



Productivity Commission
Resources Sector Regulation
ONLINE SUBMISSION: www.pc.gov.au

22 May 2020

Dear Commissioners

Resources Sector Regulation – Information Request 10.4

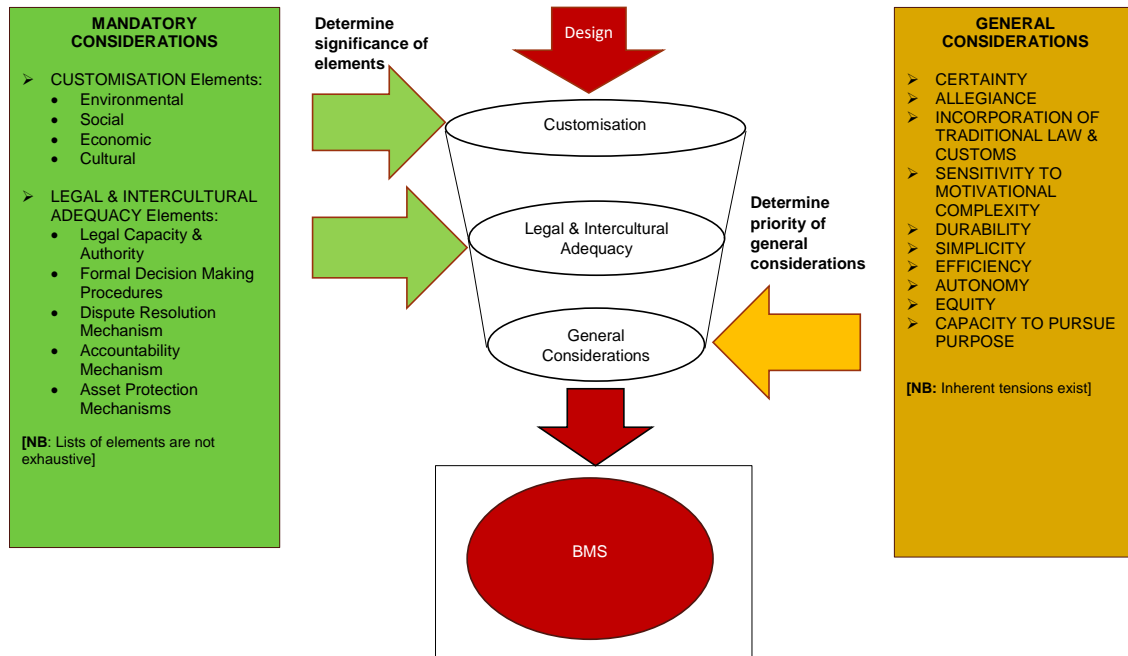
We write to you as members of the Centre for Mining, Energy and Natural Resources Law at the University of Western Australia Law School.

We have recently completed a four-year empirical and theoretical research project into Indigenous benefits management structures. The research identifies barriers to the maximisation of benefits for communities and potential solutions. It is **attached** and also available at: <https://www.uwa.edu.au/able/research/cmenrl>

Non-tax and non-charity law barriers are discussed extensively in Chapter 4. Some of these barriers involve objectives that Indigenous benefits management structures are expected to achieve, that are additional to the sort of objectives routinely pursued by standard businesses or funds managers. They include:

- The need to support autonomy.
- Processes to appropriately recognise that every community, family and individual has different needs and desires.
- Incorporation of traditional law and custom.
- The need for capacity building.
- Governance.
- Communication with community members and participation in decision-making.
- Overlapping decision-making bodies.
- Filling boards/committees and succession planning.
- Administration costs and the scale of compliance activities.
- Achieving equity.
- The timing of funding for Indigenous corporations.
- Geographical remoteness and dispersion.
- Professional trustees and inherent conflicts of interest.
- Interactions with pre-existing structures and with government.
- The need for greater strategic planning.
- The need for flexibility to deal with change over long time-frames.
- The interaction between implementation difficulties and the legal structure.
- Siloing of activities – along various dimensions.

Chapter 5 sets out twelve design considerations as lenses for responding to these barriers.



Specific examples of the way in which the design considerations can help provide solutions to the barriers are discussed in detail in Chapter 7, including:

- Measures to improve communication with community members and participation in decision-making.
- Enhancing strategic planning through a greater focus on outcomes and impacts.
- Building certainty and inter-personal trust to address overlapping decision-making bodies.
- Mechanisms that contribute to equity.
- Dealing with complexity in the aid of achieving flexibility.
- Measures to enhance the benefits and reduce the detriments of using professional trustees.

We would be very happy to discuss any of the research further with the Commission. If you would like to do so, please contact Ian Murray at ian.murray@uwa.edu.au.

Yours faithfully

Ian Murray

Joe Fardin