



# AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

## Native Title Research Unit

### NATIVE TITLE NEWSLETTER

**July and August 1999**

**No. 5/99**

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)  
Age = The Age  
Aus = Australian  
CM = Courier Mail (QLD)  
CP = Cairns Post  
CT = Canberra Times  
DT = Daily Telegraph  
FinR = Financial Review  
HS = Herald Sun (VIC)  
KM = Kalgoorlie Miner  
IM = Illawarra Mercury

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

## **NEWS FROM THE NATIVE TITLE RESEARCH UNIT**

### **Staff News**

In this issue we again bid farewell to one of our staff members, Native Title Subject Specialist, Rebecca Hall. Over the last three years Rebecca has developed the access position into an immensely valuable service for native title holders, Representative Bodies and other native title researchers. I am sure Rebecca will be missed by her clients as she will be by us.

In the interim, as we go through a recruitment process, George Boeck is maintaining the service and looks forward to hearing from people and assisting them with access to the Institute's collections. You can reach George on the same number 02 6246 1103 or on email <ntss@aiatsis.gov.au>. Rebecca's personal email will be monitored for a short time but please take this opportunity to update your contact list.

### **'Conceptualising Native Title'**

**AAS Annual Conference, UNSW Sydney, 11 July 1999**

In July, the Native Title Research Unit was involved with the Australian Anthropological Society's Annual Conference at UNSW. Together with the Indigenous Law Centre, we convened a session to examine the changing notion of native title. The session expanded to cover three 90 minute sessions over the first day of the Conference and was attended by up to 70 participants.

The session was prompted by an earlier proposal by Noel Pearson calling for discussion on this issue. Michael Dodson who is associated with both institutions took the initiative together with Professor Garth Nettheim from UNSW and Lisa Strelein from the Institute.

The session was deliberately structured to promote discussion about the concept of native title and to elicit some of the key issues that the group considered important in the development of native title to date. The session began with an introduction by Lisa Strelein, outlining some of the concerns about the development of the concept of native title and some of the suggestions that had been raised by commentators for a re-examination of native title.

Papers were presented by Mick Dodson, Jocelyn Grace and Peter Sutton. Unfortunately Noel Pearson was overseas at the time of the Conference and could not attend. Mick Dodson impressed the importance of maintaining the distinction between common law native title and the Indigenous rights and laws that are recognised in native title to avoid native title being constrained by Western legal notions. The tendency within the law to do so has made native title an ever more elusive concept. Jocelyn Grace, from the Goldfield Land Council pursued the issues of groups identification and the requirements of the registration test, particularly where the requirements of the registrar are at odds with the realities of Indigenous peoples' social organisations and their conception of native title. Peter Sutton pointed to the perils of setting up a false dichotomy between the inside and outside worlds of the native title group as is suggested by a possessory understanding of native title in particular when considering the differentiated rights of groups over the same land.

An open forum followed which provided participants with an opportunity to comment on the papers and raise other issues of concern, particularly to anthropologists. The registration test and the problems of group definition were a focus of concern as was the need for anthropologists to share their ideas with each other as well as the legal community to ensure a different perspective is taken into account in the development of native title.

## **CURRENT ISSUES**

The Native Title Research Unit is supporting the Australian Linguistic Society's workshop entitled Linguistic Issues in Native Title Claims, on 2 October 1999 at the University of Western Australia. The workshop will be held as part of the 1999 Conference of the Australian Linguistic Society but is open to non-members.

Registration fee to be paid in advance: \$40, student/unwaged \$20 (free to those registered for the main Australian Linguistic Society conference). The preferred method of registration is using the web form at the workshop website: <http://www.arts.uwa.edu.au/LingWWW/als99/ntitle.html>

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### **CERD Committee update**

This month the CERD committee extended its' monitoring of Australian native title laws to March 2000. In her report to the Committee Ms G McDougall, the country rapporteur, reiterated a series of problems manifest in the Native Title Act. She highlighted four specific provisions of particular concern;

- Validation of past acts,
- Confirmation of extinguishment,
- The primary production upgrade provisions, and
- The changes to the right to negotiate.

While the original Act had its shortcomings it was seen as a product of negotiations between the government and Indigenous and other interest groups. It represented a negotiated agreement in which Indigenous parties made substantial compromises. The NTA also set in place a framework to enable the determination of native title through negotiation and, as an interim measure, procedural rights in respect of future acts. Unfortunately since the NTA became operative, State governments in particular have sought to politicise native title by casting the issue as one which would (among other perils) prevent access to land and destroy the nation's economic base. In taking this approach an important opportunity to finally reconcile Indigenous and non-Indigenous Australians is being lost.

The amendments to the NTA in July 1998 represented the high point in the political campaign against native title by the State governments. Importantly the amendments added to the extinguishment of native title by confirming extinguishment of native title over acts deemed to be *previous exclusive possession acts* and *previous non-exclusive possession acts*, and validating acts by State governments in deliberate breach of the future act provisions of the NTA after 1993 (in Division 2B). There are other provisions of the NTA, like the primary production upgrades that deem native title to be a lesser right

subservient to other titles, this provision can also lead to extinguishment by stealth. The question in my mind is why is it that non-Indigenous property rights can be determined with no reference to the law - that is, at the whim of government - while Indigenous people are forced to undergo an arduous and offensive 'inquisition' before gaining recognition of rights we already hold? The *Mabo* decision settled the question of terra nullius; the determination process should now be one that starts on the premise of recognition of native title and then be a process of facilitating that recognition within the social, political and economic framework of the nation state. This is possible through mediation but not through the courts.

