



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

NATIVE TITLE NEWSLETTER

May and June 2000

No. 3/2000

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

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

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List of abbreviations

Note: Where an item also appears in other newspapers, etc, an asterisk () will be used. People are invited to contact the Native Title Research Unit at AIATSIS if they want the additional references. The NTRU will try to provide people with copies of recent newspaper articles upon request.*

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

NEWS FROM THE NATIVE TITLE RESEARCH UNIT

Sadly, the big news from the Native Title Research Unit in this issue is that visiting research fellow Kado Muir has left the unit and Canberra to return to work in his community in Leonora, Western Australia. Kado made an enormous contribution to the work here in his roles as Manager of the unit, and as Acting Deputy-Director of the Research Program. During his time here the unit benefited from his critical analysis of native title issues, grounded in his knowledge of native title as experienced in communities throughout the Western Desert. His work focused on Aboriginal perspectives in native title and resource management. We will miss his regular contributions to the Newsletter and we hope to entice an occasional commentary from the Goldfields. We wish him all the best.

New NTRU Publications

The Native Title Research Unit has produced two booklets in the AIATSIS Discussion Paper series. They will be distributed using the same address list as the Unit's Issues Papers. They are free for the asking through the Research Section (02 6246 1157).

The community game: Aboriginal self- definition at the local level by Frances Peters-Little (DP No. 10) is the result of her recent fieldwork in Walgett. In it she encourages 'readers to examine popular notions of Aboriginal "communities" and their historical development'. Examples from her fieldwork illustrate that the process of Aboriginal self-definition occurs at the local level and that the local Aboriginal community organisations are better situated than governmental agencies to establish the distinctive features and history defining communities.

Negotiating major project agreements: The 'Cape York model' by Ciaran O'Faircheallaigh (DP No. 11) is based on eight years experience with the Cape York Land Council. In a staged approach the model seeks to put traditional owners and community members in a position to make informed decisions and to minimise costs while maximising financial and non-financial returns. Advantages for the developers are the model's transparency and inclusive nature which diminish uncertainty and mitigate against the need for remediation. Following the description of the model, O'Faircheallaigh discusses resources, informed consent, timing and community involvement.

Issues Papers volume 2 numbers 4 and 5 were also published during the period. ***Bargaining on more than good will: Recognising a fiduciary obligation in native title*** by Larissa Behrendt provides an overview of the possibilities of the Australian judiciary finding such an obligation based on Canadian jurisprudence. ***Limitations to the recognition and protection of native title offshore: the current 'accident of history'*** by Katie Glaskin discusses native title rights of ownership and access to the sea following the Croker Island decision which limited statutory procedural rights.

Native title in perspective: Selected papers from the native title research unit 1998-2000, edited by Lisa Strelein and Kado Muir, is a compilation of papers collected in the turbulent period immediately before and after the passage of the Native Title Amendment Act. It is an account of the key issues considered at a series of seminars and workshops organised by the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies. The papers reflect the uncertainty of the period and some may now be superseded by case law or related developments.

The intention of this publication is to give some coverage of the ideas, issues and concerns which were current during that period. The 18 papers discuss the politics of the native title amendment act process, women and native title, mediation and negotiation, the registration test, maps and boundaries, national and international human rights issues, and Aboriginal title in Canada and New Zealand. RRP \$21.50 ISBN 0 85575 359 5

CURRENT ISSUES

CERD and the Native Title Amendment Act 1998

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund have released the report of their 'Inquiry Concerning the Consistency of the *Native Title Amendment Act 1998* with the *Convention on the Elimination of All Forms of Racial Discrimination*'. The report, and the dissenting report of the non-government members of the Committee, are substantial and set out the opposing views regarding the CERD Committee's criticisms of Australia's treatment of native title under the 1998 amendments.

The report of the government members reiterated the government's argument that the *Native Title Act 1993*, as amended, is consistent with Australia's international obligations, in particular its obligations under the Convention on the Elimination of Racial Discrimination. The report concedes that equality, under international law, incorporates ideas of difference in treatment to achieve substantive or real equality where those differences in treatment are not arbitrary and are justified according to the distinctive characteristics of the group or individual. The report argues, however, that it is for Parliament to decide whether substantive equality is to be provided and if so what this will encompass. That is, substantive equality is presented in the report as an optional addition to formal equality. Moreover, the report argues that consent of groups affected by substantive equality measures, or indeed special or affirmative measures, is not required under international law.

