

Information Circular

FOR ALL BIGAMBUL PEOPLE

Bigambul Native Title Aboriginal Corporation



BIGAMBUL

Native Title Aboriginal Corporation
BNTAC



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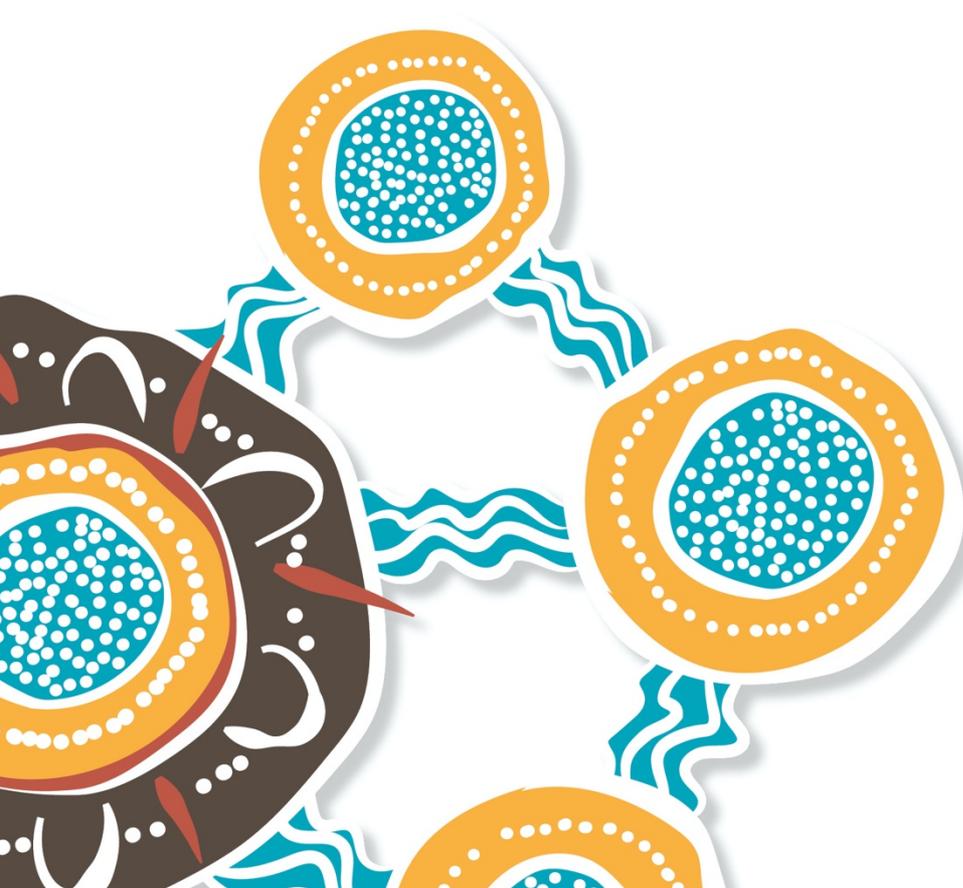
Bigambul Native Title Aboriginal Corporation

SUMMARY

The following is a brief summary of the information in this circular. Please read the circular in full for a more detailed explanation.

- Prior to the new directors taking over Bigambul Ltd and BNTAC there were significant compliance issues with the corporations that required rectification.
- These issues were very complex and included Bigambul Ltd being joined to a court action along with its previous director and CEO Mr Russell Doctor and its administrator Ms Lucy Davis.
- The process of understanding the issues and the respective roles of the parties was made very difficult by the lack of records for Bigambul Ltd.
- In order to deal with this in a transparent way and to remove conflicts of interest, the new directors made the decision that it was in the best interests of the Bigambul People to terminate all employment, contracting and directorship connections between the two companies, Bigambul Ltd and BNTAC, and Mr Doctor and Ms Davis.
- After clarification of the relative positions of Bigambul Ltd and BNTAC, it was decided to transfer all native title assets previously held by Bigambul Ltd as trustee on behalf of the Bigambul People to BNTAC as the entity that now legally holds the native title rights on behalf of the Bigambul People.
- As part of this process BNTAC issued a declaration of trust in relation to the Milmerran property acquired from ILUA proceeds that sets out the terms on which BNTAC holds that property as trustee on behalf of the Bigambul People.
- As Bigambul Ltd no longer had a role and there were ongoing issues relating to its financial position that could not be resolved due to the lack of records, Bigambul Ltd was put into voluntary administration in August 2020 with a view to it being wound up.
- It took the new management and directors over 18 months to unravel and deal with all these issues before being able to focus BNTAC on its role as the representative body of the Bigambul People native title holders.

