



Native Title Newsletter

AIATSIS Native Title Research Unit

July/August 2003

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The Native Title Newsletter is published every second month. The newsletter includes a summary of native title as reported in the press. Although the summary canvasses media 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

The 2003 Indigenous Researchers Forum is being held from the **1-3 October** at 'University House' at the Australian National University in Canberra. To register, or for more information go to the AIATSIS website at: <http://www.aiatsis.gov.au/rsrch/conferences/irf2003/index.htm>

The Newsletter is also 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 an email to 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. The same service is also available for the Issues Papers series.

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Indigenous Rights Discussion Paper for the Living Murray Initiative

Discussion Paper prepared by
Monica Morgan, Murray Darling Basin Commission

Dr Lisa Strelein, Australian Institute of Aboriginal and Torres Strait Islander Studies
Jessica Weir, Centre for Resource and Environmental Studies, ANU

The Murray Darling Basin Ministerial Council requested that the Murray Darling Basin Commission give further consideration to the issues raised by the Indigenous Nations of the Murray Darling Basin, including the issue of Indigenous interests in water. The Council indicated that it intends to review the implications of these issues at their meeting scheduled for November 2003.

In August this year AIATSIS agreed to assist the Commission and the Murray Darling Rivers Indigenous Nations (MDRIN) to develop a discussion paper to support the final report from the Indigenous consultations. A small forum was held at AIATSIS, drawing on expertise from around Australia to establish a framework for the paper. The discussion paper draws on the outcomes of the Indigenous peoples' consultations with the Murray Darling Basin Commission. The paper seeks to place the views and aspirations expressed in those documents within a broader Indigenous rights context.

More than consultation, Indigenous peoples have called for substantive involvement in policy and decision-making, as well as direct involvement in environmental management. In international law, a measure of whether Indigenous peoples enjoy equal rights in respect of effective participation in public life is to ensure that 'no decisions directly relating to their rights and interests are taken without their informed consent'. Informed consent requires more than mere consultation.

Apart from the procedural mechanisms to ensure meaningful involvement of Indigenous

Nations in decision-making and management, specific measures may be introduced to recognise substantive rights or specific interests that arise from Indigenous ownership and custodial responsibilities, including:

- Access to land and waterways
- Use and enjoyment of the natural resources
- Hunting, fishing and foraging

Specific outcomes discussed in the paper include rights to cultural flows, water allocation rights, and co-management possibilities. Only where it is impossible to protect or return lands and waters should compensation be considered, and then it should be considered in the form of land and waters before monetary compensation.

The Indigenous Nations of the Murray Darling Rivers share the vision of the Murray Darling Basin Commission for a healthy, living river system with natural flows and cycles, sustaining communities and preserving unique values. In the current context, the difficult task of determining how best to manage the scarce water resources of the Murray River cannot side-step the inherent rights of Indigenous Australians to these water resources and the surrounding ecosystem.

Recognition of Indigenous peoples rights in relation to the natural and cultural heritage and economies of the River will enable the Murray Darling Basin Commission, the Ministerial Council and the governments involved to support the Indigenous Nations and communities' desire to foster a partnership model for cultural and natural resource management that can provide a leading example for the whole of Australia.

The Native Title Research Unit hopes to develop the paper for publication and perhaps hold a follow up workshop later this year.

Indigenous Researchers Forum

The Australian Institute of Aboriginal & Torres Strait Islander Studies (AIATSIS) has been

invited by the Indigenous Researchers' Forum Organising Committee to host the IRF 2003. AIATSIS will do this in partnership with the Australian National University (ANU) and the University of Canberra (UC).

Background to the IRF

The IRF is an initiative of the six Indigenous Centres of Excellence located at various Australian universities. The inaugural IRF was hosted by the University of Newcastle in 1999. The forum was hosted by the University of South Australia in 2000, the University of Melbourne in 2001, and in 2002 it was hosted by a consortium of Indigenous units from Curtin University of Technology, Edith Cowan University and the University of Western Australia. The IRF has national significance and explores and advocates Indigenous agendas and issues in research, in addition to providing opportunities and encouragement to emerging Indigenous researchers.

When & Where

The IRF 2003 will be held from 1-3 October at University House at the ANU. The dates fall within the semester break and the venue provides opportunities for sessions and events to be held indoors but also outdoors close to the main buildings.

For more information and registration forms go to the AIATSIS website at <http://www.aiatsis.gov.au/rsrch/conferences/irf2003/index.htm>

For more specific details contact Wayne Deans, Forum facilitator, on 02 6261 4207, or at wayne.deans@aiatsis.gov.au

'Talkin' it out and Talkin' it through, it's all in the process': The Indigenous Facilitation and Mediation Project

Naming the Project

The Indigenous Facilitation and Mediation project is looking for a user friendly name.

A key concept to be reflected in the name is the management of Indigenous decision mak-

ing processes rather than an over emphasis on disputation and conflict management. Just and sustainable land related outcomes for Indigenous communities depend, in the first instance, upon the skilled facilitation of inclusive and representative decision-making processes which are transparent and fair and upon which Indigenous people can confidently rely. Such processes are an inherent component of best practice Indigenous dispute management systems.

One suggestion is 'Talkin' it out and talkin' it through'. All ideas and comments are welcome.

Project Reference Group

The Project Reference Group met for the first time on 27th August 2003 at AIATSIS in Canberra. There was discussion around a draft issues paper prepared by Toni Bauman and Rhian Williams which will shortly be revised and published in the NTRU Issues paper series.

Members of the Project Reference group to date are Mick Dodson, Gaye Sculthorpe, Diane Smith, Mary Edmunds, Marcia Langton, Larissa Behrendt, Margaret O'Donnell, Kerrie Tim, David Wilson, Wayne Denning, Darryl Pearce and Parry Agius. Steve Larkin, Lisa Strelein and Toni Bauman are NTRU AIATSIS staff on the group. Rhian Williams is the AIATSIS Consultant Research Fellow, Mediation specialist.