The report relied upon the notion that there is a margin of appreciation in the implementation of international obligations and that 'novel' areas of law, such as native title, attract a wider margin of appreciation in this regard. Therefore, the report argues, that it is a matter for national institutions to best determine the need for substantive equality measures and, as has been repeatedly argued by the government, to determine the balance between competing interests. In relation to the four contentious sets of provisions specifically identified by the CERD Committee, the report suggested that while on the surface these provisions may appear discriminatory, they are justified because they: balance

competing interests; they are within the allowed margin of appreciation; there is little or no impact on native title; and there are countervailing measures for any effect on native title, including the provision of compensation.

Relying almost exclusively on submissions by the Attorney General's department and government submissions to the CERD Committee, the report supported government criticisms of the CERD Committee's finding, arguing that the Committee appeared to consider only the amendments and that the Native Title Act, with its remaining beneficial provisions, should be considered as a whole. The report argued that the Committee should not have considered the comparison between the position of Indigenous peoples rights under the amended Act and under the original Act in reaching its conclusions that the government had treated native title in a discriminatory manner in the 1998 amendment process.

The report supports government arguments further, saying that in balancing the competing interests of groups in society, the Committee should have examined the position of Indigenous peoples rights in relation to the interests of others, and in so doing would have found that the amended Act strikes a balance between them. The report points to the equivalent protection provided to native title and 'comparable interests', and notes the 'significant benefits' provided to native title holders that are not enjoyed by non-indigenous title holders.

The report argues that the consultation process leading to the passage of the Amendment Act was extensive. Moreover, Indigenous peoples had enjoyed equal participation in the public policy development process in relation to the Amendment Act. The report therefore concludes that further discussion about the Act at this stage would not be helpful.

The non-government members, in contrast, concluded that the Native Title Act as amended is racially discriminatory and in breach of Australia's international obligations particularly under CERD. They relied on the broad range of submissions from other government departments and government agencies, native title bodies and Indigenous organisations, and legal practitioners and academics to argue that this conclusion was supported by the weight of informed opinion demonstrated in submissions to the inquiry.

The non-government members' report was also launched, by Elizabeth Evatt, as a separate volume entitled 'Undertakings Freely Given: Australia's International

Obligations to Protect Indigenous Rights'. The report contains a comprehensive discussion of the issues raised by the CERD Committee's criticisms and makes a number of recommendations for action to address the Committee's concerns.

The minority report identifies a positive obligation upon nation states to ensure true and effective equality in the enjoyment of human rights and to ensure that, in relation to Indigenous peoples, no decisions directly affecting their rights are taken without their informed consent. The report suggests that the Native Title Act requires further amendment to ensure that it is non-discriminatory and in compliance with Australia's international obligations.

The minority report also expresses concern for Australia's international reputation, particularly in relation to human rights, which may have been damaged by the government's attitude toward the CERD Committee and its international obligations. The report recommended that the government acknowledge the competence and expertise of the CERD Committee and other UN expert bodies and the right of individuals and groups to bring alleged breaches of the international obligations to the attention of such committees.

They recommended that the government amend not only the Native Title Act but also their approach to the substantive and procedural implementation of the Act through responses to court decisions and practical experiences of the Act.

The non-government members' report also recognises that native title is separate from the 'extant traditional title' emerging from, and contained within the laws and customs of Indigenous people. They go further to recommend the enactment of legislation to recognise and respect that fact, regardless of developments in the courts from time to time. They also recommend that the government acknowledge that native title legislation is only one early element of the process for 'a lasting settlement or accord between Indigenous and non-Indigenous Australians'.

The official report (which also contains the non-government members' report) is available on-line at

http://www.aph.gov.au/senate/committee/ntlf_ctte/report_16/index.htm

Or from the Secretary to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Parliament House Canberra.