A further issue highlighted by Ms McDougall is the fact that the common law, despite the attempt to cast it in a new light with *Mabo*, is still racist in its treatment of Indigenous rights. The principle that native title is vulnerable and susceptible to extinguishment by the sovereign powers of the Crown is clearly a throw back to Darwinian arguments and has no real basis in merit.

The approach to native title is always a contentious political issue but we should never lose sight of the fact that it is an issue at the very heart of our nation. Native title strikes at real issues of reconciliation, human rights and equity that simply can not be brushed aside for political convenience. I recommend that readers visit the FAIRA website, which has a lot of detail on the CERD deliberations. It can be accessed at <<http://www.faira.org.au>>.

This month the NTRU has published an Issues Paper looking at the CERD developments. We are also in the initial stages of planning a workshop to debate some of the issues surrounding the operation of the NTA, such as race, international human rights law and the development of native title law in Australia. The workshop is planned for mid November.

*Kado Muir*

*Visiting Research Fellow/Manager*

*Native Title Research Unit, AIATSIS*

## **NATIVE TITLE IN THE NEWS - JULY AND AUGUST 1999**

### **International**

ATSIC chairman, Mr Gatjil Djerrkura criticised the Federal Government's performance in relation to Australia's Indigenous people in ATSIC's report to the UN Working Group on Indigenous Peoples. Mr Djerrkura stated that he had to defend the rights of Aboriginal and Torres Strait Islander people and that the common law rights of Indigenous people had been substantially diminished through the changes to the *Native Title Act*. (*Ad, 28 July, p6*)

ATSIC urged the United Nations Committee on the Elimination of Racial Discrimination to continue to pursue the Australian government over its native title legislation. ATSCI wrote to the UN Committee requesting that it maintain its scrutiny of the situation following the Federal Government's decision to reject the Committee's findings that the *Native Title Act* as currently amended is racially discriminatory. (*ATSIC Media Release, 9 Aug*)\*

The United Nation's Committee on the Elimination of Racial Discrimination (CERD) has reaffirmed its decision that certain provisions of the 1998 amendments to the *Native Title Act* are incompatible with the International Convention for the Elimination of All Forms of Racial Discrimination. The Committee said that the changes 'risked creating an acute impairment' of Indigenous land rights and stated that it had carefully considered the Australian Government's submission but it had seen 'no progress' and would continue to monitor Australia's treatment of Indigenous peoples. Australia will become the first Western nation reported to the UN General Assembly for breaching the Convention. (*SMH, 18 Aug, p2*)\*

### **New South Wales**

Shellharbour City Council will buy a section of Crown Land at Shell Cove to build a 350-berth marina. Native title claims prevented the Council from being granted a Crown lease for part of the area in the tidal zone adjacent to Shell Cove. (*IM, 1 July, p12*)

New South Wales Cabinet Office held an information session on native title at the Wentworth and District Services Memorial Club to help clarify some of the finer points of the Native Title Act. (*Sunraysia Daily (Mildura), 28 July, p1*)

### **Victoria**

Victorian Indigenous Working Group executive officer Angela Lesley spoke at two meetings in Bendigo held to examine the effects of the Victorian Government's native title legislation. The VIWG has combined with the Defenders of Native Title to resist any lessening of Indigenous peoples' rights to negotiate over developments on traditional land. (*Bendigo Advertiser, 29 July, p3*)

The Yorta Yorta native title appeal began with the Victorian Government attempting to have a Federal Court judge removed from the hearing on the

grounds that he was biased due to his membership of the Koori Heritage Trust. (*FinR*, 18 Aug, p10)\*

Justice Ron Merkel agreed to disqualify himself from the Yorta Yorta native title appeal hearing because of 'perceived bias'. (*FinR*, 19 Aug, p5)\*

The Yorta Yorta appeal against the rejection of their claim to 2000 square kilometres of land straddling the NSW and Victorian borders is seen as important as it is the only native title appeal currently before the Federal Court that is not in a remote part of Australia. (*Bendigo Advertiser*, 21 Aug, p6)\*

The Federal Court reserved their decision in the Yorta Yorta native title claim. (*DT*, 27 Aug, p18)\*

## **Queensland**

Queensland Premier Peter Beattie has given his support for a proposed satellite launch pad near Gladstone. United Launch Systems International is investigating the feasibility of a commercial satellite launch site on a small island known as Hummock Hill, 20 kilometres south of Gladstone. The development is opposed by the Gooring-Goorang people on the grounds that a launch mishap could cause toxic materials to be released from a damaged rocket. (*CM*, 12 July, p7)

Brisbane City Council has issued a notice of resumption to use the traditional land of the Turrbal people at Herston to build part of the Inner City Bypass. Council and Turrbal representatives are negotiating over compensation. (*Westside News*, 21 July, p3)

## **South Australia**

South Australia's native title legislation has been put aside until the next sitting of Parliament to allow time for further consultation. (*Ad*, 6 Aug, p12)

## **Western Australia**

The Federal Court has stated good faith negotiations must take place before the NNTT can be involved, and that the obligation to begin good faith negotiations probably arose, at the latest, two months after a section 29 notice is advertised.

