



# Native Title Newsletter

AIATSIS Native Title Research Unit



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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.

### **STOP PRESS!!**

AIATSIS and YAMATJI LSC  
announce

*The Native Title Conference 2002:*

*Outcomes and Possibilities*

3-5 September

Geraldton WA

The Newsletter is now available in ELECTRONIC format. This will provide a FASTER service for you, and will make possible much greater distribution. If you would like to SUBSCRIBE to the Native Title Newsletter electronically, please send us an email on [ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au), and you will be helping us provide a better service. Electronic subscription will replace the postal service, please include your postal address so we can cross check our records.

## NEWS FROM THE NATIVE TITLE RESEARCH UNIT

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### Upcoming NTRB Conference

AIATSIS and the Yamatji Land and Sea Council and their collaborators are convening the third Native Title Representative Bodies conference. With major funding support from ATSIC the conference will be held in Geraldton, Western Australia, from 3–5 September 2002. The conference will be targeted to a broad cross section of NTRB staff – legal and policy issues, research and practice, and leadership and capacity building. For more information, see the enclosed flyer, or find it at <[www.aiatsis.gov.au](http://www.aiatsis.gov.au)>.

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### Native Title Research Unit Access service: What we can do for you

The Access Officer accepts all requests for information about materials held at AIATSIS from people undertaking research for native title applications. Requests must be in relation to a particular native title claim.

For researchers who know what material they need, and just require copies sent, we retrieve the material and organise any clearances and permission needed from depositors, the head of the Library, or the Principal of AIATSIS as necessary.

For other clients who have not yet identified what material would be useful for them, we undertake research to compile specific bibliographies which identify relevant materials.

Many clients like to come and visit the AIATSIS Library themselves to carry out their research. We explain how to use the Library, retrieve any closed-access materials and generally assist in research as needed. Contact the Access officer for our information sheet and list of costings on phone 02 6246 1103, fax 02 6249 7714, or <[ntss@aiatsis.gov.au](mailto:ntss@aiatsis.gov.au)>.

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### Issues Papers

The unit has published issues paper number 13 titled 'Recent Developments in Native Title Law and Practice: Issues for the High Court' by John Basten. The paper is thematically arranged around connection to country, content, extinguishment, and exclusive possession. John Basten is a Queen's Counsel and has appeared in numerous native title proceedings in the Federal and High Courts.

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### NTRB web site posted by ATSIC

ATSIC have posted a website to assist NTRBs at <[www.ntrb.net](http://www.ntrb.net)>. The website has recent news, the Native Title Services Guide, calendar of events, resource directory, and further reading (see further the feature article on page 6).

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### AIATSIS Seminar Series

The Monday lunchtime seminar series for 2002 focusses on pastoralism, land and resource use issues. The program for first semester will shortly be available at <[www.aiatsis.gov.au](http://www.aiatsis.gov.au)> by clicking on the 'Seminars' link.

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### New staff members

Christine Ratnasingham has joined us part-time to undertake copying work for the National Native Title Tribunal, who fund her position. She is a final-year law honours student at the Australian National University.

We have also been joined by Jane Anderson as the new part-time Research Assistant. Jane is also completing a PhD in Law at the University of New South Wales on governance, intellectual property, and Indigenous knowledge.

## FEATURES

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### **Indigenous fisheries: cultural, social and commercial**

Paper presented at The Past and Future of Land Rights and Native Title Conference, Townsville, 28-30 August 2001 by Tony McAvoy, Barrister

This paper talks about commercial fisheries and suggests that native title is not the sharpest tool available to Indigenous people in the quest to carve out a place in the commercial fisheries industry. Everybody here recognises the essentially political nature of native title and that the inability to separate the political from the legal is the reason we are getting illogical, irrational and inconsistent decision from the Courts. It is my contention in respect of commercial fishing rights that interim settlements may be reached on purely political grounds. If we rule out any negotiated outcomes with the Commonwealth Government and concentrate on getting state and territory governments to the negotiating table, agreements are possible.

The underlying principles of the negotiations must be that the Indigenous people must operate within the existing resource management structures and, second, Indigenous people must be brought back into the industry. By starting from this position we ensure the resource managers get the certainty they require and we make allies of potential enemies.

It is clear that management of a resource such as wildstock fisheries is a complex and difficult task. The Government agencies who have the job of promoting exploitation in an environmentally sustainable manner have been remarkably unsuccessful. The wildstocks are, generally speaking, in very poor condition. The Government will not and could not cope with the introduction of some alternative system of resource management.