Lisa Strelein
Native Title Research Unit, AIATSIS

Visit by Nunavut Sivuniksavut

On Tuesday 9 May AIATSIS was visited by the Nunavut Sivuniksavut student group from the new territory of Nunavut in Canada. The 18 students and 3 instructors showed a short video and discussed issues of cultural maintenance and survival with Institute staff. The students are enrolled in a special tertiary program based in Ottawa. They have studied their own history (colonisation and de-colonisation), contemporary Inuit organisations and issues, the efforts of their leaders to negotiate the largest land rights settlement in Canada, and the creation of the new political territory of Nunavut. The program, called Nunavut Sivuniksavut ('Nunavut is our future') is sponsored by various Inuit organisations and the Canadian government. More information about Nunavut can be found at <http://www.gov.nu.ca/>

The students illustrated their language and writing by providing us with a translation of our names and the name of the Institute:

Aastuailijan pilirijii t nunaqaqaatunut amma Tuuris Qikiktani Ilinniaqtut
Australian Institute of Aboriginal and Torres Strait Islander Studies

NATIVE TITLE IN THE NEWS - MAY & JUNE 2000

National

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund has tabled its 16th report in Parliament. The inquiry required the Committee to consider whether the amended *Native Title Act 1993* is inconsistent with Australia's obligations under the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD). The report concluded that the Native Title Act is not racially discriminatory. (*Media Release, 28 June*)* (see report page 4)

New South Wales

Five new members have been appointed to the National Native Title Tribunal in New South Wales. Ms Jennifer Stuckey-Clarke, Dr Gaye Sculthorpe and Ms Ruth Wade have been appointed as part-time members and Mr John Sosso and Mr Bardy McFarlane have been appointed as full-time members. (*NTN NSW, June 2000, p1*)

On 29 April 2000 eligible bodies were invited to apply for recognition as the Native Title Representative Bodies for the New South Wales, Australian Capital Territory and Jervis Bay areas. This is the second invitation issued in relation to New South Wales. There are currently no representative bodies for the ACT and Jervis Bay areas. The closing date for applications was 30 May 2000. (*NTN NSW, June 2000, p4*)

New South Wales Minister for Aboriginal Affairs, Dr Andrew Refshauge, has released a Discussion Paper for the Review of the *Aboriginal Land Rights Act 1983*. The paper aims to facilitate discussion on the future direction for Aboriginal Land Councils in NSW and on whether the current Act meets the needs, both current and future, of Aboriginal communities. Copies of the discussion paper are available from the Department of Aboriginal Affairs on 02 9290 8700 or from the website at: www.daa.nsw.gov.au (*NTN NSW, June 2000, p4*)

The deeds and title to a former traditional camping ground, 'Bulgandramine' at Peak Hill in western New South Wales, have been handed back to the Bogan River Wiradjuri people by the Indigenous Land Corporation. (*Koori Mail, 28 June, p19*)*

Queensland

The Gurubana Gunggandji people of Yarrabah in far north Queensland, who have native title claims on about 840 square kilometres of the Great Barrier Reef, can now lodge a complaint against tourism companies or commercial fishermen if they believe their activities are harming the Reef. This follows a successful appeal in the Federal Court. The Gurubana Gunggandji claimed that the Great Barrier Reef Marine Park Authority was permitting tourism operators and others to use sections of the Reef without consulting native title holders. (*Aus, 12 May, p6*)

Carpentaria Land Council has been recognised as the Native Title Representative Body for the Queensland west area. The area covered by the Land Council has been increased to include, as well as its original area, an area roughly from Mt Isa to the border with South Australia and from the Northern Territory border east to around Julia Creek. The announcement was made by Aboriginal and Torres Strait Islander Affairs Minister John Herron. Senator Herron stated that the recognition process was continuing for the Far North, Central and Southern areas of Queensland. (*Koori Mail, 14 June, p10*)

Queensland's native title legislation has been approved by the Federal Attorney General. The legislation now must be approved by the Senate. The Australian Democrats have formally moved to oppose the legislation on the basis that it does not represent mutually acceptable outcomes for all parties. Senator Woodley, Democrats' Indigenous Affairs spokesman, stated 'So far it appears that State governments are attempting to use State native title regimes based on the Wik legislation to water down native title rights. Reducing native title rights will not promote prosperity and racial harmony. We can only proceed with real reconciliation by recognising the legitimate rights of native title holders and proceeding in good faith on that basis.' (*Koori Mail, 28 June, p4*)*

