

**TOWARDS A COMPREHENSIVE FRAMEWORK
FOR THE RECOGNITION, EMPOWERMENT AND
SETTLEMENT OF DOMESTIC TREATIES WITH
THE FIRST NATIONS OF CAPE YORK PENINSULA**

Noel Pearson

***Address to the National Native Title Conference
Port Douglas***

Thursday 18 June 2015

1. Introduction
2. The First Principle
3. Our 25 Years work in pursuit of justice: 1990-2015
 - First part of our work: Land Rights
 - Second part of our work: Cultural and Natural Resource Management Rights
 - Third part of work: Social, Economic and Cultural Empowerment
 - Fourth part of our work: Cultural, Heritage and Language Rights
 - Fifth part of our work: Constitutional Recognition
4. A Constitutional Body to represent the voice of Indigenous First Nations to the National Parliament and Government with the Native Title PBCs as the base unit of representation
5. Where we are at with Constitutional Recognition
6. Where we are headed with Constitutional Recognition
7. Conclusion

2. The First Principle

Mr. Bayona-Ba-Meya goes on to dismiss the materialistic concept of *terra nullius*, which led to this dismemberment of Africa following the Berlin Conference of **1885**. Mr. Bayona-Ba-Meya substitutes for this a spiritual notion: the ancestral tie between the land, or "mother nature", and the man who was born therefrom, remains attached thereto, and must one day return thither to be united with his ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty.

JUDGE AMOUN, WESTERN SAHARA
ADVISORY OPINION

2. Our 25 years of pursuing justice in Cape York Peninsula

Balkanu

1997 Another landmark regional conference, the 1996 Wujal Wujal Land & Health Summit, highlighted the stark need for a community development organisation – *Balkanu* was established



2004



2010



2011



2013
Group Restructure

1990

1995

2000

2005

2010

2014

Cape York Land Council

1990 History of Cape York regional organisations began in 1990 with the establishment of the Cape York Land Council to right on behalf of Traditional Owners for return of their homelands

Apunipima Cape York Health Council

1994 Four years later following a landmark regional Indigenous Health Conference **Apunipima Cape York Health Council** was established

1999/2000

Noel Pearson published landmark paper '*Our Right to Take Responsibility*' and the Premier announced funding for Cape York Partnerships