If you ask the commercial fishing industry they will tell you that, as a result of government ineptitude in the management of the resource, they, the commercial sector, are now being squeezed out by government. All around the country, the fisheries departments are trying to remedy thirty years of poor management by reducing the number of commercial fishing licenses. The fear of fishers in some states is that the fisheries departments are not merely seeking to reduce the number of licenses but to actually outlaw commercial fishing. The commercial sector will tell you that this is because there are more votes in recreational fishing. Alternatively, the recreational fishing lobby will say that commercial fishing in Australian coastal waters is uneconomic and environmentally unsustainable.

The commercial sector is under siege. They are looking for allies and, given the right circumstances, Indigenous people are natural allies of commercial fishermen. The commercial fishermen are being squeezed out of the industry under compulsory 'buy outs'. This may be appropriate for latent effort, but there are many genuine operators that will want to get out for market value. The hitch is that the state and territory governments are going to squeeze the industry down to something within the bounds of sustainability. The Indigenous share must come from within that component. Not in addition to it.

In most cases the fisheries are fully or over exploited and not capable of withstanding further pressure. The creation of new licenses is not feasible and the re-allocation of existing licenses must be done on an equitable basis.

The reduction in the amount of licenses and the inclusion of Indigenous interests are actions that can be achieved simultaneously. The real support that can be offered to the commercial sector is in the existence of an-

other arm that once in place will be very resistant to further attack.

### *Fisheries commissions*

In order to get the states to the negotiating table they will want to know in general terms what structure is proposed. I would like to suggest that an appropriate framework can be developed from the following elements:

1. establishment of a singular fisheries council or commission for each state, modelled in part on the Treaty of Waitangi Fisheries Commission (TOKM);
2. through which the purchase of fishing licenses are made, subject to native title; and,
3. the funds for the purchases to be provided primarily by state governments.

Dealing with the first element, I do not believe nation based management units are feasible at this time. Not that Indigenous nations are not capable of managing their own affairs, but that governments are not capable with dealing with a range of management units that are at odds with their own management zones.

The purchase of licenses can be made by the proposed fisheries commissions and leased to communities in the same manner that the TOKM leases to the Iwi (clans) in Aeteroa. That is at 60 per cent of market value. Under such an arrangement the TOKM has been self sustaining in respect of administrative costs and increasing their holding in many fisheries related industries. I acknowledge that while there are problems with the TOKM model, the fundamental concepts underpinning the model are sound and capable of application to state based fisheries management units in Australia.

Consequently, as native title interests can be identified with certainty, a proportion of those licenses can be transferred to or allocated according to an agreed formula. Figuring out the formula will, in my view, be the most time consuming task.

If the states can be convinced of the merits of such a negotiated settlement, it then becomes a question of dollars. The dollars needed will vary greatly from state to state. New South Wales will be at the lower end of the scale. In terms of coastal fisheries NSW is not a particularly lucrative market. The northern rivers prawn trawl fisheries are also a valuable commodity.

### *Cultural, commercial and social fishing rights*

Commercial fishing rights should be dealt with in isolation from cultural or non-commercial rights. The cultural right to fish for non-commercial purposes is given a degree of protection in section 211 of the *Native Title Act 1993* (Cth). It is given protection to the extent that rights holders may continue to fish regardless of the regulatory provisions imposed by government. The decision in *Yanner v. Eaton* tells us this is so even where the species in question is subject to fauna conservation measures. The decision in *Wilkes v. Johnson* tells us this is so even where the fish is under minimum size. So long as it is in accordance with the traditions and customs of those persons holding native title, the exercise of the right will not be bounded by government regulation.

I say the rights are given a degree of protection because without any procedural rights to protect the fishing grounds from development and exploitation the rights are relatively limited. If, in circumstances where native title is determined to exist, it is argued that a particular activity will have an adverse impact on the sea country, it then becomes a matter of compensation.

Turning now to the concept of social rights. These are not rights which have any legal currency at this time, but there is a moral right which ordinary people can understand. That is, fishing and eating fish features large in the activities of coastal communities.

In NSW, many of the Indigenous coastal peoples were forced to reside or were 'reset-tled' on reserves that just happened to be on the sandy coastal fringe. This was in order to free up the forested areas for logging and

grazing. Deprived of most of their sources of protein, many of these peoples were given fishing boats by the government. Needless to say, fish were not the commodity they are today. These peoples, removed from their homelands, having since developed an economic dependence on the generations old fishing practices, contribute significantly to their respective local Aboriginal economies. These same small scale fishers are now caught in an administrative net designed to rationalise the industry. Unfortunately the rationalisation tends to favour the larger operators in the allocation of licenses.

