



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

NATIVE TITLE NEWSLETTER

January and February 2000

No. 1/2000

The Native Title Newsletter is published on a bi-monthly basis. The newsletter includes a summary of native title as reported in the press. Although the summary canvasses papers from around Australia, it is not intended to be an exhaustive review of developments.

The Native Title Newsletter also includes contributions from people involved in native title research and processes. Views expressed in the contributions are those of the authors and do not necessarily reflect the views of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

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List of abbreviations

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. The NTRU will try to provide people with copies of recent newspaper articles upon request.*

Ad = Advertiser (SA)	LRQ = Land Rights Queensland
Age = The Age	Mer = Hobart Mercury
Aus = Australian	NNTT = National Native Title Tribunal
CM = Courier Mail (QLD)	NTA = <i>Native Title Act 1993</i>
CP = Cairns Post	NTN = Native Title News (State editions)
CT = Canberra Times	SC = Sunshine Coast Daily
DT = Daily Telegraph	SMH = Sydney Morning Herald
FinR = Financial Review	TelM = Telegraph Mirror (NSW)
HS = Herald Sun (VIC)	WA = West Australian
KM = Kalgoorlie Miner	WAus = Weekend Australian
IM = Illawarra Mercury	
LE = Launceston Examiner	

STOP PRESS

Western Australia v Ward

(Miriuwung Gajerrong People's native title application)

Full Federal Court decision 3 March 2000

Beaumont, von Doussa and North JJ

The Federal Court has handed down a 2-1 decision in the Miriuwung Gajerrong native title case, upholding the appeal by Western Australia in relation to areas of extinguishment (North J dissenting) but reconfirming the native title of the Miriuwung Gajerrong people in general.

The determination of native title was changed to exclude any commercial aspects, such as the right to trade, and rejected Justice Lee's recognition of the right to control access by others. Also rejected was the right to protect against the misuse of cultural knowledge (North J dissenting).

The majority held that native title is a bundle of rights and is, therefore, susceptible to partial extinguishment. This issue is likely to be appealed to the High Court.

The judgement can be found at
www.austlii.edu.au/au/cases/cth/federal_ct/2000/191/html

Lisa Strelein
Native Title Research Unit, AIATSIS

NEWS FROM THE NATIVE TITLE RESEARCH UNIT

An index to the Issues Papers and Regional Agreements Papers is now available from the Native Title Research Unit and will shortly also be available on the Institute's website. The entire set of Issues Papers and Regional Agreements Papers has been collated and bound. It is available through Aboriginal Studies Press for \$19.95 including postage.

The Unit participated in an Open Day sponsored by the National Museum and AIATSIS. The purpose was to give regional residents a tour of the shared construction site and to provide an insight into the activities and functions of the two organisations. The NTRU took the opportunity to present a description of the native title process aimed at the general public and an explanation of the services provided by the Unit for native title researchers.

The Unit was represented at the National Indigenous Working Group which met on 14 to 17 February in Canberra. On the first two days a technical advisers meeting considered strategic legal issues. Political strategy in relation to state regimes and cultural heritage legislation were also high on the agenda. The meeting coincided with the hearings of the Parliamentary Joint Committee on Native Title and the Land Fund CERD Inquiry (reported on in this issue).

Transfer to New Site and Temporary Closure

In October 2000 AIATSIS will be relocating to a new site on Acton Peninsula. The new building will provide improved facilities for clients and better storage conditions for the Institute's collections.

To allow for the transfer and setting up of collections, the Library and Archives will be closed to the general public from **Monday 2 October 2000 to Friday 2 February 2001**.

Requests relating to research for native title applications will still be undertaken but clients should note that during this period there may be significant delays. This will be due to the difficulty of physically locating items and the reduced capacity to reproduce any items requested. The production of bibliographies relating to the Institute's holdings will be unaffected.