2010



2014



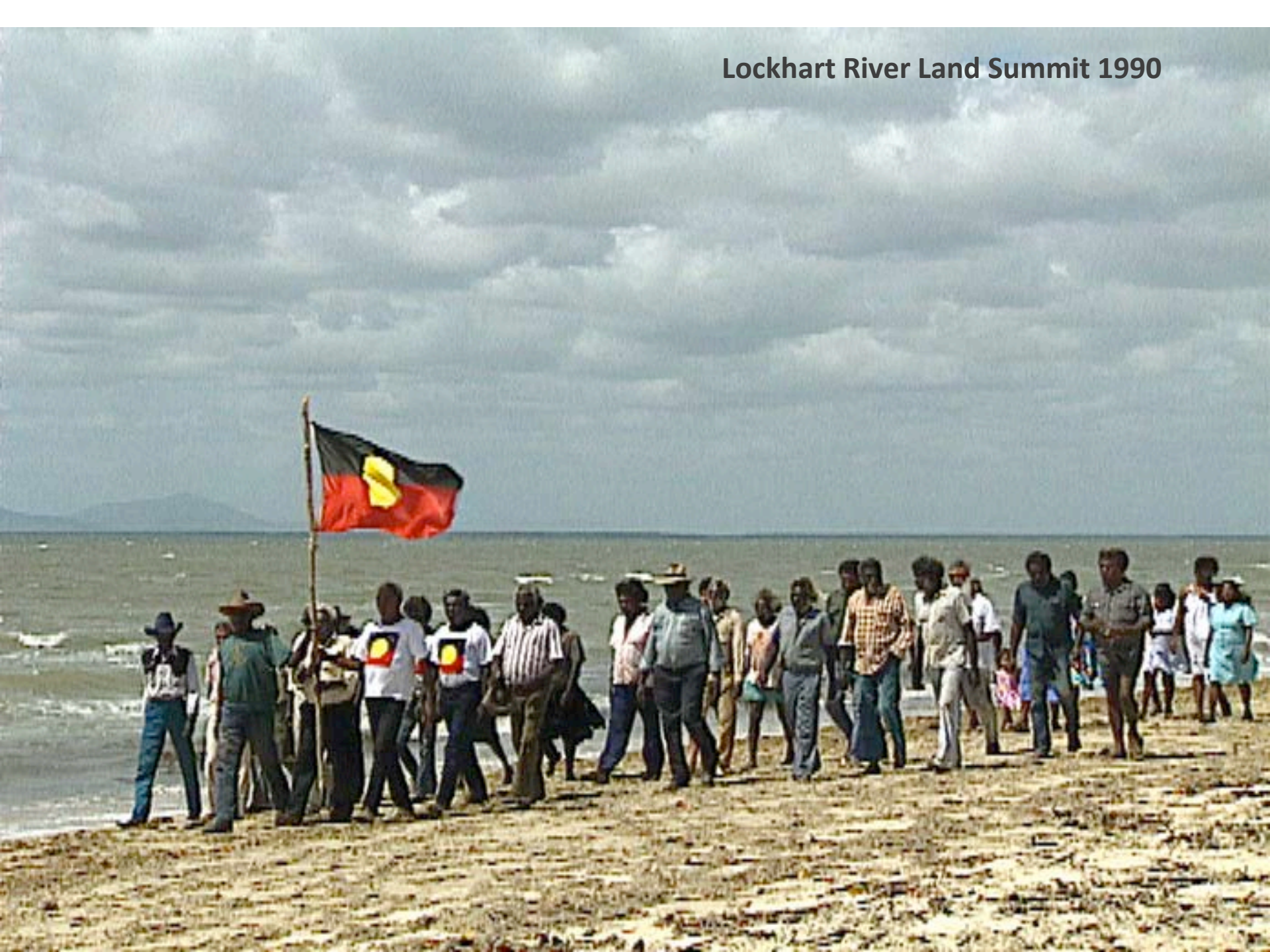
2013



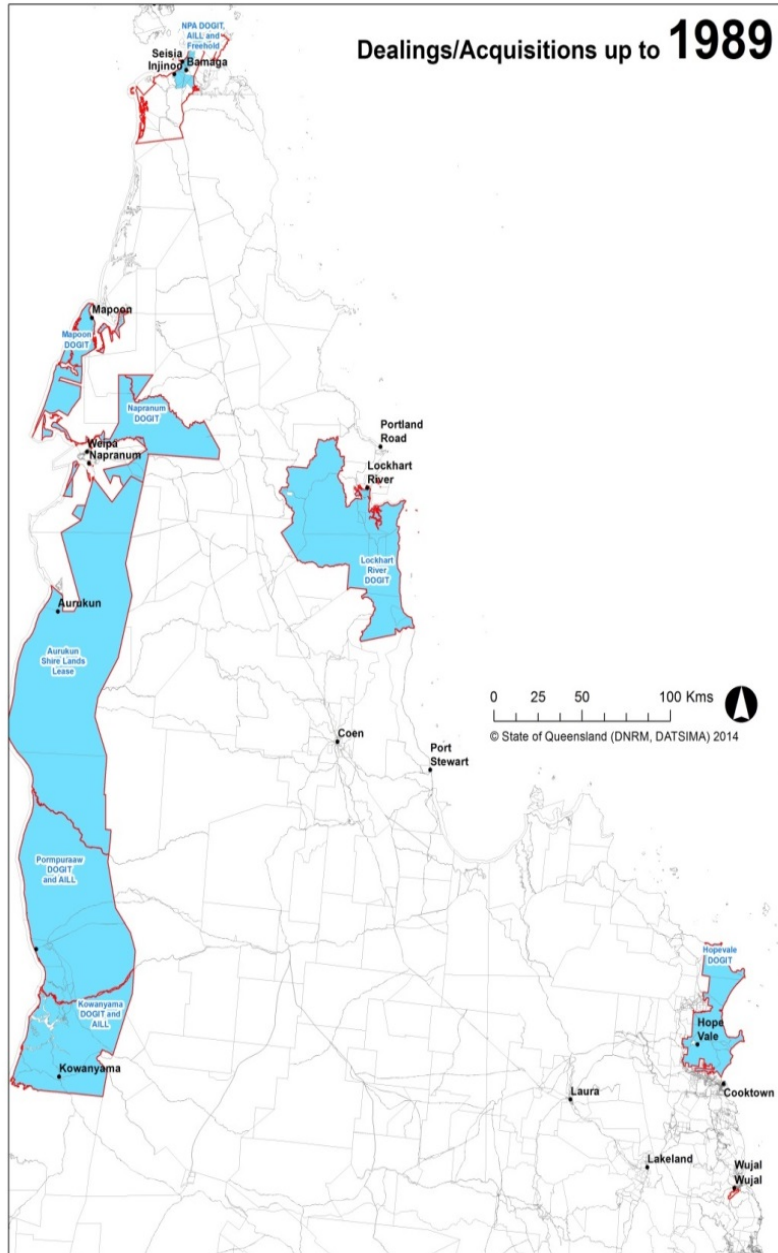
2.1 First Part of our Work: Land Rights



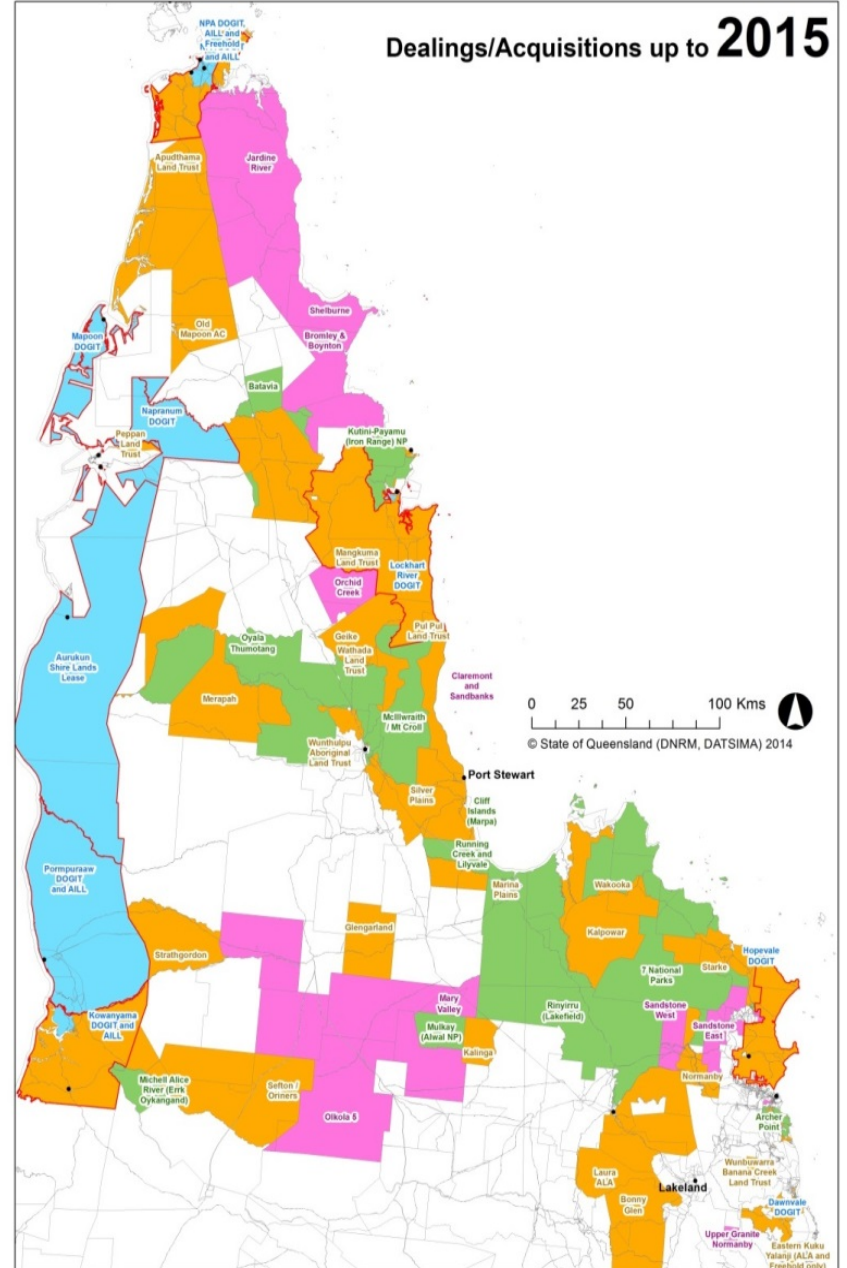
Lockhart River Land Summit 1990



Dealings/Acquisitions up to 1989



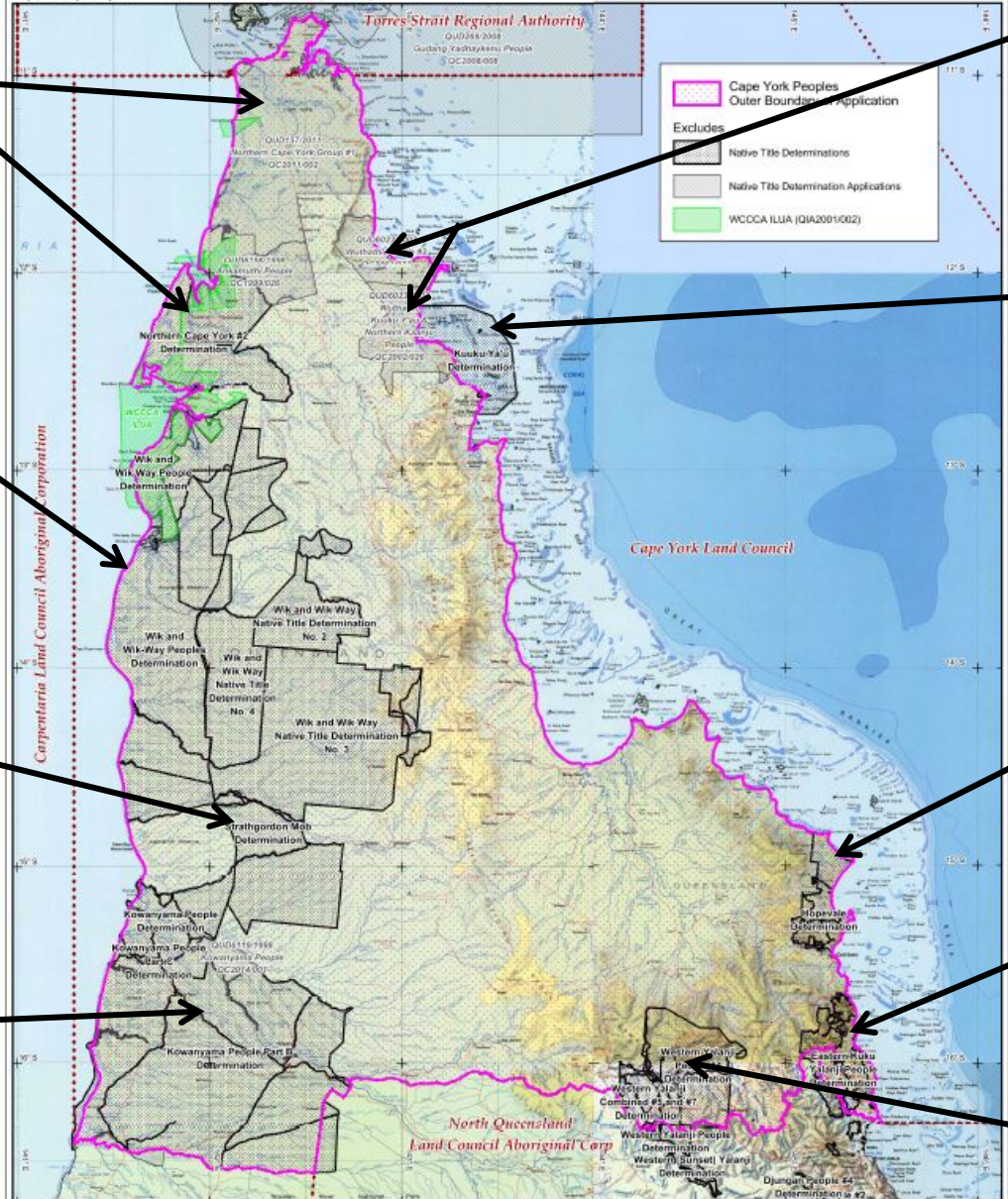
Dealings/Acquisitions up to 2015



Cape York Peoples

Representative Aboriginal/Torres Strait Islander Body Areas

NOTE: To determine areas subject to claim within the external boundary, reference to the application description is necessary.
Application boundary data compiled by the NNTT.
RAISIB data compiled by NNTT based on reference material sourced from FaHCSIA.
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NOTE: Topographic images should be used as a guide only.
Map created by: Geospatial Services, National Native Title Tribunal (08/11/2014)



NCY #1, #2
20/6/14
1/7/11
3 years

Wik and Wik Way People
3/10/00,
13/10/04,
29/7/09,
11/10/12

Strathgordon Mob
26/7/07

Kowanyama People
22/10/09,
5/12/12

Wuthathi People #2 23/5/02
Bromley determined
May 2015

Kuuku Ya'u
25/6/09

Hopevale
8/12/97

Eastern Kuku Yalanji People
19/12/07

Western Yalanji people 24/9/13

NATIVE TITLE DETERMINATION APPLICATION

Cape York Peoples

Representative Aboriginal/Torres Strait Islander Body Areas

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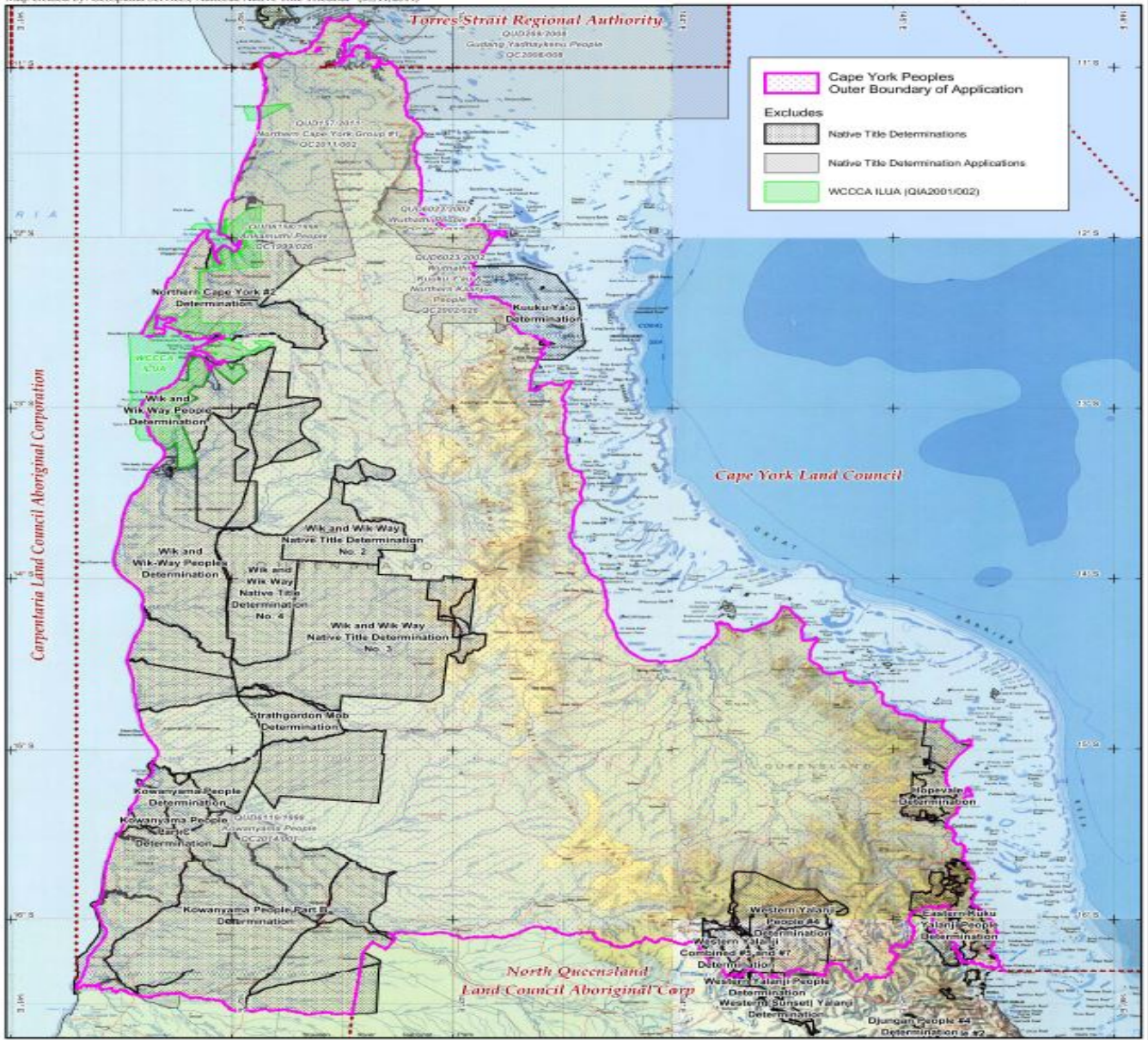
Map created by: Geospatial Services, National Native Title Tribunal (05/11/2014)



Latitude and Longitude based on Geoscience Dataset of Australia 1994



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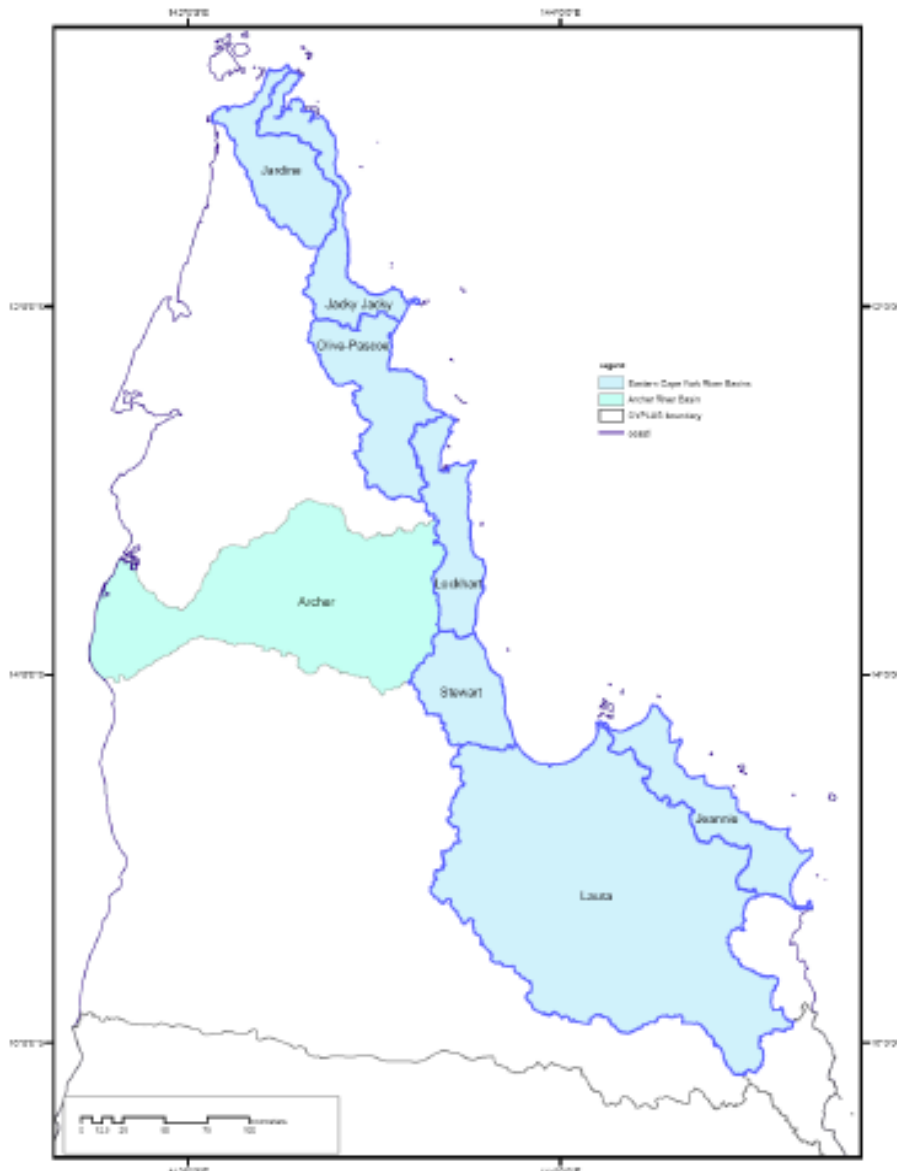