It can be argued, in NSW at least, that because reliance by Indigenous peoples upon the marine resources was promoted and encouraged by the government, both for commercial and domestic use, it is now inequitable and unjust to exclude Aboriginal people from the industry or to regulate access for non-commercial purposes through the use of recreational fishing licenses. It can be argued, in fact, that the principles of social equity would demand that Aboriginal people are entitled to a larger share of the recreational and commercial take. In amendments to the *Fisheries Management Act 1994* (NSW), in November 2000, this argument was accepted by most of the NSW Legislative Council, a notable exclusion being David Oldfield of the One Nation Party.

These rights are not supportable within the native title context unless within the concept of contingent rights. It is not inconceivable that a traditional owner group faced with the invasion of peoples from surrounding country extended to some or all of those people, whether expressly or impliedly, the right to fish on those lands for the benefit of the new community as it were.

That digression aside the fight for what is socially just and correct can continue, not only parallel to the native title process, but in spite of it. For it seems that giving things to Indigenous peoples in recognition of past injustices is more palatable than acknowledging rights specifically grounded in present ownership. Strategically it is important

for the sea rights movement to establish the right to fish for commercial purposes.

We must all remember the native title is the tool not the finished product.

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### **Indigenous rights to water**

News from ATSIC by Paul Sheiner.

ATSIC has entered into a partnership with Lingiari Foundation, an independent Indigenous organisation chaired by Pat Dodson, to develop a draft national ATSIC policy on Indigenous rights to waters. Waters for the purpose of the project includes both offshore (seas and oceans) and onshore waters (rivers, lakes, and the like) including artesian and underground waters.

ATSIC initiated the process for a number of reasons including:

1. the increasing focus of government on water related issues which impact upon Indigenous rights – for example, the COAG water reform agenda, the National Oceans Policy, and the like; and,
2. the ATSIC elected arm and other Indigenous representatives are attending an increasing number of water-related forums and committees without a common agenda, standards or protocols.

It is hoped that a national ATSIC water rights policy will provide a set of standards on Indigenous rights to waters which Indigenous representatives can use in various forums.

In order to develop the policy ATSIC and Lingiari have published the set of briefing papers, and the two discussion booklets (onshore waters and offshore waters). These documents are being circulated by regional and state ATSIC offices and copies have been sent to all representative bodies. The documents have been published to promote discussion and generate feedback from Aboriginal and Torres Strait Islander people, communities and organisations. This feedback should be directed to regional or state ATSIC policy officers in each state and territory by 5 April 2002.

As part of the project an Indigenous rights to waters think tank will be held in March.

It is intended that the project will produce a draft policy that will be considered by the ATSIC Board in June 2002.

Copies of the project materials can be downloaded at <[www.atsic.gov.au](http://www.atsic.gov.au)> (click on the 'What's New' link and find the rights to water project).

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### **Capacity building for Native Title Representative Bodies (NTRBs): ATSIC fact sheet 6/2001**

The 2001-2002 Federal Budget provides additional funding of \$17.4 million to ATSIC as its allocation, out of a total of \$86.0m, over the next four years for the Commonwealth's native title system to facilitate the recognition and protection of native title in accordance with the *Native Title Act 1993* (Cth).

A total of \$11.4m of the additional funding is to be provided to ATSIC to enhance the service delivery capacity of NTRBs, that is, capacity building.

#### *ATSIC Guiding Principles*

The ATSIC Board of Commissioners at their 73rd meeting endorsed a number of guiding principles for progression of the program, these are:

- the capacity building program is based on a partnership between ATSIC and NTRBs nationally, and is to be applied over a four year period starting 1 January 2002;
- a framework agreement is to be developed, including objectives, strategies and projects funded under the program; and,
- final assent for the partnership and details about the capacity building project is to be an outcome from the NTRB Leaders Forum 2001.

#### *NTRB Partnership*

The terms of the additional funding from Government requires the ATSIC Native Title & Land Rights Centre to coordinate and deliver the program, rather than to directly provide funds to NTRBs on an individual basis.

In light of this requirement ATSIC in partnership with all NTRBs has developed a National Framework Agreement to govern the operation of the program. In particular the Framework Agreement is intended to settle key initiatives and establish a formal process for the implementation of the program.