Wherever possible, clients should aim to have requests for the copying of items sent in no later than **Friday 1 September 2000**.

Unfortunately, visits will not be possible during the closure period as full access to the Institute's collections can not be guaranteed.

Should you have any questions please do not hesitate to ring David Leigh on (02) 6246 1103.

CURRENT ISSUES

Native Title and Australia's International Reporting Obligations

In March last year the United Nations Committee on the Elimination of Racial Discrimination (CERD) criticised Australia's *Native Title Amendment Act 1998* (Cth), under its Early Warning/Urgent Action procedures. The CERD Committee argued that the Act offended the principles of non-discrimination and equality before the law contained in the *Convention on the Elimination of All Forms of Racial Discrimination* (See Report Newsletter 5/99). The Australian Parliament is currently conducting an inquiry into the veracity of the CERD Committee's findings and is due to report in April 2000 (The inquiry is being conducted by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund).

The Institute prepared a submission and appeared before the Committee on 22 February. The submission argued that the decision of the CERD Committee was justifiable according to international law, in particular when contrasting the different understandings of equality and non-discrimination employed by the Australian government in the *Native Title Amendment Act* and those required by international standards.

Before the Parliamentary Joint Committee reports in April, the CERD Committee will again meet and will consider Australia's Periodic Report on their compliance with the Convention during the period July 1992 to June 1998. This does not specifically include the *Native Title Amendment Act* (passed in August 1998). It is likely, however, that the CERD Committee will again comment on Australia's response to the Early Warning procedures.

In addition to the CERD Committee meeting, there are a number of other United Nations Human Rights Committees that will consider reports from Australia in the coming year. First, in March and April the Commission on Human Rights will meet. Racial Discrimination and Indigenous Issues are specific items on the agenda.

In July, the Human Rights Committee will also meet to consider reports from member States on their compliance with the *International Covenant on Civil and Political Rights (ICCPR)*. Australia's Third Report under this Convention will be considered and it covers the period March 1987 to December 1995. Issues and developments relating to Indigenous peoples are mentioned throughout the report, for example in relation to health, criminal justice, and political participation, and also, though briefly, in relation to Article 1 concerning the right of all peoples to self-determination. The common law recognition of native title and the *Native Title Act 1993* are included in the discussion of Article 27 relating to the cultural rights of minorities.

A supplementary Fourth Report covering the period January - December 1996 was also submitted. While making no further reference to Article 1, developments in relation to native title during 1996 are mentioned. The report summarised the amendments but in a very positive manner, avoiding any reference to the opposition by Indigenous peoples and, due to the timing of the reporting period, omitted reference to the amendments specifically directed at the *Wik* decision (handed down on 23 December of that year). These include the validation provisions, confirmation provisions and primary production activity provisions, which were the subject of criticisms by the CERD Committee last year. Amendments relating to state alternative procedure regimes were also not included.

Finally, Australia has also provided a Periodic Report to the Committee on Economic, Social and Cultural Rights (CESCR), which will meet in April-May 2001. The report does not discuss native title, however, Article 2 of the *Covenant on Economic Social and Cultural Rights* relates to the right to non-discrimination. In addition, as with the ICCPR, Article 1 concerns the right of all peoples to self-determination (the report to the CESCR refers to the ICCPR Report on this matter). Like the others, the reporting period, in this case 1990-1997, means that Australia did not discuss recent developments concerning Australia's compliance with obligations to eliminate racial discrimination.

While the Human Rights Committee is the only one of these committees to receive representations from other than State parties, members of such committees obtain information about issues and developments in member states from a variety of sources which may be raised with Australia's representatives.

It is therefore possible that Australia may come under further international criticism in relation to the *Native Title Amendment Act 1998*.