Cape York Peoples Outer Boundary of Application

Excludes

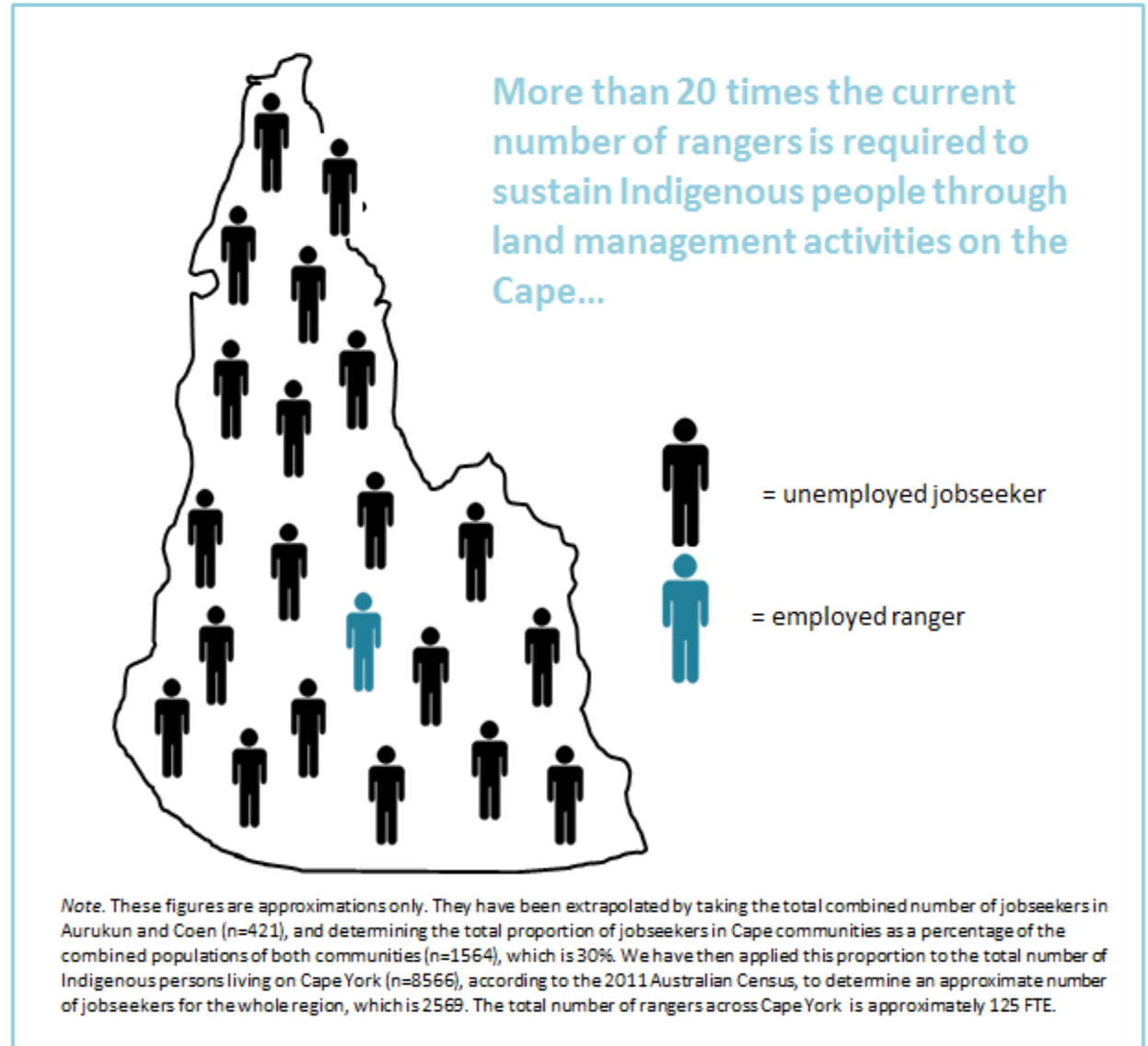
- Native Title Determinations
- Native Title Determination Applications
- WCCCA ILUA (QIA2001/002)

One Claim, 2015



The Greens World Heritage ambitions, 2006

Map 5. Scenario 4: Greater Eastern Cape York Ecosystem.



2.3 Third part of our work: Social and Economic Empowerment

Cape York families shaped our Agenda

This is what they told us...

- finishing school
- building a house
- learning a new trade
- buying a new TV
- getting a job or starting a business
- saving for my kids education
- getting healthier
- working outside the community.





EAST KIMBERLEY



Desmond Hill
CEO
Kununurra Waringari
Aboriginal Corporation



Ted Hall
Chairperson
Gelganyem Trust



Ian Trust
Executive Chair
Wunan

WEST KIMBERLEY



Anthony Watson
Chairman
Kimberley Land
Council



Marty Sibosado
Managing Director
Ninumbuk Aboriginal
Corporation



Nolan Hunter
CEO
Kimberley Land
Council

NORTH-EAST ARNHEM LAND



Denise Bowden
CEO
Yothu Yindi
Foundation



**Balupalu
Yunupingu**
Board Member
Gumatj
Corporation Ltd



**Gabirri
Collins-Yunupingu**
Board Member
Yothu Yindi
Foundation

CAPE YORK



Fiona Jose
General Manager
Cape York
Partnership



Noel Pearson
Director of Strategy
Cape York
Partnership



Richie Ah Mat
Chairman
Cape York
Land Council

CENTRAL COAST NSW



Sean Gordon
CEO
Darkinjung
Local Aboriginal
Land Council



Joshua Toomey
Chairperson
Darkinjung
Local Aboriginal
Land Council



Suzanne Naden
CEO
Bungree Aboriginal
Association
Incorporation

INNER SYDNEY



Shane Phillips
CEO
Tribal Warrior
Association



Chris Ingrey
CEO
La Perouse Local
Aboriginal Land Council

*NGAANYATJARRA PITJANTJATJARRA
YANKUNYATJATJARRA LANDS*



Nyunmiti Burton
Vice Chairperson
NPY Women's
Council



Ingrid Simms
Chairperson
NPY Women's
Council



Andrea Mason
CEO
NPY Women's
Council

GOULBURN-MURRAY



Kevin Williams
Chairperson
Njernda Aboriginal
Corporation



Paul Briggs
Chairman
Kaiela Institute

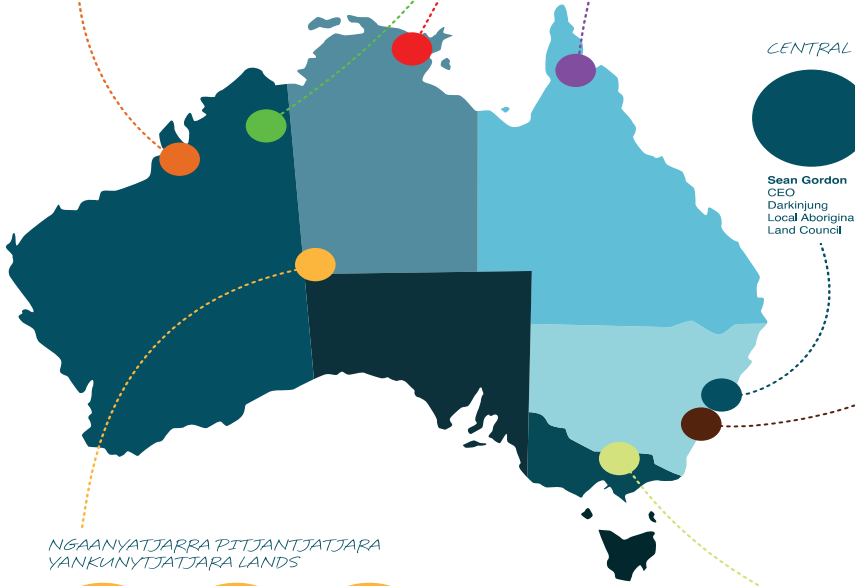
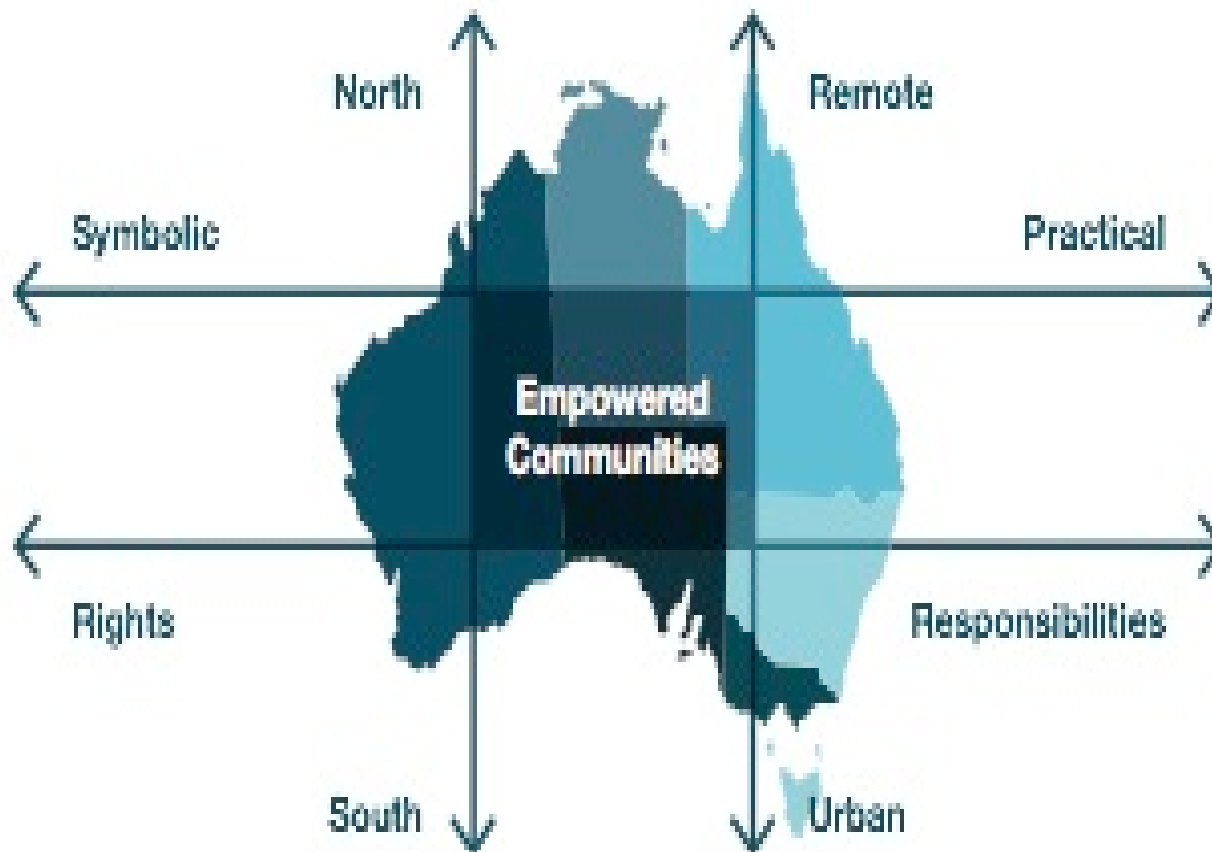
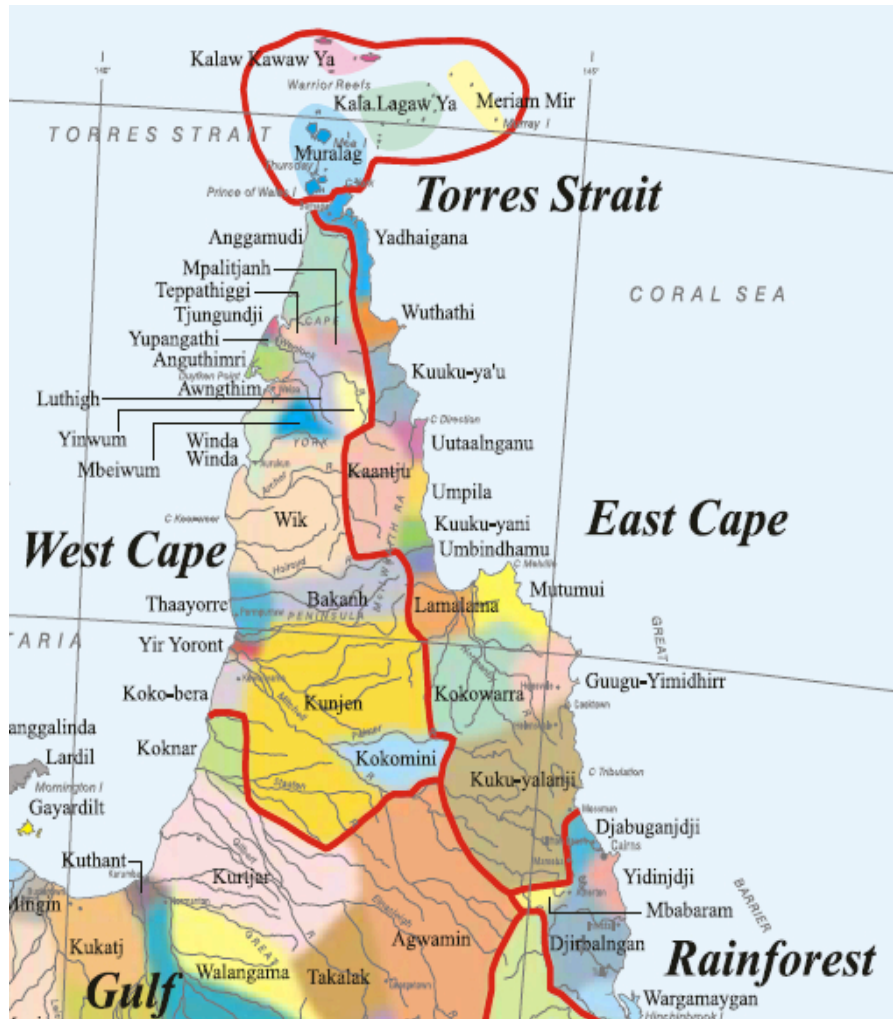


