

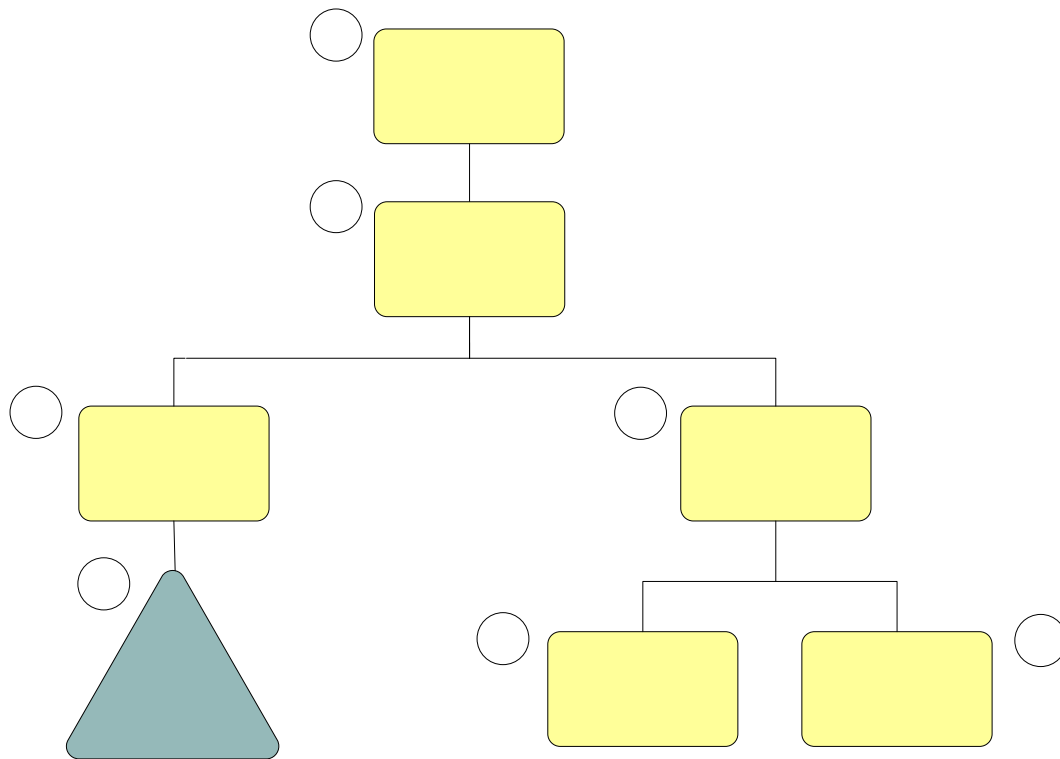
Yawuru Native Title Holders

**A commercial corporate structure
for social and economic
development**

**National Native Title Conference
2011**

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Yawuru Corporate Group



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YAWURU RNTB

McDonald Legal & Advisory - National
Native Title Conference 2011

2
100%

2

Overview

- Governing principles
- Key legislation, tax rulings, cases
- Structural elements: entity type, purpose, governance, funding & assets, tax status
- What next?

Governing Principles

- Wishes of native title holders to control and delegate
- Efficient, cost effective, transparent, accountable, adaptable structure
- Tax effective but not tax driven
- Framework for sustainable social and economic development and maintaining culture

Governing Principles (cont'd)

- Reflects nature and extent of native title interests, aspirations and compensation
- Appropriate risk management
- Builds on and enhances strengths and capacities of native title holders
- Governance – structure, systems, processes, policies and people

Governing Principles (cont'd)

- **No 'one size fits all'**

Key Legislation

- Commonwealth

- *Native Title Act 1993, Corporations Act 2001; Corporations (Aboriginal and Torres Strait Islander) Act 2006, Taxation legislation – ITAA 1936, 1997*

- Western Australia

- *Land Administration Act 1997, Conservation & Land Management Act 1984, Aboriginal Affairs Planning Authority Act 1972, Duties Act 2008, Local Government Act 1995*