The group agreed to meet again on 13th November, 2003, to bed down the project and to confirm its aims and membership of the group, following discussions between project staff and the Chief Executive Officers of the Native Title Representative Bodies in Brisbane in October.

Noongar Staff Family Meetings Team Workshop

Rhian Williams and Toni Bauman recently conducted a workshop with staff of the South West Land and Sea Council who are involved in Noongar family meetings and the 'one claim' process. The workshop, intended to

facilitate discussions among staff about how they have been running their family meetings and how they might improve them, also involved some facilitation training.

Wukindi Rom Cross-Cultural Mediation Training Workshop

Toni Bauman is one of the directors of the Wukindi Rom Cross-cultural Mediation Train-

ing Workshop project. The Wukindi Project will involve the participation of 100 young Indigenous and non-Indigenous Australians in the Wukindi ceremony which will be managed by Reverend Djiniyi Gondarra and his people from the Golumala Clan/Nation in parallel with a number of mediation training workshops. The five day event is planned for June 2004 in Gove, Arnhem Land.

FEATURE

Future Directions

By David Ross
Director, Central Land Council

It is very difficult for me to talk about future directions for us when I know that we have been comparatively lucky here in the Territory. We have the Land Rights Act which has stood the test of time, and unlike the Native Title Act, all challenges in the High Court. It has delivered real outcomes in terms of land, culture and an ability to deal with mining and other land use demands. Also very importantly, after 27 years of CLP rule, we now have a government which believes in treating people decently.

It would be pointless of me to continue the litany of the deficiencies of the Native Title Act. There is simply no argument that the Native Title Act - as it has been amended by government and interpreted by the courts - does not deliver what it set out to do. Tragically there is very little we can do about that.

So are we to keep working at a native title system that delivers so little?
From a Territory perspective, there have been considerable benefits. The Arrernte of Alice Springs (Mparntwe) have been recognised as native title holders for example. We have a number of ILUAs we have had a great number of small wins in comparative terms. As I said yesterday - even without the Court's recognition, the Yorta Yorta have earned the recognition of this nation. I want to stress that I am not arguing that we should accept the limitations and convolutions of the Native Title Act. Let's appreciate some of

these small wins that can make such a huge and tangible difference to people's lives, to their sense of themselves. Lets not underestimate the empowering fact of recognition after several hundred years, of nothing, of being seen as nobodies.

I remember being an 18 year-old and standing in a bar in Perth - and no one would serve me, or even look at me. They just acted as if I wasn't there. I can tell you that this lack of recognition leaves you feeling very empty. Most Aboriginal people would know what that feels like. I know it is something the CLC's constituents often say to me when they have a win - the sense of acknowledgment Max Stuart had, as the Chairman of the CLC, when he met the Queen here in Alice Springs. Or the sheer sense of elation Lhere Arthepe members had when they sat down and were finally taken seriously by the Government. There are many examples of this. Conversely, the sheer despair people feel when they aren't recognised. The Stolen Generations will certainly tell you about that. It is something I do not expect non-Aboriginal people to understand but I believe it is a very powerful emotion indeed. Recognition counts for a lot.

In our case and I know in others, the Native Title Act has delivered in some part recognition to some people. Often not in ways circumscribed by the Native Title Act but if you're lucky it may open up avenues you had never even considered. And Lhere Arthepe members would probably agree with me there. Recognition is the first fundamental step to greater things. It opens the box. Lets

not get hung up on the Native Title Act as the only mechanism for delivering that. It may, or it may not, depending on your luck. Milk it for what its worth and move on. Use every avenue to get agreements, to get participation, to get recognition... if you don't ask you don't get.

There are other things we should be concerned with, that go hand in hand with the type of justice we hoped the Act would deliver. The Social Justice package that has been completely forgotten, governance issues, the operation of our agencies like the ILC, ATSIC and Indigenous Business Australia. Let me just say I was most heartened by Brian Stacy's paper signalling a change of ATSIC policy to step into the breach to confer recognition on those native title holders unrecognised by this legal system.

Finally to that most fundamental document of Australian law – the Australian Constitution. It is my belief that to enshrine the status of Aboriginal people as the original owners of this land within that document, would offer one of the most potent and healing symbols of recognition of Aboriginal people that this country could confer.

Now to my last point. We have had the Land Rights Act for nearly 30 years now. It is only now that people are beginning to see that there are issues beyond having land back. That there are community issues, social and economic issues that they need to address. Let us all remember that change isn't effected overnight and if it is then it may not be the type of change you bargained for. And I am thinking specifically of when the Department of Aboriginal Affairs walked out of communities back in the seventies leaving them to 'self determination', which then meant another word for nothing at all. Change can take a very long time and I urge patience on Governments to allow Aboriginal people to do things in their own time, in their own way.

I ask you all to commit now to a very long haul. Thank you

This is an edited version of an address to the Native Title Conference 2003: Native title on the ground, held in Alice Springs in June. The conference was co-convened by AIATSIS and the Central Land Council and hosted by Lhere Artepe, the PBC for the native title holders of Alice Springs.

NATIVE TITLE IN THE NEWS

National

Federal Attorney-General Daryl Williams has appointed two new full-time members of the National Native Title Tribunal. The two new members are Neville MacPherson and John Catlin. Native title professionals and Indigenous leaders have criticised these appointments, saying it has further isolated the NNTT from the Indigenous community. These two new appointments come immediately after the decision by the Attorney-General to not reappoint Tony Lee to a third term with the Tribunal. Mr Lee was one of only three Indigenous members in the Tribunal's history. Dr Gaye Sculthorpe is currently the sole Indigenous 'member' of the nation's peak body. *Koori Mail*, 13 August 2003.

