



PBC INTERVIEW WITH *Lui Ned David*

BY IAIN JOHNSTON, AIATSI

As part of the ongoing PBC website redevelopment (nativetitle.org.au), Mike Cawthorn and AIATSI conducted interviews with PBCs from across Australia about how they look after their native title rights. This article reflects upon the interview with Lui Ned David from the Magani Lagaugal (Torres Strait Islanders) Corporation.

Lui Ned David, the chair of Magani Lagaugal, was interviewed during the National Native Title Conference 2018 (NNTC 2018), where he discussed his PBC's experiences of dispute resolution processes concerning native title governance and Torres Strait Islander culture. The Magani Lagaugal (Torres Strait Islanders) Corporation administers land on behalf of the lama people and Tudulaig people. The lama and Tudulaig own parts of lama (Yam) Island, Zagai Island, Tudu Island and Cap Islet in the Torres Strait under the lama Islanders determination (also known as the Tudulaig People determination) which came into effect in 2005. Ned discussed his PBC dispute resolution processes from his

experience of holding the chair of Manani Lagaugal for more than 10 years:

Land disputes and arguments around who own this or where boundaries are, in terms of each community in the Torres Strait [and] I suspect even down to Cape York to a certain extent, these are not new things, they are not recent. The court records for a lot of councils, like Murray Island, has land dispute records going back to the 1800s.

As Ned explained, disputes are inevitable but they are also part of any healthy corporation. However, for PBCs there are some unique challenges and disputes that other types of corporations don't regularly face. The CATSI Act requires that all constitutions include a process for dealing with disputes. ORIC also includes information about basic dispute resolutions processes in The rule book – info-kit and The rule book - condensed (see also the PBC website's dispute management section). However, often these resources are not tailored to the specific needs of a PBC or are too general. Ned explained:

We had [a] process to deal with disputes in the rule book, which was totally flawed because it basically said [that for] any dispute... we'll do the normal sort [of] thing, you write in or whatever "this is what I..." and the board of directors will just make a decision on it. But we can't work like that... [Because] there's myself and seven other directors that make up the board, [and] five of us are from the one family, Davids. Can you imagine [us] making a decision for another family, you're asking for war. That was instantly not accepted by anyone including ourselves... I wasn't going to be party to that.

Ned highlighted how PBCs must often act like any other corporation in Australia, but are also governed by families or cultural groups who must make decisions, sometimes deeply personal decisions, for Country. This is a situation that other corporations do not regularly consider, but from whom much of the advice and dispute resolutions processes given to PBCs have developed. While well managed dispute resolution processes can

Above: Mer (Murray) Island, Torres Strait Islands.

Right: Mer (Murray) Island, Torres Strait Islands.

produce positive outcomes and strengthen a corporation, it can be extremely difficult when these decisions affect certain places or families more than others. Ned described how Magani Lagaugal's initial dispute resolution processes were inadequate for their corporation and discussed how they redeveloped their processes:

This one particular dispute, in the last five years, kept coming to every meeting. We knew that this wasn't something that was going to go away... We [re] going to have to find some sort of closure soon because every meeting we're having is dominated by this one dispute. It kept coming up. Interestingly enough and I hear this a lot, "it's easy, just get a council of Elders and they'll have look at this and that [and it] will be done and dusted". I'm sorry but it doesn't work like that... we don't really have this thing called a 'Council of Elders'; there really is no such thing, not for us anyway in the Torres Strait. Traditionally we have the Kod, which is like a council. It's made up of people that have knowledge, have status and more importantly have the authority. They make all the decisions. Now a Kod hasn't functioned since [the] 1920s, 1910 or maybe even before, certainly not for Yam Island.

While reinstating a Kod was the preferred option, Ned explained that it wouldn't be simple:

We knew that we couldn't necessary get a Kod type arrangement in place... You know some of those things that were strong held beliefs, part of the tradition, like the male dominated Kod. We would have to say we're going to change that.

Ned, with his co-authors Keith Pabai and Cassie Lang, presented a paper at the NNTC 2018 about how Magani Lagaugal developed a Dispute Resolution Council (DRC) in order to manage their dispute resolution processes. In his presentation, Ned explained that often people in his community would seek dispute

resolution from external providers; however, it didn't solve the disputes for long and was often expensive for the PBC. Therefore, Magani Lagaugal decided that, in collaboration with legal experts Dr Lisa Strelein and Cassie Lang, they would develop a Dispute Resolution Council that would incorporate the important principles of a Kod, *knowledge, status and authority*, and the laws of today. As part of this process Magani Lagaugal members spent time undertaking their own research to work out who owned and who can speak for which parts of their Country. They also decided that the Dispute Resolution Council would not follow a family group membership model but would be made up of elected members with attributes that the community had decided were important for dispute resolution. Ned described that creating the council was not the final step:

There was a lot of work done with the group [DRC members] about how to... [and] what to consider, like making sure that the Elders are given all the information and... [that they] understand [they're] going to do somethings that a Kod use[d] to do, like making some big decisions and this is what you need [to] make sure you do by the rule book. These are the rules that the rule book says, these are the laws of the day. Be clear about this is this family; this is this person disputing this person. All those things we run through so that they're [DRC members] absolutely clear about what the issue was and how to conduct the actual hearing in a fair and open process.

Ned concluded his interview by reflecting upon Magani Lagaugal's experience of developing their Dispute Resolution Council.

I'm reflecting now, and I'm glad it happened [the dispute mentioned above] because it made us do this, create this. Any potential disputes or new disputes that come - this is how we're going to deal with it. This is going to be the process. We are fortunate to have people who understood the law of today so that what we did didn't breach any of the rules that ORIC's got in our rule book, didn't break any of the laws of today's laws commonwealth or state... They had a look at what we'd done and quality assured the thing from start to finish. We all sat and looked at everything and all agreed, and we drew the membership from all those families to become part of this Dispute Resolution Committee. There are people there, members of that group that are quite young, not young, young like me but still we wouldn't call them your Elder. But they have all those things knowledge status authority and they can deal with stuff.

The interview described in this article is viewable in the dispute management section of the PBC website. See also:

See Lui Ned David, Keith Pabai & Cassie Land, 2018, Dispute resolution in the Torres Strait: How we combined the two laws and practices, presented at National Native Title Conference 2018 - Many Laws, One Land, 5 -7 June 2018, Broome, WA.