#### *NTRB Leaders Forum 2001*

The NTRB Leaders Forum 2001 endorsed the following major capacity building priorities as areas for the capacity building program to target:

- corporate and cultural governance;
- management and staff development;
- information technology;
- native title technical training;
- collaborative relationships and research;
- applied capacity building; and,
- building effective relationships with NTRBs and ATSIC.

#### *Current Projects*

To date a number of key capacity building projects have already been completed, including:

- development and production of Native Title Services Guide on CD Rom;
- development and launch of <[www.ntrb.net](http://www.ntrb.net)> web page to enhance communication and networking opportunities between NTRBs;
- NTRB Leaders Forum 2001; and,
- creation of NTRB – CEO capacity building reference group to assist with implementation and monitoring of national capacity building program.

### Contact

For further information on this fact sheet please contact ATSIIC's Native Title and

Land Rights Centre, Legislation and Program Unit on (07) 3006 4800.

## NATIVE TITLE IN THE NEWS

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### New South Wales

Bemax Resources have successfully completed native title negotiations for Ginkgo mining lease, by signing an agreement with the registered native title claimants representing the Barkandji (Pooncarrie). This milestone significantly enhances Bemax's progression towards obtaining the grant of a mining lease for Ginkgo mineral sands project in the northern Murray basin. The Barkandji people are the sole registered claimant group in this area. (*Mining Chronicle* 1 December 2001)

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The Mooka Traditional Owners Council has lost their injunction application, which was dismissed in court by Judge Neal Bignold. The Mining Company operation in NSW central west can continue drilling of Aboriginal sacred land at Lake Cowal. Council chairman Neville Williams said the present exploratory activity taking place was destroying the land at Lake Cowal, which is the largest lake in NSW and lies 47 km north west of West Wylong in the heartland of Wiradjuri country. (*Border Mail Albury Wodonga* 25 January 2001)

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Orange's skate park development application has been formally approved after an investigation found native title had been extinguished. Orange city council was required to do a native title investigation following a submission from an opponent that questioned the title of the site at the corner of Warrenpine and Anson streets. The opponent who is of non-Aboriginal descent conceded that native title was raised as a bit of a wobbly, with the park having the backing of the Orange local Aboriginal land council. (*Central Western Daily* 15 December 2001)

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Last year the New South Wales Aboriginal Land Council (NSWALC) formally requested their status as a Native Title Representative Body (NTRB) to be withdrawn. On the 6th of December 2001 the Minister agreed to withdraw NSWALC's native title recognition status. As a result the NSWALC is no longer the NTRB for NSW and does not hold statutory responsibility for native title services within the state. The new service called the New South Wales Native Title Services Limited (NSWNTS) commenced operations on the 7th December 2001. The NSWNTS is currently operating out of offices at Parramatta but is also in the process of establishing regional offices in Dubbo and Coffs Harbour. (*NTRBs Latest News* 18 February 2002, <[www.ntrb.net](http://www.ntrb.net)>)

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### Victoria

People with interest in land covered by four related native title applications in central Victoria have been called upon by the NNTT to register for negotiation talks. The Tribunal will send out 3,000 letters to possible interested holders in four claims, informing them how to become a party. (*Country News* 31 December 2001)

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A process to determine native title for the Dja Dja Wurrung people has the Central Goldfields Shire taking no part to become a party. Instead council will rely on the Municipal Association of Victoria to act as its representative in mediation or court proceedings, to determine the validity of the claims. (*Maryborough Advertiser* 31 December 2001)

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Moorabool farmers who lease Crown land in Wombat State Forest are being asked to join native title claim negotiations. The

NNTT began contacting more than 3,003 people who may have interests affected by the claim made by the Dja Dja Wurrung. (*Bacchus Marsh-Melton Express* 29 January 2001)

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The Latji Latji people have included Lake Tyrrell, north of Sea Lake, in a native title claim. Buloke council been asked if it wishes to be registered as a party to this application. (*Buloke Times* 11 December 2001)

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### **South Australia**

Three local councils in the southern Fleurieu's and the City of Onkaparinga along with 300 applicants are to register an interest in the Kurna peoples native title claim. The claim area covers metropolitan Adelaide, Broughton to the north and Cape Jervis to the south. It also includes about 800 metres of St Vincent, from Port Wakefield to Cape Jervis. (*Times Victor Harbour* 28 February 2002)

