



# AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

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## Native Title Research Unit

### NATIVE TITLE NEWSLETTER

July and August 2001

No. 4/2001

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)	LRO = 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	NTRB = Native Title Representative Body
CT = Canberra Times	NTN = Native Title News (State editions)
DT = Daily Telegraph	SC = Sunshine Coast Daily
FinR = Financial Review	SMH = Sydney Morning Herald
HS = Herald Sun (VIC)	TelM = Telegraph Mirror (NSW)
KM = Kalgoorlie Miner	WA = West Australian
I LUA = Indigenous Land Use Agreement	WAus = Weekend Australian
I M = Illawarra Mercury	
LE = Launceston Examiner	
LR News = Land Rights News	

## NEWS FROM THE NATIVE TITLE RESEARCH UNIT

### New Staff Member

The Unit has been joined by Paul Sheiner who will be with us for several months and is working on an Issues Paper on consent determinations and on a larger project on framework agreements. He was most recently on the legal staff of the Kimberley Land Council.

### Treaty Research at AIATSIS

The AIATSIS Treaty Research Project is affiliated with the Unit as many issues overlap. We will keep you posted on research of relevance. Hannah McGlade has been appointed as a Visiting Research Fellow on treaty issues. Papers from the first semester of the Research Section's Seminar Series *The Limits and Possibilities of a Treaty Process in Australia* have been posted on the Institute's website. These include discussions of the central issues by Mick Dodson and Geoff Clark, and historical, political and comparative papers by Tim Rowse, Judith Brett, Paul Patton, Carol Johnson and Larissa Behrendt. We will begin posting the papers in the second series shortly.

For a schedule and links to the papers, consult:

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

For more information on the treaty process and an opportunity to be part of the discussions on line, a related website can be found at <http://www.treatynow.org/>

## **The Past and Future of Land Rights and Native Title**

This year's Native Title Representative Bodies Legal Conference has been hailed as a success. Over 200 people registered and nearly 60 papers were given. We are currently working on arrangements to make the papers available. We will keep you posted.

### **Research Workshop held by CQLCAC at Mackay Qld 28 August 2001**

On 28 August the Central Queensland Land Council organised a research workshop in Mackay for its staff and consultant anthropologists who are currently working, or who have worked on their native title cases. One of the motivations for the workshop was to explore the notion and the practice of regional research on broad regional patterns of laws and customs. To date, the focus has often been on small application areas and associated groups of people, within the time constraints of future acts and the demands of the Federal Court. In so-called 'settled Australia' where there has often been little if any prior ethnographic research, there is a need to rationalise research and maximize research efforts in order to avoid duplication of archival, linguistic, anthropological and archaeological research and to arrive at more meaningful and comprehensive understandings.

It was acknowledged that there is an urgent need to arrive at sophisticated arguments which represent the reality on the ground and which cannot be misinterpreted by opposing lawyers in attempts to demonstrate that claimants in so-called 'settled Australia' no longer have native title. However, given that consultants typically have little time to engage in classical in-depth ethnography, there is little opportunity for researchers to arrive at such arguments.

A major concern of the workshop was to find ways of talking about laws and customs in 'settled Australia' which do not speak of 'lack' and which do not approach 'culture' and laws and customs as 'things' or 'objects' which can be lost. There are few if any theoretical tools to deal with 'laws and customs' in areas with a long history of white settlement. At the very least, connection or mediation reports should commence with descriptions of claimants and their laws and customs today as opposed to commencing with historical or archaeological descriptions or discussions of earlier ethnographies against which change is often measured negatively. There is also a need to find a way of speaking about the contemporary use by applicants of documents such as Tindale's as an integral part of the ongoing dynamics of laws and customs.

The workshop weighed up the usefulness of terms such as 'primary and secondary' and 'core' and 'contingent' in representing the differentiation of 'rights and interests' across particular areas, while still recognising exclusive possession.