Lisa Strelein

Native Title Research Unit, AIATSIS

NATIVE TITLE IN THE NEWS - JANUARY & FEBRUARY 2000

National

Changes to Indigenous Land Use Agreement (ILUA) regulations have been gazetted. The new regulations alter the requirements for applications for the registration of ILUAs. For example, more precise descriptions and a map of the area covered by the agreement are now required. The new regulations can be accessed at

<http://scaleplus.law.gov.au/html/numrul/17/8538/top.htm>

(NTN (Qld), Jan 2000, p4)

Six new members have been appointed to the National Native Title Tribunal for a 3 year period. John Sosso, Graham Fletcher and Barty McFarlane have been appointed as full-time members and Ruth Wade, Gaye Sculthorpe and Jennifer Stuckey-Clarke have been appointed as part-time members. *(News Release, Attorney-General, 2 Feb)**

A series of public hearings was held at Parliament House in Canberra by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund. The Committee's inquiry concerned the *Native Title Amendment Act 1998* and Australia's international legal obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) as well as matters listed at s.206(d) of the *Native Title Act 1993* and annual reports pursuant to s.206(c). (See article on page 4)

New South Wales

A Bourke farmer has been fined by the NSW Mines Court for operating an illegal gypsum mine. The land on which the mine is located is subject to 3 native title claims. Development approval had been received for the mine but a mining permit had not been granted because the claimants' permission had not been received. *(SMH, 12 Feb, p11)*

The Attorney-General, the Hon Daryl Williams, has noted that the proposed New South Wales alternative right to negotiate native title provisions comply with section 26A of the Native Title Act. He has written to the NSW Aboriginal Land Council to notify the Council of 2 proposed determinations by the NSW Government relating to low impact exploration for minerals and petroleum in New South Wales. (*Attorney-General, News Release, 17 Feb*)

Victoria

Glenelg Shire is seeking approval from native title groups to construct a \$1.5m cable tram project on Crown land. (*Warrnambool Standard, 13 Jan, p9*)

Queensland

The Darlungbara and Ngulungbara People from the Great Sandy region near Noosa and the Aboriginal University of Australia have applied to the Queensland Supreme Court for an injunction to stop the National Parks and Wildlife Department's sale of the Double Island Point Lighthouse. Mr. John Lee Jones, Chairman of the Darlungbara Land Council, says that the Batchala tribe has launched a native title claim over the area and that the \$7 million property will be used to establish the university and a museum. The Court adjourned the hearing to a date to be fixed. (*FinR, 14 Jan, p4*)*

The Central Queensland Land Council has been informed of the favourable assessment of its application to be reregistered as a Native Title Representative Body. (*LRQ, Feb 2000, p1*)

The Torres Strait Regional Authority (TSRA) has been named the Native Title Representative Body for the whole Torres Strait region. Walter Waia, TSRA Native Title Office executive officer, said the appointment would allow the TSRA to vigorously pursue the Torres Strait regional sea claim and hopefully would mean a resolution to all outstanding native title issues relating to land claims in the Torres Strait. (*Koori Mail, 9 Feb, p4*)

South Australia

The Aboriginal Legal Rights Movement (ALRM) has been named by the Federal Minister for Aboriginal and Torres Strait Islander Affairs as the Native Title Representative Body for the Greater South Australia region. Parry Agius, ALRM's native title unit manager, said that the decision means the ALRM would

represent all Indigenous people in South Australia including those people in the Maralinga Tjarutja and Anangu Pitjantjatjara regions. (*Koori Mail, 26 Jan, p9*)

Northern Territory

Aboriginal Affairs Minister John Herron returned the freehold title of Eley Station in the Northern Territory to the elders of the Mangarrayi People, the traditional owners. The 5500 sq km cattle station is 450 kilometres south-east of Darwin, near the town of Mataranka. The local Indigenous community purchased Eley Station in 1991 and then lodged a land claim under the Northern Territory's Land Rights Act. (*WA, 22 Feb, p10*)*

Australian Capital Territory

The Australian National University's Faculty of Law offered an intensive one-week unit in Native Title Law in early March 2000. 'The unit is designed for people who, through work or other interests, need to gain an understanding of the complex regime governing common law rights to land held by Aboriginal and Torres Strait Islander people' lecturer Jennifer Clarke said. For more information see the ANU website at <http://law.anu.edu.au/graduate>. (*Koori Mail, 9 Feb, p27*)

APPLICATIONS

National

The National Native Title Tribunal posts summaries of registration test decisions on their website at: <http://www.nntt.gov.au>

The following decisions are listed for November and December.