Key Tax Rulings

- TR 2000/11 (endorsement of charities)
- TR 2003/5 (PBIs)
- TR 2005/21 (income tax and FBT) (now replaced by TR 2011/D2)
- TR 2005/22 (companies controlled by exempt entities)

Key Cases

- Word Investments HCA 2008
 - trading enterprises can be charitable
- Indigenous Barristers' Trust – The Mum Shirl Fund v Comm'r of Taxation FCA 2002
 - 'the public': scope of substantial section of the community

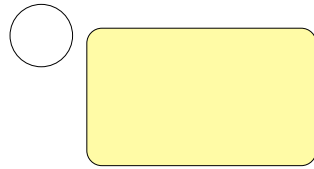
Key Cases (cont'd)

- Shire of Ashburton v Bindibindi Community Aboriginal Corporation
WASC 1999
 - charitable purposes LGA rates exemption
 - dominant charitable purposes and ancillary objects and activities

Key Cases (cont'd)

- Darkinjung P/L v Darkinjung Local Aboriginal Land Council & Ors NSWSC 2006
 - ultra vires divesting of native title assets

1. Yawuru RNTBC – foundation stone



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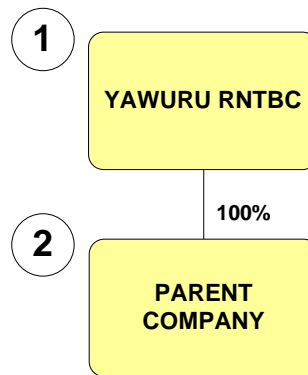
1. Yawuru RNTBC (cont'd)

- Yawuru Native Title Holders Aboriginal Corporation RNTBC ICN 7033 registered 13/2/08
- Purpose - ultimate owner of Yawuru Group; holds native title rights and interests in trust for native title holders
- Body corporate – CATSI Act

1. Yawuru RNTBC (cont'd)

- Members – native title holders over 18 years
- Board – 12 directors, 6 appointed, 6 elected
- Funding and assets – native title holders compensation package
- Tax – not a charity or DGR

2. Parent Company



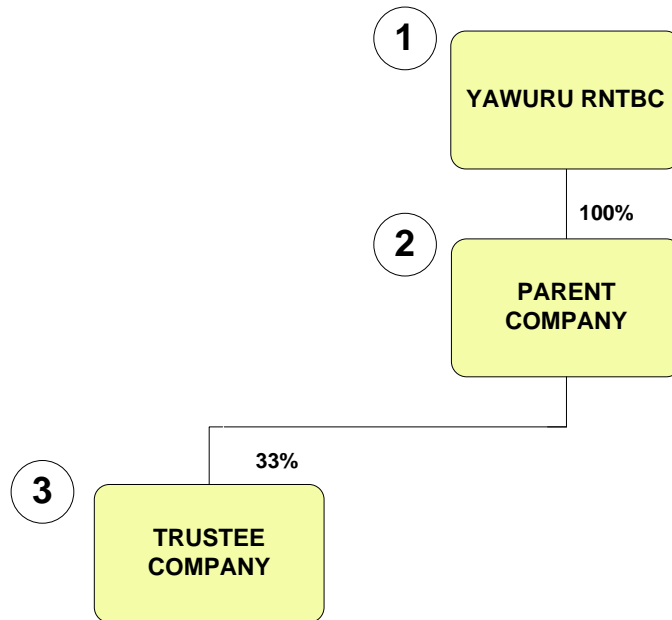
2. Parent Company (cont'd)

- Murra Mala Yawuru Pty Ltd ACN 136 961 012 registered 6/5/09
- Purpose - holding company
- Proprietary limited company (Corporations Act)
- Member – Yawuru RNTBC

2. Parent Company (cont'd)

- Board
 - 3 directors (legal minimum is 1)
- Funding requirements – minimal (board meetings)
- Tax – not a charity or DGR