Figure 1.1: A reform agenda that transcends divides



2.4 Fourth Part of our Work: Culture and Language Rights



2.5 Fifth Part of our Work: Constitutional Recognition

Expert Panel 2011-2012





+



+



+



+



**EMPOWERED
COMMUNITIES**

ONE CLAIM

**CULTURE
AND
LANGUAGE
RIGHTS**

**CONSTITUTIONAL
RECOGNITION**

**NATURAL AND
CULTURAL
HERITAGE**

=

**CAPE YORK FRAMEWORK FOR FIRST
NATIONS DOMESTIC TREATY SETTLEMENTS**

The Window of Constitutional Opportunity



Panel's Proposals



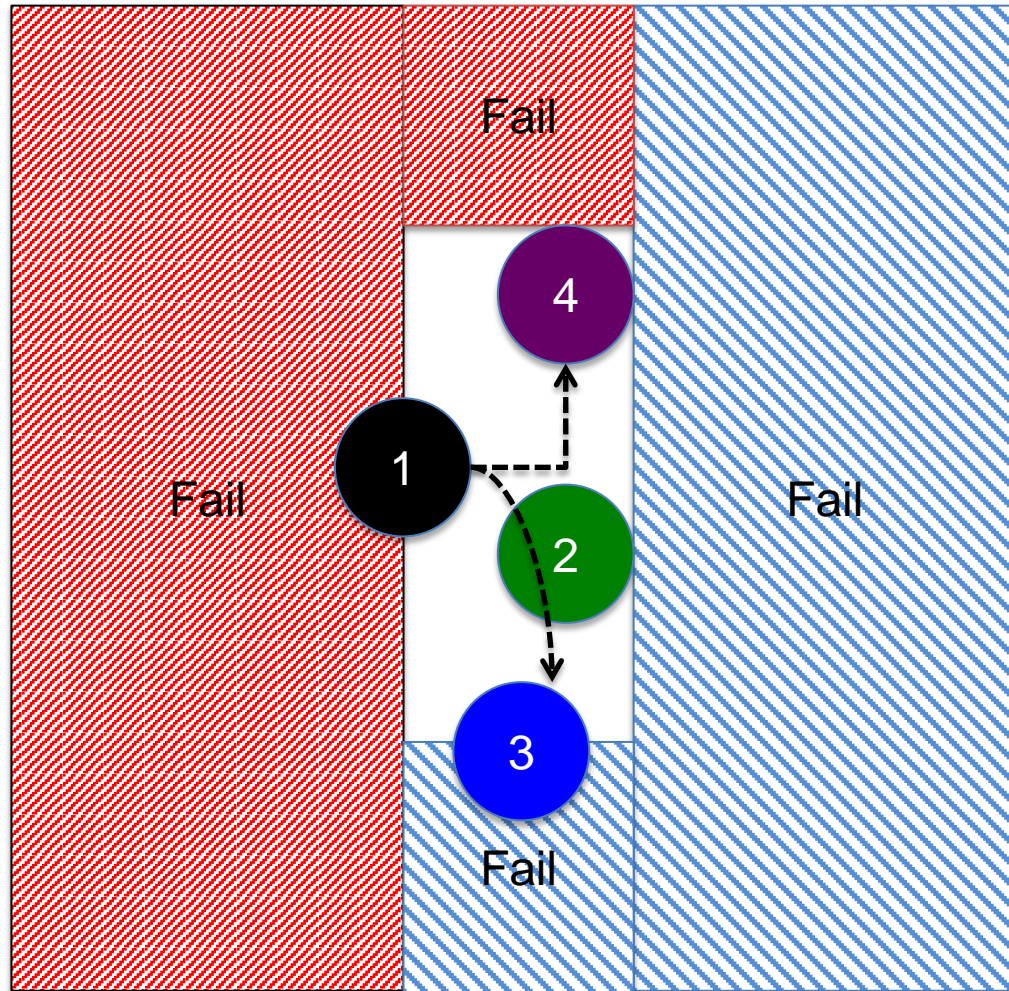
Attempt to modify Panel's Proposals accounting for conservative objections



What 2 is more likely to become



Better than Panel's Proposals: Step right, then up



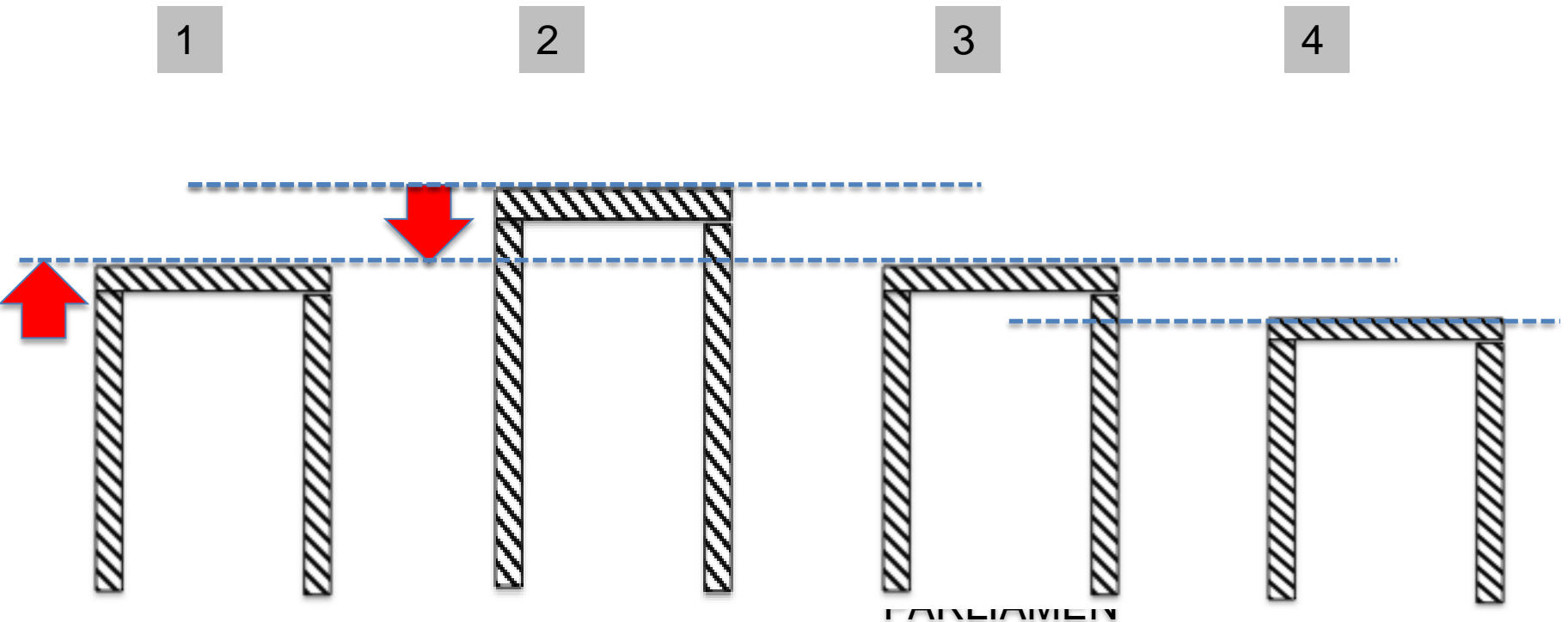
Left

Right

Really Great

Really Bad

Four hurdles



1

2

3

4

TA

This is the crucial first hurdle. If he can be brought to position 4 – then we are over the first hurdle.

PARTY ROOM

The Party Room is the biggest hurdle of all. It is up to TA to pull the height of this hurdle down to his level.

T

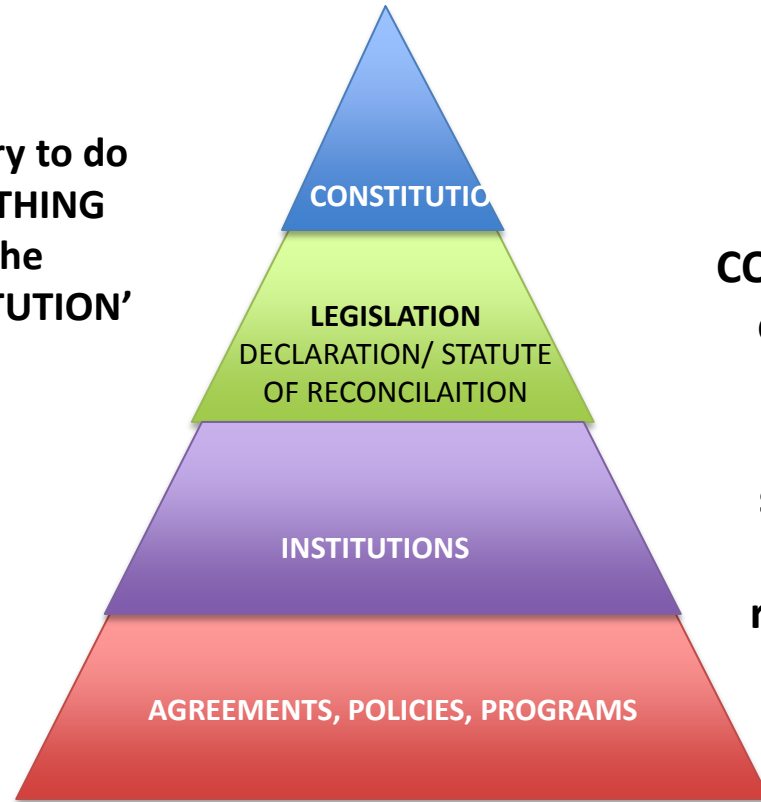
Once the Party Room accepts TA's position, then Parliament is no greater hurdle. If TA accepts position 4 then parliament will follow.

PEOPLE

As difficult as the Referendum hurdle is, it is the lowest of the 4 hurdles. Provided a bipartisan position emerges out of Parliament.

A package of reforms

**'Don't try to do
EVERYTHING
in the
CONSTITUTION'**



**CONSTITUTION
creates the
'hooks' off
which a
substantial
package of
reforms can
hang...**

**Indigenous Constitutional Recognition can be a
package of constitutional, institutional, legislative and
other reforms...**