Justice Carr made the comments while hearing a group of test cases regarding a flood of applications to the NNTT for determination against the granting of mining tenements in WA. The Tribunal found that it could not make any

determinations because the WA Government had not complied with its obligation to negotiate in good faith. The Federal Court upheld the decision of the Tribunal and dismissed the appeal.

Dennis Eggington of the Aboriginal Legal Service (WA) said that the decision had raised significant new issues in relation to the time frame for negotiations, which meant that negotiations could not be delayed indefinitely. Premier Richard Court also said the decision confirmed that native title claimants, too, would have to negotiate in good faith. (WA, 9 July, p10)

The National Native Title Tribunal and Curtin University have announced their collaboration on a project to introduce primary and secondary school Aboriginal studies teachers to native title concepts. The project was launched at Curtin University by NNTT President Graeme Neate. (*NNTT Media Release, 20 July*)

Kalgoorlie Labor MLA Megan Anwyl and Kalgoorlie-Boulder mayor Paul Robson have combined to gain commitments from the WA Chamber of Mines, Goldfields Land Council, Goldfields Esperance Development Commission, WA Chamber of Commerce and Industry, Australian Drilling Industry Association and the Australian Prospectors and Lease-holders Association to 'break the deadlock over land access by avoiding the courts'. (WA, 20 July, p31)

More than 20 native title claims over the Kalgoorlie-Boulder region have been amalgamated into 2 claims after negotiations between native title groups. The Goldfields Land Council has submitted the Central West and Central East native title applications to the Federal Court for registration. The Central West application covers West Kalgoorlie to Southern Cross and is the amalgamation of 16 previous claims. The Central East application covers land east of Kalgoorlie-Boulder to Karonie and is the amalgamation of fewer than 10 previous claims. (KM, 22 July, p3)

A Full Federal Court appeal against the Miriuwung-Gajerrong native title decision has begun before Justices Bryan Beaumont, John von Doussa and Anthony North. (WA, 27 July, p29)

A series of workshops are being held by Goldfields Land Council to teach native title claimants how to successfully negotiate with mining and development companies. The aim of the workshops is to broaden the skills and understanding of the local Aboriginal people. The workshops are being held from Kalgoorlie to Esperance. (Aus, 17 Aug, p6)

Labor MP Mark Nevill has officially resigned from the ALP and will sit as an Independent, and hold the balance of power, in the Upper House of the WA Parliament. If Mr Nevill votes with the Government, legislation such as the native title bill can be passed after being delayed for nearly a year. (*Aus, 24 Aug, p2*)\*

## Northern Territory

Governor-General Sir William Deane delivered freehold title to three Northern Territory pastoral leases to traditional owners. Title to the Central Mount Wedge lease was handed to the Ngalurrjtju Land Trust and title to the Tempe Downs and Middleton Ponds leases was handed to the Urrampinyi Iltjiltjarri Aboriginal Land Trust. The handovers follow claims made under the *Aboriginal Land Rights (Northern Territory) Act 1976* which has a clause preventing claims after 1997. (*Age, 26 July, pA6*)\*

Senator John Herron, Minister for Aboriginal Affairs, handed over the title deed to the Urrpantyenye lease covering 6554 hectares of Crown land in central Australia to the traditional owners. The deed was handed over to the Yewerre Aboriginal Land Trust. (*DT, 19 Aug, p4*)\*

The report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs has rejected all of the major recommendations of the Reeves Report into the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Committee's major recommendation is that no changes be made to the Act without the consent of traditional landowners. (*DT, 31 Aug, p4*)\*

The Senate has voted to disallow the Northern Territory's native title scheme. It is the first state-based regime to go to Parliament for Senate approval as a result of the 1998 amendments. The Democrats, Independent Senator Brian Harradine and Greens Senator Bob Brown sided with Labor to pass the disallowance motion because future changes could be made to the scheme without further monitoring by the Federal Parliament. (*Media Release, Australian Democrats, 31 Aug*)\*

National Native Title Tribunal President Graeme Neate stated that the Tribunal had made contingency plans to deal with the 900 applications currently held by the Northern Territory Government following the disallowance of the Territory Government's native title legislation in the Senate. Mr Neate said the applications could be handled in a timely and efficient way. (*NNTT Media Release, 31 Aug*)

## ACT

The ACT Government has offered legal title over Namadgi National Park to Aboriginal people. This would allow the Ngunnawal people to take part in joint management of the park, but it was not a native title offer. Hunting or living in Namadgi would not be allowed but traditional Aboriginal land use had not been ruled out according to Gary Humphries, ACT Attorney General. (CT, 20 July, p1).\*

## APPLICATIONS

### National

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

The following decisions are listed for July and August:

<u>CLAIMANT</u>	<u>DECISION</u>	<u>CLAIMANT</u>	<u>DECISION</u>
Nanda People	sff	Badimia People	pass
Ngangawonka Wadjari & Narla (Combined Application)	pass	Djungan People #3	pass
Dharawal People	pass	Iman People #1	sff
Ballardong People	pass	St Vidgeon's	sff
Karriyara #14	sff	Bullenbuk-Noongar (amended 16/7/99)	pass
Wanjina/Wunggurr-Willinggin	pass	Koa People	pass
Antakirinja Native Title Claim	pass	Olga Miller #2 - Wondunna	pass
Yandruwandha/Yawarawarrka	pass	Warraber (Sue Islanders) #2	pass
Gooreng Gooreng People # 2	pass	Gnulli	pass
Gurang People	dnp	Gangulu People	sff
Irruntyju-Papulankutja	pass	Taribelang Bunda People	pass
Kiwirrkurra	pass	YUED	pass
Ngankali	pass	Masig People (Yorke I'ders) #1	pass
Borrooloola Region	sff	Moorawarri Aboriginal People	dnp
Borrooloola/Gulf Regions	sff	Gubrun	sff
Edward Pellew Seas	sff	Kalamaia Kabu(d)n People	sff
West Arnhem Seas	sff	Gkuthaarn & Kukatj Peoples	sff
Wurdaliya - Wuyaliya	sff	Bidawal and Monaro (Ngarigo)	sff
Ngadjunngarra	pass	Dhudoroa #2	sff
Ngaluma/Injibandi (Combined Application)	pass	Gkuthaarn People	sff
V.J. & C.F. Isaacs	dnp	Karuwali People	sff
Rail Corridor 3	sff	Leichhardt River	sff
Rail Corridor 4	sff	Mundine & related families	sff
Rail Corridor 5	sff	Ngunawal people #2	sff
Rail Corridor 6	sff	Ngunawal people #7 (D Bell)	sff
Rail Corridor 7	sff	Ngunawal #4	sff
		Iman People #2	sff

Gibson Desert	pass	Barkandji #7	sff
Kurungal	pass	Barkandji (Paakantyi) #2	sff
Noonkanbah	pass	Barkandji (Paakantyi) #3	sff
Palyku (Combined Application)	pass	Barkandji (Paakantyi) #4	sff
Wotjobaluk	pass	Barkandji (Paakantyi) #5	sff
Bigambul People	sff	Tingarri Tjina	pass
Narnoobinya Family Group	pass	Bundjalung people #3	pass
Ngoonooru Wadjari (Combined Application)	pass	Bunjalung People #2	pass
Barada, Kab Albara, Jetimarala	pass	Dja Dja Wurrung #15	pass
Southern Noongar	pass	Bunuba (Combined Application)	pass
Gawler Ranges NT Claim	pass	Lissadell & Thomas	dnp
Girramay People	pass	Jiddngarri	sff
Malgana 1	pass	Tjurabalan	pass
Barkandji people #6	sff	BAUMGARTEN	pass
		Millera Tribe	pass
		Barkandji (Paakantyi) #8	pass

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

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

## Queensland

### **Gkuthaarn People [NNTT Ref#QC99/18]**

The Gkuthaarn People's application, lodged in the Federal Court in Sydney on 24 May 1999, has been transferred to the Federal Court in Queensland (Federal Court Ref#N6007/99). This new claimant application was lodged in response to non-claimant application QN98/5 lodged by Carpentaria Shire Council and covers an area around Karumba in the Gulf of Carpentaria region. (*QNT, July 1999, p1*)

### **Bindal People [NNTT Ref#QC99/21]**

The Bindal People lodged a native title application on 21 July 1999. The application covers specific parcels of land in and around Townsville. (*QNT, August 1999, p1*)

### **Lamalama People [NNTT Ref#QC99/22]**

The Lamalama People's application was lodged in the Federal Court on 28 July 1999. The application covers specific lots in the vicinity of Marina Plains and Princess Charlotte Bay, Cape Your Peninsula in Cook Shire. (*QNT, August 1999, p1*)

## **South Australia**

### **Kokatha Native Title Claim (Combined Application) [NNTT Ref#SC96/6, SC98/5 and SC99/2]**

A native title claim covering 34,230 sq km of land in the Far North of South Australia, including Woomera and Andamooka, has been registered with the NNTT. The decision means that the Kokatha Aboriginal group becomes an official negotiating partner in all new developments in the area. WMC holds a freehold lease on the Olympic Dam uranium mine which predates native title legislation. (*Ad, 12 July, p3*)

## **MINING AND NATURAL RESOURCES**

### **New South Wales**

The Wonnarua Aboriginal community, based in the Upper Hunter region, has entered into an agreement with Powercoal, the State Government owned mining group, covering a tract of land at Lake Macquarie. The Wonnagua people have granted Powercoal use of the land for 21 years in return for \$1.2 million compensation. The land includes mining leases over the Newstan and Awaba collieries. (*Newcastle Herald, 26 July, p3*)

A dispute has arisen relating to the agreement between Powercoal and the Wonnagua people. Several Hunter Aboriginal groups have condemned the agreement saying that the Wonnagua had no traditional associations with the land and that the claim would not have passed the amended criteria of the *Native Title Act* which was passed after the claim was lodged. (*Newcastle Herald, 28 July, p18*)

### **Queensland**

Deputy Premier Jim Elder and Aboriginal groups met to discuss native title claims in relation to a Regional Forest Agreement to manage Crown forests. Up to two thirds of the Crown forests are subject to native title considerations according to Foundation for Aboriginal and Islander Research Action (FAIRA) spokesperson Les Malezer. 'They are talking about establishing hardwood plantations on lands subject to claims - these are vast area of land where native title hasn't been extinguished' Mr Malezer said. (*CM, 19 July, p8*)