Adelaide River	pass	Ngyabul People	sff
Timber Creek	pass	Molong Tribe	dnp
Western Creek	pass	Muthi Muthi People	dnp
Djabugay	sff	Myilly Point Larrakia	pass
First Peoples of the River		Pine Creek No. 2	pass
Murray & Mallee Region		Bogan River Wiradjuri	pass
(amended 11/01/2000)	pass	Mutthi-Mutthi People	dnp
Ncoorilma Munros	sff	Thudgari People	pass
Ngarrindgerri and Others		Arakwal People #3	sff
(amended 11/01/2000)	pass	Gurang People (amended	
Davenport/Murchison	pass	01/02/2000)	pass
Nukunu	pass	Thalanyji (Combined	
Githabul Nation #2	sff	Application)	pass

Birri People	pass	People of Boigu Island #2	pass
Kudjala People	pass	Tableland Yidinji #1 & #2	
Wongatha (Combined Application)	pass	(Combined Application)	pass
Dharawal People	sff	Wik Peoples	pass
Yuibera People	pass	Santo clan of Kudjala	
Western Yalanji #3	pass	People	pass
Arakwal People	pass	Karajarri (Combined Application)	pass
Bandjalung People	pass	Yaegl, Bundjalung,	
Baryulgil	pass	Gumbaynggirr	sff
Mandandanji #2	pass	Wiri People #2	pass
Nyangumarta People	pass	Widji People	pass
Garingbal and Kara Kara People	sff		

Sff - Short form failure - means that the application was tested against a limited number of conditions.

Dnp - did not pass - does not necessarily mean that native title does not exist. The applicant may still pursue the application for determination of native title. If an application does not pass the registration test the applicant may seek a review of the decision in the Federal Court.

Queensland

Turrbal People [NNTT Ref# QC98/26]

The native title claim by the Turrbal People has passed the registration test. The claim covers a large area of Brisbane and parts of Logan, the Redlands and Pine Rivers Shires. Passing the registration test gives the claimants access to certain statutory benefits including the right to negotiate. It does not mean that they have been determined as native title holders. (*CM, 17 Jan, p1*)*

Wiri People [NNTT Ref# QC99/34]

A native title claimant application has been lodged by the Wiri People covering specific lots in Mirani and Nebo Shires in Central Queensland. (*NTN (Qld), Jan 2000, p2*)

Gubbi Gubbi People [NNTT Ref# QC99/35]

A native title application has been lodged over sections of the Isis and Biggenden Shires. The application extends from North Pine River, south of Caboolture to north of Childers, west to Kilkivan and almost to Biggenden and covers an area of almost 15,000 sq km. The claim does not include Fraser Island. (*News Mail (Bundaberg), 3 Feb, p5*)*

Gurang People [NNTT Ref# QC99/20]

The native title claim by the Gurang People has passed the registration test. The claim covers areas of Gladstone and Calliope. (*Observer (Gladstone)*, 4 Feb, p5)

Western Australia

Wongatha People [NNTT Ref# WC99/1]

The Wongatha People's native title claim will have to undergo the registration test for the second time following the State Government's successful Federal Court challenge. The passing of the registration test last year has been set aside and referred back to the National Native Title Tribunal registrar. The State Government challenged the registration of the claim on the grounds of denial of natural justice. (*KM*, 14 Jan, p5)

