But to the other extreme it’s been a bit sad, frustrating and disappointing because of a lack of support from the government for PBCs. At the same time, I want to remain optimistic so that we can move forward and not let obstacles stop us or be a cause and/or an excuse for our failure.

Thomas King Jnr

The 2002 Karajarri native title consent determination marked the beginning of a complex and formalised relationship between Karajarri and all the other people who live or hold interests in Karajarri country. Despite all the problems that have come with native title, Karajarri woman Devina Shoveller talked to me about how much she enjoys working with the KTLA. For her it has been a joyful experience, where she has learnt a lot and been inspired:

First of all I didn’t understand what they were arguing for, about the land. But now I’ve been going to the meetings, learning everything and getting brave. Then I started talking up, and now I can’t stop... It’s been really good having KTLA. There’s a lot of respect in the family group. The things they come up with are inspiring. When they come up with an idea I think, ‘I can do that’ but then I think I can’t have everything. My family inspires me.

The enthusiasm and commitment of these Karajarri people for the KTLA to be a vehicle for doing Karajarri business, their way, is also an opportunity for governments who make the connection between recognising native title, supporting Indigenous leadership and building a more equitable society.

Native title holders have worked hard to achieve native title, with the anticipation that their position in Australian society will be transformed through this recognition. For this to occur, the attention of the major native title institutions needs to expand
out from the focus on achieving native title determinations in court. Native title is also a governance responsibility. The expectations of native title holders, governments and others for outcomes on native title land rely on the workings of these native title corporations and the key individuals who manage them.

There are three key concerns among the multiple impacts of the Karajarri experience of living with native title that require immediate attention from governments. They relate to policy, understandings of native title and resourcing.

First, because native title is a ‘notoriously complex’ legal system, it is critical that state, territory and federal governments develop policy responses that support all native title parties to manage their interests in native title lands. Native title issues are open to interpretation and can be settled through policy and agreement-making, not just through amending the NTA. A suite of useful policy responses that address governance, agreement-making, and decision-making over land, water and town planning is needed. The complexity of communal and individual interests held in perpetuity necessitates such policy innovation.

Second, the notion that the work of the KTLA is limited to a narrow legal interpretation of native title belies the lived experience of Karajarri who identify and articulate logical, meaningful and practical connections between country, their elders and their future generations. This approach includes referencing Karajarri people’s own laws, customs and cosmologies of being. Indeed, Karajarri laws and customs were presented and recognised as evidence of their native title, and thus it is the work of native title holders to respect and maintain them.

The work of governments with Indigenous people needs to extend to understanding the importance of Indigenous peoples’ laws, customs and cosmologies and the implications of doing business with RNTBCs. Ignoring this governance context results in governments and the members of RNTBCs being placed at cross-purposes, wasting valuable meeting time and providing additional challenges to the negotiation and implementation of land use agreements. There are clear synergies between the work of the KTLA and programs such as Yiriman, which could be productively developed rather than disregarded.

Third, federal, state and territory governments have failed to provide policy and funding support for these corporations which are legally obliged to undertake numerous native title responsibilities, including responding to the agendas of other parties who are generally better funded. This absence of support from government destabilises the governance of RNTBCs from the very start. For Karajarri, the flow-on effects of an inadequately administered RNTBC have included: placing undue pressure on the personal capacity and commitment of KTLA members; draining resources and energy from other projects and activities which have governance capacity within the native title group; and causing tension in the local community. The same individuals who are under pressure to meet the legal obligations and community expectations of the KTLA are also active in coordinating Karajarri activities, such
Living with native title

as Yiriman, the rangers and the pastoral enterprise. The failure of governments to invest in the KTLA frustrates these key people and affects their leadership capacity.

Further, the KTLA experience shows that there is clearly a case for funds to be allocated on establishment of an RNTBC, rather than being dependent on an ILUA process which needs to address many issues and may be lengthy. Indeed, in terms of supporting good governance, an operational RNTBC is an investment for the ILUA process not an outcome of one.