New Chapter in the Constitution

CHAPTER 1A

Aboriginal and Torres Strait Islander Body

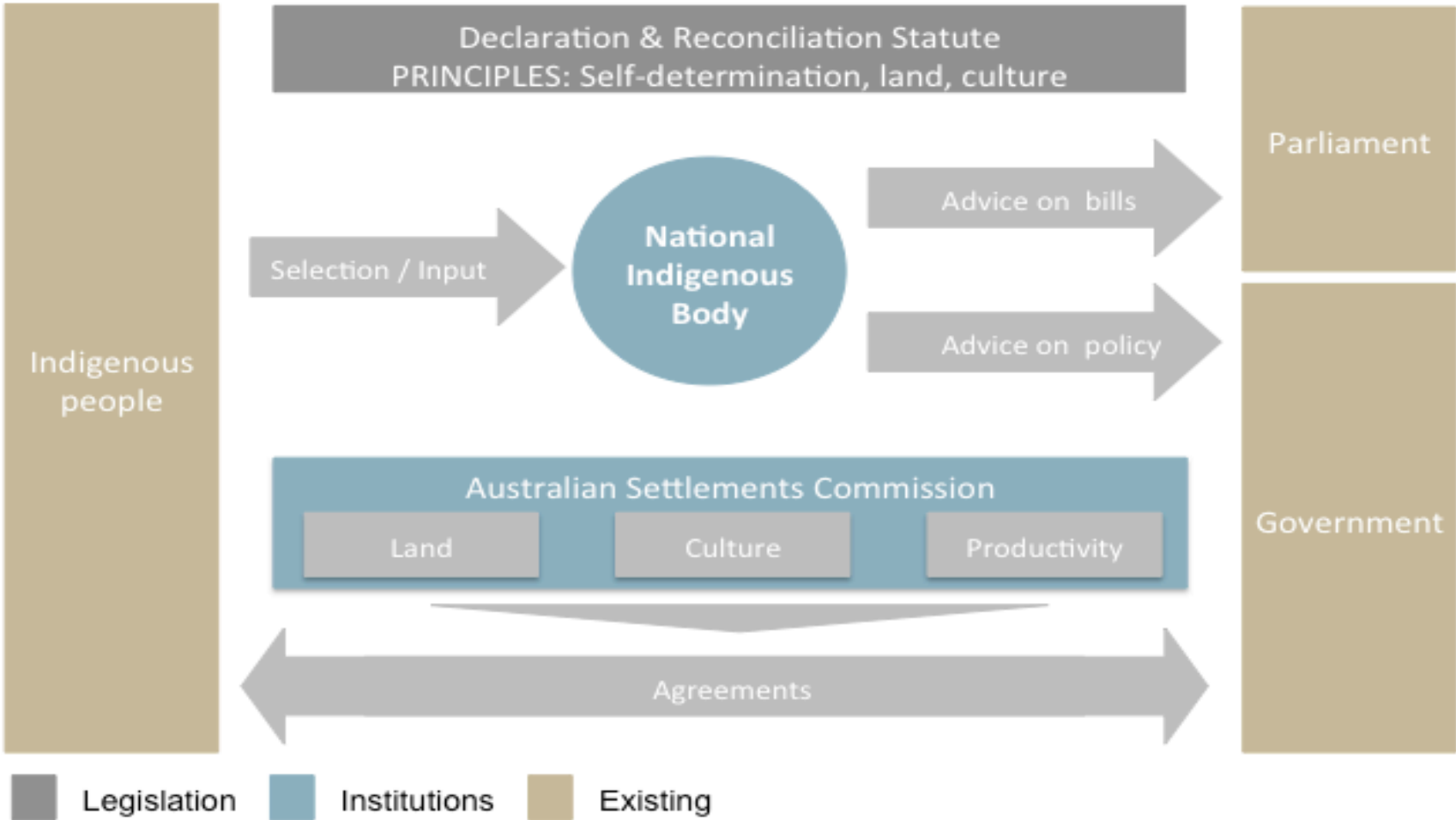
60A(1) There shall be an Aboriginal and Torres Strait Islander body, to be called the [TITLE], which shall provide advice to the Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples.

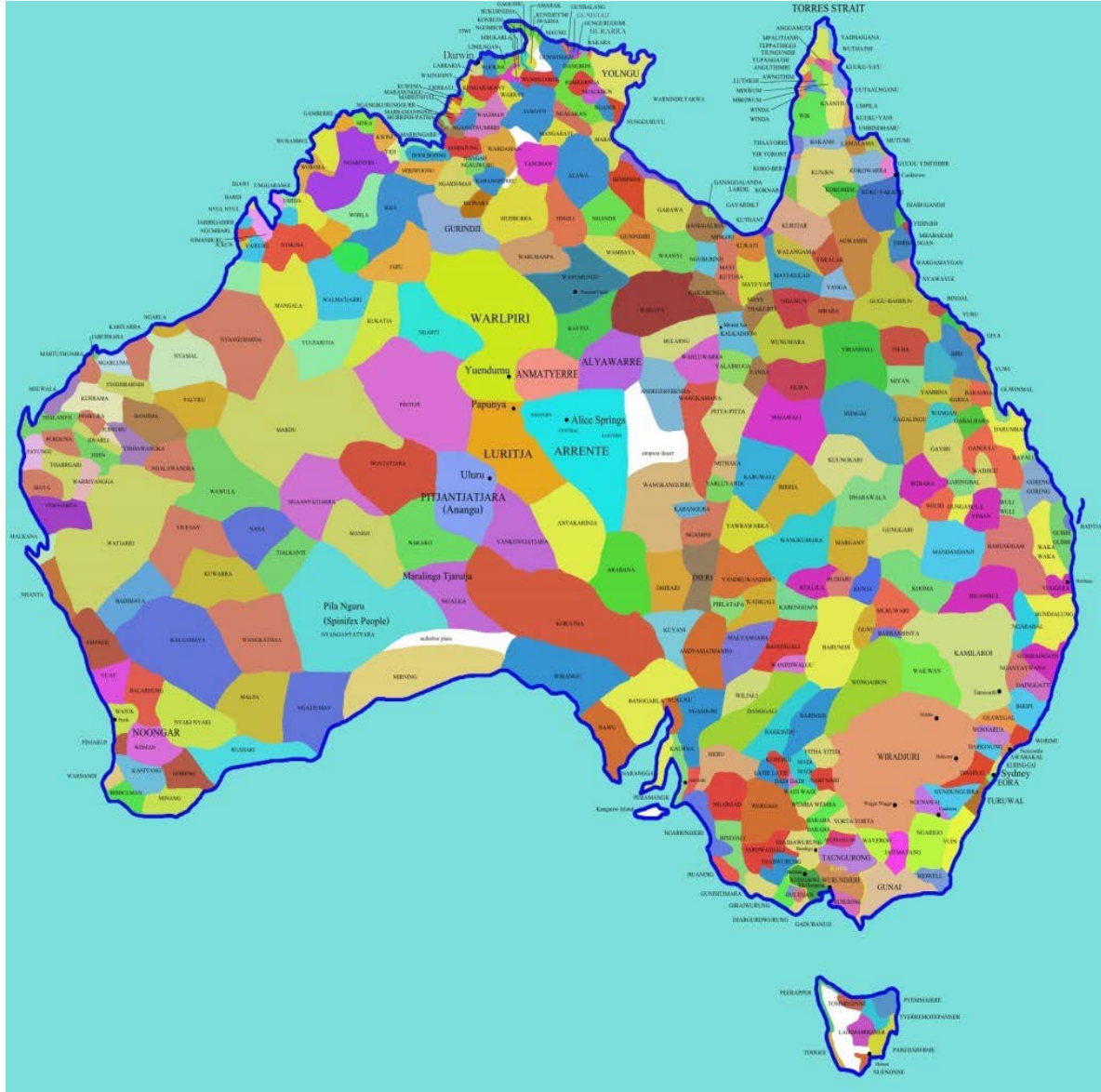
(2) The Parliament shall, subject to this Constitution, have power to make laws with respect to the composition, roles, functions and procedures of the [TITLE].

(3) The Prime Minister shall cause a copy of the [TITLE]'s advice to be tabled in each House of Parliament as soon as practicable after receiving it.

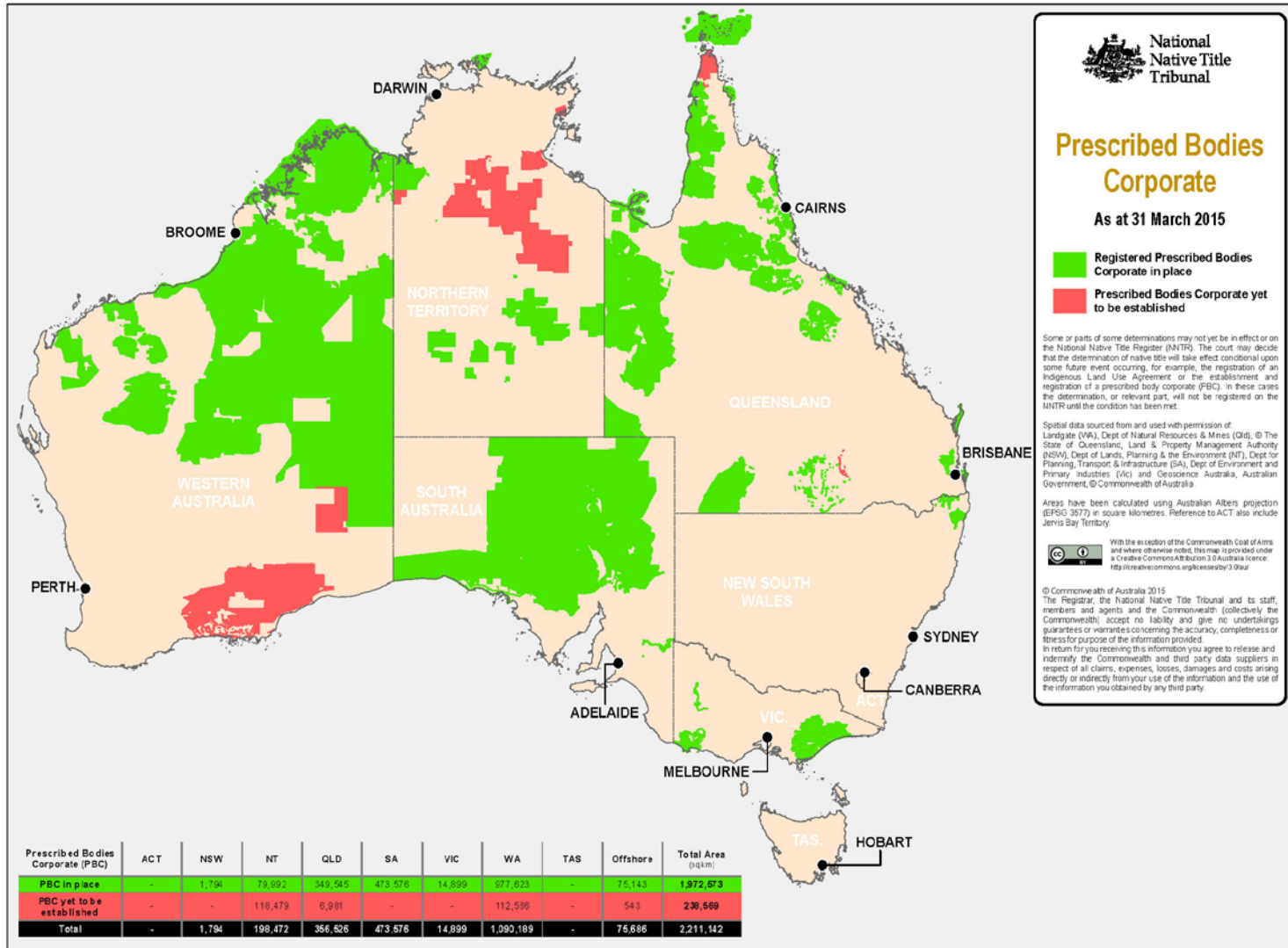
(4) The House of Representatives and the Senate shall give consideration to tabled advice of the [TITLE] in debating proposed laws relating to Aboriginal and Torres Strait Islander peoples.