An agreement has been signed between the Barada, Barna, Kabalbarra, Yetimarla and Darumbal people, the State Government and Marlborough Nickel to enable a nickel mine to be developed 75 kilometres north-west of Rockhampton. The mine

is due to begin construction in March 2000 and is expected to produce 19,400 tonnes of nickel annually. *(CM, 17 Aug, p2)*

### **South Australia**

Mining company RMG Services was prevented from drilling on Lake Gairdner, north of Eyre Peninsula, after it failed to prove that Aboriginal claimants had not acted in 'good faith'. RMG Services stated they believed the agreement, obtained in 1998, with Aboriginal representatives at Mallee Park, Port Lincoln, would allow drilling on the lake. However the agreement with the Barngala families, Wirangu claimants and Biringa claimants stated that a 'work clearance survey' would be undertaken before drilling could commence. During the survey the lake and its surrounds were studied and found to be sacred. *(Ad, 3 July, p32)*

Resources Group Musgrave Block Holdings Ltd was preparing to seek a declaration in the SA Supreme Court to uphold the exploration and mining agreement negotiated with the Pitjantjatjara people in June. *(FinR, 7 July, p4)\** Aboriginal leader Mr Yami Lester, chairman of the Yakunytjatjara Council, has supported the State Government's proposal for an exploration agreement for the Pitjantjatjara Lands. *(Ad, 9 July, p32)*

### **Western Australia**

The State Opposition has claimed that nearly 80 per cent of exploration mining licence priority applications were not being dealt with due to understaffing at the Department of Minerals and Energy. There are currently 2864 licence applications pending, 1080 of which are listed as priority applications. George Savell, chief executive of the Association of Mining and Exploration Companies, suggested that until a State-based native title commission was in place more staff were needed to deal with the applications. *(WA, 5 July, p10)*

A senior mining industry executive, Mr Hugh Morgan, has stated that delays in reaching native title agreements were producing large costs for the mining industry. However, while only 9 claims have been settled, 5 by agreement and 4 through the courts, the National Native Title Tribunal stated that 1300 agreements had been reached between miners and Aboriginal groups that did not require a formal determination of native title. *(Aus, 7 July, p2)*

The Noongar Land Council is seeking funds to run a test case challenging the Department of Conservation and Land Management's logging practices which it says are destroying evidence of native title in WA forests. Land Council executive director John Hoare said that if forests continue to be logged in the

current manner all evidence of traditional practices and spiritual connections will be destroyed. (*Manjimup Bridgetown Times, 14 July, p5*)

## **Northern Territory**

UNESCO's World Heritage Committee has decided not to list Kakadu National Park on the 'in danger' list. The decision follows lobbying from environmental groups, traditional owners, Opposition parties and Energy Resources Australia. A spokesperson for the Mirrar people, Ms Jacqui Katona, stated that the Government was required to report to the World Heritage Committee by April 2000 on how the Jabiluka Mine could proceed without damaging Mirrar cultural values. An 18 month delay before the development of the mine allows time for an inquiry into Aboriginal heritage issues and the development of a cultural heritage management plan. (*SMH, 14 July, p4*)\*

## **AGREEMENTS**

### **General**

Graeme Neate, President of the National Native Title Tribunal has urged Australian mining companies, governments, pastoralists and other land users to take advantage of new measures to settle native title issues in areas under claim. Addressing the Australian Mining and Petroleum Law Association conference Mr Neate said that new native title laws made it possible to strike legally binding land use agreements which allowed developments to proceed while protecting the interests of native title holders. The NNTT has prepared a kit to assist companies work out what sort of agreement suited their needs and to ensure any agreement complied with the law. The kits are available through the Tribunal. (*NNTT Media Release, 29 July*) (See recent publications section, this issue).

Four Indigenous Land Use Agreements have been registered nationwide and another four agreements have been lodged for registration. (*NNTT Media Release, 25 Aug*)

### **New South Wales**

NSW Mineral Resources Minister Eddie Obeid had advised companies to negotiate Indigenous Land Use Agreements as the long-term answer to the future of mining land where native title exists. (*Newcastle Herald, 3 Aug, p18*)

### **Victoria**

Victoria's first Indigenous Land Use Agreement has moved into a three month public notification period to enable any potential native title holders to the area, who may not have been identified, a chance to come forward. The agreement is

between BHP Petroleum Pty Ltd, the Framlingham Aboriginal Trust, the Kirrae Whurrong Native Title Group and the Victorian Government and covers land access for the proposed Minerva Gas Field Development in south-west Victoria. The agreement provides heritage protection and management, employment opportunities and financial benefits to local Aboriginal people and does not extinguish native title. *(NNTT Media Release, 14 July)\**

## **Queensland**

An Indigenous Land Use Agreement between Telstra Corporation and the Ewamian People has been lodged with the NNTT. The agreement covers an area of 4 hectares near Forsayth and Georgetown in Far North Queensland which is the area of the current native title determination application of the Ewamian people (QC99/13). *(QNT, July 1999, p1)*