MINING AND NATURAL RESOURCES

Western Australia

Conquest Mining reported that exploration areas in the Bow River and Ellendale areas of Western Australia are now free of native title objections following discussions with the Kimberley Land Council and the Aboriginal Legal Service. A heritage survey of the Bow River is still to be completed. Ground exploration is due to start in April 2000. (*Aus*, 17 Jan, p43)

AGREEMENTS

Queensland

Cairns City Council, the Yirrganydji People and the Gimuy Yidinji People have signed an Indigenous Land Use Agreement to allow for the development of the site for the Cairns Esplanade. The agreement has resulted in 3 jobs for Aboriginal people and recognition of the rights of traditional owners in the area, stated a Yirrganydji elder. A spokesman for the Gimuy Yidinji People said a precedent had been set whereby native title legislation could benefit all parties negotiating a land use agreement. (*CM*, 20 Jan, p7)*

An Indigenous Land Use Agreement between Telstra and the Ewamian People in Queensland has been registered. The agreement covers a Telstra radio facility in Etheridge Shire in Far North Queensland and allows the grant of a 20 year lease over the area and the construction of a radio communications tower and ancillary equipment on a fenced site. (*NTN (Qld)*, Jan 2000, p1)

The South Pacific Pipeline Company (SPPL) has advertised its intention to negotiate Indigenous Land Use Agreements in relation to the Papua New Guinea Gas project. The project involves the building, operating and maintenance of a gas pipeline from Kutubu in Papua New Guinea to Gladstone in Queensland. The proposed agreements relate to the Cape York and Central Queensland sections of the proposed pipeline. *(NTN (Qld) Jan 2000, p1)**

Santos Limited has advertised its intention to begin negotiations with Indigenous groups in relation to an Indigenous Land Use Agreement covering the area of petroleum operations in the south-west corner of Queensland near the South Australian and New South Wales borders. *(NTN (Qld), Jan 2000, p1)*

Oil Company of Australia (OCA) has advertised its intention to begin negotiations with Indigenous groups in relation to a gas pipeline from Myall Creek gas field to the Beranga South gas field in the Surat area of south-west Queensland. *(NTN (Qld), Jan 2000, p2)*

THE LAND AND RESOURCES TRIBUNAL (QUEENSLAND)

The Land and Resources Tribunal (LRT) is a new State tribunal. It was established to provide a single forum to deal with all issues in dispute regarding proposed resource development and other land management issues.

The Tribunal was established as the independent State body envisaged under the *Native Title Act 1993*.

Our jurisdiction is extensive. We will:

- take over the mining jurisdiction previously handled by the Wardens Court.
- if the Queensland alternative State provisions native title scheme is approved by the Commonwealth, be the independent State body to hear native title objections to certain future acts.
- have exclusive jurisdiction for injunctions to prevent interference with culturally significant items.
- have exclusive jurisdiction to enforce and interpret negotiated agreements about native title and mining.
- determine objections concerning State compulsory acquisitions for significant infrastructure facilities for third parties.

However the LRT will not determine native title claims. That remains a task for others.

Our members will include persons at judicial-equivalent level (the president and deputy presidents) and others (non-presiding members) with experience in cultural heritage and indigenous issues, mining, mediation, native title, land or other issues. This mix of experience and expertise should greatly benefit all tribunal users. Our Acting Registrar is an experienced lawyer and manager and our support staff are impressive and knowledgeable people who are committed to the principles of accessibility and co-operative development of the practices of our jurisdiction.

I am keen to emphasise that we will be a completely independent, fair and user-friendly tribunal. Our emphasis will be on client service. Accordingly, we will:

- sit in Brisbane, regional centres and other places as required.
- use a simplified form of rules and procedures.
- adopt an active case management approach including the routine use of directions hearings.
- minimise formality, and not be bound by the rules of evidence.
- deal with matters quickly.
- emphasise the importance of mediation.
- respect the interests of all stakeholders, including cultural sensitivity.
- hold regular information and feedback sessions with user groups.
- embrace state-of-the-art electronic technology.
- publish our decisions on the internet.