The Koa people's native title application over the Castle Hill Pastoral Holding and the Bladensburg National Park in the Shire of Winton has entered the notification period. Landholders and other interest holders have three months to register as parties to the application and to be part of the mediation process. The application was lodged on 24 May 1999 in response to a non-claimant application made over the Castle Hill Pastoral Holding by the leaseholder. (*NNTT Media Release, 28 June 2000*)

The notification period for the Western Yalanji People's application #2 [QC98/39] covering two lots south of Laura and south-west of Cooktown has closed. The Federal Court is assessing the applications to become a party. (*NTN Qld, June 2000, p3*)

The notification period for the Birri Gubba people's application [QC97/19] has closed. The application covers the Cape Upstart National Park in North Queensland. The NNTT is waiting the finalised party application details from the Federal Court. (*NTN Qld, June 2000, p3*)

South Australia

A protest was held at South Australia's Parliament House against the State Government's proposed native title legislation. Protesters called on state MPs to reject the legislation which they say will extinguish areas of native title. (*Age, 1 May, p4*)

The South Australian State Government is seeking a court ruling that native title was extinguished 2 years before white settlement in the State. In the Yangkuntjatjarra People's De Rose Hill native title claim, before the Federal Court, the State is arguing that the Colonisation Act, passed by the British

Parliament in 1834, extinguished all Aboriginal claims to land. De Rose Hill is a pastoral lease that straddles the Stuart Highway, 80 kilometres south of the Northern Territory border east of the Pitjantjatjara lands. (*Age*, 29 May, p4)*

Western Australia

Independent MLC Mark Nevill, who resigned from the State ALP last year, has taken up a petition to have the Senate support passage of the *Native Title (State Provisions) Act 1999* to set up a State Native Title Commission. The petition asks that ALP members in the Western Australian Parliament support a State-based Native Title Commission to deal with future Acts and a right-to-negotiate regime over non-exclusive possession leases such as pastoral leases. Western Australian Opposition leader Geoff Gallop and Kalgoorlie MLA Megan Anwyl are encouraging the Federal ALP to disallow the State native title legislation in the Senate. (*KM*, 2 May, p5)*

The National Native Title Tribunal began notification of 11 new and amended native title applications in regional Western Australia. Advertisements have been placed in newspapers giving landholders and other interest holders three months to register as parties if they want to join in the mediation. The applications cover land, inland waters and some areas of sea in the Pilbara, Kimberley, Gascoyne, Mid West and Goldfields and all exclude private freehold land which is not claimable. (*NNTT Media Release*, 17 May)

The Widji native title claim, covering an area from Widgiemooltha to Ora Banda, including Kambalda, Kalgoorlie-Boulder and Coolgardie, has entered the notification period. Stakeholders have three months to register their interest in the Goldfields native title claim. (*KM*, 18 May, p3)

The Federal Court in Sydney has dismissed an appeal against a native title claim in Western Australia. The WA Government appealed against an earlier ruling that allowed the Maduwongga claim to pass the native title registration test. (*ABC News*, 19 May 2000)

Members of the Purnululu Aboriginal Corporation representing 400 native title claimants in the east Kimberley have accused the Western Australian Government of backing out of a binding legal agreement to allow them to live in their customary homeland. The Corporation members protested when State Environment Minister Cheryl Edwardes visited the Purnululu National Park to open a tourist centre. Mrs Edwardes said that joint Aboriginal-CALM management of the National Park had been delayed because of differences

between the Purnululu People and Mindi Mindi People who also claim to speak for the park. *(WA, 19 May, p13)*

A temporary campsite is to be established on Yarri Road in Kalgoorlie, for visitors from the Western Desert region. The camp development has been approved by native title parties and mining tenement holders. *(KM, 25 May, p7)*

The Western Australian Government has spent more the \$16 million on native title litigation in the last seven years. Premier Richard Court said that the fault is with the unworkability of the Federal native title laws. *(WA, 27 May, p59)*

National Native Title Tribunal President Graeme Neate stated the while other States had 'embraced mediation' the Western Australian State Government had 'been reluctant'. Western Australia has only one claim that has come close to a mediated outcome and no Indigenous Land Use Agreements have been registered. New South Wales has resolved two claims under mediation, Queensland has resolved four claims under mediation and six Indigenous Land Use Agreements have been registered in New South Wales, Queensland and Victoria. Mr Neate stated that mediation in Western Australia is difficult due to the number of overlapping claims. *(WA, 2 June, p14)*

