



# AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

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## NATIVE TITLE NEWSLETTER

No. 2/99

### NATIVE TITLE IN THE NEWS - February 1999

*(Note: Where an item also appears in other newspapers, etc, an asterisk (\*) will be used. People are invited to contact the Native Title Research Unit at AIATSIS if they want the additional references. As usual, NTRU will try to provide people with copies of particular newspaper articles on request.)*

Ad = Advertiser (SA)  
Age = The Age  
Aus = Australian  
CM = Courier Mail (QLD)  
CP = Cairns Post  
CT = Canberra Times  
DT = Daily Telegraph  
FinR = Financial Review  
HS = Herald Sun (VIC)  
IM = Illawarra Mercury  
LE = Launceston Examiner

Mer = Hobart Mercury  
NNTT = National Native Title Tribunal  
NTA = *Native Title Act 1993*  
NTN = Northern Territory News  
QNT = Queensland Native Title News  
SC = Sunshine Coast Daily  
SMH = Sydney Morning Herald  
Tel M = Telegraph Mirror (NSW)  
WA = West Australian  
WAus = Weekend Australian

### News from the Native Title Research Unit

#### **Mura: Internet access to the catalogue of the Institute's collections**

The AIATSIS Library's online catalogue, Mura, was launched on the internet on 12 February 1999. Those clients with an internet connection may now search the databases of the Library, and Film and Video, Pictorial, and Recorded Sound Archives from their own workplace or home.

For those people undertaking native title research, searches may still be requested from the Native Title Specialist. Searches dealing with other areas of Indigenous studies should be requested from the Reference Desk on phone: 02 6246 1182, or email: [ref@aiatsis.gov.au](mailto:ref@aiatsis.gov.au)

The shadow catalogue, which contains items from the Archives which are restricted and/or have not yet been fully documented, may only be accessed by the Native Title Specialist. If you wish to have comprehensive listings of our holdings for your claims research, you should request a search of the shadow catalogue.

For more information and assistance contact:

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The catalogue and website can be accessed through: <http://www.aiatsis.gov.au>

### **History Workshop, 10 – 11 May 1999**

The NTRU is holding a workshop for native title practitioners examining **the use of history in native title processes**. The workshop will be co-convened by Dr Lisa Strelein, Visiting Research Fellow – Native Title, and Dr Geoff Gray, Research Fellow - History.

The workshop will be targetted at historians who have been or are becoming more involved in native title processes. As well as looking at the use of history in evidence, we will examine the issues raised by native title for history as a discipline and as a profession. The role of historians as expert witnesses will also be discussed.

As always we encourage all NTRBs to be represented as part of our commitment to continued skills development. Workshop numbers will, however, be limited.

The workshop will be held at University House, close to AIATSIS, on 10 – 11 May 1999.

Contact Ros Percival for registration. You can contact Ros via phone 02 6246 1161, fax 02 6249 1046, or email: [ros@aiatsis.gov.au](mailto:ros@aiatsis.gov.au)

### **Linguistics Workshop, 2 October 1999**

The NTRU will co-sponsor a one-day workshop in Perth with the Australian Linguist Society on **linguistic issues in native title processes**. The workshop will consider the implications of linguistic evidence in native title processes and should be of interest to applicants, language centers, anthropologists, lawyers and others involved in native title claims.

## **Current Issues**

### **Registration Test**

It appears the registration test will be a key issue for the first half of this year. I have been discussing the implications of the test with some Native Title Representative Bodies (NTRBs). The most obvious implication is that the test has placed NTRBs under considerable pressure and time constraints in attempting to deal with the requirements of the test. In most cases NTRBs are under resourced and simply do not have the staff to perform the functions

required of them. In addition many NTRBs are required to undergo a formal re-recognition of their Representative Body status, this injects considerable uncertainty into the process.

Aboriginal communities engaged in the native title process are also placed under considerable pressure. They are required to respond to changes to their applications, often within very short timeframes and can only respond without proper community debate and consideration. This is proving to be a very stressful period for the claimant groups and their representatives.

Another issue highlighted to me in discussions is that some people feel they are being asked by the NNTT to provide information and material suited for a judicial process, not an administrative one. There is a lack of guidance or precedents for the registration test and the full implications of these concerns will only become apparent as decisions are made. However, I am particularly concerned that administrative interpretations of statutory requirements don't force applicant groups into a situation where their social structure as a native title holding group is modified to reflect an administrative model developed for implementing the registration test. We must not lose sight of the fact that each applicant group already holds native title according to their laws and customs and are only seeking recognition of this fact from the Crown.

I will be keeping a close watch on the registration test process and invite people to call me on 02 6146 1153 if you have any comments and suggestions about this or other native title issues.