Queensland

Queensland Sapphire producers association president Jenny Elliot has criticised the Qld government for delays and inactivity which they say is killing off the economic viability of the Gemfields and has had a huge flow-on effect for the central highlands. Ms Elliot said the problem was becoming worse as operators run out of land to mine. Tourism is also affected. Miners have been awaiting negotiation of an ILUA since April 2002, and the Government is seen to be solely responsible for the delay as negotiations with the Kangoulu people ended 15 months ago. *Morning Bulletin (Rockhampton)*, 03 July 2003.

Under a new arrangement, mining exploration permits will be processed faster in re-

turn for guaranteed protection of cultural heritage values on land subject to native title. This arrangement was made between Indigenous representative bodies, the mining industry and the State government. Mines Minister Stephen Robertson said the arrangement reached last month was the result of the Queensland Mining Council and the Queensland Indigenous Working Group endorsing the State's use of expedited procedures available under commonwealth native title legislation to deal with permit applications. The new native title protection conditions are seen by the QMC as a major step towards getting explorers back on the ground in Queensland. *Northern Miner (Charters Towers)*, 08 July 2003.

Traditional owners in the Carpentaria Mineral Province are threatening to hold up exploration for potentially billions of dollars of gold, copper and silver in protest at changes to exploration procedures involving native title. This has come about due to the State Government's move to revert to the Commonwealth's "right to negotiate" scheme, allowing exploration on land subject to native title. Mitakoodi-Juhnjar group applicant Pearl Connelly claimed the scheme which began on 01 April 2003 had replaced spontaneous face-to-face negotiations between the claimants and people wishing to explore their land. The Carpentaria Mineral Province is regarded as the State's richest mining province and is potentially amongst the richest in the country. The region contains the Ernest Henry mine which contains gold, copper and some silver. *Courier Mail*, 12 July 2003. Mitakoodi claim: QC96/101, QG6106/98.

Gerry Hand has recently resigned from his position as Chief Executive Officer of the Queensland South Representative Body, in Toowoomba. Mr Hand held the position for two years. He has confirmed that he has accepted a consultancy position with the 18-member Board of Commissioners of the Aboriginal and Torres Strait Islander Commission, to assist with the response to the review paper on ATSIC released last month. Mr Hand has previously worked closely with former ATSIC deputy chairman Ray Robinson, who until recently was the

son, who until recently was the chairman of the Queensland South Representative Board. *Courier Mail*, 18 July 2003.

Indigenous groups from across the North-West will gather next month for a forum on natural resource management. The forum conducted by the Southern Gulf catchments group, is the first of its kind for the region and will be held in Mount Isa from 6-7 August. Southern Gulf acting co-ordinator Charles Curry said the main aim of the meeting was to establish a reference group. Traditional owners are encouraged to become involved in looking after land, water and places of cultural heritage. Speakers at the forum will include Ron Archer and Joseph Rainbow from Savannah Indigenous Group, Melissa George from the Burdekin region, as well as agency representatives familiar with the processes of resource management. *North West Star*, 25 July 2003.

The Queensland Sapphire Producers Association recently held a meeting at the Rubyvale Hall. Around 60 people were in attendance to discuss the signing of an ILUA. If the ILUA is signed by QSPA, the native title claimants and the Queensland Government before the end of August, it can be tabled in the Federal Parliament during September. QSPA president Jenny Elliot explained to those gathered the details of the ILUA and how the process would proceed from the meeting. The document is available for perusal at local Post Offices and at the Department of Natural Resources and Mines. *Central Queensland News, (Emerald)*, 06 August 2003.

A natural resources management forum was held in Mount Isa during early August. The forum which was the first of its kind in the region, was hosted by the Southern Gulf Catchments group (SGC). The primary aim was to engage and involve Indigenous groups in relation to the management of natural resources, with the aim of establishing a reference group. The proposed board would contain seven directors, with one being Indigenous. One of the main issues raised by the Indigenous representatives, was

better access onto properties which contained cultural sites without having to go through the drawn-out native title process. A priority action project would be formulated when the SGC better understood the needs of traditional owners, then funding would be sought. *North West Star (Mt Isa)*, 11 August 2003.

In their bid to have Kalpowar Station in Cape York Peninsula declared a veterans' retreat, Vietnam veterans have turned to civil disobedience. Hundreds of people converged on the remote area near the Lakefield National Park to attend a commemorative service for Vietnam Veterans' Day. The group has squatted on the Crown land, which they call 'Pandanus Park' for more than two years. To date, the group have failed to convince the State government to set aside the land (which is subject to a native title claim) for veterans. Les Hiddins, a former Australian Army major said the group was prepared to turn up the heat on the government. Queensland Premier Peter Beattie said the government had bent over backwards to be accommodating. *Sunday Mail (Brisbane)*, 17 August 2003.

Victoria

A native title agreement has recently been signed making way for a 100 berth marina to be built on the Murray river at Mildura. Victorian premier Steve Bracks said the \$70 million project would attract thousands of tourists, create around 400 construction jobs and 200 permanent jobs. Development is expected to begin by the end of this year and be complete by the end of 2005. The Victorian government negotiated the agreement with the Latji Latji. Under the agreement the Latji Latji people will be given a shop in the marina and their traditional ownership of the land will be acknowledged. *Herald Sun (Melbourne)*, 29 July 2003. Latji Latji People claim: VC00/3, V6003/00.

The Victorian Native Title Services recently held a meeting in Bendigo. The meetings primary purpose was to seek ways to help progress native title claims in north-west Victoria. VNTS CEO Chris Marshall said in

the past there had been a lack of progress with native title claims in north west Victoria. Claims in the region had been stop-start due to factors such as inadequate anthropological research and a lack of unity. *Bendigo Advertiser*, 02 August 2003.