A confidential agreement has been reached between the Kangoulu and Ghungalu People in Central Queensland to a right to negotiate process in relation to the Togara North mine project. *(QNT, July 1999, p1)*

The NNTT has registered Queensland's first two Indigenous Land Use Agreements under the new Federal native title laws. The agreements are between four local Aboriginal groups, the Queensland Government, Mackay Surf Life Saving Club and Mackay City Council. They relate to the construction of a new surf lifesaving club and the gazettal of land for a park in the Mackay Harbour Beach area of North Mackay. The agreements were placed on the Register of Indigenous Land Use Agreements after a 3 month notification period had passed without any formal response from other native title applicants. *(NNTT Media Release, 25 Aug)*

## **Northern Territory**

The Northern Territory's first (and Australia's second) Indigenous Land Use Agreement has been given final approval by the NNTT. No objections were received during the three month public notice period. The agreement involves the Jawoyn native title holders agreeing to the extinguishment of native title rights and interests over land known as the 'Venn Blocks' and 'Warlangluk' to enable subdivision of the land by the Northern Territory Land Corporation for horticultural projects. In return the Warlandluk Aboriginal Corporation received freehold title to a 16 hectare site to be used by the Kalano Community Association for an alcohol rehabilitation facility and other community purposes. *(NNTT Media Release, 11 July)\**

## MARKING PROGRESS ON NATIVE TITLE

Tony McRae - Manager Research, National Native Title Tribunal<sup>1</sup>

One of the constants of native title during the past seven years has been the universal demand for an understandable guide - of accurate and accessible information on the nature of native title, its origins, and its place in the Australian legal and social landscape.

Continuing uncertainty and anxiety on all sides appears to have as much to do with the discomfort of making our way through unfamiliar territory as the subject matter itself<sup>2</sup>. We would be far happier if there were historical or international precedents to provide even a faded sketch of the lay of the land. It's a rather unsurprising reminder that we don't much like treading where there is little or no evidence of a track.

### Mapping tracks

In local communities and industries throughout Australia there is evidence of the effort to understand the strategies and skills necessary for negotiating and settling native title agreements. In many cases, communities and industries are doing it for themselves - from the Yandicoogina agreement for a new iron ore mine, to the Yalanji pastoral deal and South Stradbroke Island local government agreement, the essential step of building relationships is being addressed<sup>3</sup>.

This progress with agreement making was marked, in part at least, by the outgoing President, Justice Robert French, in the December 1998 release of a 5 year retrospective on the work of the Tribunal<sup>4</sup> (and by extension, everyone with an interest/involvement in native title). The Retrospective included the results of a Tribunal audit of known agreements, confirming more than 250 native title-related agreements and nearly 1100 future act agreements had been reached in Australia since 1994.

What was also revealing is that prior to the 1998 amendments to the Native Title Act there had been a discernible trend towards agreement making. The amendments debate saw a decline in the number of agreements being made - hardly surprising behaviour given the anticipated impact of the amendments being considered by the Parliament. It should also be of little surprise that agreement-making culture is staging a comeback, although now within a resources sector under the additional pressure of falling commodity prices.

### Planning the journey

We had been talking for quite a long time and I couldn't point to a single achievement. I asked a couple of Aboriginal friends for help and they told me to be patient. They assured me dividends would accrue but they said it might take ten years.<sup>5</sup>

Experience tells us that developments in unfamiliar environments are often best undertaken as joint venture partnerships<sup>6</sup>. This has been the approach of many participants in native title, and is also the approach of the Tribunal in its work in assisting broader community understanding of native title and mediation processes. Three joint ventures now underway and scheduled to provide results within the next six months, represent major strategic efforts by the Tribunal to research native title and communicate findings to the community.

### **Working with native title**

This project emerged from the work of the Western Australian Municipal Association and Council for Aboriginal Reconciliation 1997 publication of the sector-targeted booklet, *Working with Native Title*. In what can now be viewed as a fairly harsh environment, the WAMA initiative was an important step in putting factual and accessible information on native title into the public domain. This has since been built on through an ATSIC, NNTT and ALGA partnership, resulting in a sell-out how-to manual *Working out Agreements*, and the preparation of the second edition of *Working with Native Title* and its linked national program of regional, customised workshops, due to commence before the end of the year.

### **Teacher training in native title**

A joint venture project with Curtin University's Centre for Aboriginal Studies is presently developing a native title unit for pre-service and in-service teacher training. The Tribunal President, Graeme Neate and the Deputy Vice Chancellor of Curtin University, Lesley Parker, launched the project for Aboriginal Studies in mid-July with piloting of the training scheduled for February 2000.

Graeme Neate said it was important that teachers understood the history and legal principles underpinning native title laws in Australia.

It's vital that teachers have accurate and factual information about native title as they are educating the future generations for whom native title will be taken for granted as part of the social and legal fabric of society. Teachers are an important group of professionals in regional and metropolitan communities who can play a role in raising awareness of native title issues which many miners, pastoralists, local governments, indigenous people and other landholders may have to face.<sup>7</sup>

### **Governance structures for Indigenous Australians**

An Australian Research Council project with the Tribunal acting as industry partner to the University of NSW, Murdoch University and Macquarie University now in its last year. The Tribunal's contribution includes research on Prescribed Bodies Corporate (PBCs) - the bodies required by the Act to hold (or act as agents for) common law native title following a determination of native title. Mr

Christos Mantziaris and Dr David Martin have been engaged by the Tribunal to draft two reports:

- *Native Title Corporations: A Legal and Anthropological Analysis of Institutional Design*; and
- *A Guide to the Design of Native Title Corporations*

Both works are presently subject to peer review and will be published early next year.