.....*Kado Muir, Visiting Research Fellow, NTRU, February 1999*

### Evaluating the Reeves Report: Cross-Disciplinary Perspectives A Two Day Conference

The Centre for Aboriginal Economic Policy Research, and the Department of Archaeology and Anthropology at the Australian National University are holding a conference focusing on the Reeves Report. Papers at the conference will address two main themes:

1. the use made of evidence, particularly the work of anthropologists, in the Report; and
2. the political and administrative implications of the Report's recommendations.

The conference will be held on Friday 26 and Saturday 27 March at Fenner Hall, Northbourne Avenue, Canberra. The registration fee is \$75.00 and \$30.00 for students/unwaged. The fee includes morning and afternoon tea and lunch.

If you are interested in attending the conference, please contact any of the people below for a registration form.

Frances Morphy (co-convenor)  
Tel: 02 6253 0361  
Fax: 02 6253 0900  
email: bookmorph@ozemail.com.au

Tim Rowse (co-convenor)  
Tel: 02 6249 4776  
Fax: 02 6249 2711  
email: timothy.rowse@anu.edu.au

Sue Fraser  
Archaeology and Anthropology, The Faculties  
The Australian National University, Canberra ACT 0200

## CLAIMS

### Queensland

#### Gungarri People [NNTT Ref#QC96/1]

##### Correction

In the last edition of the newsletter (1/99), a sentence in relation to the Gungarri people's native title application was incorrect. In relation to the Gungarri people's connection report, the sentence says "Mr Neate said the report provides information from the Gungarri people, proving their links to the land". This sentence should read: "Mr Neate said the report provides information which the Gungarri state proves their links to the land". We apologise for any misunderstanding this may have caused.

#### Mualgal People [NNTT Ref#QC96/20], and Saibai Island Community [NNTT Ref#QC95/13]

In a special sitting in Cairns, the Federal Court has formally recognised native title in two separate determinations covering Moa and Sabai Islands in the Torres Strait. Moa and Sabai are the first (and second) determinations of native title in the Torres Strait under the *Native Title Act 1993*, and the first two of 67 applications in the area to be resolved.

The agreed determinations are the result of nearly two and a half years mediation by the National Native Title Tribunal. The Federal Court issued a consent order, ratifying agreements reached between the parties after nearly two and a half years of mediation by the National Native Title Tribunal. The agreements formally recognised the traditional rights and interests of the Mualgal and Sabai people to the land and inland waters of Moa and Sabai Islands in Australian law.

Incoming Tribunal President Mr Graeme Neate said the determinations showed again that native title issues could be resolved through negotiation, and provided a framework for the resolution of other native title matters in the region. Mr Neate acknowledged the contribution of former Tribunal President Justice Robert French who personally led the mediation on both agreements ratified today by the Federal Court. He also acknowledged former Tribunal Member Mr Rick Farley for his role in mediating the Moa application. Mr Neate also praised the Queensland Government, saying it set an example for other governments around Australia with its constructive approach to the resolution of native title issues by mediation.

Mr Neate said a native title determination reached through mediation can include more than a recognition of native title rights in Australian law. It may also include agreements about how those rights can be exercised concurrently with the rights of others - including the rights of other Indigenous people who may not be the native title holders but who have historical links to the area.

The native title determinations include a number of land use agreements between the native title holders and other parties such as service providers like Telstra, the Island Community Councils and, on Moa Island, the residents of the St Pauls' Community, many of whom descend from South Sea Islanders. Both agreements also recognise the traditional access

rights of the inhabitants of Papua New Guinea, which is only five kilometres away and visible from Saibai Island. (*NNTT Media Release, 12 Feb*)\*

## **South Australia**

### **Adnyamathanha People**

Five overlapping native title applications by the Adnyamathanha people in South Australia's Flinders Ranges have been united in one application after extensive negotiations.

National Native Title Tribunal Member Fred Chaney, who was involved in the negotiations, said the move was a significant breakthrough in the long-term resolution of the applications. He said by acting in a united way, the Adnyamathanha people have far greater prospects of engaging non-Indigenous interest holders and the State Government in constructive negotiations.

Mr Chaney said documents had been filed in the Federal Court combining the applications and further moves were expected to formally withdraw four of the claims. One of the applications was lodged in 1994, two in 1995 and a further two in 1997.