The Dja Dja Wurrung people are hoping to succeed in a native title claim over crown land in Bendigo. The claim has been in progress for over 2 years. A renewed push for recognition of the claim is likely to follow the creation of a new native title service body in the area. Last month, Mirimbiak was replaced by the Victorian Native Title Services. Dja Dja Wurrung chair, Graham Atkinson said he estimates there to be about 1000 Dja Dja Wurrung members across Victoria and beyond. He also said that culturally and psychologically, their link to the land had continued. The claim is the only one lodged in the Bendigo area. *Bendigo Advertiser*, 02 August 2003. Dja Dja claim: VC99/6, V6001/99.

A Portland Gournditchjmara native title claimant has called for bluegum owners to improve consultation with claimants. This is due to plantations possibly having a negative impact on customary lands. A representative of a local bluegum company said he believed cropping was more widespread than the plantations. Gournditchjmara elder Elizabeth King's main concern was that creeks and wetlands located downstream from bluegum plantations could possibly dry up. In response, Green Triangle Plantation Forest company field manager Don Jowett said the company welcomed discussion with claimants. *Portland Observer*, 04 August 2003. Gournditchjmara: VC99/7, VG6004/98.

Western Australia

The recent announcement by the Australian Agricultural Company will begin agreement-making negotiations with Aboriginal groups who have native title claims over the company's pastoral properties, has been welcomed by the National Native Title Tribunal president, Graeme Neate. AACO's chief executive Peter Holmes, said recently that dis-

cussions between the company and native title applicants about agreement-making options would begin in the near future. The AACO currently owns or leases 19 properties in Queensland and the Northern Territory covering over 6.5 million hectares. All but two of the Queensland properties have native title claims over them, while all the company's Northern Territory properties are also subject to claims. As part of a national strategy with the pastoral sector, the Tribunal has held a number of meetings with AACO representatives in recent months. *Exmouth Expression*, 04 July 2003.

Two Indigenous groups have been granted non-exclusive native title rights by the Federal Court to more than 20,000sq km in the resource rich Pilbara region. Industrial centres of the Burrup Peninsula and the Maitland estate were not in the agreement. Justice Nicholson ruled the Ngarluma and Yindjibarndi peoples had a right to access the land in question for camping, fishing, hunting and other cultural practices. He also ruled the group's rights did not extend to mineral resources nor to the sea beyond the low-water mark, and that their rights & interests would have to co-exist with any existing mineral and pastoral leases. The decision was welcomed by the claimant groups, the State government, and pastoralists, for providing certainty over the economically significant area. The 444 page judgement ends a process that began in 1994 when the first applications were lodged with the National Native Title Tribunal. The case first came before the Federal Court in February 1997. *The Australian*, 04 July 2003. Yindjibarndi claim: WC03/3, W6005/03.

The Goldfields Land and Sea Council wants the State Government to resolve the Wongatha native title claim outside the courts. The claim which has faltered due to a lack of funds, is the first from the region to reach the Federal Court and the second largest claim in the State. GLSC invited Deputy Premier Eric Ripper to meet with the Wongatha claimants to consider a negotiated outcome. Mr Ripper indicated further that he would like to settle native title by way of agreement. The Land Council applied to the

Federal Court to postpone an August hearing because of a shortage of money to continue the case. Mr Ripper also informed State Parliament that they wish to find ways to meet aspirations of Aboriginal communities outside the limitations of native title law. *Kalgoorlie Miner*, 12 July 2003. Wongatha claim: WC99/1, WAG6005/98.

Kalgoorlie-Boulder delegates will attend a Liberal Party State conference next month. Water, mining and native title will be the key issues raised. Kalgoorlie-Boulder Liberal Party branch president Alan Dungey said it was important for the branch to attend the conference to keep regional areas in the political spotlight. The Division is concerned about the State's failure to guarantee a water supply for present and future use. The subject of native title will also be raised, as there is a need for the process to be immediately amended to expedite business ventures. Mr Dungey said the exploration industry had never quite recovered since the Mabo decision. *Kalgoorlie Miner*, 21 July 2003.

A memorandum of understanding was signed recently in Perth, which would allow land ownership for the Ninga Mia community in Kalgoorlie-Boulder to be transferred within two years. There are 32 Aboriginal lands trust properties in the Goldfields, including that of Ninga Mia. The 'mou' signed by the Goldfields Land and Sea Council and Department of Indigenous Affairs should speed up the transfer of properties to different Aboriginal groups. Indigenous Affairs minister John Kobelke stated the land transfers would not affect native title claims or rights. The State Government announced an independent review to be held in December into the ALT, which holds about 12 per cent of the State's property, to investigate accelerating land transfers to Aboriginal people. *Kalgoorlie Miner*, 30 July 2003. Wongatha claim: WC99/1, WAG6005/98.

The Federal government has been called upon by Kalgoorlie MLA Matt Birney to investigate Australian land councils. Goldfields Land and Sea Council executive direc-

tor Brian Wyatt stated land councils already adhered to strict guidelines on how business should be conducted. Mr Birney has written to Indigenous Affairs Minister Phillip Ruddock requesting that an investigatory oversight body for all Australian land councils be put in place. Mr Wyatt said the land councils already had to follow a three year strategic plan that was endorsed by Mr Ruddock. *Kalgoorlie Miner*, 09 August 2003.

Iain McGregor, a newly-elected Menzies Shire councillor was the first of two pastoralists to state at a recent Wongatha native title hearing, he did not mind if Aboriginal people went onto his leased property. William Axford also told the Federal Court in a video-linkup from Kalgoorlie-Boulder, that he also had no objections as long as some conditions were met. They included no dogs or guns brought onto the property. The pair's evidence was the final session via video linkup in the long running Wongatha case, the first Goldfields native title claim to be tested in court. *Kalgoorlie Miner*, 15 August 2003. Wongatha claim: WC99/1, WAG6005/98.