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A dispute over government funding in the Pitjantjatjara lands has mining projects worth hundreds of millions of dollars in jeopardy. The Pitjantjatjara council alleges it has lost ATSIC funding held by the Department of State Aboriginal Affairs, because it refused to deal with consultants employed to restructure operations of the Anangu Pitjantjatjara Council. Pitjantjatjara elders voted last week to suspend all native title negotiations within their 110,000 sq km territory until the dispute was resolved. (*Advertiser* 28 January 2002)

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A meeting was held between Aboriginal people and miners to talk about native title mining agreements that allow opal mining on Lambina station, with noodling rights being one of the main issues discussed. It was always understood that Aboriginal people would have the first right to noodle as set out in the native title agreement and the

miners would make good level dirt available. (*Coober Pedy Times* 6 December 2001)

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### **Queensland**

The director of operations of the QLD mining council, Barry Mathias, said that the backlog of exploration permits would not affect the central QLD coal industry. Concerns were raised after the council predicted the State's base metal and gold mining industries would be extinguished within 10 to 15 years, unless exploration was increased and major discoveries made. Mr. Mathias said the biggest threat for the central QLD coal industry has been the ability to remain competitive. (*Morning Bulletin Rockhampton* 8 January 2002)

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In one of the State's first negotiated hand over of pastoral leased land, 273.9 hectares of the former Karma Waters pastoral holding, about 155 km northwest of Cairns, has been handed back to its traditional owners. The Western Yalanji people had a ceremony featuring traditional dancers and Indigenous music, Lance Riley, chairman of the western Yalanji Aboriginal Corporation, said the land would be worked to benefit traditional owners and protect their cultural heritage. (*Courier Mail* 25 January 2002)

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A local Gubbi Gubbi elder Dr Eve Fesl has said that a successful native title claim across the sunshine coast covering 13,907 sq km would be a win for all people interested in protecting the local environment. Dr Fesl said the Gubbi Gubbi people had been recognised as the only Indigenous people with proven links to the area, and had been registered as native title claimants and were proceeding with the next stage of the process. (*Sunshine Coast Daily* 24 January 2002)

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The casino and gaming group Jupiters is to go ahead with construction of the 118 million Gold Coast convention and exhibition centre. Jupiters advised that the Indigenous Land Use Agreement (ILUA) had com-

pleted its notification period and will be registered by the NNTT. Construction is expected to get underway in February. (*Cairns Post* 26 January 2002)

The Federal Court has declared that parts of Queensland's native title laws are invalid. In the case started by the Central Queensland Land Council, the Court found that parts of the native title regime relating to high impact mining and exploration are invalid because Federal Attorney General Daryl Williams approved sections of the regime that did not comply with Commonwealth laws. It is still unclear how many permits have been affected by the ruling but it is expected to relate predominately to high impact mining. (*ABC Indigenous News* 8 February 2002 )

The Wakka Wakka native title application over 31 000 square kilometres of land in Burnett, northern Queensland, has moved into mediation. The mediation process is likely to continue for at least twelve months. (*ABC Indigenous News* 12 February 2002 )

## **Western Australia**

The Noongar Land Council has been unsuccessful in its application for recognition as a native title representative body. Indigenous affairs Minister Phillip Ruddock has approved a new NTRB, the South West Aboriginal Land and Sea Council. (*Augusta Margaret River Mail* 1 December 2001)

The Woolah-Wah Aboriginal Land Corporation will take possession of the property near Bakers Hill, known as Coobabla farm (647 hectares) through the Indigenous land council. It is freehold land and has been used in the past as a stud cattle property. Denis Hayward of the Woolah-Wah group said that the Woolah-Wah people would run the property initially as a sheep and cattle farming venture, but hoped to introduce Indigenous cultural activities in the future. (*Avon Valley Advocate* 16 January 2001)

The Association of Mining and Exploration Companies (AMEC) has urged caution by the State government in examining ways to relieve the backlog of mineral tenement applications. The High Court decisions on the Miriuwung Gajerrong appeal and heritage were identified as emerging issues to be addressed in any solution. (*Kimberly Echo* 24 January 2002)

The Yamatji Land and Sea Council will merge to become one of Australia's biggest land councils. The Yamatji people originally voted against the move, but in a meeting have now supported the merger in principle. More than 250 native title claimants met at Yule River east of Port Hedland to endorse the proposal for the combined native title representative body. (*ABC Indigenous News* 11 February 2002)

A memorandum of understanding which details a strategic approach to developing a new comprehensive agreement with local traditional owners, has been signed by the Argyle diamond mine and the Kimberly Land Council. The new agreement will offer opportunities for employment and training for locals and traditional owners. (*Mining Chronicle* 1 November 2001)