Participants argued that we might utilise a range of ethnographic evidence which emerges from our contact with applicants, focussing on the processes of negotiation between Indigenous groups and individuals inherent in native title claims. This could include detailed analysis of spontaneous remarks and actions,

regional patterns of discourse and ways of talking, and the many meetings which have become key fieldwork experiences in the region. Some argued that the latter provide a context in which sanctions can be observed, where we can observe how people construct themselves in relation to each other, and where moral obligations, authority and representation are evident. That is, meetings provide a context in which 'laws and customs' and 'rights and interests' might be recorded. Others thought that this kind of evidence might be discounted in courts as purely the outcome of native title related matters and therefore less valid and that meetings were artificial situations where attendance might be seen as a matter of circumstance and resources of the Native Title Representative Body. This approach to gathering ethnographic evidence might also run counter to legal procedure in obtaining witness statements with a strongly focussed question and answer format. Given that this type of evidence may not be recognised by lawyers, it was agreed that we need to have some examples of this approach published in order that researchers who are acting as 'expert witnesses' have a body of literature to which to refer.

From our point of view the most urgent needs arising from this workshop were for the writing and publication of:

- a paper showing how notions of 'laws and customs' can be applied in regions where there is a long and disruptive history of colonisation; and
- a paper showing how analysis of talk and action in meetings and similar gatherings can be used as a source of evidence in native title about regional concepts and procedures of land law.

Regional research often takes a back-seat to more pressing demands and it is good to see that CQLC is still pushing ahead with it. Best practice must be rationalised regional practice. Anthropologists, historians, archivists, ethnographers, linguists, archaeologists and other researchers should work cooperatively across applications which are often made in direct response to s.29 notices and without the benefit of previous regional research.

Toni Bauman and Patrick McConvell

### **Conference 2001**

AIATIS has hosted a conference in celebration of its 40th anniversary. Among a diverse range of speakers and topics, native title is represented in a session entitled 'Self-government on Aboriginal lands; Economic independence and commercial development'. Abstracts of papers in the session by Jon Altman, Larissa Behrendt, Kado Muir, Lisa Strelein and David Watts are available on the AIATIS website. Selected papers were made available for distribution on the web and will remain posted until 20 October 2001.

### **Issues Papers**

We have recently published an Issues Paper on 'Anthropology and Connection Reports in Native Title Claim Applications' by Julie Finlayson. Those of you on our distribution list will receive a copy shortly. The paper has been posted on our

web-site as well. Should you wish to receive a copy, but are not on our mailing list, simply contact us.

We are actively seeking Issues Papers from our readers. They are usually 3,500 to 4,500 words long on a topic of interest to native title researchers and claimants. If you have a suggestion for a topic or, better yet, have a paper you would like us to consider for publication please contact the Unit.

## **NATIVE TITLE IN THE NEWS - July & August 2001**

### **National**

ATSIC Commissioner Geoff Clarke's criticism of the way the native title system is working has received support from Labor Aboriginal Affairs spokesman, Mr Bob McMullan who said, 'Geoff's criticism of the way native title works is right, but I think his solution is wrong...it's true there is too much emphasis on litigation and that native title representative bodies are not adequately funded...but we shouldn't throw out the whole native title system because it's not being properly run by the Howard Government.' Mr Clarke had criticised native title legislation after NSW Aboriginal Land Council objected to the creation of 85 national parks without the consent of traditional owners. (*Sydney Morning Herald 6 August 2001*)

### **New South Wales**

The Federal Court has dismissed an application to remove Dorothy and Phillip Lawson as Barkandji 'Pooncarie' representatives whose agent is Mark Dengate. Judge Stone handed down the decision almost two months after the hearing on 17 May. It is seen as a disappointment for both the NSW government and the NSW Aboriginal Land Council. (*Mildura Independent Star*)

### **Applications**

Native title applications by the Bandjalang, Yaegl, Bundjalung and Gumbaynggirr Peoples (NC96/16, NC98/19, NC96/38) have prompted NSW Farmers Association to remind the farmers affected by two important claims on the state north coast that the cut off date is approaching for registering with the Federal Court. If they register as a party to the claim it will ensure lease and licence holders have their say in the native title process. (*Daily Examiner 18 June 2001*)

Native title claims in the Yarrowlumla area by the Ngunnawal People (NC00/1) have prompted the Yarrowlumla Shire Council to assist local residents to be more informed about the claims. Shire Mayor Ian Marjason said that the Council had been advised by the NNTT that the Ngunnawal People have asked the Federal Court to recognize their traditional rights and interest over the Southern Tablelands area. (*Queanbeyan Age 9 July 2001*)