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- Due to the past governance and accountability issues in both Bigambul Ltd and BNTAC, as a first step BNTAC undertook a full review of its governance and corporate structure to ensure it was in the best position to fully deliver on its objective of bringing benefit to the Bigambul People.
 - The review of the governance resulted in a new, more representative Board structure with a focus of ensuring that the Board has the necessary skills and expertise to enable it to achieve its objectives.
 - The review of the governance and corporate structure also resulted in the BNTAC Board deciding to adopt and implement a nation rebuilding approach, an evidence-based approach that has been demonstrated as best practice to enable indigenous nations to overcome the impact of colonisation and to rebuild themselves.
 - As part of the nation rebuilding approach, and also as a risk management strategy, the Board of BNTAC has approved the creation of a separate trust to hold the native title assets of the Bigambul People and to invest and protect those assets for future generations.
 - A new corporate trustee will be established to manage this trust. The Board of the trustee will have representatives who are descendant from all six apical ancestors on it. Expressions of interest for appointment to the Board will be issued shortly.
 - Now that the compliance and governance issues have been largely resolved, the focus of BNTAC in the immediate future is on expanding its membership, lodging an extension of the Bigambul People's native title claim; applying for compensation from the Queensland Government for extinguishment of native title rights; and negotiating and managing existing and new ILUAs and cultural heritage rights, including in relation to the Inland Rail project.
 - BNTAC recently became aware of a compensation claim lodged in the courts purportedly on behalf of the Bigambul People. BNTAC chose to intervene in the court action as it is of the view that it has not been properly authorised by the Bigambul People. The decision of the court in this matter is still pending.



HISTORY

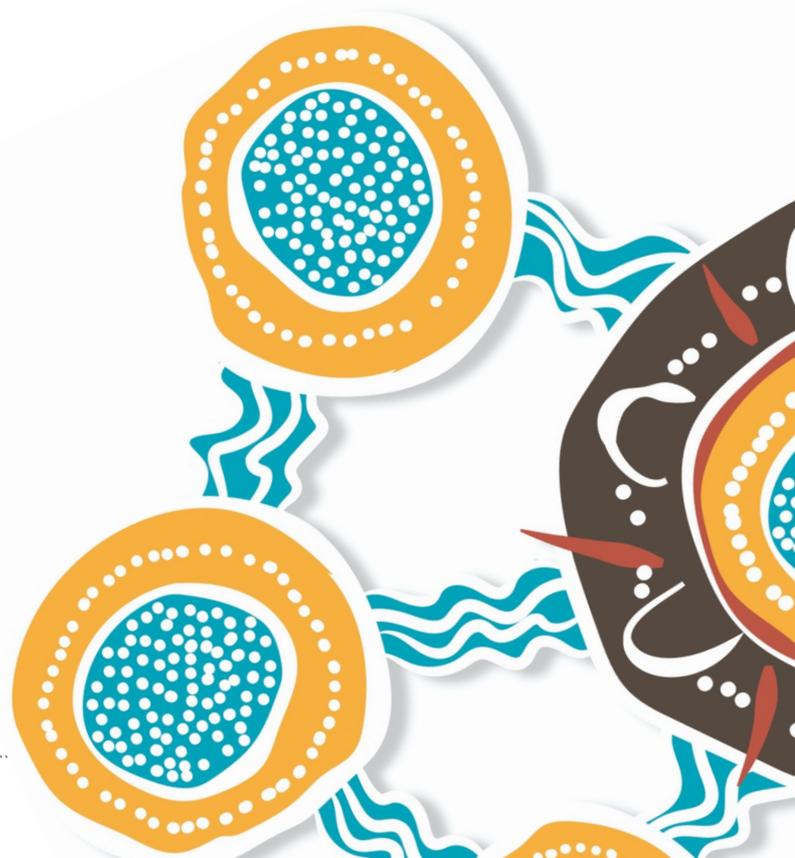
Bigambul Ltd was set up as a corporate entity by the original claimants for native title to hold native title income and assets pending determination of native title. As such it was the nominated entity that received payments under the QGC ILUA. It also received ILUA payments to purchase the Milmerran property on behalf of the Bigambul People common law holders.