A meeting recently from representatives of Nanda and Mullewa Wadjari native title claims reached an historic agreement to resolve their overlapping claims. The meeting was part of a protocol developed in September to assist in resolving overlapping claims in the mid west by the Yamatji Land and Sea Council and the NNTT. (*Mid West Times* 15 December 2001)

The Wongatha native title application over Western Australia's goldfields was heard in the Kalgoorlie on 19 February 2002. The native title claim over nearly 2,000 sq kms of land is the first to be made over land in the goldfields area. Michael Barker QC, repre-

senting the Wongatha people, told the Court that the family groups within the claim area would be seeking different rights according to their own traditional laws and customs. (*The West Australian* 23 February 2002 )

A formal settlement recognising the native title rights of the Karajarri people was announced on 12 February 2002. The decision is a consent determination between the Karajarri people, the State of Western Australia and several other parties over 24,725 sq kms of land on the coast south of Broome. The number of native title holders is approximately 750 people. The determination gives the Karajarri people the right to exclusively possess, occupy, use and enjoy the land and waters within the determination area. (*The West Australian* 12 February 2002)

### **Northern Territory**

A land signing ceremony was held to mark an historical agreement, which could see the government sell 50 hectares of land near Palmerston to the Larrakia nation for housing development. The ceremony was disrupted by protestors who were angry at the process used to reach the Rosebery agreement. (*The Northern Territory News* 14 December 2001)

### **Tasmania**

A meeting between Aboriginal groups and environment minister David Llewellyn could see a 30 year lease granted for Eddystone point to the local Aboriginal community. Eddystone Point became controversial last year when the Tasmanian Aboriginal Centre (TAC) occupied the site for three years in its bid to have land handed back to the Aboriginal Community. The TAC has also negotiated with Llewellyn for the use of nearby Mt William National Park. The site could also be eligible for reassessment as a heritage site, which would allow access in the future. (*Launceston Examiner* 24 January 2001)

Tasmanian Aboriginal people say they are puzzled by a land giveaway by the Break O'day council, in the same area of land they have been fighting for: Eddystone Point. Break O'day Council has announced it will give away a block in the Fingal Valley or coastal Hinterland to someone from outside the region who has registered through local business. (*Mining Chronicle* 1 November 2001)

## **APPLICATIONS**

The National Native Title Tribunal posts summaries of registration test decisions on <[www.nntt.gov.au](http://www.nntt.gov.au)>. The following decisions are listed for January-February. All were accepted. The first number following the name is the NNTT Application Number, the second is that of the Federal Court.

Jarowair People	QC00/5, Q6005/00	Butchulla People	QC97/30 QG6140/98
Daly Waters	DC01/71, D6071/01	Wanderrie Road	DC01/70 D6070/01
Bigambul People	QC01/6 Q6005/01		

## APPLICATIONS CURRENTLY IN NOTIFICATION

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### Queensland

Closing date	Application no	Application name
6 June 2002	QC01/22	Tagalaka People #1
	QC01/27	Gunbara Bulara Group
	QC01/36	Gunbara Bulara #2
	QC01/37	Muluridji People #2
	QC01/38	Djungan People #4
	QC01/39	Western Yalanji People #6
	QC01/41	Gunbara Bulara #3
	QC01/43	Christmas Creek Holding Group
	QC99/35	Gubbi Gubbi People #2
	19 June 2002	QC01/24
QC01/26		Kudjala People #3
QC01/40		Cape Holding Group
QC97/9		Kowanyama People
QC99/15		Mardigan People

For further information regarding notification of any of the applications listed contact the National Native Title Tribunal on 1800 640 501 or <[www.nntt.gov.au](http://www.nntt.gov.au)>.

## RECENT PUBLICATIONS

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### **'Review of the Native Title Claim Process in Western Australia: Report to the Government of Western Australia' by Paul Wand and Chris Athanasiou, September 2001**

Review by Christine Ratnasingham, NTRU

The State of Western Australia has the second highest number of native title applications. The current Western Australian Government, when elected in February 2001, expressed a keen interest to reform the Western Australian native title claim process, and commissioned a review of the process in April 2001, also known as the *Wand report*. This review was conducted by Paul Wand, a former Vice President of Aboriginal Relations for Rio Tinto Ltd., and barrister Chris Athanasiou. Both Wand and Athanasiou have previously provided significant contributions to discussion of native title.