National Representative Body and an Australian Settlements Commission

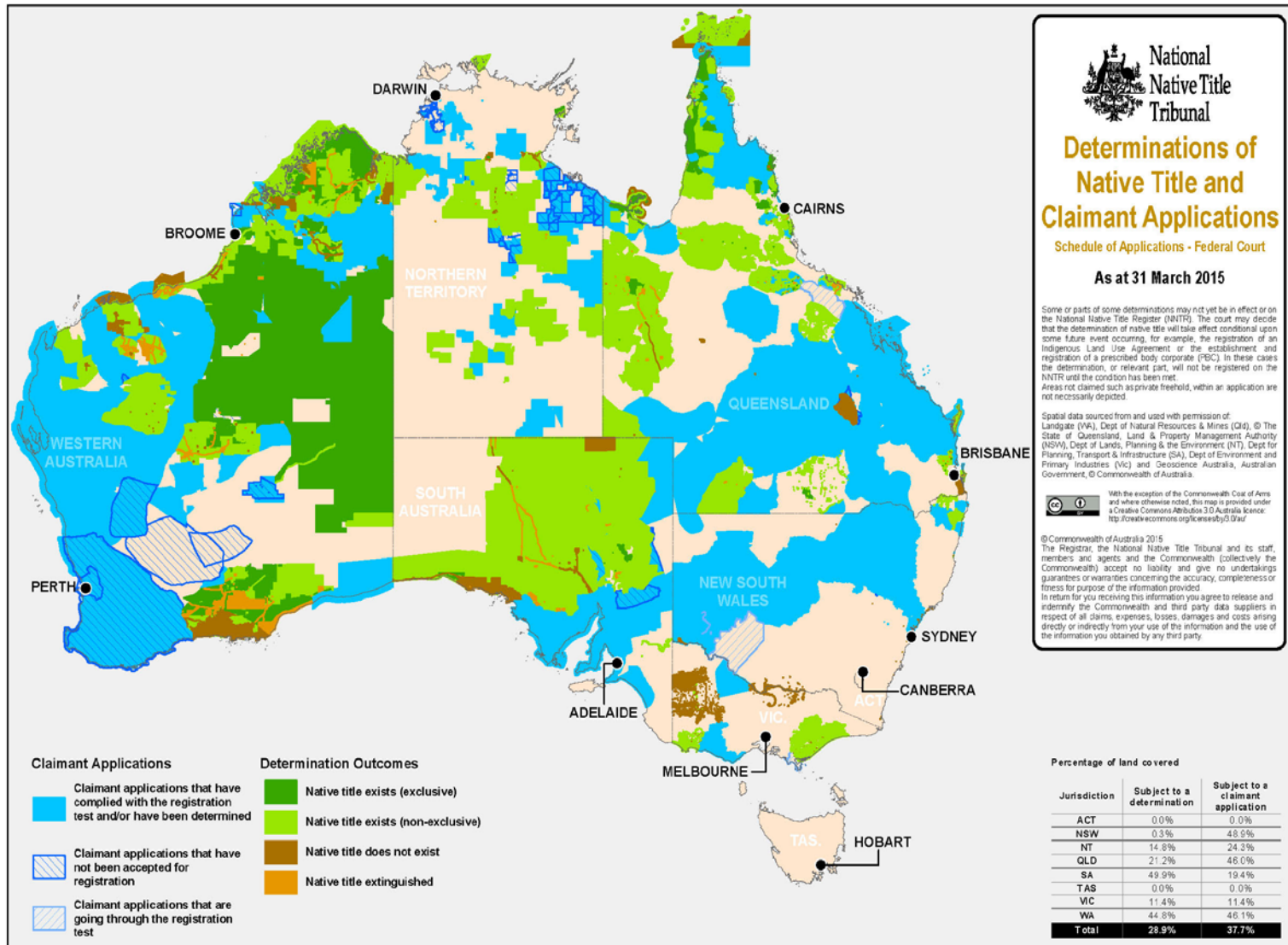


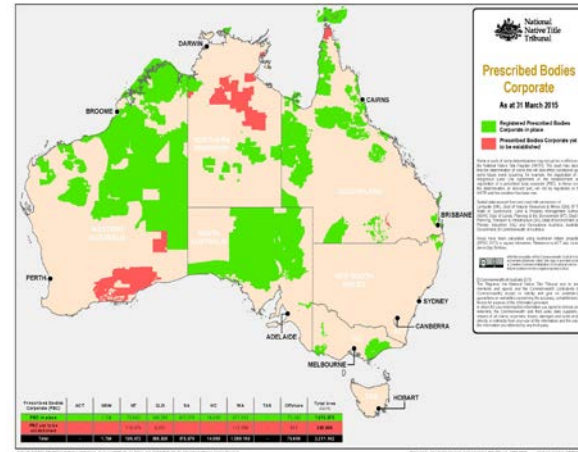
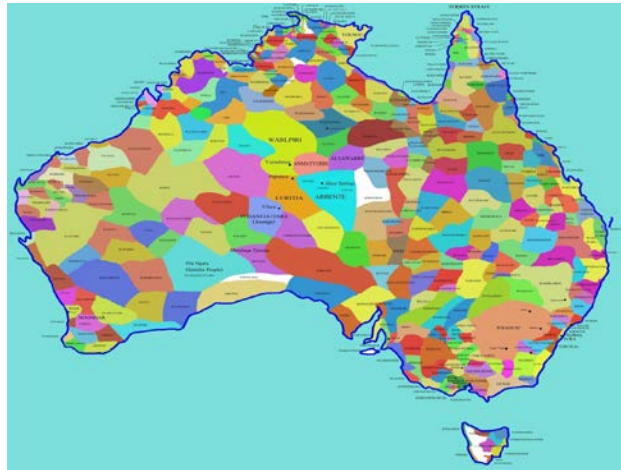
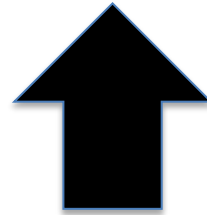
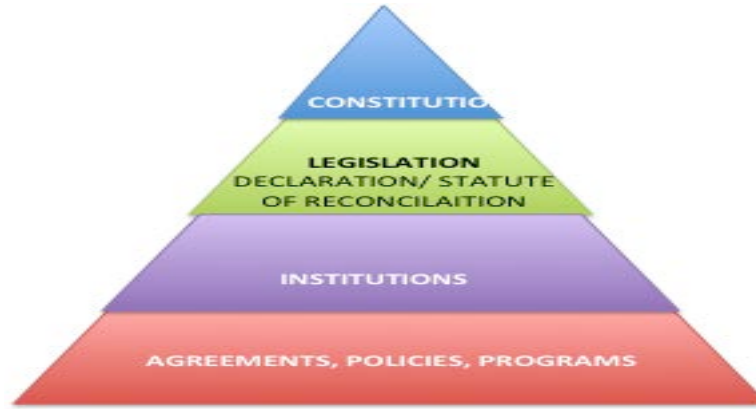