Bigambul Ltd was originally set up as a charitable public benevolent institution with tax exempt status. Its objects required it to act for the benefit of the Bigambul People as a whole. In 2016 that charitable status was revoked as Bigambul Ltd had failed to comply with its financial and regulatory reporting obligations.

Bigambul Native Title Aboriginal Corporation (BNTAC) was established in September 2016 as the prescribed body corporate under native title legislation. When the consent determination for native title for the Bigambul People was received the native title rights were vested in BNTAC, as required under the Native Title Act to hold the native title rights as trustee on behalf of the Bigambul People and to be the representative body of the Bigambul People native title holders.

At that point Bigambul Ltd's status as the representative of the Bigambul People native title claimants ceased and any assets/rights it held as trustee on behalf of the Bigambul People should have been transferred to BNTAC and Bigambul Ltd deregistered. However, issues with governance and a lack of financial records and regulatory compliance meant that this was not immediately possible.

Steps were then taken to replace the Board of both BNTAC and Bigambul Ltd in 2018 with the new directors stepping in to try to resolve these issues to enable Bigambul Ltd to be wound up or deregistered and BNTAC to move forward as the native title representative body of the Bigambul People.





WHAT HAS BEEN HAPPENING SINCE THEN

When the new directors were brought in to both Bigambul Ltd and BNTAC it became clear that the compliance issues with Bigambul Ltd in particular were more significant and complex than had been anticipated and that these needed to be resolved before any future activities, beyond those immediately necessary, could be undertaken.

Bigambul Ltd

The new directors of Bigambul Ltd spent significant time and resources attempting to resolve the financial reporting and compliance issues in Bigambul Ltd to better enable it to understand its financial position and, in particular, ascertain its legal position.

In examining the limited financial records that had been left from the previous administration, it became clear to the new Board of Bigambul Ltd that there were a number of significant issues.

All reasonable efforts were made by the directors of Bigambul Ltd to attempt to forensically compile the financial records to determine its financial position.

This position was further complicated when, in mid-2019 Bigambul Ltd was added as a party to a court action being taken against Russell Doctor (in his capacity as a Director of Western Downs Group Ltd and Director of Bigambul Ltd) in relation to payments that had been overpaid to Bigambul Ltd by Western Downs Group Ltd. Although the court has granted a default judgement in this matter against Mr Doctor and another director Mr Jarro, for the amounts overpaid to Bigambul Ltd, the court action remains ongoing and Bigambul Ltd remains a party to that action, subject to the administrator placing a stay on proceedings.

In order to deal with the multitude of issues facing Bigambul Ltd in a transparent way and to remove the potential for conflicts of interest, the new directors made the decision that it was in the best interests of the Bigambul People to terminate all employment, contracting and directorship connections between the two companies, Bigambul Ltd and BNTAC, and Mr Doctor and Ms Davis. In addition, the decision was made by the Board to terminate Mr Doctor's membership of BNTAC, which was ratified by the members.

Bigambul Ltd was originally set up to temporarily deal with the native title benefits pending the determination of native title. When native title was determined and BNTAC incorporated, BNTAC became the legal holder of the native title rights as trustee on behalf of the Bigambul People. Therefore the new directors felt that it was appropriate that the trusteeship of the assets that had been acquired on behalf of the Bigambul People from ILUA benefits should be transferred from Bigambul Ltd to BNTAC.