I have also scrapped some practices. For example, legal wigs and gowns will not be worn in the tribunal. That direction has already received widespread approval.

Most of these initiatives have occurred following extensive consultation with our many stakeholders. I congratulate all who participated. We intend to monitor and fine-tune our practices on an ongoing basis. That is a constructive and practical approach which will facilitate the successful operation of this new jurisdiction.

The LRT looks forward with enthusiasm to the work which lies ahead in this interesting, challenging and topical jurisdiction.

Gregory J Koppenol
President, Land and Resources Tribunal

NATIVE TITLE DEVELOPMENTS OF INTEREST TO LOCAL GOVERNMENT

Training Workshops in QLD and WA.

The Australian Local Government Association has held a round of training workshops on the use and application of its 2 recent publications the *Working with Native Title* Guide and the *Working out Agreements* Guide.

To date seven workshops have been conducted throughout Queensland and eight workshops throughout Western Australia. Participants have included:

- Elected members of local Councils
- CEO's of local Councils
- Senior managers and practitioners
- Elected members of NTRB's
- Managers and staff of NTRB's
- ATSIC Regional Office staff
- NNTT Members and staff
- Local Aboriginal Land Council representatives
- Consultant planners, engineers and surveyors
- State Government officials from a range of departments, including Crown Solicitor's Office, Planning and Aboriginal Affairs, and
- Other individuals.

(The round of workshops involved over 22,500 km in 29 days, 50 hours flying time through 5 time zones, 15 workshops in 14 different cities/towns with 204 participants, and more than 150 hours standing on two feet by one of the Guide's co-authors!!)

The workshops provide participants with an opportunity to ask questions and to raise issues for clarification. A selection of issues raised in the Qld and WA workshops include:

- what are the trigger points for native title processes;
- how native title affects Aboriginal Local Government (DOGIT) Councils in Qld;
- how native title matters are resolved;
- what is the State's role;
- how intra-indigenous conflicts can be resolved;
- what happened after a determination of native title has been made;
- what is the impact of native title on planning processes;
- what are the implications for land management practices;

- what is the role for agreements in the native title context;
- what is the connection or relationship with reconciliation;
- what is Council's liability for invalid future acts;
- what do the procedural rights involve, and how does Council respond to a comment received in response to 'an opportunity to comment';
- how can Councils work with NTRB's;
- what does co-existence mean and what are the implications;
- length of the process;
- compulsory acquisition - processes and responsibilities of the parties;
- understanding of mediation/negotiation processes;
- the differences or advantages of mediation over litigation;
- interaction between Commonwealth and State/Territory legislation;
- obtaining and releasing land for subdivision;
- how do local laws apply to native title rights and interests; and
- many more issues.

Other interesting issues raised included compulsory acquisition, whether the gazettal of a statutory planning scheme constitutes a future act, and the valuation of native title.

At the completion of the workshop, each participant is invited to complete an evaluation form. The overwhelming feedback can be summarised as follows:

- the one-day workshops are too intensive;
- the workshops need to spread out over at least two days;
- participants want more specific examples and more relevance to their local circumstances;
- participants want time to absorb the material and to have more time for questions and answers;
- participants want the training delivered in ways that will enable them to make use of the material in their work or in training other members of staff
- simple information is needed to allay the misconceptions and fears of their elected members on Council;
- that basic information on native title needs to be included in elected member training as part of the standard training for new Councillors; and
- all the feedback was very positive, especially on the usefulness of the Guide and the knowledge and expertise of the trainer.

There were also many interesting and rewarding experiences in explaining the basic facts to participants as well as enlightening them to some of the simpler aspects of native title. It is remarkable that in explaining the page of basic

facts about native title many of the participants are for the first time exposed to some of its parameters in ways that they were previously unaware of. Armed with this knowledge, many participants felt better equipped to tackle some of the concerns of their elected members and/or senior managers and the wider local community.