The Ngyabul People, who have a native title claim over areas in Lake Ainworth, Broken Head Nature Reserve and Seven Mile Beach (NC98/1) are moving toward

mediation by the NNTI. Affected landowners and other stakeholders had until August 1 to register with the Federal Court to be involved in the mediation process. Some areas included in this claim are likely to be contentious because they are also the subject of claims made by the Arakwal People. (*Northern Star 20 July 2001*)

Armidale has become the focus of two native title applications with public notices inviting affected landowners and other interested holders to register for talks. The claim by the Gumbangirri People asks that their traditional rights to be recognised over a 4,466 sq km area generally to the east of Armidale to the coast (NC97/34). The second claim is by the Nucoorilma Clan of the Gamilaroy People to an area to the west (NC98/17). The first step in settling these applications is to hold mediation meetings aimed at reaching voluntary agreements that respect everyone's rights and interests. (*Northern Daily Leader 27 July 2001*)

Traditional owners of the Sydney region, the Darug People, have notified thirty six local councils of a native title claim stretching from Bondi to the Blue Mountains, including 482 parcels of vacant Crown land in the city and environs (NC97/8). Claimant Colin Gale said the claim is intended to prove that his people were committed to living in the area since settlement. 'There are other groups who have attempted native title claim in the Sydney basin, but we are the only ones who have succeeded in proving up to this point our genealogy and background.' (*Sydney Morning Herald 7 August 2001*)

A rugby park is subject to a native title claim in Goulburn where the City Council is attempting to purchase Crown land near the park to build sludge lagoons. The area is managed by the Rugby Park Trust which is subject to native title claim by the Gundungurra Tribal Council Aboriginal Corporation (NC97/7). (*Goulburn Post 8 August 2001*)

Two native title claims, one by the Ngunnawal People which covers Goulburn to Murrumburrah in the western part of the Monaro region (NCO0/1), the other a 1997 claim by the Gunungarra Tribal Council which covers a much larger area beyond Lithgow (NC97/4), may take several years to resolve but will not be major impost on local councils according to consultants. The cut off date to become a party to the Ngunnawal claim was 1/8/2001. (*Goulburn Post 8 August 2001*)

### **Agreements**

Described as a significant step forward in the reconciliation process, the Bega Valley Shire Council and all three local Aboriginal Land Councils and represented native title landholders have signed an historic statement of understanding. The three page document was signed in Bega by local Aboriginal claimants, John Dixon, Ben Cruse, Edward Foster and Mervyn Penrith. It acknowledges that Aboriginal people were the first custodians and native title holders of all lands and waters in the Bega Valley Shire. As well, the Council will assist and encourage employment opportunities for Aboriginal people in its own workforce. (*Bega District News 15 June 2001*) 4/7

## **Indigenous Land Corporation**

Weilmoringle near Brewarrina, one of the best known stations in the NSW western division, has been sold to the Indigenous Land Corporation for eventual transfer to the land's traditional owners. The sale of the 17,300 hectare combined area followed two years of negotiation with the ILC whose representative made initial approach to buy the property. (*Advocate Ayr 22 June 2001*)

## **Victoria**

Responding to a claim by the Yorta Yorta People for public land and water in the Goulburn Valley and Southern Riverina, the Victorian Farmers Federation (VFF) has stated that native title applicants should have to prove they can manage land as well as establish they are descendants of the original tribe occupying the land before agreements are negotiated. (*Country Times 6 August 2001*)

### **Land Rights and Heritage**

Aboriginal affairs minister Keith Hamilton congratulated the Lake Tyers Aboriginal Trust on the 30th anniversary of the Aboriginal Land Act, which gave freehold title to the Lake Tyers Aboriginal Reserve to the local Koorie community. This legislation was groundbreaking in that Victoria was the first state in Australia to unconditionally hand over a freehold title to Indigenous people. (*Mirror 25 July 2001*)

The Wurundjeri Community intends to fight to protect Woodbourne Hills and The Sanctuary from development. The community and alliance groups maintain Woodbourne Hills and The Sanctuary are environmentally and historically significant and are calling on appropriate studies to be conducted before any development takes place. Wurundjeru tribal elder Norm Hunter said it is Indigenous land and the local council should protect it. (*Sunbury Telegraph 31 July 2001*)