This resulted in BNTAC becoming the trustee of the Milmerran property that had been purchased from ILUA proceeds. Further, it was agreed with QGC that BNTAC rather than Bigambul Ltd should become the nominated entity to receive the payments from the existing QGC ILUA going forward.

Because of Bigambul Ltd's role as trustee of assets on behalf of the Bigambul People, BNTAC considered it necessary to support Bigambul Ltd while the transfer of trusteeship was finalised and the financial and legal position of Bigambul Ltd was determined. However, once the trusteeship of the assets and the ILUA payments were transferred to BNTAC, the Board of BNTAC made the decision that it no longer had an obligation to provide further financial or administrative support to Bigambul Ltd, other than to facilitate its winding up.

Accordingly, as it no longer had a role to perform and had no income to support its continued operation, Bigambul Ltd was put into voluntary administration in August 2020.



Bigambul Native Title Aboriginal Corporation (BNTAC)

BNTAC took over as the representative body and holder of the native title rights of the Bigambul People following consent determination in 2017. For the initial year following its establishment the Bigambul Ltd Board was also the Board of BNTAC and BNTAC suffered from some of the same structural and compliance issues as Bigambul Ltd.

When the new directors came on to the Board of BNTAC in 2018 and Mr Justin Saunders was appointed as executive director, BNTAC began the process of determining its financial and legal position and what its role as the native title representative body of the Bigambul People was in light of Bigambul Ltd's existence.

As mentioned above, part of this process saw the trusteeship of the Milmerran property and assets transferred from Bigambul Ltd to BNTAC and BNTAC becoming the Nominated Entity under the QGC ILUA to receive and hold the ILUA payments on behalf of the Bigambul People in place of Bigambul Ltd.

Also as a result of what was happening with Bigambul Ltd, the decision was taken to review the governance and corporate structure of BNTAC. Initially, the regional construct model was favoured by the BNTAC Board and a consultation process with the Bigambul People was undertaken regarding this structure.

However, after considering feedback, BNTAC's potential role in rebuilding the Bigambul nation and the issue of how best to minimise risks to the assets held on behalf of the Bigambul People, the Board determined that a



structure that aligned to the nation rebuilding approach advocated by Reconciliation Australia and the Office of the Registrar of Indigenous Corporations was a better option.

The nation rebuilding approach is one that many years of research by Harvard University and the University of Arizona has shown to be the best practice for enabling indigenous nations that have been negatively impacted by colonisation to overcome disadvantage and to rebuild their nations.

In order to implement this approach the constitution of BNTAC was amended in May 2020 to remove some significant inconsistencies between the constitution and the legal requirements under the CATSI Act and to provide for a Board that was:

- more broadly representative of the Bigambul People;
- took into account the knowledge, experience and expertise required to govern BNTAC in accordance with best practice and put it in the best position to achieve its objective of delivering long term generational benefits to the Bigambul People; and
- recognised the importance of having a mechanism that enabled both Bigambul Elders and the next generation of Bigambul youths to have input into the decision-making process.

The new Board structure of BNTAC now consists of up to 12 directors being:

- (a) the chairs (or nominees) of the Elders Advisory Council and the Youth Advisory Council;
- (b) up to 7 member-endorsed Bigambul People (including at least one additional Elder and one additional Youth) nominated and selected based on experience, diversity across apical ancestors, gender and age diversity; and the skills needed on the Board;
- (c) up to 2 skills-based directors; and
- (d) an executive director (if one is appointed by the Board).