The Adnyamathanha people would now pursue a united 72,000 square kilometre application seeking native title rights and interests including the right to:

- maintain and protect places of importance;
- control, maintain and protect the use and misuse of cultural knowledge; and
- use and enjoy the resources of the area. (*NNTT Media Release, 1 Feb*)\*

## **Western Australia**

Rubibi # 6 [NNTT Ref#WC95/28], Leregon (Lanaganjun) Clan [NNTT Ref#WC95/43] Action over two overlapping native title applications, which were referred to the Federal Court in July 1998, has been adjourned to allow negotiations over a section 137 inquiry. Section 137 of the *Native Title Act 1993*, says that the Commonwealth Minister may direct the National Native Title Tribunal to hold an inquiry in relation to a particular matter or issue relating to native title. Matters covered by such an inquiry could be: the effect on Aboriginal peoples and Torres Strait Islanders of the validation of particular past acts or intermediate period acts; alternative forms of compensation that could be provided; and action that could be taken to assist Indigenous peoples where native title has been extinguished.

Support for the adjournment, as well as in principle support for the inquiry, has been given by all parties involved. If the inquiry goes ahead, it will be the first to be held in Australia. (*The Broome Advertiser, 17 Feb, p10*)

## **MINING AND NATURAL RESOURCES**

### **Queensland**

#### **WMC Ltd, Carpentaria Basin**

Mining company WMC Ltd has secured the right to explore the Elizabeth Creek area from the Queensland Government. A permit can only be granted after a procedure to work with native title is in place. The company will re-enter negotiations with Indigenous groups in north-west Queensland over further exploration in the province. A spokesperson for WMC said they aim, over the next few months, to enter into an Indigenous land use agreement with the Carpentaria Land Council. (*CM, 18 Feb, p22*)\*

## **AGREEMENTS**

### **Northern Territory**

#### **Adelaide-to-Darwin Railway**

In the first native title agreement negotiated with the Northern Territory Government, Aboriginal people have signed over land to be used by the Adelaide-to-Darwin railway. The Northern Land Council and the Central Land Council agreed to a \$10 million compensation package in return for the 100m wide and 1385km long strip of land. (*CT, 12 Feb, p2*)\*

## **AMENDMENTS**

### **National**

A report prepared by the Indigenous Law Centre, says changes to native title legislation and to policies on Indigenous affairs have left Australia in breach of its international treaty obligations. The report, commissioned by ATSIC, has gone to the United Nations Committee on the Elimination of Racial Discrimination (CERD), which asked the Australian Government to report after concern was raised over developments in the areas of native title and social justice. Australia submits periodic reports to CERD, the last report being in 1994. The ATSIC submission to the UN also reports on other developments since 1994, saying that the social justice package process has been abandoned and the policy of self-determination has been jettisoned. The submission says that the Federal Government has also failed to show leadership in deferring to the States and Territories and passing significant responsibilities, such as native title, to them. It also criticised the Government for not having made any appointment to the Office of Aboriginal and Torres Strait Islander Social Justice Commissioner since January 1998.

The full ATSIC submission is available from ATSIC's website: <http://www.atsic.gov.au> (*ATSIC Media Release, 18 Feb*)\*

Aboriginal and Torres Strait Islander Affairs Minister, Mr John Herron, has announced the areas proposed for which eligible organisations will be invited to apply for recognition as Native Title Representative Bodies. Under the amended NTA, the Minister is required to decide on the areas before issuing invitations to interested organisations to apply for recognition. Mr Herron has called for submissions on the proposed boundaries by 12 March and expects to make a final decision by the end of March.

The boundaries create the areas over which Representative Bodies, such as existing Indigenous land councils and organisations, will have the responsibility for handling native title processes.

Information and maps about the proposed areas can be obtained by contacting ATSIC on 02 6289 3485 or 02 6289 3531. (*Senator John Herron, Media Release, 19 Feb*)\*

### **Western Australia**

The Western Australian Government and the Labor Opposition are negotiating a compromise on the Government's proposed native title legislation. The talks were initiated by the Labor Party. According to *The Australian*, the deal would enable passage of the Government's Validation Bill with the Government accepting amendment to exclude historical leases from

the list of tenures confirming extinguishment in the Bill. The Labor Party would then accept the schedule. (*Aus, 26 Feb, p6*)

## GENERAL NATIVE TITLE ISSUES

### National

The Prime Minister, Mr John Howard, has proposed a question on a new preamble for Australia's constitution to be put at the referendum planned for November. Mr Howard said that the preamble should be narrow in its wording. He said it should recognise the prior occupation of Australia by the Indigenous people but warns against getting into 'judgmental' areas such as dispossession. (*SMH, 5 Feb, p2*)\*

ATSIC Chairperson, Mr Gatjil Djerrkura, and the Chairperson of the Council for Reconciliation, Ms Evelyn Scott, support a question on a preamble that includes recognition of Indigenous peoples' prior ownership of Australia. (*FinR, 8 Feb, p6*)\*