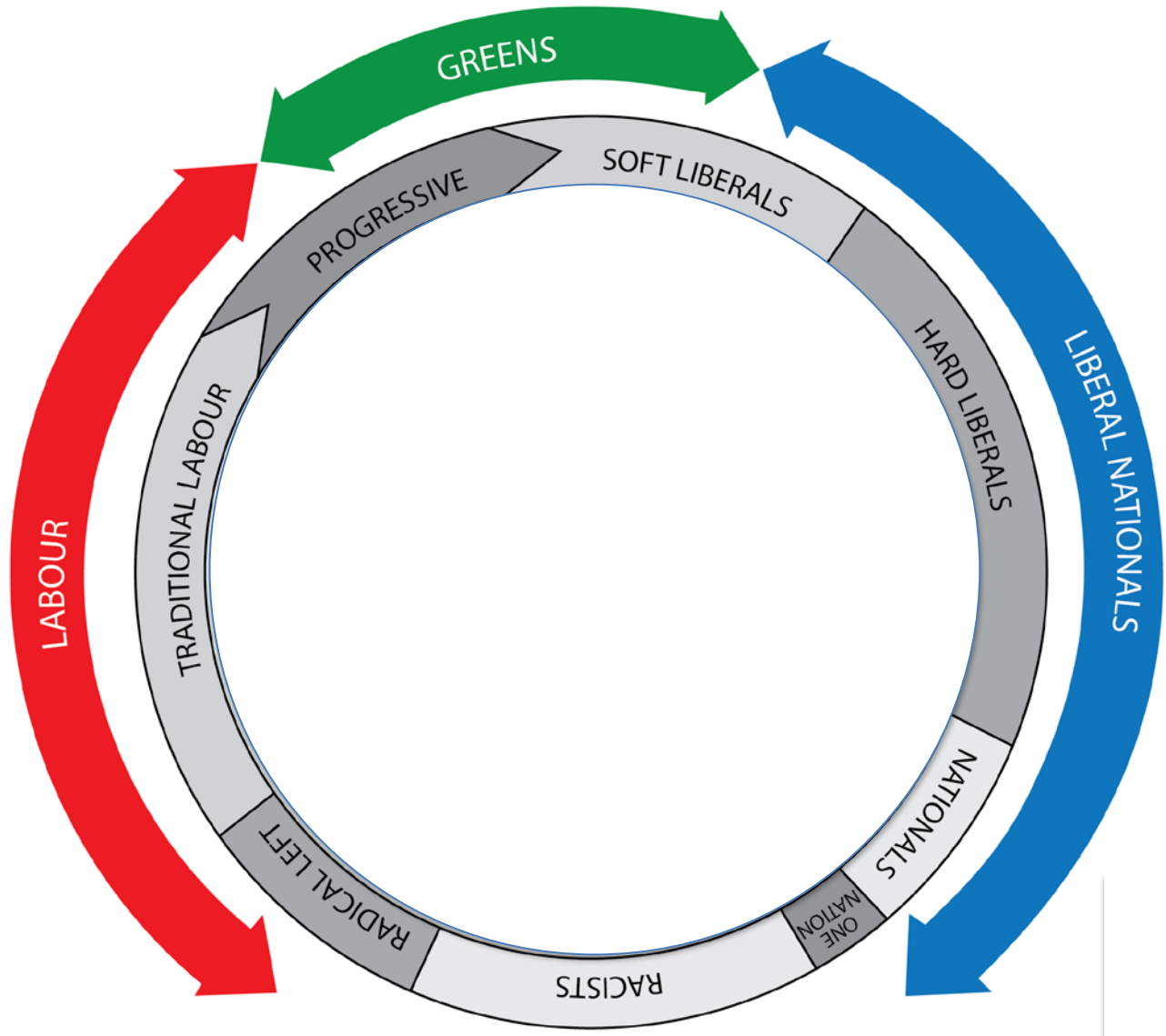
Prescribed Body Corporates



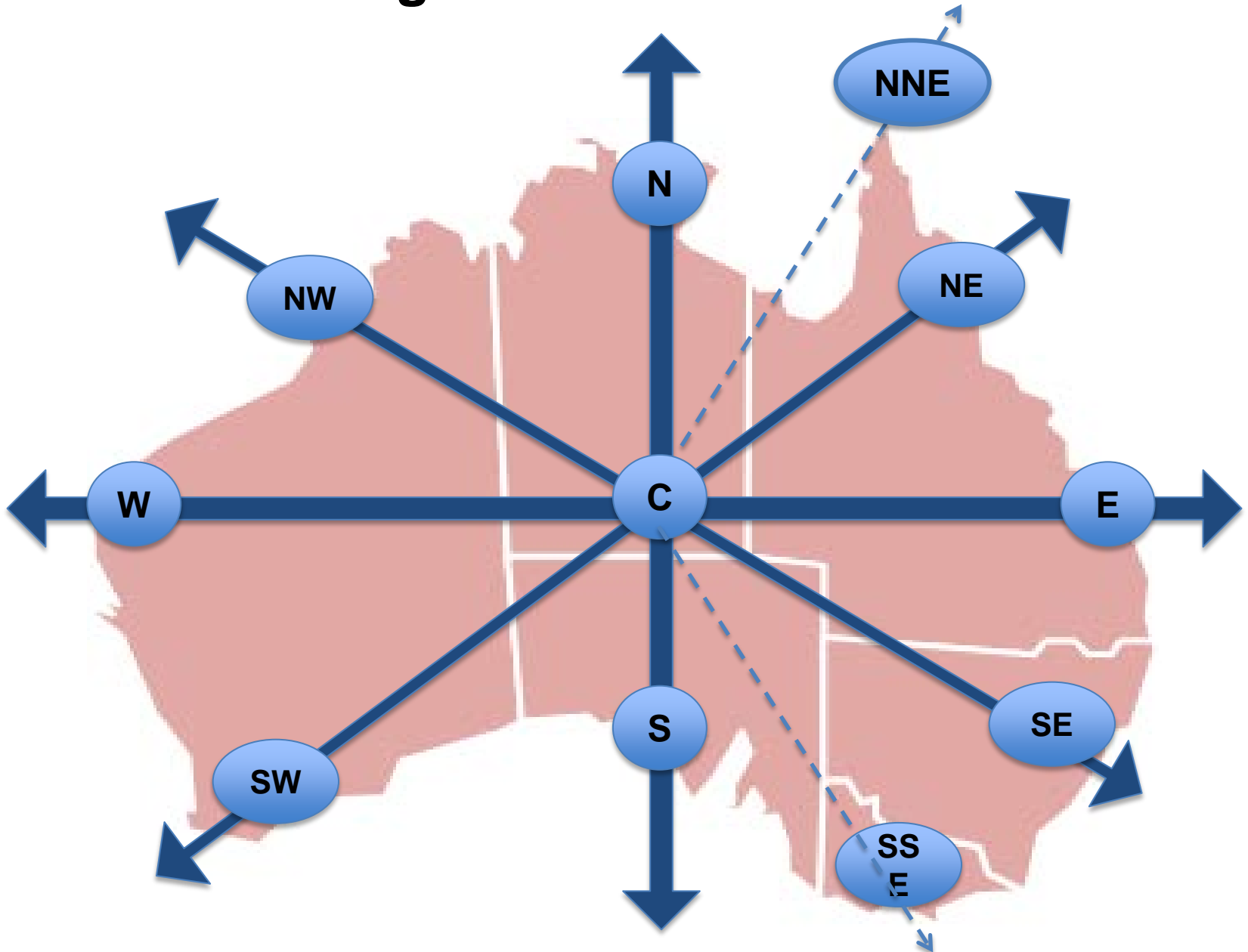
Claims and Determinations







Indigenous Conferences



The Window of Constitutional Opportunity



Panel's Proposals



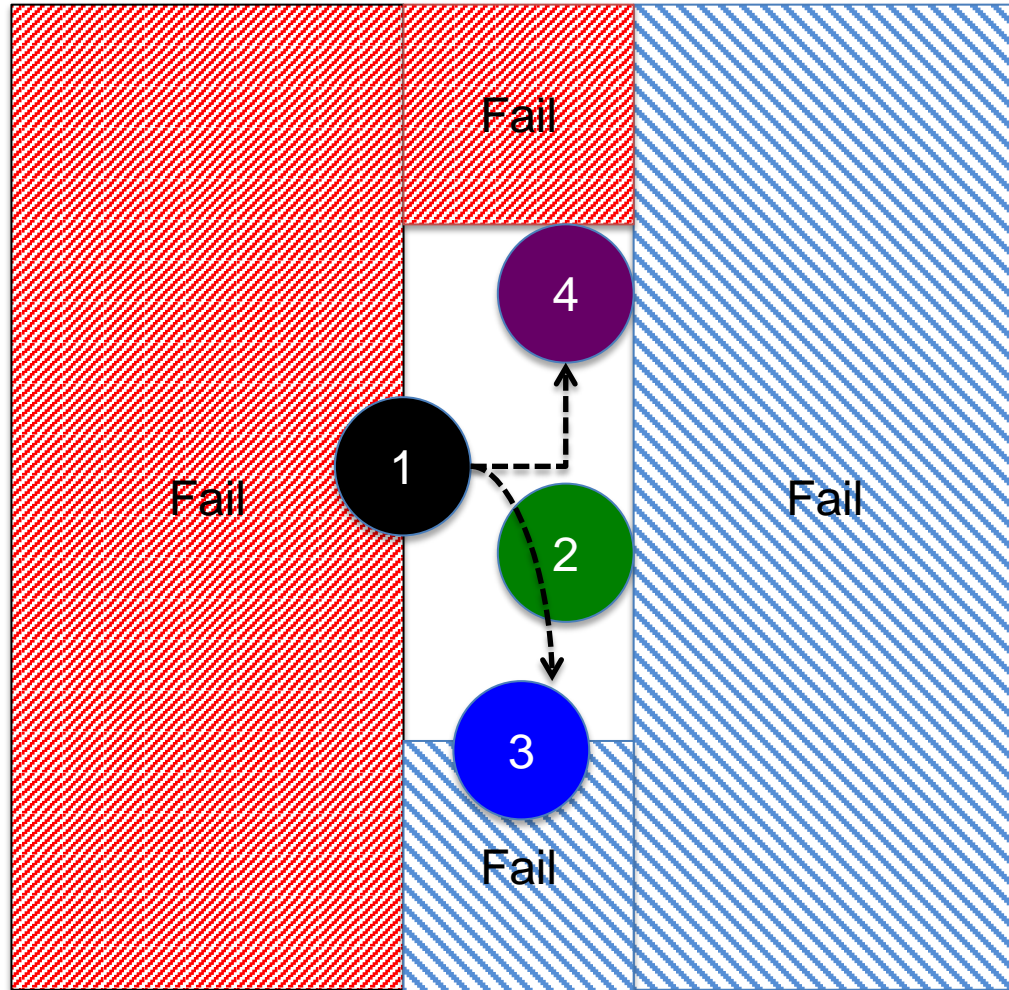
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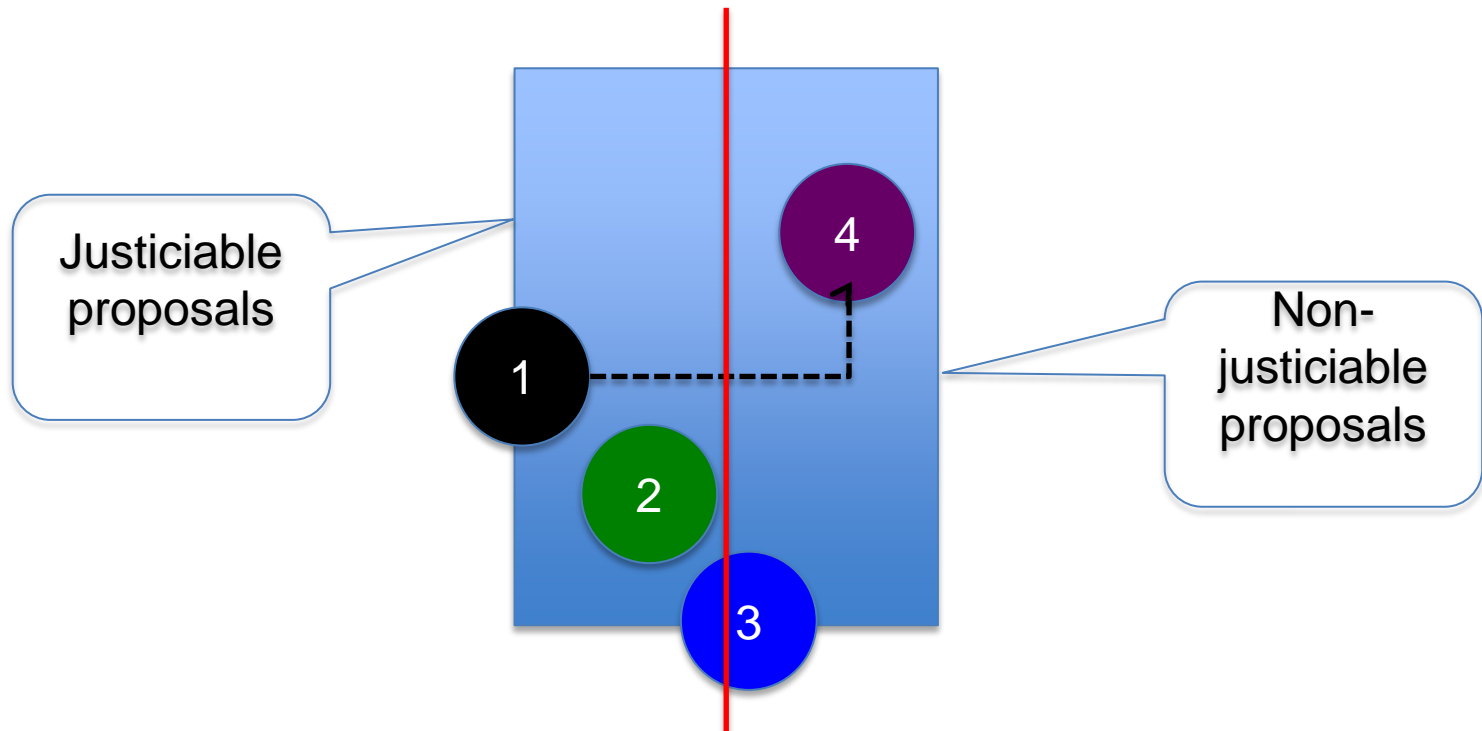
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Really Great

Really Bad

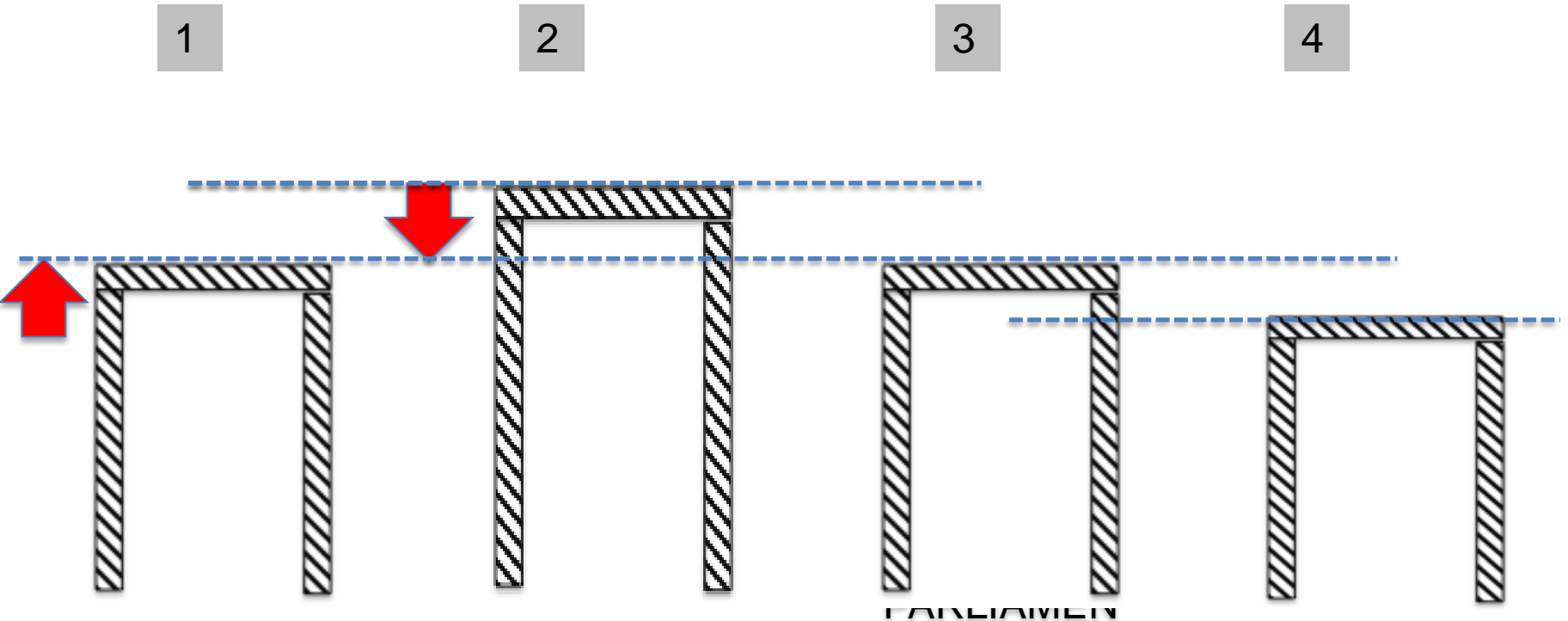
Why 4 is logical



The **Red line** running vertical in the middle of the window is crucial. To the right is where every proposal is NON-JUSTICIABLE: and therefore should not be objectionable in principle to conservatives. To the left of the **Red line** is where all or even one of the proposals is JUSTICIABLE: and therefore objectionable on principle to conservatives.

The problem with **2** is that it includes proposals (however modest and miserable) that are JUSTICIABLE. That is why it is in fact a harder position to locate than **4** (even though **4** is much more substantial). In trying to deal with the objections to the JUSTICIABLE aspects, **2** in fact ends up at **3**.

Four hurdles



TA

This is the crucial first hurdle. If he can be brought to position 4 – then we are over the first hurdle.