### **Mediation**

Native title claim on Crown land across Victoria is nearing the mediation stage. The claim by the Gournditch-Mara People covers 20,360 sq km across areas of land and sea stretching from the high water mark out to 22 nautical miles (VC96/3). About 270 parties have registered an interest and mediation is expected to begin in September. (*Hamilton Spectator 3 July 2001*)

A native title claim which covers five northern Victorian shires over an area of almost 12,000 sq km including Gannawarra and the rural city of Swan Hill has reached its mediation stage. The claim on behalf of the Wamba Wamba, Barapa Barapa and Waddi Waddi Peoples asks that their traditional rights be recognized (VCO0/5). The claim excludes areas already claimed by the Wotjobaluk, Wadi Wadi and Robinvale Peoples. (*Bendigo Advertiser 12 July 2001, Northern Times 20 July 2001*)

## **Federal Court Proceedings**

A native title claim affecting a large area of western Victoria and the border of SA is being heard in Federal Court. The claim, on behalf of the Gournditch-mara People, covers more than 20,000 sq km extending from Portland to Nelson and includes the seas between Naracoorte, Ararat and Yambuk (VC99/7). Manager of the native title court, Ron Davies said the final list of those accepted would not be drawn up until the end of the year. (*Warrnambool Standard* 13 July 2001)

## **South Australia**

The Adnyamathanha Traditional Lands Association Aboriginal Corporation has given notice of a special meeting to which all Adnyamathanha People and interested parties are invited to decide important issues in relation to native title claims. (*Advertiser* 27 July 2001)

Michael Pinnock, Chief Executive of QLD Mining Council, has suggested that the backlog of 1700 mining applications dating as far back as 1996 are costing the north QLD region more than \$250 million. He blamed the delays on the QLD government and the QLD Indigenous Working Group failing to reach an agreement on land use. (*Cairns Post* 18 July 2001)

The federal and state governments have stopped funding to Anangu Pitjantjatjara and Pitjantjatjara Council after traditional owners refused to accept a government imposed administrator whom they felt undermined traditional landowners' power to control and develop on their lands. (*Australian* 30 July 2001)

## **Queensland**

Under a fee structure in the QLD government's proposed Indigenous Land Use Agreement guidelines, companies would pay up to \$1500 per day for an Aboriginal inspection team to get native title clearance to explore land and an up front compensation payment for an exploration liaison officer from the claimant group, as well as for a monitor if ground is to be broken up. Premier Beattie said this was a small price to pay to deliver an outcome for backlogged exploration and achieve certainty for the industry. (*Courier Mail* 11 August 2001)

Acting under the terms of one of the first native title consent determinations negotiated in Australia, the Gamay People of the Guugu Yimithirr nation, traditional owners of the north QLD community of Hopevale, issued eviction notices to five families brought to the community during mission times. The Hopevale Community Council intends to return the land to its natural condition and use it as a tourist venture. (*Aus* 21 August 2001)

A recently granted sand mining lease on North Stradbroke Island could be invalidated because it failed to get approval from Aboriginal people named as official applicants in a native title claim. The mining lease application by Unimin Australia (formerly ACI Industrial Minerals) has received a number of objections



from Aboriginal families and individuals on the island. (*Bayside Bulletin 31 July 2001*)

Premier Beattie has said native title issues regarding a planned convention centre on the Gold Coast (QC98/24) may be resolved by compulsory acquisition processes to ensure the project proceeds despite legal complexities. The QLD Nationals have said that the same processes should be used to alleviate native title delays in the mining industry. (*Tablelands Advertiser 1 July 2001*)

Forty five individuals and groups with native title interest in Mount Morgan Shire land have contacted the council in a response to a public notice which urged people with interest to arrange to meet with Council to discuss claims by the Darumbal People over unallocated land (PR1-58). (*Morning Bulletin 3 August 2001*)

The North Queensland Land Council has been recognised as the Native Title Representative Body for the Cairns area. This brings the number of Rep Bodies in Queensland to 6 and the number of Rep Bodies nationally to 21. (*Qld NT News Sept 2001*)

A forum was held to give the community of Burdekin and its Council a better understanding of native title. Speaker Marissa Menin, who is the Local Government Association of QLD native title policy officer, gave an overview of native title. (*Advocate Ayr 22 June 2001*)