According to a recent survey, the State government should investigate native title rights in water before issuing further water licences in the south-west. A social values and impact study showing strong opposition to the proposal was firstly conducted before the cultural report was completed, with nine recommendations, including ownership rights of water resources be investigated before more water licenses are granted. *Farm Weekly (WA)*, 28 August 2003.

New South Wales

One of the longest native title deliberations in NSW is almost ready for a decision. The claim involves the Biripi and Worimi people, specifically focusing on traditional Aboriginal camping grounds at Saltwater, which are set to become a model for similar claims across the State. Saltwater has for centuries been the principal meeting place for the group to perform initiations and conduct major gatherings. A mediator was flown in

from Perth to lead round table discussions between the Aboriginal claimants, Greater Taree City Council and National Parks and Wildlife. The talks were aimed at putting the final touches on the agreement that would see the local Indigenous people given campsite rights to what has for many years been a council public reserve. A plan has been prepared by the city council proposing camping areas for Aboriginal families, which still allow the wider community access to Saltwater's attractions including the picnic area, beach and lagoon. *The Manning River Times (Taree)*, 11 July 2003. Biripi & Worimi People.

Cowal Gold mine proponents Barrick Gold appear to be headed back into court despite Government approval being granted last month for the project. The Mooka traditional owners council were recently granted leave to appeal to strike out the Wiradjuri native title claim. The appeal led by chairman Neville Williams will go before the federal court in Sydney during November. The court had previously ruled against Mr William's attempt to strike out the Wiradjuri native title claim group, which reached an agreement with Barrick Gold to allow mining of the area under a 20-year lease. Without his consent along with other traditional owners, Barrick and the Government could face a legal risk running into hundreds of millions of dollars. *West Wyalong Advocate*, 25 July 2003. Mooka claim: NC02/4, A6001/02. Wiradjuri claim: NC02/10, N6015/02.

A Wiradjuri nation elders conference was recently held in Dubbo. It discussed knowledge of Aboriginal life, laws and boundaries, and established a tribal roll and future membership of the elder's council. More than 300 elders attended. The conference was convened as a matter of urgency by members who were concerned their heritage would die with them if not shared and passed on to the youth. Among other agenda items, were discussions on the environmental impact of land management practices in the Murray-Darling Basin and issues relating to youth and employment. Elders spokesperson Tony

Peachey said the elders always kept an open mind and welcomed any initiatives that might improve the overall well-being of Aboriginal people. *Daily Liberal (Dubbo)*, 01 August 2003. Wiradjuri claim: NC02/10, N6015/02.

A group of Aboriginal elders recently set up protest near Lake Cowal gold mine in central New South Wales. 20 protestors from the Wiradjuri group erected tents and flags on public land just outside the proposed mine site near West Wyalong. They plan to stay indefinitely. The \$278 million dollar mine is being built by Canadian company Barrick Gold, after reaching an agreement with the Wiradjuri Condobolin native title claim group in May. Wiradjuri elder and protestor Neville Williams has questioned the authority of Wiradjuri representatives who originally agreed to the mine. Mr Williams said the group hoped to have more people arriving to join the protest in the coming days. Barrick Gold Corporation, the world's third biggest gold miner, is a few months away from satisfying preconditions for development of the mine and deciding whether to proceed. *Kalgoorlie Miner*, 07 August 2003. Wiradjuri claim: NC02/10, N6015/02.

Northern Territory

The Federal Government and Aboriginal landowners recently signed an ILUA to allow development at Bradshaw station. This agreement finalised seven years of negotiations. The Australian Defence Force now has access to 9000sq km of property for 225 years. This also means millions of dollars will be injected into development for the Northern Territory. When completed, Bradshaw will be one of the largest defence training establishments in the world. Defence Minister Robert Hill said the benefits of the ILUA would be shared by the Defence Force and traditional owners. He further added that Indigenous needs and values will be respected, they will have access to their land and opportunities of employment. *Northern Territory News*, 17 July 2003.

The Northern Territory Government recently gave the go ahead for a clean-up of the Jabiluka uranium mine. This decision has ended a long row which pitted conservation groups and Aboriginal people against mining company ERA. Under the clean-up program, ERA will backfill the 1.8km decline located next to Kakadu National Park, which is world heritage listed. ERA, which is primarily owned by Rio Tinto, will retain the lease on the mine but will sign a formal agreement with the traditional owners guaranteeing no future development in the area without the explicit permission of the Mirrar people. ERA chief executive Bob Cleary welcomed the Government's approval of the plan. *Canberra Times*, 02 August 2003. Mirrar People claim.

Claims of native title red tape have halted the contribution of \$100,000 towards the building of a church. The women from the remote township of Mataranka 430km south of Darwin have however been allowed to build a non-denominational church on the land. The main problem is, the lease is only for 25 years. The previous government informed the group they could have the crown lease in perpetuity. The Labor government then refused to honour the previous government's promise. After consultation with the Northern Land Council, they then offered the club a 50-year lease. Recently, the NT government withdrew that offer and offered a 25-year lease. The NT government and the NLC are still in discussion, and no final decision has been made on the matter. *Northern Territory News*, 23 August 2003.

The Northern Land Council wishes to invest more than \$100 million into building a gas pipeline in the Northern Territory. The land council is considering paying up to 25 per cent of the cost of the pipeline, which would carry gas from the Black Tip field off the coast at Wadeye to the Alcan alumina plant near Nhulunbuy. The project could bring in millions of dollars for Indigenous people and help break the culture of welfare dependency, according to NLC chairman Norm Fry. The NLC has identified several major projects for the region likely to offer a range of opportunities over the coming decade. This gas pipeline project

would offer training, employment and business development prospects. *Northern Territory News*, 27 August 2003.