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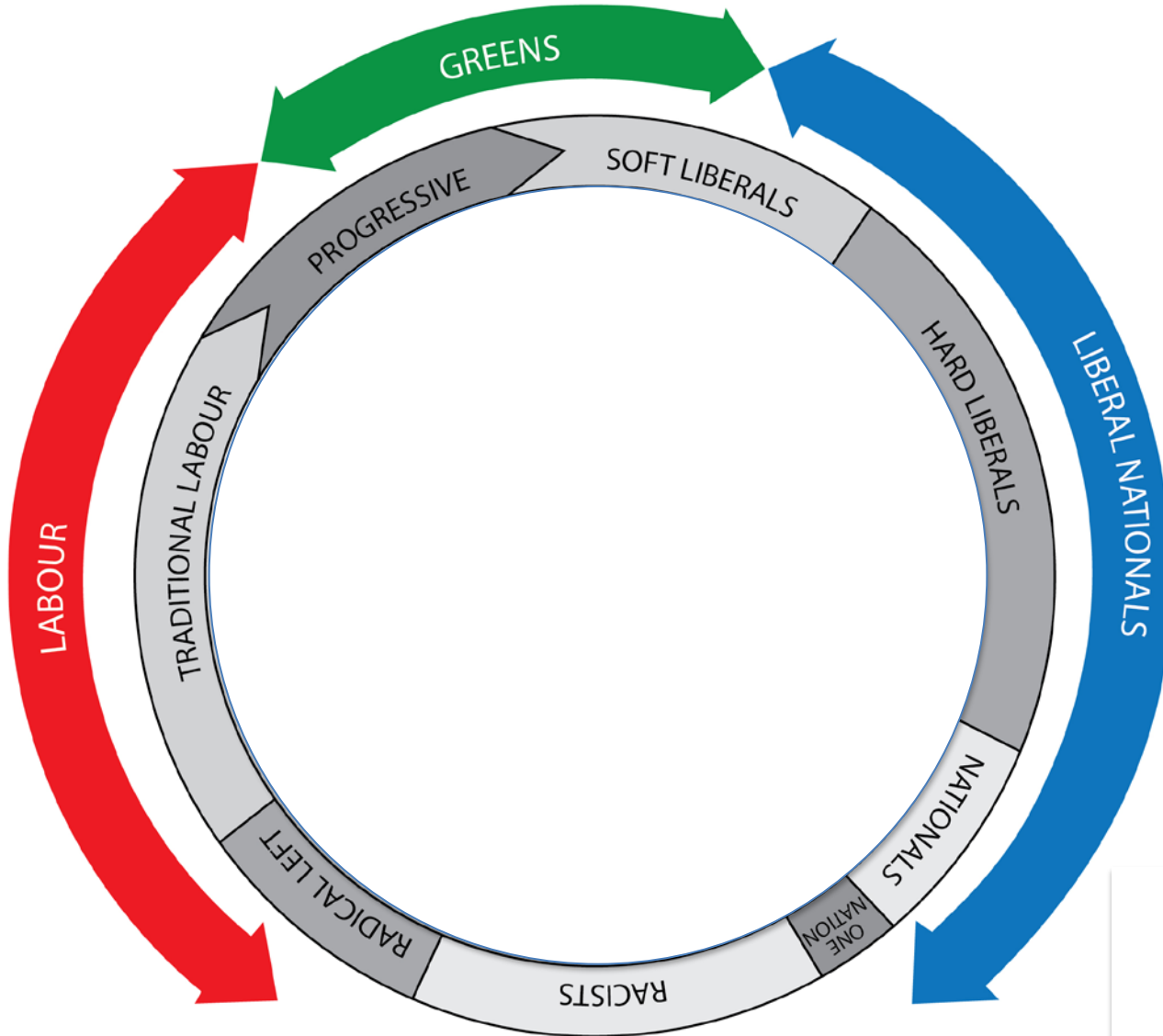
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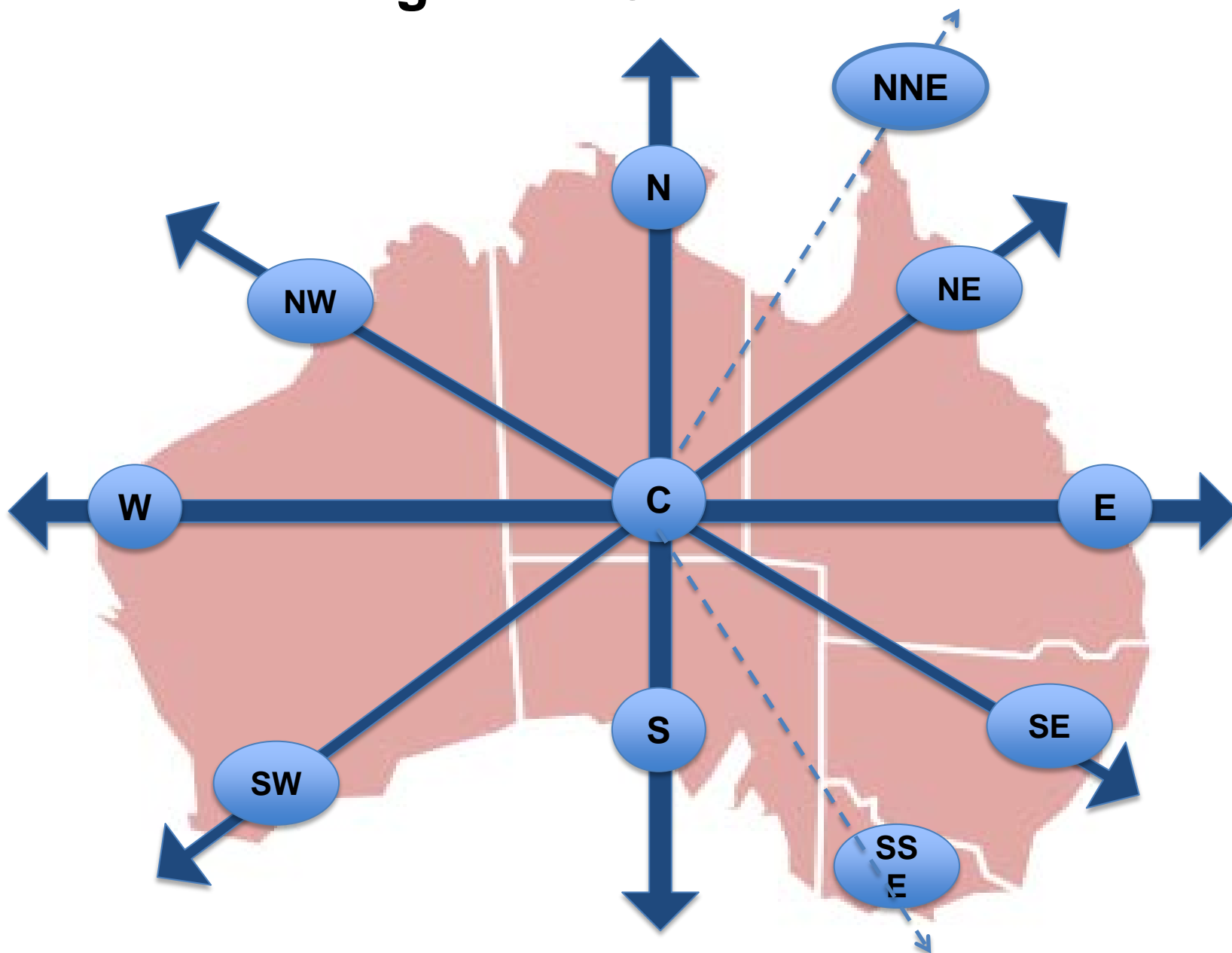
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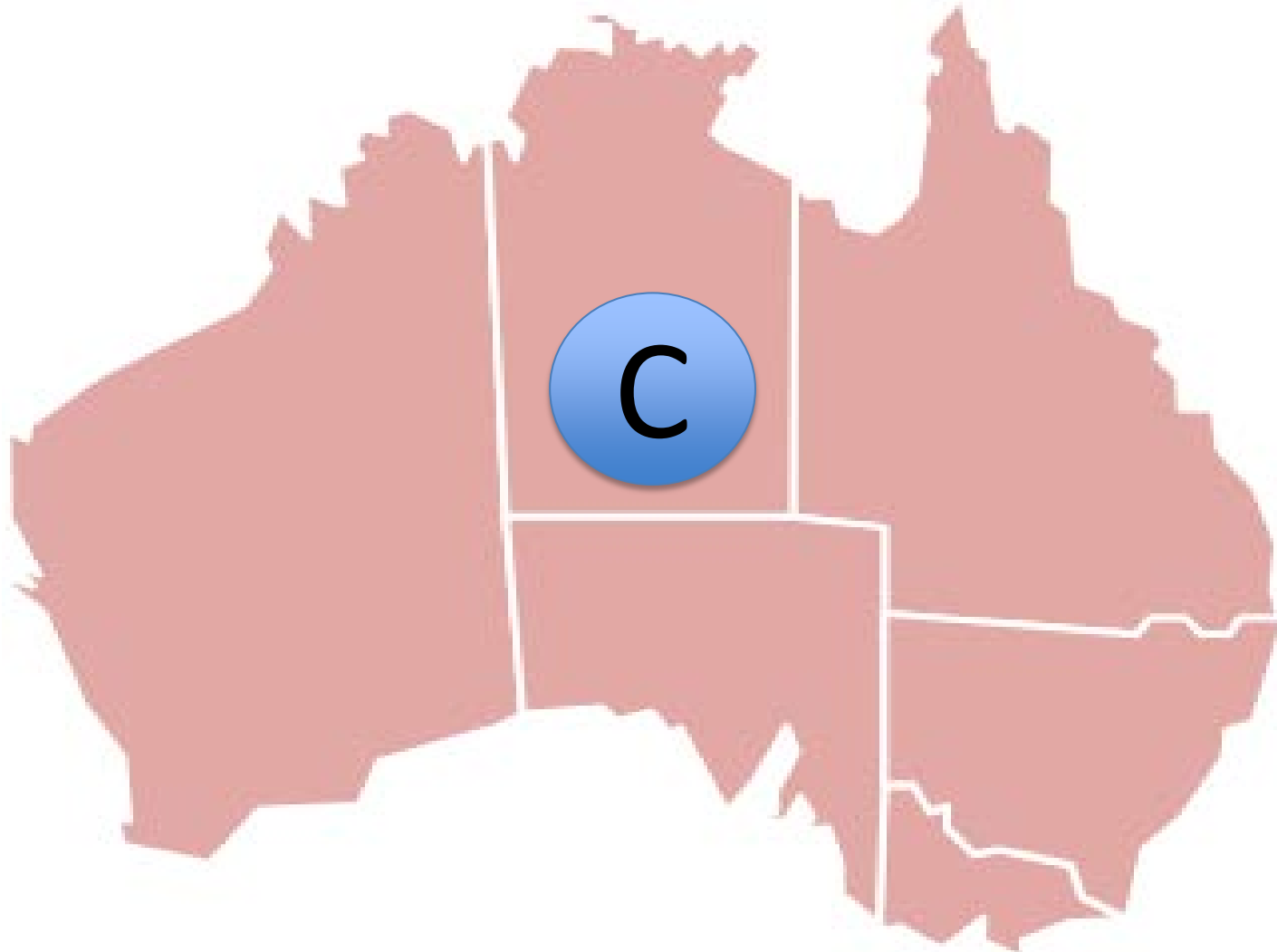
90% of the political spectrum



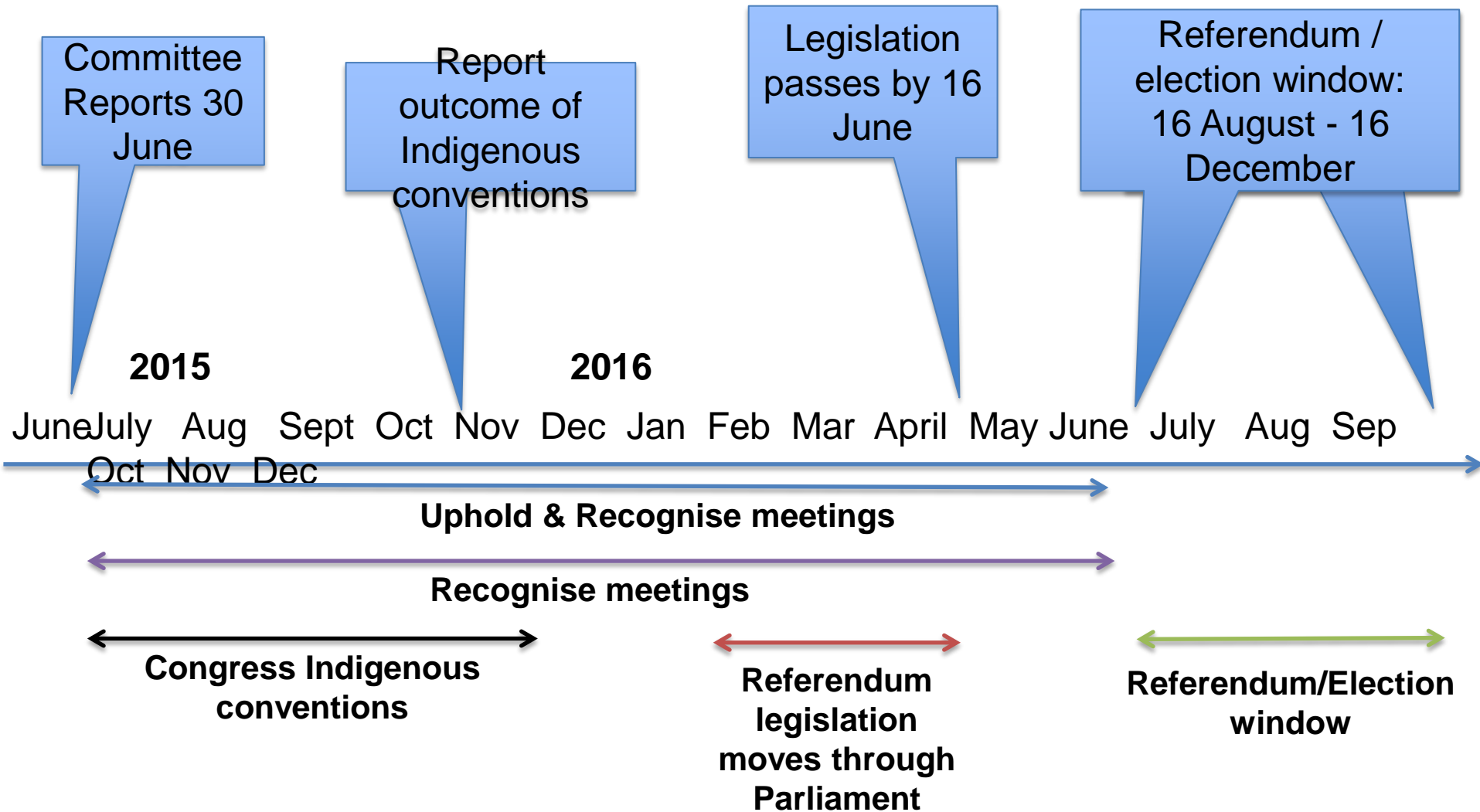
Indigenous Conferences



Leading to an Indigenous Convention



Timeline



Conclusion