Stephen Ducksbury of the NNTT has given notice to stakeholders to register to participate in the the Mandingalbay, Yidinji and Yarrabarra Gunggandji Peoples' claim to the southern parts of the Yarrabah DOGIT, south to High Island and including the Frankland Island group south of Cairns (QC99/40). (KM 16 July 2001)

### **Agreements**

A confidential Indigenous Land Use Agreement is reportedly being negotiated between the Quandamooka Land Council and Premier Peter Beattie. Aboriginal people of North Stradbroke Island will receive millions of dollars in royalties and state government grants including secure land title over national parks and seaside areas. (*Australian 19 July 2001*)

Recent negotiations over the last year on an Indigenous Land Use Agreement between the Kalkadoon People, the QLD government and a handful of mining companies may resolve a five year long native title negotiation. The agreement would affect about 20 exploration permits in the mineral rich area. (*Courier Mail 20 July 2001*)

The Kaurareg People have achieved native title over Ngurupai (Horn Island) and six other islands in the southern most portion of the Prince of Wales group in the Torres Strait (PR01-36a). The Kaurareg People were previously unrecognized Aboriginal people of the Strait after being forcibly removed from their home island 46 years ago. An Indigenous Land Use Agreement signed simultaneously between the Kaurareg, the Torres Shire Council and the State of Queensland

allows for public access to two reserves on Ngurupai and one on Muruiag. (*Koorie Mail 27 June 2001*)

Normandy was granted a second mining lease by the QLD Government following approval of an agreement signed with the Birra and Kudjala Peoples. Following the initial agreement with traditional owners 13 years ago, the first such agreement for exploration and mine development, Normandy extracted over one million ounces of gold. Another million is yet to be mined. (*Northern Miner 26 June 2001*)

The Imjim Land Trust has been granted 12 hectares of freehold land title over Laura Aboriginal Reserve and will act as custodian for the Imjim People who have a connection with the land. Chief executive of the Ang-gnarra Aboriginal Corporation, Robert Williams, who represents all Indigenous people of Laura, said the arrangement was pleasing for the people who have had families in the region for years. (*Cairns Post 29 June 2001*)

### **Federal Court Proceedings**

The Wulgurukaba People and a number of other parties involved in a Magnetic Island native title claim have been sent back to mediation following a brief hearing in the Federal Court. Justice Douglas Drummond reopened the mediation process between the four applicants representing the Wulguukaba People. Two claims before the court were lodged in 1998 and deal with national parks and unallocated state land on the island (PR98/57). (*Townsville Bulletin 4 July 2001*)

### **Determinations**

The Bar-Barum Peoples native title claim to an area of about 357 sq km of reserves and unallocated state land south west of Cairns (QC96/105) was heard by the Federal Court in Herberton. The Court determined native title by consent. NNTT President Graeme Neate has said that this is also a starting point for a new relationship between the Bar-Barum People and the wider community which can ensure the protection and recognition of the claim. (*KM 29 June 2001*)

## **Western Australia**

The State Government has released draft guidelines to facilitate the settlement of native title applications in WA. This is the result of a review of native title negotiations headed by former Rio Tinto Vice President Paul Wand. Key recommendations include involving NNTT in all mediation and ensuring that reports prepared by claimants are adequate before beginning mediation. This is an important step in clearing up the state's backlog of 128 outstanding native title applications. (*WA 14 July 2001*).

Dolly Walker, spokeswoman for the Goldfields Ngalia Kutjunktja People, has criticised the Goldfields Land Council, saying that they were 'meeting with miners and the WA government to give away our rights.' She was referring to an Aboriginal Heritage Protection Protocol negotiated between the Goldfields Land Council, the WA government, the Chamber of Minerals and Energy and the

ASSOCIATION OF MINING AND EXPLORATION COMPANIES. NNTT member Barry McFarlane, on the other hand, described the Protocol as 'a formula for the protection of Aboriginal heritage' and said that the process was marked by goodwill and the desire to concentrate on solutions. (KM 17 August 2001, NNTT 15 August)

Dolly Walker, speaking for the Ngalia Heritage Research Council, has refused to join a proposed liaison committee made up of native title parties to discuss mining leases near WMC's Mt Keith nickel operation. She described the area as so complex that it 'should never be subject to any form of mineral exploration or other destructive impact.' (KM 8 August 2001)