### **Signposts along the way**

The Tribunal's primary administrative and mediation functions are complemented by its response to community short and long-term information needs. It is a role that requires continual critical reflection to ensure the Tribunal's impartial leadership on native title is not threatened. As industries and communities continue to develop their own ability to recognise and protect native title<sup>8</sup> the Tribunal's strategic partnerships in research and community education will play a vital role in signposting the path.

The Tribunal's and others' research work is now being posted on a research information exchange on the Tribunal homepage. It has proved a popular service – averaging more than 700 web page hits per month in the first half of this year. The research information exchange has generated inquiries about research development from people throughout Australia as well as contacts from Canada, Germany, the USA and UK. If you're involved in any form of research around native title we'd be happy to hear from you via the listed web page research site contact!<sup>9</sup>

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<sup>1</sup> This is the work of the author and should not be interpreted as reflecting the policy of the National Native Title Tribunal.

<sup>2</sup> See P Lane & T McRae, *Sustainable Partnerships*, in *In the wake of Wik*, NNTT, 1999 and P Lane & T McRae, *Reinventing old relationships*, NNTT, 1997.

<sup>3</sup> Ibid.

<sup>4</sup> *Native title: a five year retrospective 1994 - 1998*, NNTT, 1999.

<sup>5</sup> Robert de Crespigny in *The Age*, 21 August 1999, p5.

<sup>6</sup> See also Henry Reynold's discussion in *Why Weren't We Told?* on the role of Aboriginal people in European exploration and occupation of Australia.

<sup>7</sup> Graeme Neate, 20 July 1999, *NNTT press release*.

<sup>8</sup> *Native Title Act 1993* s.3.

<sup>9</sup> The NNTT webpage can be found at [www.nntt.gov.au](http://www.nntt.gov.au)

## Recent publications

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

***Indigenous Law Bulletin: Indigenous Land Use Agreements Issue*** Indigenous Law Centre, Faculty of Law, University of NSW. The June 1999 issue of the Indigenous Law Bulletin (Volume 4, Issue 21) is dedicated to the discussion of Indigenous Land Use Agreements and should prove invaluable to anyone considering making an ILUA. Graeme Neate, President and Jo-Anne Byrne, Legal Officer of the National Native Title Tribunal explain the statutory framework and administrative compliance procedures which are contained in the Native Title (Indigenous Land Use Agreement) Regulations 1998 (Cth). Experienced practitioners offer constructive advice on how to negotiate successful agreements. The Indigenous Law Bulletin can be ordered from the Indigenous Law Centre, Faculty of Law, University of NSW, Sydney, NSW 2052. Telephone (02) 9385 2256, fax (02) 9385 1266, email [ilc@unsw.edu.au](mailto:ilc@unsw.edu.au) (*QNT, August 1999, p3*)

***Making Indigenous Land Use Agreements*** The National Native Title Tribunal has produced a series of four guides to making Indigenous Land Use Agreements (ILUAs). The guides are as follows:

- Alternative procedure - Application booklet - includes a practical guide to getting your alternative procedure agreement registered
- Area agreements - Application booklet - includes a practical guide to getting your area agreement registered
- Body corporate agreements - Application booklet - includes a practical guide to getting your body corporate agreement registered
- Short Guide to ILUA registration - What you must do before your ILUA can be accepted for registration.

The guides are aimed at ILUA applicants. The application booklets contain an application form and a detailed step by step guide to completing the application to ensure that it complies with the requirements for the particular type of ILUA. Copies of the guides are available from the National Native Title Tribunal and on the Tribunals website at [www.nntt.gov.au](http://www.nntt.gov.au) (*QNT, August 1999*)

***Justice & Equity For All: Local Government and Indigenous Partnerships***, Australian Local Government Association and ATSIC, 1999.

A simplified version of the ALGA's Working Out Agreements, this brochure presents twenty-two brief descriptions of community projects that involved Indigenous Australians in the functioning of local government. In a number of

cases, this involvement is surprisingly simple. Subiaco, for instance, re-named a park and a room in their local history museum to reflect the traditional owners of the area. Others are far more complex. Redland Shire Council and the Quandamooka Land Council have been negotiating a native title claim on North Stradbroke Island (Minjerribah) and surrounding seas. All the cases presented emphasise the positive effects of 'open communication, respect, and a real desire to improve relations within their communities.'

The introductory material describes the Association's policy on Indigenous issues, ATSIC's local government policy and the shared policies which are the basis for a process of 'understanding, commitment and reform' in which different communities follow different paths to achieve similar ends. As well as providing examples of programs local councils have devised, the conclusion of the booklet presents a checklist of questions intended to begin or further the process of awareness, participation, planning agreements and service delivery.