At the time this report was commissioned, the newly elected government expressed its aim as finding "the best way to achieve an environment where native title agreements are the norm rather than the exception". The review supports this aim and provides informed and well considered recommendations to assist the government establishing such an environment in Western Australia.

Justifying its recommendation that native title claims should move towards negotiation and mediation rather than litigation, Chapter 4 critically examines the native title claims process in Queensland, South Australia, New South Wales and Victoria. The native title claims process varies significantly in each state and territory due to the unique concerns of each region. The Northern Territory's native title claims process was excluded from the review because of its significant emphasis on litigation. The Aus-

tralian Capital Territory and Tasmania were also excluded from the report.

The review concluded that claims in Western Australia are similar to those of Queensland because both states have: high numbers of native title claims; the largest land area; a similar proportion of Aboriginal reserves; significant pastoral holdings; and, both have strong links between mining activities and native title. Since 1998, the Queensland Government has been committed to developing its negotiations based approach to native title claims. This approach resulted in the State Government entering into a protocol with Aboriginal organisations, and the establishment of the Native Title Services within the Department of the Premier and Cabinet. With just over 80 per cent of native title consent determinations coming from Queensland, the Queensland Government's approach is viewed favourably. The review strongly recommends that the Western Australian Government cease allocating approximately half of its native title budget on litigation and reallocate the funds to areas that will ensure negotiations-based outcomes.

The review recognises that the native title claims processes involve local, state and Commonwealth governments, and that governmental bodies such as the Native Title Unit of the Department of the Premier and Cabinet in Western Australia, Native Title Representative Bodies, ATSIC, the National Native Title Tribunal, and the Federal Court of Australia, each of which have a significant role in native title claims, are interdependent on each other. Furthermore, many of these bodies are under-resourced. Plans to increase the funding of the Federal Court, the National Native Title Tribunal and the Commonwealth Attorney-General's Department are of concern to the review, as the Federal Court has expressed an aim to dispose of all native title cases in three years, a move that would have a detrimental effect on a negotiations-based approach to native title.

In light of such plans, it becomes vital that this review is seriously considered by the

Western Australian government. While the review takes care to include the views of a range of relevant parties, such as land councils, industry organisations, academics and relevant governmental bodies, it should be noted that the Western Australian Farmers Federation expressed its fear that the review is 'one-sided', after having been significantly misquoted in relation to its opinion on the availability of connection reports (*ABC News*, 7 January 2002).

Despite this controversy, the review provides researched criticism into current native title claims processes, and offers practical suggestions that are aimed at establishing a process that includes dialogue between all relevant parties.

*Copies available from:*

The report can be viewed or downloaded from <<http://www.ministers.wa.gov.au/>>; follow the 'Eric Ripper' link and then click on the 'Native Title Update' icon.

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***Background Briefing Papers: Indigenous Water Rights, Lingiari Foundation: Broome. February 2002***

*Background Briefing Papers: Indigenous Water Rights* contains nine papers concerned with onshore water rights for Indigenous people. It is one of two briefing papers developed in conjunction with ATSIC examining both onshore and offshore water rights. Following the *Crocker Seas* decision, a variety of legal, political and practical elements of the case have emerged. This document aims to provide information and promote feedback regarding the development of a national policy on Indigenous rights to water.

The contributions to *Background Briefing Papers: Indigenous Water Rights* provide diverse legal, cultural, scientific and economic perspectives to Indigenous rights to onshore water. The content includes: 'Crocker seas decision recognises Native Title sea rights - what now?' by The Northern Land Council; 'A common law right to groundwater' by Virginia Newell; 'The economics of Indige-

nous ownership of water resources and commercial fisheries' by Ian Manning; 'On-shore water project - briefing paper' by Jennifer McKay; 'Freshwater' by Marcia Langton; 'Water rights and international law' by Neva Collings; 'Water rights in Australia: Some Canadian reflections' by Larissa Behrendt; 'Briefing paper for the Water Rights Project' by Michael O'Donnell; and, 'Scien-

tific and environmental issues related to Indigenous ownership and use of aquatic environments in Australia' by Stephan Schnierer.

A copy of this Briefing Paper can be downloaded at <[www.atsic.gov.au](http://www.atsic.gov.au)> (click on the 'What's New' link and find the rights to water project publications).