All participants commented on the value and simplicity of the Action Plan.

Training workshops in Victoria

Four native title training workshops were conducted in Victoria during February 2000. Two in Melbourne, one in Horsham in western Victoria and one in Echuca in northern Victoria. Attendance at all three workshops has been around 20-25 participants at each, and have included:

- Local Government elected members;
- Local Council chief executive officers;
- senior officers and practitioners in Local Government;
- consultants;
- representatives from Optus;
- several State Government officers from the Native Title Units in the Department of Justice and the Department of Natural Resources and Environment;
- a representative from Mirimbiak Nations (the NTRB for Victoria);
- representatives from ATSIC; and
- representatives from a community organisation called 'Defenders of Native Title'.

The kind of issues raised at the commencement of the workshops included:

- a desire to understand native title better;
- which organisations are responsible for what;
- how does native title relate to Local Government's 'good governance' responsibilities;
- how does native title impact on reserves and parks and tourism activities;
- an understanding of the processes for determining where native title may exist and the processes for future acts;
- what extinguishes native title and why;
- clarification of past acts, intermediate period acts and future acts;
- the impact of native title on Local Government's functions and responsibilities, especially in relation to Crown land under its care or trust;
- what are the notification requirements;

- the impact of native title on strategic and statutory planning and land management processes;
- the relationship between native title and Aboriginal heritage;
- agreements, how they can be made and registered;
- what can agreements be about;
- can they be binding on Local Government and the traditional owners;
- how can Council communicate with the claimants and build a better relationship with traditional owners;
- what the implications are for infrastructure agencies; and
- why the community is so unaware of the basic facts about native title.

One of the first questions put on the table at the introduction of the first workshop in Melbourne on Monday 7 February was ‘Why has it taken so long for Local Government to be told of the facts and its new responsibilities?’. The answer to this question lies in the fact that it has taken a long time to develop the resource materials because of the complexity of the *Native Title Act 1993*, and that most State Governments have until recently been in a state of denial about that fact that Aboriginal and Torres Strait Islander peoples now have, in certain circumstances, an enforceable right and interest in land and waters.

Most of the discussions during the workshops centred on the fact that Councils in Victoria only hold and manage land for and on behalf the State Government and that if Council wants to do anything with the land, the State Dept of Natural Resources and Environment’s (DNRE) approval is generally required as a pre-requisite. In relation to native title, however it was reported in more than one workshop that the DNRE is not releasing of allowing new leases to be issued over Crown land that is subject to a native title claim (registered or unregistered).

At the conclusion of the workshops some local Councils were surprised at the extent of their new responsibilities and how little they knew about them. At the end of each workshop there was ample opportunity for discussion about where to go from here, what sort of strategies might need to be considered and what realistic targets can be set to achieve a greater level of awareness of Local Government’s responsibilities. At each workshop there was spirited discussion about these matters, with some Councils saying how useful and practical the Guides will be.

The predominant comment in the evaluation reports was that the participants found the workshops very valuable, but that there was too much material

covered in one day. Several participants said that the course should be offered over two days and that there is a need for follow-up training. Many participants also expressed concern about how they would be able to canvas these issues with their own Councils and communities. They said they may need some assistance as some Councillors are still in a state of denial and are not fully conversant with the facts.

*Ed Wensing FAPI MRAPI
Consultant to ALGA on native title matters*

Recent publications

The publications reviewed here are not available from AIATSIS. Please refer to individual reviews for information on obtaining copies of these publications.

Yarning About Indigenous Land Use Agreements. National Native Title Tribunal. 2000.