As Karajarri start to leverage some outcomes from the ILUA process, they still face the many other problems besetting the KTLA. They have a pressing need to undertake a lengthy planning exercise to establish processes and policies to hold and manage their native title, including the complex issues surrounding individual and group interests in communal land. This planning exercise requires negotiating the Indigenous and non-Indigenous laws, customs and cultures which coalesce around native title business. This work must maintain legitimacy and engagement with the broader Karajarri community, or cultural match, to ensure that any agreements and decisions are sustainable.

There is also much for Karajarri to undertake with the Bidyadanga Community Council on the many issues where their interests intersect. As the Bidyadanga desert tribes go through their own process of gaining native title recognition for their traditional country, there is an opportunity for improved dialogue between RNTBCs about the role of native title holders within diverse Aboriginal communities. Significantly, what happens in Bidyadanga will establish a critical point of reference, as there are many more Aboriginal communities in Western Australia which are on ALT lands subject to native title applications.

RNTBCs are at the forefront of the legal changes since Mabo. Native title is changing both how Indigenous peoples’ interests are represented and how business is done on native title land. This paper demonstrates how these changes extend beyond RNTBCs to include myriad interactions with local, state and territory, and federal governments. Significantly, the people innovating and interpreting around native title today, in places such as Bidyadanga, are creating models for what will be considered normal into the future when native title is known and accepted as a familiar part of our governance landscape.

Innovations in governance are occurring as Karajarri and governments find ways to work together. Late in 2008, the Karajarri Rangers received a boost in government support, with five years of funding from the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) Working on Country program. Prior to this, the rangers operated from the back of Nyaparu Hopiga’s veranda, with ‘top-up’ wages from CDEP. Karajarri are also in the consultation phase of establishing an Indigenous Protected Area (IPA) under a federal government program which provides funding for conservation work on Indigenous and public
lands. Logistically, this environmental money is an investment in Karajarri staff, office facilities, transport and more.

Karajarri are enthusiastic about how the Karajarri Rangers could work on many native title matters, such as regulating tourists, taking care of important sites, monitoring changes to water management and undertaking conservation work on the pastoral leases. It is an integrated perspective which understands and seeks to consolidate the links between native title, country, land and water management, local employment and Karajarri futures.

Endnotes

1 The chapter is an edited version of a paper published as JK Weir, Karajarri: a West Kimberley experience in managing native title, AIATSIS Research Discussion Paper, no. 30, AIATSIS, Canberra, 2011, http://www.aiatsis.gov.au/research/documents/DP30NTRU.pdf, accessed 27 June 2013. This chapter has been facilitated by the relationships I built with Karajarri, KLC staff and other people who have worked with Karajarri. Their willingness to share information and support this work made this case study possible in three trips to the Kimberley in 2007 and 2008. I am deeply grateful for their support. For comments on earlier drafts of this chapter, I would like to thank Jess De Campo, Joe Edgar, Bruce Gorrting, Krysti Guest, Anna Mardling, Howard Pedersen, Lisa Strelein and Sarah Yu. For their assistance I also thank Jane Blackwood, Jess Clements, Maree Gaffney, Kate Golson, Nyaparu Hopiga, Tiffany Labuc, Mervyn Mulardy Jnr, Edgar Price, Shirley Spratt, Claire Stacey and the anonymous peer reviewers. I thank Cynthia Ganesharajah, Bruce Gorrting and Sayuri Piper for clarification with specific technical questions. I thank Toni Bauman, Cynthia Ganesharajah, Zoe Scanlon and Christiane Keller for their editorial work to prepare this chapter for publication. Any errors or omissions are my responsibility. The research for this paper was supported by a research agreement between the KTLA and AIATSIS. This case study is part of a larger AIATSIS PBC project, focused on planning and governance issues facing RNTBCs across Australia.

2 An ‘Aboriginal community’ is a community or association wholly or principally composed of persons who are of Aboriginal descent, as defined by the Aboriginal Communities Act 1979 (WA) (ACA Act), s 3.