South Australia

In order to find new ways of sharing land, local Aboriginal groups and South Australian pastoralists have been working together. The Native Title Unit of the South Australian Aboriginal Legal Rights Movement has set up a 'Secure Futures' program for both par-

ties. NTU executive officer Parry Agius said by entering into negotiations for agreements, both parties can obtain outcomes not bound by narrow legalistic definitions. Consultant Don Blesin said both the pastoralists and Aboriginal people had to improve their negotiating skills. Mr Agius concluded in saying 'both parties would receive commercial and non-commercial benefits by taking part in local agreements'. *Farm Weekly (WA)*, 21 August 2003.

APPLICATIONS LODGED

The National Native Title Tribunal posts summaries of applications that are lodged with them, on their website, <www.nntt.gov.au>. The following lodgements are listed for July/August.

Claimant Applications

Date Filed	Application Name	State/Territory	Tribunal File No.	Federal Court File No.
07/07/03	Djiru People #3	QLD	QC03/6	Q6006/03
09/07/03	Yindjibarndi #1	WA	WC03/3	W6005/03
09/07/03	Yindjibarndi #2	WA	WC03/4	Q6004/03
09/07/03	Kalkadoon People #3	QLD	QC03/7	Q6007/03
07/08/03	Olkola People	QLD	QC03/8	Q6008/03
07/08/03	Olkola & Thaypan People	QLD	QC03/9	Q6009/03
12/08/03	Olkola/Fairlight	QLD	QC03/10	Q6010/03

Non Claimant Applications

Date Filed	Application Name	State/Territory	Tribunal File No.	Federal Court File No.
25/07/03	Anthony Bernard Kelly, Minister Assisting the Minister for Natural Resources for NSW	NSW	NN03/3	N6004/03
26/08/03	Minister for Natural Resources for NSW	NSW	NN03/4	N6005/03

REGISTRATION TEST

The National Native Title Tribunal posts summaries of registration test decisions at <www.nntt.gov.au>. The following decisions are listed for July to August. If an application has not been accepted, this does not mean that native title does not exist. The applicants may still pursue the application for the 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 or re-submit the application.

Decision Date	Application Name	State/Territory	Tribunal File No.	Federal Court File No.	Decision
02/07/03	Paddy Carlton obo MGW Groups	NT	DC95/1	DG6008/98	Not accepted
16/07/03	Indjilandji/ Dithannoi	QLD	QC02/36	Q6034/02	Accepted
17/07/03	Kalkadoon People #3	QLD	QC03/7	Q6007/03	Accepted
17/07/03	Kalkadoon People	QLD	QC99/32	Q6031/99	Accepted
28/07/03	Mitakoodi People #3	QLD	QC03/4	Q6004/03	Accepted
29/07/03	Mitakoodi People	QLD	QC96/101	QG6106/98	Accepted
30/07/03	Wiklyeny/Akanh /Olkol/Olkola Peoples	QLD	QC03/5	Q6005/03	Accepted
06/08/03	Jirrbal People	QLD	QC03/1	Q6001/03	Accepted
08/08/03	Yindjibarndi People #1	WA	WC03/3	Q6005/03	Accepted
12/08/03	Injilandji Peoples	QLD	QC96/100	QG105/98	Accepted
20/08/03	Djiru #2	QLD	QC03/3	Q6003/03	Accepted
20/08/03	Djiru #3	QLD	QC03/6	Q6006/03	Accepted
29/08/03	Blue Mud Bay No. 2	NT	DC02/34	D6035/02	Accepted

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
01/10/03	NC02/10	The Wiradjuri People
01/10/03	QC02/35	Mithaka People
01/10/03	QC02/6	Waluwarra People # 2
15/10/03	NN03/2	Darkinjung Local Aboriginal Land Council
29/10/03	QC02/37	Bintharra Group
29/10/03	QC02/38	Mugina Group
29/10/03	DC02/19	Pine Creek #3
29/10/03	NC01/4	The Nyoongar Ghuree – Bhurrah (Gubboothar) Far Western Gumilaroi Aboriginal People
29/10/03	DC03/2	Deep Well
29/10/03	DC03/1	Rockhampton – Brunette Downs
29/10/03	DC02/33	Dulcie Ranges
29/10/03	DC02/32	Newcastle Waters #2
29/10/03	DC02/31	New Wanderrrie Road
29/10/03	DC02/30	Lorella – Nathan River
29/10/03	DC02/29	NTP4440 Tennant Creek
29/10/03	DC02/28	Labelle Downs
29/10/03	DC02/27	Killarney
29/10/03	DC02/26	Pigeon Hole
29/10/03	DC02/24	Town of Larrimah

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>.

NEW PUBLICATION

Treaty, Let's Get It Right!

In May 2000, ATSIC restated the importance of a treaty as a central plank of the Indigenous agenda on rights — part of the overall package of unfinished business that remained from the 10-year reconciliation program that concluded that year.

Treaty ... let's get it right! is a collection of essays from members of ATSIC's National Treaty Think Tank and authors commissioned by AIATSIS.

In the Foreword, ATSIC Chairman Geoff Clark explains that the 'let's get it right' approach recognises the political, constitutional and institutional 'barriers to equality under the law in Australia' that recur throughout Australia's modern history.

Michael Mansell, Secretary of the Aboriginal Provisional Government, says the two competing outcomes for a treaty are (a) the return of all crown lands to Aboriginal and Torres Strait Islander peoples to provide economic and cultural autonomy and (b) equality for Indigenous people within white economic and social structures while allowing for a degree of Indigenous autonomy. Mansell says the choice is not the real issue, but 'the right to make that choice is'. Two models exist that could be used to guide a treaty making process, offers Larissa Behrendt, Professor of Law and Indigenous Studies at the University of Technology in Sydney. One is the system of Indigenous Land Use Agreements (ILUAs) under the *Native Title Act* that result in binding negotiated contracts between parties without the costs and uncertainty of litigation. The second is the Canadian system for agreements that operate under its *Inherent Right to Self-Government* policy that has an expressed preference for community-level negotiations.