### **Federal Court Proceedings**

Evidence of native title holders on behalf of the Wanjina Wunggurr Willingjin claim (WO01/312) is being held in Perth. The 70,000 sq km claim area stretches from about 25 km east of Derby to about 60 km west of Whyndham and Kununurra. Last year evidence of six older claimants was taken in advance of the hearing. (WA 31 July 2001)

### **Detrminations**

A consent determination, the first under the Gallop government and only the third in WA, has given the Tjurabalan People native title rights to 26,000 sq kms in the Tanami Desert region south of Halls Creek (WC95/74). The claim was first lodged in 1995 by the Kimberley Land Council on behalf of the 24 different applicants. NNTT member Fred Chaney praised the Gallop government for recommending that disputing parties return to negotiation rather than face litigation. See box for details. (WA 1 August 2001)

#### **Tjurabalan Consent Determination**

*Ngalpil v State of Western Australia [2001] FCA 1140*

In this case the Court made a consent determination of native title over an area of nearly 26,000 sq kms in northern Western Australia and adjacent to the Northern Territory border south of Halls Creek. The determination area included two pastoral leases (each of which is held by the Aboriginal Lands Trust), Aboriginal reserves and several areas of unallocated Crown land.

The consent determination was for the right to possess, occupy, use and enjoy the land and waters of the determination area to the exclusion of all others, including certain identified pendant, or parasitic, rights. The native title is to be held by the Tjurabalan People. Tjurabalan is the cultural concept that gives definition to the community of native title holders which includes members of three language groups, Walmajarri, Jaru and Nyininy.

The consent determination does not include the right to own minerals. However, in the event that the Full Court decision on this issue in *State of Western Australia v Ward* (2000) 170 ALR 59 is over-ruled, the determination acknowledges the right of the prescribed body corporate to apply to vary the determination under s.13(4) or (5) of the *Native Title Act 1993*. Unlike the earlier Spinifex determination (*Mark Anderson on behalf of the Spinifex People v State of Western Australia* [2000] FCA 1717), the Tjurabalan consent determination acknowledges the native title extends to flowing and subterranean waters to the extent recognised by the common law.

The Tjurabalan determination provides claimant groups presently negotiating with the new Western Australian State Government cause for cautious optimism that they will be able to achieve an exclusive possession determination without the need for a contested hearing before the Federal Court.

Paul Sheiner

## Northern Territory

### Land Rights and Heritage

In a victory for the Mirrar People, Rio Tinto has announced it will delay indefinitely the Jabiluka uranium project, blaming low commodity prices and Aboriginal opposition. Yvonne Margarula stated that the Mirrar People are disillusioned with the small benefits mining has produced for Aboriginal people throughout the 1980's and early 1990's. (*Koorie Mail* 12 July 2001)

A native title claim on behalf of the Western Arrernte People over western portions of the Macdonnell Ranges (DO01/73), did not become an issue in the NT election campaign. The claim covers one of central Australian's most important tourist destinations and was to prevent exploration and mining. The title holders are opposed to exploration and mining because they are worried about detrimental affects on sacred sites, tourism and conservation of the environment. (*Cairns Post* 3 August 2001)

## APPLICATIONS

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 July and August 2001.

The Wajarri Elders (Combined Application)	accepted
Helen Springs	accepted
Ooratippra	accepted

Gamilaaroy Aboriginal People	not accepted
Tagalaka People #2	accepted
Ngalia Kutjungkajja	not accepted
Town of Tennant Creek Lots 663 etc.	accepted
Adelaide River, Lot 160	accepted
Camfield	accepted
Town of Elliott	accepted
Badjiri People	not accepted
Kurna People	accepted

The decision indicates whether an application has met or not met each of the conditions of the registration test against which it was considered.

If an application does not pass the registration test it may still be pursued for determination through the Federal Court.

## NOTIFICATIONS

### Applications currently in Notification

Notification period is 3 months from the Notification start date.