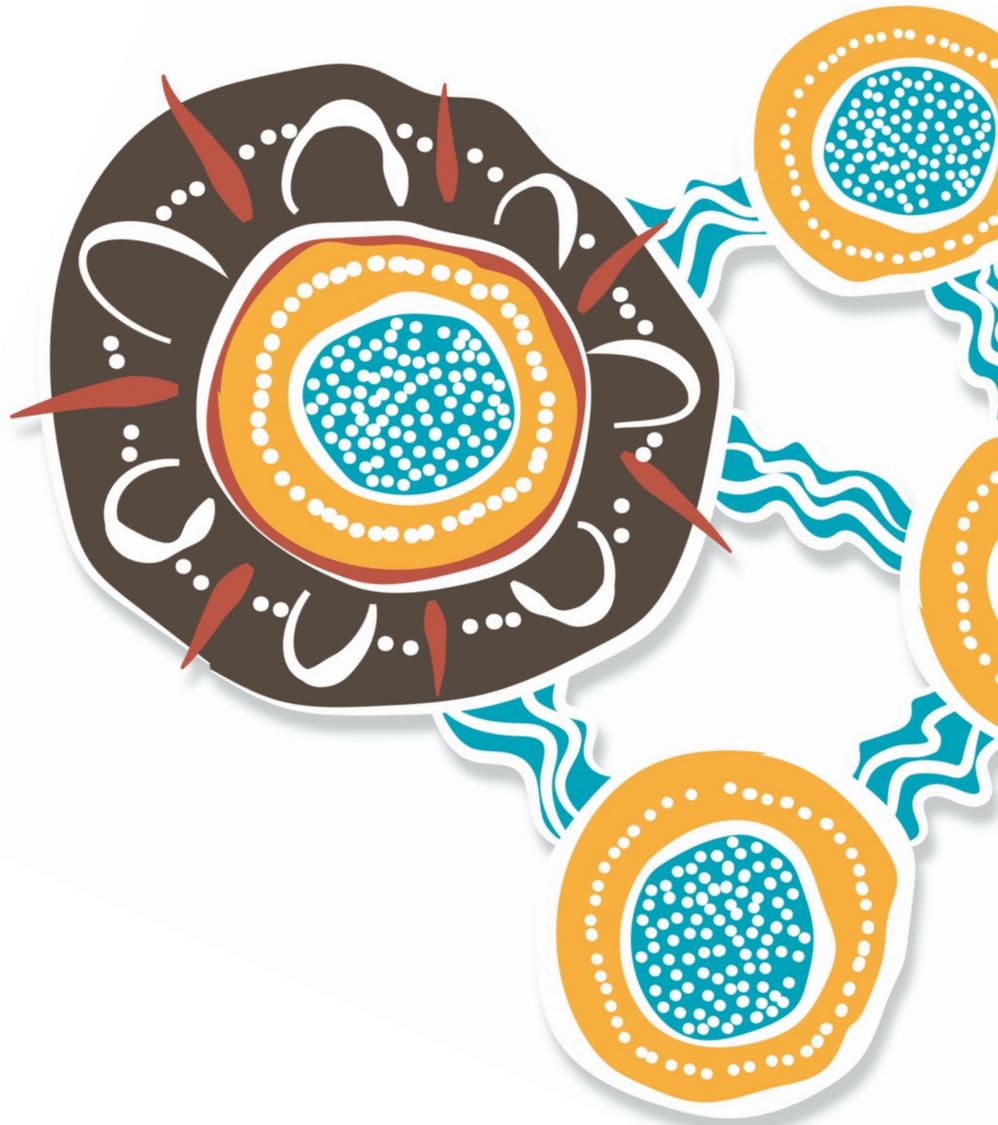
In addition to the restructure of the BNTAC Board, it was decided that in order to best protect the assets derived from the Bigambul People's native title rights for the long term, a separate trust would be established for the benefit of the Bigambul People. The trust is to be controlled by a separate corporate subsidiary of BNTAC. The reasons for setting up a separate corporate trustee are:

- to enable BNTAC to focus on how best to manage native title, cultural heritage and compensation claims on behalf of the Bigambul People;
- to enable the corporate trustee to focus on managing and investing the assets so the benefit of those assets are not just received by current Bigambul People but will continue to deliver for future generations;
- to facilitate access to the best possible investment expertise for managing the assets; and
- to ensure that the trustee was not involved in any other activity other than managing the trust assets so the exposure and risks of loss to those assets were minimised.