The AIATSIS Chair, Professor Mick Dodson, suggests that a treaty or treaties could be

achieved by an agreement under international law, be supported by legislation or be a simple contract under statutory and common law. His focus, however, is on a proposed new Section 105B of the Constitution that would spell out the powers of the commonwealth government to 'make a treaty or treaties with persons or bodies recognised as representatives of Aboriginal and Torres Strait Islander peoples' on matters of specific relevance to their peoples.

Professor Marcia Langton (Melbourne University) and Dr Lisa Palmer (ARC Postdoctoral Fellow) examine the importance of agreement making, including developments in native title and the growing use of ILUA, as well of the diversity of Indigenous customary and cultural interests that need to be accommodated by any regime for such agreements.

The capacity for a treaty to protect Indigenous heritage is considered by intellectual property specialists Robyn Quiggan and Terri Janke. In the absence of an overarching agreement that offers specific protection it will be necessary to pursue *sui generis* legislative protection for heritage rights and the desire of Indigenous peoples to enjoy informed consent on the use of such intellectual property and to share subsequent benefits.

A treaty holds the potential to define a new relationship between the Indigenous and non-Indigenous peoples of Australia that moves 'beyond past and present injustices', according to Lester-Iribinna Rigney, a senior lecturer at South Australia's Flinders University. In particular, Indigenous languages and educational standards and practices stand to benefit from a system that can 'transform the structures that continue to cause disharmony'.

Despite the evident benefits to Indigenous heritage, discussion of a treaty will inevitably throw up challenging questions of identity and Aboriginality, says Indigenous lawyer Louise Taylor. Authenticating Indigenous identity is a complex and troublesome process that can only be achieved through internal community processes that take account of local circumstances. It may be that the final form of a treaty cannot be met by a single uniform document.

These questions interest young Indigenous people. The National Indigenous Youth Movement of Australia identifies the need for healthy and functional families and communities that provide clear pathways to a sustainable Indigenous identity. A 'collective sense of purpose', perhaps supported with a Bill of Rights that guarantees Indigenous rights and responsibilities, might prove more beneficial than an uncertain treaty process.

In a survey of developments since the *Mabo* judgment in 1992, Perth-based lawyer and academic Hannah McGlade (who also edited this volume) finds that the issue of sovereignty has only rarely been tested in the courts and has only once been placed directly before the full bench of the High Court of Australia. While issues such as self-determination and sovereignty continue to develop in the international arena, Indigenous claims within Australia point to the need for legal and perhaps constitutional reform.

Megan Davis, a specialist in international law, argues that the developing international human rights framework can be a valuable reference in discussion of a domestic treaty. The Draft Declaration on the Rights of Indigenous Peoples, currently under consideration by the United Nations, could be influential once adopted if the rights contained in it are elevated 'to the level of a convention in which those states that sign become legally bound by the instrument'.

A treaty could be valuable in strengthening Indigenous governance systems, control over service delivery and the re-empowerment of Indigenous peoples within society, according to Darwin-based academic Daryl Cronin. By

providing a system for greater Indigenous autonomy and control and the means for asserting Indigenous authority, communities would be able to take greater responsibility for dealing with their social and economic problems, manage and control natural resources, and develop appropriate legal models and relationships with governments.

Communities in the Torres Strait have perhaps moved further along the road to self-government than communities elsewhere in Australia and without excessive controversy, says Treaty Think Tank member Dr Martin Nakata. Islander negotiation has not been tied to any single ideology or political party, but has taken note of the both the long-term and immediate and practical aspirations of grass-root community members and represented those via incremental advancement based on a concept of 'relative sovereignty'.

Senator Aden Ridgeway sees that obstacles to Indigenous advances include the continuing spirit of denial manifested by the federal government and the 'plethora' of community organisations that constitute a significant drain on 'human and financial capital'. He calls for greater accountability in both areas — government policy that is based on honest acknowledgement of the past and meets the standards set by its own rhetoric as well as a system of national benchmarks to ensure directed and effective management of Indigenous organisations.

In the final contribution to the book, the Olympic gold medallist and ATSIC Treaty Ambassador Nova Peris says Australia's present Constitution is 'an ill-adapted mix of symbolic power and the practice of government'. A treaty would contrast with current government systems by providing inclusion, adaptability and incorporate both Indigenous and non-Indigenous parties into the life of the nation.

***Treaty — let's get it right!* is available for \$19.95 plus postage from Aboriginal Studies Press (phone 02 6246 1186 or email sales@aiatsis.gov.au).**

RECENT ADDITIONS TO THE AIATSIS LIBRARY

The following are newly catalogued items that have just become available on Mura, the AIATSIS on-line catalogue. Please check Mura for more information on each entry, including annotations.

Early personal journals, correspondence and diaries

Barrington, George, 1755-1804.

A voyage to New South Wales: to which is prefixed a detail of his life, trials, speeches, etc.
Sydney: View Productions, 1985.

Malaspina, Alessandro, 1754-1809.

The secret history of the convict colony: Alexandro Malaspina's report on the British settlement of New South Wales. [translated by] Robert J. King.
Sydney : Allen & Unwin, 1990.

Paine, Daniel, b. 1770.

The journal of Daniel Paine, 1794-1797: together with documents illustrating the beginning of government boat-building and timber-gathering in New South Wales, 1795-1805 / edited by R.J.B. Knight and Alan Frost.

Sydney: Library of Australian History in association with the National Maritime Museum, Greenwich, England, 1983.

Stapylton, Granville William Chetwynd, 1800-1840.

Stapylton with Major Mitchell's Australia Felix expedition, 1836 / largely from the journal of Granville William Chetwynd Stapylton.