The National Native Title Tribunal has contacted residential, commercial and community purpose leaseholders in the Goldfields area to reassure them that their leases will not be affected by the Widji native title application. Mr Andrew Jagers, NNTT State Manager, said that the tenure information obtained from the State Government for the Widji application did not identify or exclude such leases so the Tribunal took a cautious approach and 'notified everyone'. There is now greater precision in identifying specific lease types and the Tribunal will not be notifying these people in the future stated, Mr Jagers. *(NNTT Media Release, 7 June)*

Three Native Title Representative Bodies have been recognised in Western Australia. The Kimberley Land Council has been recognised for the Kimberley Area, the Yamatji Land and Sea Council for the Geraldton area and the Ngaanyatjarra Council for the Central Desert area. The announcement was made by Aboriginal and Torres Strait Islander Affairs Minister John Herron. Senator Herron stated that the recognition process was continuing for the Pilbara, Goldfields and South West areas. *(Koori Mail, 14 June, p10)**

The land manager of Delta Gold, a major Goldfields mining company, stated at a native title conference in Kalgoorlie-Boulder that a regional agreement would free native title stakeholders from ongoing negotiations over future Act matters. He said the right to negotiate process had encouraged claimants and companies to seek simple, quick solutions to their needs. Keynote speaker at the conference, Pat Dodson, stated that reaching an agreement at a regional level was crucial for land use but there also had to be 'certainty and security for Aboriginal people'. (*KM, 17 June, p3*)

The Western Australian Association of Mining and Exploration Companies have welcomed a move by the State Government to process a backlog of mining and exploration lease applications. Mining applications will therefore not have to go through Federal or State native title legislation stated Premier Richard Court. The action was based on the Full Federal Court decision in the Miriuwung-Gajerrong appeal case which ruled that native title had been extinguished over most of the land, including the Argyle and Ord River regions said Mr Court. An appeal to the High Court has been lodged against the decision. 'As the law currently stands, native title in Western Australia has been extinguished by enclosed and/or improved pastoral leases or parts of leases and mining and general purpose leases granted under the *Mining Act 1978*,' Mr Court said. (*KM, 19 June, p3*)*

The Federal Court has begun hearing a native title application over 27,000 square kilometres of land south of Broome. The Karajarri people's claim covers land from the south Kimberley coast into the Great Sandy Desert. (*WA, 20 June, p29*)*

Northern Territory

The Dungalaba Clan's native title claim over approximately 18 square kilometres of land in and around the East Arm Port has entered the notification stage. Interested parties now have three months to lodge their application with the Federal Court. (*Northern Territory News, 4 May, p6*)

Nearly 8,000 hectares of the Rockhampton Downs cattle station, 100 kilometres north east of Tennant Creek, have been handed back to the Warumungu traditional owners. (*Ad, 14 June, p15*)

APPLICATIONS

National

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

The following decisions are listed for May and June 2000.

Muluridji People	accepted	Naaguja Peoples	accepted
Wahlabul People #1	abbreviated	Gundungurra #6	accepted
Wadi Wadi	accepted	Bunjalung People (Tabulam) #1	
Bradshaw Station	accepted	(amended 22/06/00)	accepted
Dangalaba 1	accepted	The Wahlabul People #2	not accepted
Ngadjon-Jii People	accepted	Dangalaba 7	accepted
D Collard and S Collard	abbreviated	Gundungurra #2	accepted
Donald and Sylvia Collard	abbreviated	Gundungurra #4	accepted
Donald & Sylvia Collard	abbreviated	The Githabul Peoples	accepted
Noongar people	abbreviated	Bandjalang People #2	accepted
Gangulu People		Dangalaba 8	accepted
(amended 7/6/00)	accepted	Gundungurra #5	accepted
Badjubara People		Wom-Ber (amended	
(Combined Application)	accepted	03/07/2000)	not accepted
Wajarri Elders		Ngunawal (NSW)	accepted
(Combined Application)	accepted	Euahlay-i # 3	accepted
Yugunga-Nya People		Euahlay-i #2	accepted
(Combined Application)	accepted		
Gia People	accepted		

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

'Abbreviated' decision indicates that the application has been tested against a limited number of conditions.