The Prime Minister, Mr John Howard, has confirmed that acknowledging more than Aboriginal prior occupation in the proposed new preamble would be unacceptable. This would include any mention of 'custodianship'. (*Age, 10 Feb, pA6*)\*

The Opposition Leader, Mr Kim Beazley, supports the recognition of prior occupancy and ownership by Aboriginal people as part of the proposed preamble. (*WA, 10 Feb, p4*)\*

### Queensland

Queensland Premier, Mr Peter Beattie, has asked the Prime Minister to allow small miners collective access to Commonwealth funds set aside to help landholders with native title processes. (*CM, 8 Feb, p4*)

### Western Australia

Western Australia's assistant Director General of the Ministry of the Premier and Cabinet's Native Title and Strategic Issues Division, Mrs Vera Novak, is a major shareholder in mining companies. This raises questions regarding conflict of interest. Mrs Novak is responsible for native title policy coordination and development and is involved in policy setting and the drafting of legislation in native title. Premier Richard Court denies a conflict of interest, saying that Mrs Novak has previously declared her share interest to the Ministry and that she did not work on claims where there would be such a conflict. Mrs Novak said that she did not believe there was a conflict of interest in holding shares in a mining company that had tenements in an area under native title claim. (*WA, 18 Feb, p1*), (*WA, 19 Feb, p4*)

## Native Title Research Unit Publications

*The following NTRU publications are available from Aboriginal Studies Press, ph.: (02) 6246 1191.*  
***A Guide to Overseas Precedents of Relevance to Native Title*** Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden. AIATSIS, Canberra. (cost \$18.95 including postage)  
***Working with the Native Title Act: alternatives to the adversarial method.*** Edited by Lisa Strelein, 1998. (\$9.95 including postage)  
***Regional Agreements: Key issues in Australia, volume 1.*** Edited by Mary Edmunds, 1998. (\$16.95 including postage)  
***A Sea Change in Land Rights Law: The Extension of Native Title to Australia's Offshore Areas*** by Gary D. Meyers, Malcolm O'Dell, Guy Wright and Simone C. Muller, 1996. (\$12.95 including postage)

***Heritage and Native Title: Anthropological and Legal Perspectives***

(Proceedings of a workshop conducted by The Australian Anthropological Society and AIATSIS at the ANU, Canberra, 14-15 February 1996 ~ cost \$20 including postage)

***The Skills of Native Title Practice***

(Proceedings of a workshop conducted by the NTRU, the Native Title Section of ATSIC and the Representative Bodies, 13-15 September 1995 - cost \$15 including postage)

***Anthropology in the Native Title Era***

(Proceedings of a workshop conducted by the Australian Anthropological Society and the Native Title Research Unit, AIATSIS, 14-15 February 1995 - cost \$11.95 including postage)

***Claims to Knowledge, Claims to Country: Native Title, native title claims and the role of the anthropologist***

(Summary of proceedings of a conference session on native title at the annual conference of the Australian Anthropological Society, 28-30 September 1994 - out of print)

***Proof and Management of Native Title***

(Summary of proceedings of a workshop conducted by the Native Title Research Unit, AIATSIS, on 31 January-1 February 1994 - cost \$9.95 including postage).

*The following publications are available from the Native Title Research Unit, AIATSIS, Tel (02) 6246 1161, Fax (02) 6249 1046 (issued free of charge):*

**Issues Papers published in 1998 and 1999:**

- No. 20: ***Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime*** by J.C. Altman
- No. 21: ***A New Way of Compensating: Maintenance of Culture through Agreement*** by Michael Levarch and Allison Riding
- No. 22: ***'Beliefs, Feelings and Justice' Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples' Rights in Canada*** by Lisa Strelein
- No. 23: ***'This Earth has an Aboriginal Culture Inside' Recognising the Cultural Value of Country*** by Kado Muir
- No. 24: ***The Origin of the Protection of Aboriginal Rights in South Australian Pastoral Leases*** by Robert Foster
- No. 25: ***Compulsory Acquisition and the Right to Negotiate*** by Neil Löfgren
- No. 26: ***Engineering Unworkability: The Western Australian State Government and the Right to Negotiate*** by Anne De Soyza
- No. 27: ***Extinction and the Nature of Native Title Fejo v Northern Territory*** by Lisa Strelein

**Regional Agreements Papers: Land, Rights, Laws: Issues of Native Title**

- No. 5: ***Process, Politics and Regional Agreements*** by Ciaran O'Faircheallaigh
- No. 6: ***The Yandicoogina Process: a model for negotiating land use agreements*** by Clive Senior
- No. 7: ***Indigenous Land Use Agreements: New Opportunities and Challenges under the Amended Native Title Act*** by Dianne Smith

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*This newsletter was prepared by Penelope Moore*