Alan E.J. Andrews, editor.

Hobart: Blubber Head Press, 1986.

History – exploration and accounts

Ross, Margaret

'The Hann Expedition to explore Cape York Peninsula, 1872' / Margaret Ross

Journal of the Royal Historical Society of Queensland Vol.18, no.6 (May 2003),
p. 273-286

Uhr, Frank

'September 12, 1843, the Battle of One Tree Hill: a turning point in the conquest of Moreton Bay' by Frank Uhr.

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'Bonyi bonyi: life and legends of the Bunya Mountains: an account of the times and lives of those who settled on and around the Bunya Mountains from 1841' / by Ray Humphrys.

Nanango, Qld: *Wyndham Observer*, 1992.

Jebbs, Mary-Anne

'Blood sweat and welfare: a history of white bosses and Aboriginal pastoral workers' / Mary Anne Jebb, *Indigenous law bulletin* Vol. 5, no.24 (April-May 2003), p.20-21

O'Brien, Justin

'Canberra yellowcake: the politics of uranium and how Aboriginal land rights failed the Mirrar people' / Justin O'Brien

Journal of Northern Territory History. No. 14, (2003), p. 79-91

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'Policing our state: a history of police stations and police officers in

Western Australia 1829-1945' / by A.R. (Don) Pashley.

Cloverdale, W.A: *EDUCANT*, 2000.

Taylor, Martin Francis James.

'Bludgers in grass castles: native title and the unpaid debts of the pastoral industry' / Martin Taylor.

Chippendale, N.S.W: Resistance Books, [1997]

Native Title - recent news items

'Badimia group offer new deal over native title claim' 2001 *Yamaji News*, (05 Dec 2001), p. [1], port.

'Major native title settlement in Central Desert' 2001 *Yamaji News*, (7 Nov. 2001), p. 10

Noonkanbah land handed back to Yungngora community'

2001 *Yamaji News*, (26 Sept. 2001), p. [1]

'Report recommends native title reforms'

2001 *Yamaji News*, (5 Dec. 2001), p. 4

'WA's Aboriginal groups unite as one'

2001 *Yamaji News*, (20 June 2001), p. [1]

Native title – legal issues

'Northern Territory: customary law and underage sex'

2003 *Alternative Law Journal*, Vol.28, no. 3 (June 2003), p.151-152

Donaldson, Margaret

'The Racial Discrimination Act: does it have a role in native title?'

Margaret Donaldson and Yvette Park
2003

Indigenous law bulletin Vol. 5, no.24 (April-May 2003), p.8-10

Strelein, Lisa

'Undertanding non-discrimination: Native Title law and policy in a human rights context' / Lisa Strelein, Michael Dodson and Jessica Weir

2001, *Balayi* Vol.3, (2001), p.113-148

Government reports and Native Title cases: Australia and States

Consent determination of native title: Martu and Ngurrara determinations:

James on behalf of the Martu people v State of Western Australia [2002] FCA 1208.

Native Title Hot Spots No.2 (14 October 2002), p. 1-5

Determination of native title: De Rosa v South Australia [2002] FCA 1342 2002.

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(16 August 2002), p. 12-14

Yougarla v Western Australia: 9/8/01, [2002]

HCA 47; (2001) 181 ALR 371

2001, *Litigation notes*, No. 7, 15 October 2001

Place names and site reports

The land is a map: place names of Indigenous origin in Australia / edited

by Luise Hercus, Flavia Hodges, Jane Simpson. Canberra: Pandanus Books, 2002.

Western Australia. Ministry of Lands

The spelling of native geographical names / issued by direction of the Minister for Lands, Perth: Govt Pr. 1901

Land acquisition and land management

Indigenous Land Corporation (Australia)

The Indigenous Land Corporation/ the Public Affairs Office of the Indigenous Land Corporation, 2003

Indigenous law bulletin Vol. 5, no.24 (April-May 2003), p.11-12

Economics and policy

Altman, Jon C., 1954-

Indigenous community organisations and miners: partnering sustainable regional development / outline by Jon Altman of a proposed study to be undertaken 2002-2004, 2001

Intellectual property

Claiming the stones/naming the bones: cultural property and the negotiation of national and ethnic identity / edited by Elazar Barkan and Ronald Bush.

Los Angeles: Getty Research Institute, c2002.

Land, Rights, Laws: Issues of Native Title

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

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- No. 23 *'Indigenous Pueblo Culture and Tradition in the Justice System: Maintaining Indigenous Language, Thought and Law in Judicial review'*
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John Basten
- No. 12 *The Beginning of Certainty: Consent Determinations of Native Title*
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Bruce Shaw
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Lee Godden and Shaunnagh Dorsett

Monographs

The following NTRU publications are published by Aboriginal Studies Press and are available from the AIATSIS Bookshop located at AIATSIS, Lawson Cres, Acton Peninsula, Canberra, or telephone 02 6246 1186 for prices and to order.

Treaty: Let's get it right!, Aboriginal Studies Press, Canberra, ACT, 2003.

Through the Smoky Mirror: History and Native Title, edited by Mandy Paul and Geoffrey Gray, Aboriginal Studies Press, Canberra, ACT, 2003.

Language in Native Title, edited by John Henderson and David Nash, Aboriginal Studies Press, Canberra, ACT, 2002.

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.

Earlier publications dating back to 1994 are listed on the Native Title Research Unit's website at <www.aiatsis.gov.au>, go to the Native Title Research Unit and then click on the 'Previous Publications' link. Orders are subject to availability.

ABOUT THE NATIVE TITLE RESEARCH UNIT

AIATSIS acknowledges the funding support of the ATSIC Native Title and Land Rights Centre. For previous editions of this Newsletter click on the native title research unit link at <www.aiatsis.gov.au>

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