The National Native Title Tribunal (NNTT) has issued a free audio tape explaining Indigenous Land Use Agreements (ILUAs). The tape is being distributed to Indigenous organisations, native title claimants and Indigenous radio stations. There are currently 6 Indigenous Land Use Agreements registered in Australia and five more have been lodged with the NNTT for registration. The tape runs for 37 minutes and is broken into four segments. The new provisions for ILUA's are explained and 3 case studies of registered ILUA's are discussed. The tape is presented in plain language and conversational style. NNTT President Graeme Neate said the audio program aimed to provide insights about the issues involved in negotiating agreements through the experiences of Indigenous people who had successfully negotiated agreements in the Northern Territory, Queensland and New South Wales.

Copies of the tape are available from the NNTT registries in all states on 1800 640 501. (*NNTT Media Release, 4 Feb*)*

Strategic Resources Agreements Victoria, Discussion Paper, Livesey, N. National Native Title Tribunal, Melbourne, 2000.

The National Native Title Tribunal has published a Discussion Paper on options for Agreements in Victoria which examines 16 separate pieces of Victorian legislation. The paper analyses Commonwealth and State legislative frameworks which regulate the acquisition, protection, use and management of land and resources of the respective resources and how these laws may allow for the

involvement of Aboriginal people in land and resource management. The purpose of the paper is to be a *toolkit* for parties engaged in native title negotiations in Victoria in respect of four categories of land and resource assets, national parks and nature conservation reserve system, State forests, inland waters, coastal and offshore waters. The sections titled “Scope for Resources Agreements” clearly outline the opportunities under the various acts. In many cases these laws allow for the recognition and involvement of various interests in the management of land and resources as a matter of process. There are no real impediments for Aboriginal people to seek greater involvement under these laws regardless of native title outcomes.

The report makes three key recommendations regarding the NNTT’s role

- It should facilitate a Victorian Native Title Agreements Seminar/Forum with all relevant parties to discuss Native Title Agreements using this report as a discussion point.
- It should carry out regional and/or claim based studies to develop specific agreements models (SRA Victoria Part 2). The study would involve close consultation with Native Title Claimants, Native Title Representative Bodies, State Government Departments and Regional Statutory Bodies.
- It should examine the effectiveness of pre-existing Indigenous and non-Indigenous planning and implementation techniques including committees of management to determine their effectiveness as a possible agreement tool in Victoria.

We can all look forward to the NNTT organising a Victorian Native Title Agreement seminar/forum to take this matter further in that State.

Native Title Research Unit publications

The following NTRU publications are available from AIATSIS. Please phone (02) 6246 1161, fax (02) 6249 1046 or email: ntru@aiatsis.gov.au. Prices listed include postage.

Land, Rights, Laws: Issues of Native Title, Volume 1, Issues Papers Numbers 1 through 30, Regional Agreements Papers Numbers 1 through 7 1994- 1999 with contents and index. (\$19.95)

Regional Agreements: Key Issues in Australia - Volume 2, Case Studies
Edited by Mary Edmunds, 1999. (\$19.95)

A Guide to Overseas Precedents of Relevance to Native Title Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden, 1998. (\$18.95)

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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)

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 (\$20)

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 (\$15)

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 (\$11.95)

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 (\$9.95).

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

Issues Papers published in 1998 and 1999:

No. 30 ***Building the Perfect Beast: Native Title Lawyers and the Practise of Native Title Lawyering*** by David Ritter and Merrilee Garnett

No. 29: ***The compatibility of the amended Native Title Act 1993 (Cth) with the United Nations Convention on the Elimination of All Forms of Racial Discrimination*** by Darren Dick and Margaret Donaldson

- No. 28: ***Cultural Continuity and Native Title Claims*** by Ian Keen
- No. 27: ***Extinguishment and the Nature of Native Title, Fejo v Northern Territory*** by Lisa Strelein
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- No. 21: ***A New Way of Compensating: Maintenance of Culture through Agreement*** by Michael Levarch and Allison Riding
- No. 20: ***Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime*** by J. C. Altman

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

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