### NEW SOUTH WALES

Closing date	Application no	Application name	Location
7 Nov	NC97/34	Gumbangirri People	New England Tablelands
	NN01/8	NSW Government #58	Pipers Bay
21 Nov	NC97/8	Darug Tribal Aboriginal Corporation	Sydney region
	NN01/9	NSW Government #59	near Kempsey

### VICTORIA

Closing date	Application no	Application name	Location
24 Nov	VC00/5	Wamba Wamba, Barapa Barapa and Wadi Wadi Peoples.	North west Victoria

### QUEENSLAND

Closing date	Application no	Application name	Location
24 Oct	QC00/15	Thanakwithi People	Cape York
	QC00/7	Wulli Wulli People	Near Theodore
	QC01/10	Wombino People	Near Herberton
	QC01/11	Djilbalama People	Near Herberton
	QC98/14	Bunthamarra People	Cooper Basin
	QC99/27	Pitta Pitta People	Near Boulia
	QC99/39	Combined Mandingalbay Yidinji - Gungandji	North Queensland
21 Nov	QC01/17	Bar-Barrum People #2	Mt Garnett
	QC01/18	Bar-Barrum People #3	West of Herberton
	QC97/21	Darumbal People	Rockhampton seaward

**NORTHERN TERRITORY**

Closing date	Application no	Application name	Location
10 Oct	DC00/28	Mt Ringwood	Mt. Ringwood
	DC00/29	Billengarra	Billengarra
	DC00/30	Mount Kepler	Mt. Kepler
	DC00/31	Old Mount Bunday	Old Mt. Bunday
07 Nov	DC01/10	Newry-Rosewood	Baines River
	DC01/11	Mountain Valley	Mountain Valley
	DC01/12	Mt Drummond	Mt. Drummond
	DC01/2	Auvergne	West of Timber Creek
	DC01/3	Mallapunyah North	Mallapunyah Springs
	DC01/4	Calvert Hills	Calvert Hills
	DC01/5	Banka Banka	Central NT
	DC01/6	Mary River West	Mary River West Station
	DC01/7	Tipperary North	Near Batchelor
	DC01/8	Newcastle Waters	Newcastle Waters
	DC01/9	Bonaparte Gulf	Bonaparte Gulf

A non-claimant application (marked with an \*) is one made by someone who is not claiming native title themselves but who has an interest in the area which is not a native title interest and they want the Federal Court to determine whether anyone has a native title interest in the same area. The location is meant to be indicative only.

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**

*Wand Review of the State Governments 'General Guidelines for Native Title Determinations and Agreements' Discussion Paper.* The new State Labor Government in Western Australia has released two discussions papers recently. The Wand Review, released in July 2001, was produced by two consultants, Paul Wand and Chris Athanasiou, and reviews the previous State Government's policy guidelines for negotiating native title claims. The Review recommends that the Government adopt policies directed towards the full recognition of the status of Aboriginal peoples including a policy in favour of negotiated determinations of native title and other outcomes.

The Review recommends that the Government adopt a 'process' approach to the negotiation of native title claims which would include the following:

- While the Government should seek resolution of claim overlaps before engaging in negotiations, where requested the Government should assist in the mediation of such overlaps.
- Where the Government forms the view that it is probable that a native title party's claimed connection will be established it should fully engage in

negotiations in relation to the claim without waiting for the connection report.

- It is suggested that there is little point in other parties negotiating with the native title party until the Government has assessed and is satisfied with the connection report.
- The Government should support the use of s.86F of the NTA so as to provide for non-native title outcomes.
- Information communicated to the Government in the course of negotiations should remain without prejudice, confidential and subject to appropriate cultural restrictions.
- The Government should adopt a strategic approach, together with representative bodies, the NNTT and the Federal Court to dealing with native title applications.
- The Government should not pursue native title outcomes that are less than is possible at law.

The Review also provides recommended guidelines for the preparation of connection reports. These proposed guidelines require sufficient detail to 'satisfy the Government' that the native title applicants are the persons who hold collectively the native title rights and interests that exist in the claimed areas and have a connection with that area. The proposed structure and content for such connection reports suggest that what is required is at least the equivalent of the expert anthropological report that is generally filed in the Federal Court when or if the matter moves into a litigation stream.

The Review does not look at an approach to native title based on State-wide or regional framework agreements with representative bodies and claimant groups.