## **NATIVE TITLE RESEARCH UNIT PUBLICATIONS**

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### **Issues Papers: Land, Rights, Laws: Issues of Native Title**

Native Title Research Unit Issues Papers are available through the native title link at <[www.aiatsis.gov.au](http://www.aiatsis.gov.au)>; or are available, at no cost, from the NTRU. Receive copies through our electronic service, email <[ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au)>, or phone 02 6246 1161 to join our mailing list.

#### **Volume 2**

- No 13: *Recent Developments in Native Title Law and Practice: Issues for the High Court* by John Basten
- No 12: *The Beginning of Certainty: Consent Determinations of Native Title* by Paul Sheiner
- No 11: *Expert Witness or Advocate? The Principle of Ignorance in Expert Witnessing* by Bruce Shaw
- No 10: *Review of Conference: Emerging Issues and Future Directions.* by Graeme Neate
- No 9: *Anthropology and Connection Reports in Native Title Claim Applications* by Julie Finlayson
- No 8: *Economic Issues in Valuation of and Compensation for Loss of Native Title Rights* by David Campbell
- No 7: *The Content of Native Title: Questions for the Miriuwung Gajerrong Appeal* by Gary D Meyers
- No 6: *'Local' and 'Diaspora' Connections to Country and Kin in Central Cape York Peninsula* by Benjamin Smith
- No 5: *Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'* by Katie Glaskin
- No 4: *Bargaining on More than Good Will: Recognising a Fiduciary Obligation in Native Title* by Larissa Behrendt
- No 3: *Historical Narrative and Proof of Native Title* by Christine Choo and Margaret O'Connell
- No 2: *Claimant Group Descriptions: Beyond the Strictures of the Registration Test* by Jocelyn Grace
- No 1: *The Contractual Status of Indigenous Land use Agreements* by Lee Godden and Shaunnagh Dorsett

#### **Discussion papers**

Discussion papers are published in concert with AIATSIS Research Section and are available from the Research Section on telephone 02 6246 1157.

- No 10: *The Community Game: Aboriginal Self-Definition at the Local Level* by Frances Peters-Little
- No 11: *Negotiating Major Project Agreements: The 'Cape York Model'* by Ciaran O'Faircheallaigh

#### **Monographs**

The following NTRU publications are available from the Institute's Bookshop; telephone (02) 6261 4285 for prices.

*Native Title in the New Millennium*, edited by Bryan Keon-Cohen, proceedings of the Native Title Representative Bodies Legal Conference 16-20 April 2000: Melbourne, Victoria, 2001, includes CD.

*A Guide to Australian Legislation Relevant to Native Title*, two vols, lists of Acts summarised, 2000.

*Native Title in Perspective: Selected Papers from the Native Title Research Unit 1998-2000*, edited by Lisa Strelein and Kado Muir.

*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.

*Regional Agreements: Key Issues in Australia - Volume 2, Case Studies*, edited by Mary Edmunds, 1999.

*A Guide to Overseas Precedents of Relevance to Native Title*, by Shaunnagh Dorsett and Lee Godden. AIATSIS, Canberra, 1998.

## Web Resources

*Sea Rights Resource Page: Croker Island and Native Title Offshore*

[http://www.aiatsis.gov.au/rsrch/ntru/news\\_and\\_notes/](http://www.aiatsis.gov.au/rsrch/ntru/news_and_notes/)

The High Court decision on *Commonwealth v Yarmirr, Yarmirr v Northern Territory* was handed down on 11 October 2001. This web page presents recent papers about the case, as well as other relevant materials on native title and sea rights issues.

*Limits and Possibilities of a Treaty Process in Australia*

<http://www.aiatsis.gov.au/rsrch/seminars.htm>

This series explores some of the issues surrounding the proposal for a national treaty. The issues include current proposals, past obstacles, issues for Indigenous representation, political and philosophical questions, national identity, reconciliation, belonging, public law implications, and comparisons with other countries.

## ABOUT THE

## NATIVE TITLE RESEARCH UNIT

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The Native Title Research Unit identifies pressing research needs arising from the recognition of native title, conducts relevant research projects to address these needs, and disseminates the results of this research. In particular, we publish this newsletter, the Issues Papers series and publications arising from research projects. The NTRU organises and participates in conferences, seminars and workshops on native title and social justice matters. We aim to maintain research links with others working in the field.

The NTRU also fields requests for library searches and materials from the AIATSIS collections for clients involved in native title claims and assists the Institute Library in maintaining collections on native title.

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For previous editions of this Newsletter click on the native title research unit link at <[www.aiatsis.gov.au](http://www.aiatsis.gov.au)>.

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