3. Trustee Company



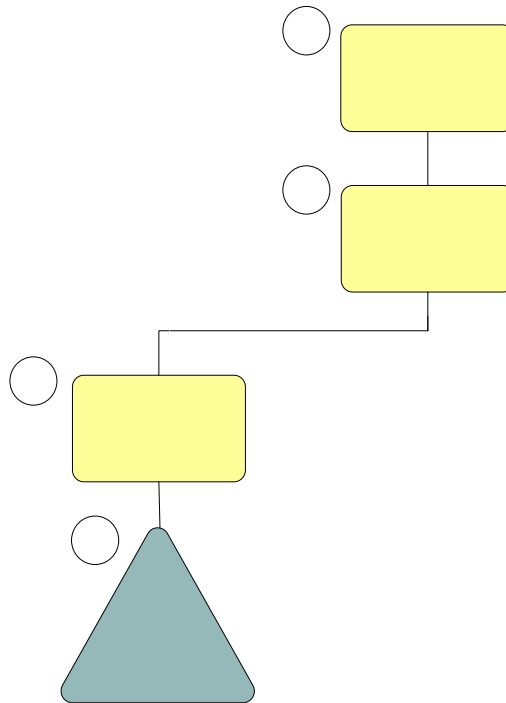
3. Trustee Company (cont'd)

- The Rubibi Aboriginal Land, Heritage and Development Company Pty Ltd ACN 071 882 990 registered 15/12/95
- Purpose – acts as trustee of charitable trust
- Proprietary limited company (Corporations Act)

3. Trustee Company (cont'd)

- Members – parent company holds 2 shares; 3 individuals hold 4 shares on trust
- Board
 - 3 - 7 directors (legal minimum is 1)
- Funding requirements – covered by trust fund
- Tax – not a charity or DGR

4. Charitable Trust



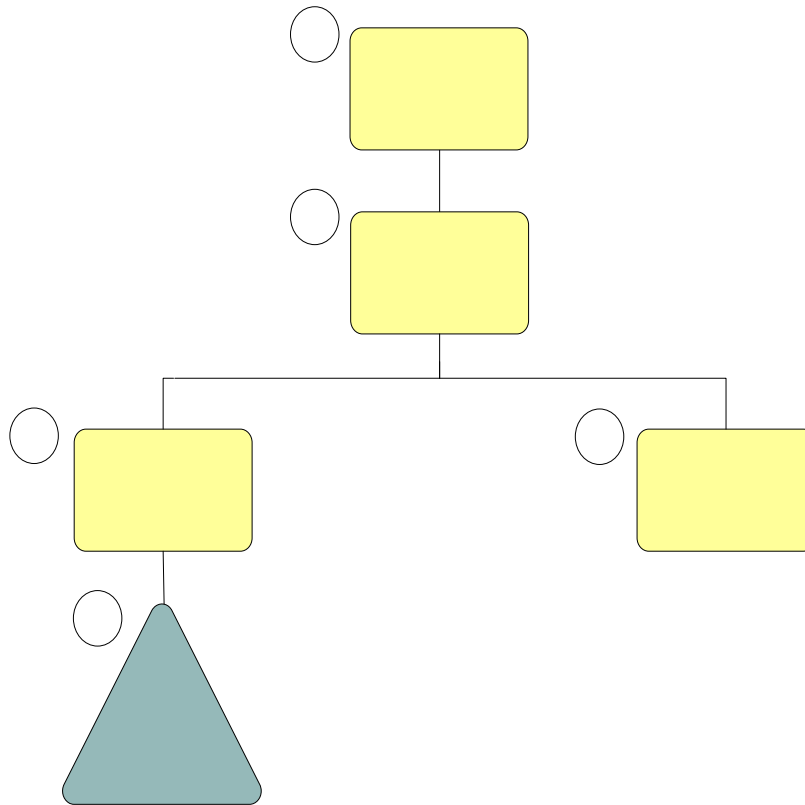
4. Charitable Trust (cont'd)

- The Rubibi Aboriginal Land, Heritage and Development Trust established by trust deed in 1996
- Purpose – charitable trust to relieve poverty, misfortune, disadvantage etc of Aboriginal people from wider Broome area

4. Charitable Trust (cont'd)

- Governance – trust deed, trustee, trust law
- Funding and assets – initial grant, subsequent income from investments
- Members – not applicable
- Tax – charitable fund endorsed as income tax exempt