The Board of the corporate trustee will be established to include a representative from the descendants of each of the six apical ancestors and up to two skills-based directors. In addition to this, the intention is to build a capital base within the trust that can be invested for the benefit of future generations of the Bigambul People. The Board will establish an investment advisory committee that will consist of persons with the experience and expertise to advise it on the best forms of investment to achieve this purpose.

In the future, it is anticipated that the nation rebuilding approach will provide BNTAC with opportunities to pursue social, economic and cultural development on behalf of the Bigambul People. In order to do this

without putting the native title assets at risk, the intention is that a separate BNTAC controlled company will be set up whose sole purpose will be to pursue these opportunities.





THE NEXT STEP

Elders Advisory Council

An Expression of Interest for appointment to the Elders Advisory Council has been issued and can be found at: <https://www.bigambul.com.au/community-news/get-involved> Those Bigambul Elders with an interest in becoming involved are encouraged to apply. For more information about the Council and how to register your interest/apply, please visit our webpage and follow the link to the EOI Form.

Cultural Heritage Field Officers

BNTAC are seeking Expressions of Interest from Bigambul People 18 years or older to be listed on the BNTAC Register of casual Cultural Heritage Field Officers for upcoming Cultural Heritage works. Please follow the link to our website and the EOI Form to access further information and lodge your application. <https://www.bigambul.com.au/community-news/get-involved/>

Bigambul Language Working Group

BNTAC are currently seeking Expressions of Interest (EOIs) from Bigambul Traditional Owners and Elders to be part of the BNTAC Language Preservation Working Group. BNTAC was successful in securing funding for the commencement of the Bigambul Language Preservation program. For more information regarding our Language Preservation Working Group and how to apply, please visit our webpage and follow the link and lodge your EOI. <https://www.bigambul.com.au/community-news/get-involved/>

Establishment of the BNTAC NAIDOC Committee

BNTAC are currently seeking Expressions of Interest (EOIs) from Bigambul Traditional Owners and Elders to participate as part of the BNTAC NAIDOC Committee. The purpose of the NAIDOC Committee will be to lead and coordinate plans and arrangements for NAIDOC celebrations each year in Goondiwindi and surrounding areas in our Determination Area. If you are interested in applying, please follow the link to our website and the EOI Form to access further information and lodge your application. <https://www.bigambul.com.au/community-news/get-involved/>

Establishment of Corporate Trustee

BNTAC will shortly commence the process for establishment of the corporate trustee. An expression of interest for appointment to the Board of the corporate trustee will be issued shortly.

Extension of Native Title Claim

BNTAC's intention is to make an application to extend its Native Title Claim to include areas recognised as Bigambul Country.



Compensation Claim

Earlier this year the BNTAC Board passed a resolution that it would seek advice on its options to claim compensation for loss of native title rights based on the *Timber Creek* decision. For this purpose, it held a consultation meeting with Queensland South Native Title Service (QSNTS). At the time, QSNTS recommended that BNTAC not file a compensation claim immediately but rather wait until the Queensland Government considered its position and what, if any, compensation it would offer.

However, before BNTAC had progressed very far down this path, it was made aware of legal action lodged against the Queensland Government claiming compensation for loss of native title rights on behalf of the Bigambul People. Neither BNTAC nor its directors had been advised of, or consulted in relation to this potential claim. On investigation, BNTAC felt that this claim had not been properly authorised by the Bigambul People as required under the Native Title Act and lodged an application to intervene in the court action to this effect. This matter is currently before the courts and a decision is expected shortly.

It remains BNTAC's view that, in line with advice from QSNTS, less costly avenues of obtaining compensation should be pursued prior to commencing legal action.

Other Activities

As the representative entity of the Bigambul People native title holders, the next steps for BNTAC will be to:

- Renegotiate the Shell – QGC Indigenous Land Use Agreement (ILUA)
- Australian Rail Track Corporation (ARTC) Inland Rail
- Workforce Development and Training Program
- Establish the BNTAC Office in Goondiwindi
- Water and Resources Management Planning