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.

New South Wales

Ngunawal (NSW) [NNTT Ref No NC00/1]

Mr Donald Thomas Bell filed a claimant application covering land and waters in the Cooma-Monaro, Cootamundra, Goulburn, Gundagai, Gunning, Harden, Holbrook, Snowy River, Tallagandra, Tumbarumba, Wagga Wagga, Yarrowlunla

and Yass local government shires and areas. The application has been referred to the NNTT for preliminary notification. (*NTN NSW, June 2000, p7*)

New South Government #55 [NNTT Ref No NN00/1]

The New South Wales Government filed a non-claimant application covering a 2,352 hectare area at Krambach. The application relates to the sale of the land by public auction. (*NTN NSW, June 2000, p7*)

Metropolitan LALC [NNTT Ref No NN00/2]

The Metropolitan Local Aboriginal Land Council filed a non-claimant application covering four lots in the Warringah local government area. (*NTN NSW, June 2000, p7*)

Dareton LALC [NNTT Ref No NN00/3]

The Dareton Local Aboriginal Land council filed a non-claimant application covering two lots located at Monak in the Wentworth local government area. (*NTN NSW, June 2000, p7*)

Queensland

Waier and Dowar [NNTT Ref No QC98/34], People of Boigu Island #2 [NNTT Ref No QC98/29] and Ugar (Stephen Islanders) #1 [NNTT Ref No QC96/61]

Three Torres Strait native title claims, the Waier and Dowar, People of Boigu Island and Ugar (Stephen Islanders), have passed the registration test. (*Torres News, 12 May, p15*)*

Kullilli People [NNTT Ref No QC00/2]

The Kullilli People have filed a claimant application in the Federal Court over an area that includes the south-west corner of Queensland with the boundary extending through the towns of Windorah, Adavale, Quilpie, Toompine, Eulo and Hungerford and along the Queensland borders with New South Wales and South Australia. (*NTN Qld, June 2000, p2*)

NOTIFICATIONS

Applications currently in Notification

Notification period is 3 months from the Notification start date.

NEW SOUTH WALES

3 May 2000

NSW Government #55 (non claimant)
NN00/1
Council of the City of Lake Macquarie
(non claimant) NN99/8

31 May 2000

Metropolitan LALC (non claimant)
NN00/2
Dareton LALC (non claimant) NN00/3

QUEENSLAND

28 June 2000

Koa People QC99/17

31 May 2000

Flinders Shire Council (non claimant)
QN00/1

WESTERN AUSTRALIA

17 May 2000

Widji People WC99/27
Ning Bingi WC99/31
Pamela Simon WC99/32
Doris Fletcher WC99/34
Madigan Thomas & others WC99/37
Arnold Franks WC98/57
Wiluna (combined application) WC99/24

Martu Idja Banyjima People WC98/62
Niyiyaparli People (combined application)
WC99/4
Palyku (combined application) WC99/16
Thudgari People WC97/95

NORTHERN TERRITORY

3 May 2000

Dangalaba 13 DC98/14
Town of Katherine DC99/2
Tennant Creek DC99/3
Pine Hill Station DC99/4
Adelaide River DC99/5

Middle Arm DC 99/14
Pine Creek DC99/15
Timber Creek DC99/16
Western Creek DC99/17
Myilly Point Larrakia DC99/18
Pine Creek No.2 DC99/19
Lot 1348 Katherine DC00/1

A non-claimant application is one made by someone who is not claiming native title themselves but who has an interest in the area which is not a native title interest, and they want the Federal Court to determine whether anyone has a native title interest in the same area.

For further information regarding notification of any of the applications listed contact the National Native Title Tribunal on 1800 640 501.