5. PBI



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YAWI

5. PBI (cont'd)

- Nyamba Buru Yawuru Ltd ACN 137 306 917 registered 25/5/09
- Purpose – non-profit institution for direct relief of poverty, sickness, destitution or helplessness of Indigenous people from wider Broome area

5. PBI (cont'd)

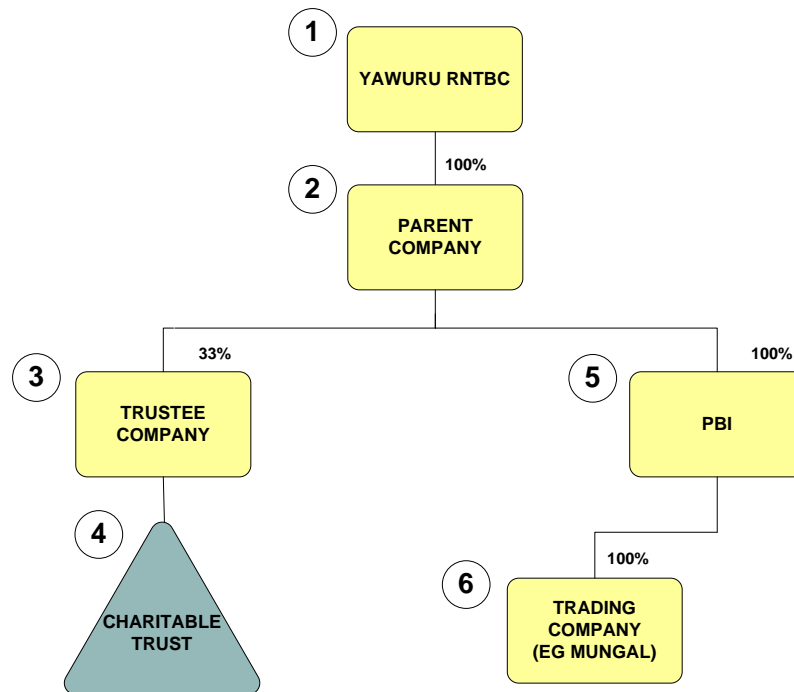
- Public company limited by guarantee (Corporations Act)
- Member – parent company
- Board

5 – 7 directors, including 2 independent directors (legal minimum is 3 directors)

5. PBI (cont'd)

- Funding - native title holders compensation package; service agreements; government & philanthropic grants; donations; income generation activities
- Tax – PBI. Endorsements: DGR, GST concession, income tax and FBT exempt

6. Trading Company – 100% owned



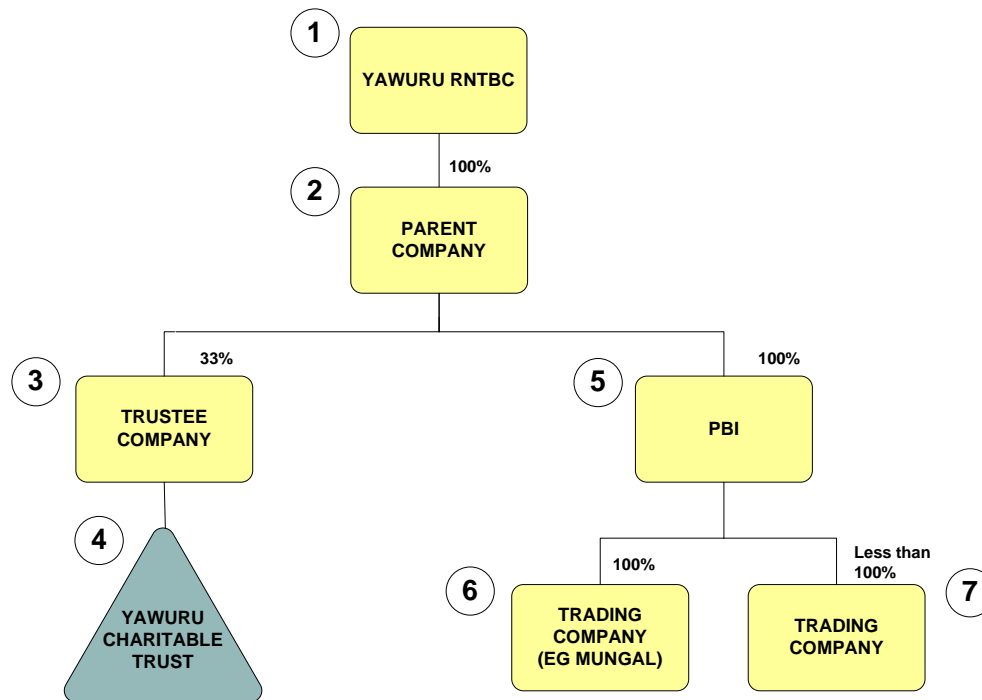
6. Trading Company – 100% owned (cont'd)