3 The applicants in the Tjurabalan native title application (Ngalpil v State of Western Australia [2001] FCA 1140 were represented by the KLC, but the matter was settled by consent prior to the Karajarri application. The KLC also represented individual applicants in the Miriuwung Gajerrong application (Western Australia v Ward (2002) 213 CLR 1), but the majority were represented by the Aboriginal Legal Service (Western Australia) and the Northern Land Council; Krysti Guest, pers. comm., 12 May 2009.


7 For example, ACA Act, above n 2.


9 Christos Mantziaris and David Martin noted that much of the RNTBC regime was a hasty legislative response to a Senate debate on group rights, C Mantziaris & D Martin, Native title corporations: a legal and anthropological analysis, The Federation Press, Sydney, 2000, p. 94. See also p. 98.

10 In 2007, the funding situation began to be partly addressed, with nominal ‘crisis’ funds provided on application to a handful of native title corporations by the Commonwealth Government. It is not common for Indigenous Land Use Agreements (ILUAs) to include long-term funding and institutional support for RNTBCs, although Victoria is a notable exception. The Commonwealth Government has also changed native title funding policies to provide native title holders with more support from their representative bodies. For a discussion of these funding changes see: AGDSC, above n 5, pp. 8–9; LM Strellein & T Tran, Native Title Representative Bodies and Prescribed Bodies Corporate: native title in a post determination environment, Native Title Research Report, no. 2, Native Title Research Unit, AIATSIS, Canberra, 2007, http://www.aiatsis.gov.au/ntru/documents/PBCReport.pdf, accessed 27 June 2013; T Bauman & T Tran, First National Prescribed Bodies Corporate meeting: issues and outcomes, Canberra 11–13 April 2007, Native Title Research Report, no. 3, Native Title Research Unit, AIATSIS, Canberra, 2007, http://www.aiatsis.gov.au/ntru/docs/researchthemes/pbc/PBCMeeting2007.pdf, accessed 27 June 2013; Weir, above n 5. Also, the Native Title Amendment (Technical Amendments) Act 2007 (Cth) permits native title corporations to establish a ‘fee for service’ regime to meet and recover costs associated with various native title related activities. As at October 2010, the native title regulations to implement this amendment were still in draft form.

11 I would like to thank the Karajarri men and women who shared their experiences of native title with me, some of whom I have quoted in this document: Sylvia Shoveller, her daughters Shirley Spratt, Madeline Shoveller and Devina Shoveller, her nieces Jaqueline Shoveller and Pamela Shoveller, as well as Fay Dean, Joe Edgar, Nyaparu Hopiga, Thomas King Jnr, Elaine McMahon, Mervyn Mulardy Jnr, Andrew Bin Rashid and Frank Shoveller. I would particularly like to thank Karajarri elder Wittidong Mulardy and acknowledge the leadership of Karajarri elders Donald Grey, Nita Marshall, and Nyaparu Possum. I also thank Jessica Bangu.

12 Wittidong Mulardy, interview with the author, Bidyadanga, 6 May 2008.


14 Ibid., pp. 29, 53.


16 K McKelson & T Dodd, Nganarna Nyangumarta Karajarrimili Ngurranga: we Nyangumarta in the country of the Karajarri, Wangka Maya Pilbara Aboriginal Language Centre, South Hedland, 2007, p. 182.