*Technical Taskforce on Mineral Tenements and Land Title Applications Discussion Paper.* The State Government also released in August 2001 a discussion paper from the Technical Taskforce on Mineral Tenements and Land Title Applications. The Taskforce was composed of government and mining industry representatives and selected staff from native title representative bodies. It was convened by a Member of the National Native Title Tribunal. The Taskforce did not include any Aboriginal people.

The discussion paper attributes the fall in exploration expenditure in Western Australia since 1997 on declining commodity prices. It acknowledges that there are major difficulties in attempting to quantify the impact of native title on the mining industry beyond delaying the processing of mining tenement applications. The paper then canvasses a number of largely technical options for addressing a backlog of 5,300 mining tenement applications.

At present many companies apply for mining leases simply to extend the lifespan of their exploration licences, which at present are only valid for four to five

years. The discussion paper recommends that existing applicants for mining leases be allowed to apply for new exploration licences. It is also recommended that all new exploration licences continue in force indefinitely. Relevantly for native title holders, it is recommended that, as a pre-condition to the grant of a new exploration licences, the mining company applying for the tenement be required to enter into a heritage survey agreement with the relevant native title representative body and/or registered native title claimants.

The Taskforce also made recommendations for the progressing land titles, which include the negotiation of Indigenous Land Use Agreements over specified areas.

Both papers are available on

[http://www.ministers.wa.gov.au/ripper/Native\\_Title.htm](http://www.ministers.wa.gov.au/ripper/Native_Title.htm)

## Native Title Research Unit publications

*The following NTRU publications are available for purchase from AIATSIS. Please phone (02) 6246 1186, fax (02) 6246 1143 or email: [sales@aiatsis.gov.au](mailto:sales@aiatsis.gov.au)*

***Native Title in the New Millennium*** A Selection of Papers from the Native Title Representative Bodies Legal Conference, 16-20 April 2000: Melbourne, Victoria, (includes CD of complete proceedings) Bryan Keon-Cohen editor, Native Title Research Unit, AIATSIS, 2001.

***A Guide to Australian Legislation Relevant to Native Title*** 2 volume set, Native Title Research Unit, AIATSIS, 2000.

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

***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*** Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden, 1998.

***Working with the Native Title Act: Alternatives to the Adversarial Method*** Edited by Lisa Strelein, 1998.

***Regional Agreements: Key Issues in Australia - Volume 1, Summaries.*** Edited by Mary Edmunds, 1998.

***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.



workshop conducted by the Australian Anthropological Society and AIATSIS at the ANU, Canberra, 14-15 February 1996.

**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.

*Copies of papers in the Land, Rights Laws: Issues of Native Title are available free of charge from the Native Title Research Unit, AIATSIS, Phone (02) 6246 1161, Fax (02) 6246 1122:*

## Issues Papers

### Volume 2

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 R 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

For a full list of past Issues Papers please consult our web site. Individual issues are available from the Unit. A bound volume including Issues Papers 1 through 30, the Regional Agreements papers and an index is available for purchase through Aboriginal Studies Press

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Promoting knowledge and understanding of Australian Indigenous cultures, past and present

## Native Title in the New Millennium ORDER FORM

*Native Title in the New Millennium Native Title Representative Bodies Legal Conference 16-20 April 2000: Melbourne, Victoria*, Bryan Keon-Cohen, editor. This publication presents 31 papers from a conference jointly sponsored by the Mirimbiak Nations Aboriginal Corp., ATSIC and the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies. Bryan Keon-Cohen describes the book in his introduction, saying, 'The conference ... highlighted a real need for a regular forum where information and experience can be exchanged between all players, and better ways identified to progress the varied and often complex processes required by the NTA. Hopefully this book, and the accompanying CD, can service that need, and record a valuable range of contributions to this ongoing debate.' The CD contains additional papers, maps and information.

The book has sections on constitutional issues, the federal court's case management, State and Territory alternative schemes, economic development, alternative approaches, issues related to particular claims and methods, Indigenous Land Use Agreements, Indigenous land claims in Canada, New Zealand and South Africa and the application of international law and conventions in Australia.

(2001) 480 pages, indexes of cases, statutes and topics, bibliography, maps, 25 x 17.5 cm, paperbound with CD of the complete proceedings. ISBN 0 85575 376 5. Price \$59.95 (incl. GST and shipping).

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