- Status – to be established as required
- Purpose – operate businesses for profit
- Proprietary company limited by shares (Corporations Act)
- Member – PBI

6. Trading Company – 100% owned (cont'd)

- Board – minimum
3 – 5 directors (legal minimum is 1)
- Funding requirements – share capital, loans, income from trading
- Tax – TR 2005/22 Companies controlled by exempt entities. Company itself must meet exemption requirements – see ‘What’s Next’

7. Trading Company – less than 100% owned



7. Trading Company – less than 100% owned (cont'd)

- Same as 6: Trading Company 100%, except that members include:
 - PBI; and
 - one or more other shareholders

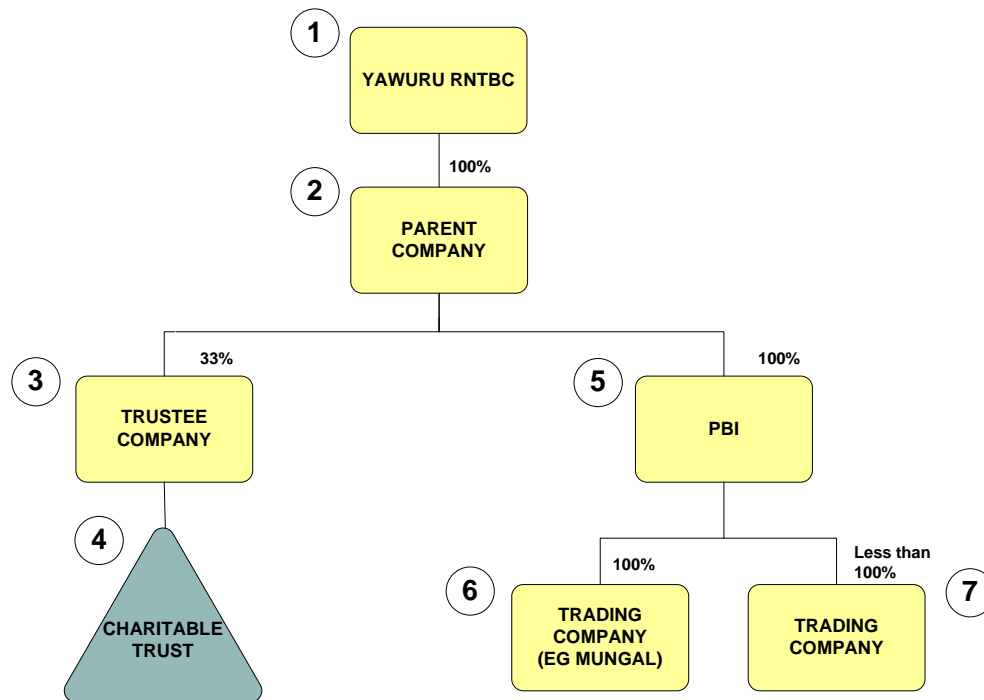
What next?

- Further corporate development to support economic development activities

BUT IMPENDING DEVELOPMENTS

- Indigenous Community Fund and Indigenous Economic Development Strategy
- Governance & future acts reforms
- 2011-12 NFP Budget Reforms: *Better targeting of not-for-profit tax concessions*
- TR 2011/D2 Income tax and FBT: charities

Yawuru Corporate Group



Yawuru Native Title Holders – a commercial corporate structure for social and economic development

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