17 Bagshaw, above n 13, pp. 86–7.

18 Anna Mardling, pers. comm., 28 April 2008.

19 Edgar, above n 6.

21 The Community Council is a representative forum comprising and elected on behalf of community members.
22 ACA Act, above n 2.
23 Shirley Spratt, interview with the author, Bidyadanga, 28 April 2008.
26 Bagshaw, above n 13, p. 35.
27 Ibid., p. 87. See also Edgar, above n 6.
28 Translated quote in Bagshaw, above n 13, p. 52. The speaker is identified as DW.
29 Bruce Gorrin, pers. comm., 2 June 2009. See also Edgar, above n 6.
32 NTA, above n 5.
34 Ibid.
35 Prior to the Mabo decision (Mabo v Queensland [No. 2] (1992) 175 CLR 1) (Mabo (No. 2)), Crown radical title was called unallocated Crown land within the Australian property law system; see Mabo (No. 2), at [30]. Such lands continue to be commonly described as unallocated Crown land even though the High Court determined otherwise in Mabo (No. 2).
37 Spratt, above n 23.
38 Special lease 3116/9944 under s 116 of the now repealed Land Act 1933 (WA), Nangkiriny (2002), above n 31, first sch. This lease is an exclusive possession act under s 23B of the NTA, above n 5, which extinguishes native title under s 23G.
39 Western Australia v Ward, above n 3.
40 Nangkiriny (2004), above n 31, at [2], [6].
41 These reservations are provided for in the Lands Administration Act 1994 (WA) s 104, and have existed in state pastoral lease statutes since the early years of colonisation in Western Australia; Western Australian Government, Aboriginal access and living areas final report, Pastoral Industry Working Group, Western Australian Government, Perth, 2003, p. 11.
42 Nangkiriny (2004), above n 31, at [5].
43 Relevant Western Australian legislation includes: Land Administration Act 1997 (WA) pt 7; Dividing Fences Act 1961 (WA); Agriculture and Related Resources Protection Act 1976 (WA); Soil and Land Conservation Act 1945 (WA); Environmental Protection Act 1986 (WA); Rights in Water & Irrigation Act 1914 (WA); Wildlife Conservation Act 1950 (WA); and Conservation and Land Management Act 1984 (WA).
44 Western Australia, above n 3, at [194].
46 NTA, above n 5, s 44H(c).
48 For a general discussion about the ‘un-economic’ casting of native title, see LM Strelein & JK Weir, ‘Conservation and human rights in the context of native title in Australia’, in J Campese,

49 NTA, above n 5, s 47A(4) and s 212.

50 To the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (WA).

51 See also D Ritter, *The native title market*, University of Western Australia Press, Crawley, 2009, p. 7.


53 See also the discussion on de-facto extinguishment in K Magarey, ‘Native Title Amendment Bill (No 2) 2009’, Bills Digest, Parliamentary Library, Canberra, 2010, pp. 12–13.

54 NTA, above n 5, s 233.

55 See, for example, ibid., s 24HA(7).

56 See ibid., div 3, subdiv P.

57 Devina Shoveller, interview with the author, Bidyadanga, 8 May 2008.

58 AGDSC, above n 5, p. 6.

59 AGDSC, above n 5.

60 Ibid., p. 10.

61 Ibid.


63 This was identified in a KTLA office workshop, 11 November 2008, facilitated by Sarah Yu and Edgar Price, funded by AIATSIS.


66 NTA, above n 5, s 47A.

67 Quimbeena had two shareholders: the Community Council and Nigel Gill (former community administrator) who held a share on behalf of Karajarri traditional owners because they had no legal entity to hold and preserve their interests at the time. Quimbeena operated well before the native title determination on this shareholder basis. However, due to responsibilities arising out of the Community Development Employment Projects (CDEP) scheme and other subsidised activities managed through the Bidyadanga Community Council office, Quimbeena management decisions and funding administration became subsumed into the Community Council administration. This led to poor record-keeping, difficulties in tracking expenditure, potential redirection of funds prescribed for Quimbeena activities being used for other purposes, limited transparency in decision-making and, hence, a deteriorating pastoral station. Gorring, above n 29. See also T King & K Carter, ‘Moving forwards’, Quimbeena Pastoral Company Development Plan (second draft) for Frazier Downs, unpublished document, May 2002.

68 Gorring, above n 29.

69 See Rowse’s discussion, above n 8, pp. 231–3.

70 Andrew Bin Rashid, interview with author, Bidyadanga, 30 April 2008.


72 A site in the country of the Goolarabooloo and Jabirr Jabirr people, north of Broome, has been negotiated between the gas proponents, the KLC and some of the traditional owners.