***Guide to Compiling a Connection Report*** The Guide has been designed by the Historical and Anthropological Unit, Native Title Services, Queensland Department of the Premier and Cabinet and aims specifically to help those involved in compiling connection reports. Connection reports are presented to the Queensland Government as part of the mediation process carried out under the Commonwealth *Native Title Act 1993* by native title applicants seeking recognition that they are the traditional owners of particular areas and are used to prove continued connection with those areas. The guide lists sources of relevant material and provides some guidance on research materials and oral history research. For further information contact Val Donovan on (07) 3227 7994 or Colin Sheehan on (07) 3227 7964.

#### **BOOK REVIEW by Sandie Suchet\***

***Land claims and national parks: The Makuleke experience*** by Dr Bertus De Villiers<sup>#</sup> (published by HRSC Publishers, Pretoria) is a useful book for anyone involved in interactions between indigenous communities and state authorities including representative bodies, resource managers, academics, researchers, lawyers, policy makers and government workers, especially those directly involved in potential or actual resource co-management situations. The book outlines the processes involved in negotiating the Makuleke Land Claim over a portion of Kruger National Park under the South African *Restitution of Land Rights Act 22 of 1994*. It embeds land claims/restitution in South Africa in an international legal context, and considers the right to, and application of, joint management of national parks with a comparative review and analysis of Australian co-management experiences. It is useful to get the perspective of one of the South African National Park's lawyers to gain an understanding of

the government's perspectives. It is also extremely useful for people working in this area to have the full agreement re-produced in the text as an appendix. This allows for critique of the agreement beyond De Villiers' own interpretations and insights.

However, it is necessary to contextualise the book within De Villiers experiences. Apart from the intriguing footnotes, the book does not engage with the perspectives and experiences of the other parties involved in the negotiations, in particular the Makuleke community. The reader is tantalised by the odd reference to what the community negotiated away and feels that there is more to the story. This may be forthcoming in other publications or it may be necessary to directly interact with the community for these insights.

As background to a negotiation process for co-management arrangements the book is a potentially powerful tool for gaining ideas and invoking international standards in negotiation processes. Keeping it in perspective as part of broader processes makes follow-up investigations, outlining and analysing the actual effectiveness of the implementation processes from multiple vantage points, important for those wanting to build on the Makuleke experiences.

\* Sandie Suchet is a PhD Student in the department of Human Geography at Macquarie University.

# Dr Bertus De Villiers is currently working as the Manager: Native Title with the Goldfields Land Council in Kalgoorlie, Western Australia. He previously worked with South African National Parks as General Manager: Legal Services and as Head of the Centre for Constitutional Analysis of the Human Science Research Council in Pretoria, South Africa.

### **Native Title Research Unit publications**

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

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

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

***Working with the Native Title Act: Alternatives to the Adversarial Method***  
Edited by Lisa Strelein, 1998. (\$9.95)

**Regional Agreements: Key Issues in Australia - Volume 1, Summaries.**  
Edited by Mary Edmunds, 1998. (\$16.95)

**A Sea Change in Land Rights Law: The Extension of Native Title to Australia's Offshore Areas** by Gary D. Meyers, Malcolm O'Dell, Guy Wright and Simone C. Muller, 1996. (\$12.95)

**Heritage and Native Title: Anthropological and Legal Perspectives**  
Proceedings of a workshop conducted by the Australian Anthropological Society and AIATSIS at the ANU, Canberra, 14-15 February 1996 (\$20)

**The Skills of Native Title Practice** Proceedings of a workshop conducted by the NTRU, the Native Title Section of ATSIC and the Representative Bodies, 13-15 September 1995 (\$15)

**Anthropology in the Native Title Era** Proceedings of a workshop conducted by the Australian Anthropological Society and the Native Title Research Unit, AIATSIS, 14-15 February 1995 (\$11.95)

**Claims to Knowledge, Claims to Country: Native Title, Native Title Claims and the Role of the Anthropologist** Summary of proceedings of a conference session on native title at the annual conference of the Australian Anthropological Society, 28-30 September 1994 (out of print)

**Proof and Management of Native Title** Summary of proceedings of a workshop conducted by the Native Title Research Unit, AIATSIS, on 31 January-1 February 1994 (\$9.95).

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

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

- No. 29: ***The compatibility of the amended Native Title Act 1993 (Cth) with the United Nations Convention on the Elimination of All Forms of Racial Discrimination*** by Darren Dick and Margaret Donaldson
- No. 28: ***Cultural Continuity and Native Title Claims*** by Ian Keen
- No. 27: ***Extinguishment and the Nature of Native Title, Fejo v Northern Territory*** by Lisa Strelein
- No. 26: ***Engineering Unworkability: The Western Australian State Government and the Right to Negotiate*** by Anne De Soyza
- No. 25: ***Compulsory Acquisition and the Right to Negotiate*** by Neil Löfgren

- No. 24: *The Origin of the Protection of Aboriginal Rights in South Australian Pastoral Leases* by Robert Foster
- No. 23: *'This Earth has an Aboriginal Culture Inside' Recognising the Cultural Value of Country* by Kado Muir
- No. 22: *'Beliefs, Feelings and Justice' Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples' Rights in Canada* by Lisa Strelein
- No. 21: *A New Way of Compensating: Maintenance of Culture through Agreement* by Michael Levarch and Allison Riding
- No. 20: *Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime* by J. C. Altman

**Regional Agreements Papers published in 1998 and 1999**

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

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