73 The Bidyadanga community is built on Reserve 38399 for which the Management Order is vested in the Aboriginal Lands Trust (ALT) (with the power to lease) in accordance with the
Karajarri: native title and governance in the West Kimberley

_The Land Administration Act 1997_ (WA) for the dedicated purpose of ‘use and benefit of Aboriginal inhabitants’. See Gorring, above n 29.

74 Department for Planning and Infrastructure (DPI), _Bidyadanga community layout plan no. 2, draft for comment and review_, Western Australian Government, July 2007, p. 7. It is worth noting that the full extent of the community development exceeds the area of Reserve 38399. The community bylaws area is not proclaimed and therefore irrelevant.

75 Gorring, above n 29.

76 Thomas King Jnr, interview with author, Port Smith, 7 May 2008.

77 Rowse, above n 8, p. 179; Mantziaris & Martin, above n 9, pp. 100–1.

78 _Corporations (Aboriginal and Torres Strait Islander) Act 2006_ (Cth) (CATSI Act).

79 J Hunt, DE Smith, S Garling & W Sanders (eds), _Contested governance: culture, power and institutions in Indigenous Australia_, CAEPR Research Monograph, no. 29, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2008; and, P Sullivan, _A sacred land, a sovereign people, an Aboriginal corporation – prescribed bodies and the Native Title Act_, North Australia Research Unit, Australian National University, Darwin, 1997.


81 The CATSI Act repealed and replaced the _Aboriginal Councils and Associations Act 1976_ (Cth).

82 CATSI Act, above n 78, s 265-20.


84 Fay Dean, interview with the author, Bidyadanga, 7 May 2008.

85 Karajarri Traditional Lands Association RNTBC meeting, Bidyadanga Telecentre, 30 April 2008.

86 Joe Edgar, interview with the author, Broome, 9 May 2008.

87 Ibid.

88 Blackwood & Hopiga, above n 64.

89 Edgar Price was funded by AIATSIS to begin a KTLA business plan as part of the PBC project.

90 For a discussion on the optimal factors for good governance, see Cornell & Kalt, above n 80, pp. 187–214; Hunt et al., above n 79; and Weir, above n 5.

91 See also Edgar, above n 6.

92 Fay Dean, above n 84.

93 DPI, above n 74, p. 17.


95 For a discussion on the residency vis-a-vis traditional ownership rights of Indigenous peoples in remote Indigenous communities see Rowse, above n 8, pp. 111–23.


97 As ALT lands do not extinguish native title rights and interests, it is expected that compensation cases will be lodged by RNTBCs and Native Title Representative Bodies in response to _Darnley_. Gorring, above n 29.

98 See further Edgar, above n 6.

99 DPI, above n 74, p. 7.
100 Gorrin, above n 29. The Bonner Report recommended that all ALT land be transferred back to Aboriginal corporations to be held on trust for Aboriginal people. See Aboriginal Lands Trust Review Team & N Bonner, *Aboriginal Lands Trust*, Aboriginal Affairs Department, Perth, 1996.

101 Edgar, above n 6.


103 The amendments include the granting of a ‘right to comment’, which seems an unnecessary legislative provision in a democracy. Magarey, above n 53, pp. 16–17. See also text box 3 in Weir, above n 1.

104 Dillon & Westbury, above n 62; see also Magarey, above n 53, pp. 19–20.

105 King Jnr, above n 76.

106 Shoveller, above n 57.

107 See, for example, K Guest, *The promise of comprehensive native title settlements: the Burrup, MG-Ord and Wimmera agreements*, Research Discussion Paper no. 27, Native Title Research Unit, AIATSIS, Canberra, 2009.

108 Magarey, above n 53.

109 As also argued by Dillon & Westbury in their discussion of the agreement-making which led to joint-management arrangements for the majority of national parks in the Northern Territory, above n 62, p. 113.

110 See Rowse, above n 8, p. 222 for a discussion on state/territory relations with the Commonwealth on Indigenous issues.

111 The first ILUA was signed in late 2010; the global ILUA is being negotiated.

112 *Mabo (No. 2)*, above n 35.