Indigenous Self- Government and Sovereignty in Canada:

Some Lessons for Australia

Grand Chief Charles Fox - Nishnawbe Aski Nation

In our last newsletter we included news of Grand Chief Charles Fox speaking at the inaugural Occasional Native Title Seminar organised in Canberra by the Canadian High Commission and the Native Title Research Unit. The seminar was held at the Australian National University on 12 April 2000. Charles Fox was elected Grand Chief of Nishnawbe Aski Nation in 1994. On June 13, 2000, Charles Fox became Regional Vice Chief of Ontario and will represent the interests of all First Nations in the province of Ontario at the regional, provincial, national and international levels. Born in Bearskin Lake First Nation in remote northwestern Ontario, Grand Chief Fox has worked for First Nations in a variety of capacities for over 20 years. Here is an extract from the seminar:

When we talk about governance, we are talking about reconciliation, about healing, about partnerships. From our perspective as First Nations people the Government of Canada is obliged to sit down with us to negotiate with us to reach governance arrangements that we so desire as First Nations people. When I talk about governance, I am talking about decolonisation.

I outline this for you so you know the context in which discussions about governance occur and so you know where we are going as First Nations in Canada. In order for our nations to be healthy, we need healthy communities, healthy families and healthy individuals. As part of this healing journey we have to take back those systems that were removed, that were outlawed, that were taken away from us. And so our governance negotiations and the process of healing and reconciliation with the government reflect this as a long-term objective.

In 1905 and 1906, we signed a treaty with the government of Canada. To this day we maintain that that treaty is based on a nation-to-nation relationship and that it is one based on friendship, coexistence, and mutual benefit. Unfortunately, that has not happened. Canada's interpretation of the treaty has been one-sided. It has interpreted the treaty as the extinguishment of Aboriginal title and thereby giving access and control over all the lands and resources in our territory to the provincial powers and federal powers. Lands and resources are part of the negotiation process. We cannot be nations without having a land base, without having access to resources to sustain our nationhood.

We are governed by a colonial piece of legislation called the *Indian Act*. There are passages in there that are still very outdated. Prior to 1951 Aboriginal people could not meet in groups of more than three people. We could not leave the reserve without having permission from the Indian agent. Still today the *Indian Act* system continues to dictate how we elect our leadership. To this day we still deal with that and we are trying to find a middle ground between traditionally leaders versus those elected under the *Indian Act*.

As Nishnawbe Aski people we are actively negotiating a governance agreement with Canada. We are currently beginning a scoping exercise of what a Nishnawbe Aski Nation (NAN) governance model may look like. There are 49 First Nations in northern Ontario which comprise Nishnawbe Aski Nation. A number of questions need to be resolved. For example, what levels of government, what kind of power, and what authority will NAN First Nations have and what will they delegate? Will there be middle layers of government? Will there be tribal governments? Will there be treaty-area governments? And, what about a regional government? What federal powers that will go with that?

The tricky part of the equation is the role of the province. The provincial government should sit at the table with us to negotiate that but at this time they are unwilling to do so. Currently they do not have an Aboriginal policy in place to participate in governance negotiations. Yet when it comes to provincial jurisdiction Ontario should be at that table. When we talk about access to resources off-reserve, when we talk about curriculum development that will affect us, we need to talk. When we talk about health services, when we talk about justice, when we talk about policing, we need Ontario at that table. The provincial government, as a potential partner in governance, is something of necessity. At this point in time they are playing hard to get.

When people speak of sovereignty there are many connotations but from our perspective as First Nations of Nishnawbe Aski Nation, we are not saying that we are going to break away from Canada. We are not saying that we want to be separate from Canada. What we believe in is a nation-within-a-nation concept. If we reach an agreement on governance in Nishnawbe Aski Nation territory, then we should have the same relationship that exists between the provincial and federal governments—the same powers, same authorities, same jurisdiction.

It is our hope that there will ultimately be a third order of government for First Nations people in Canada.

When I think of the other agreements that have been reached across Canada with First Nations I do not think that our pursuit, our objective, our vision is too far removed. We look at the *Nunavut Agreement* the Inuit recently concluded. It is a territorial government that has the same powers and authorities as the other provinces and territories. The Inuit now have authority over a vast tract of land.

The other agreement that I can speak to is the *Nisga'a Agreement* in British Columbia. The Nisga'a, I believe, have secured a land basin of about 4,000 square miles, and again it is an agreement that recognises First Nation jurisdiction, First Nation power, sub-surface mineral rights, cash compensation, and it outlines the governing powers that the First Nation will enjoy. In my opinion, its powers are equal or nearly equal to provincial powers. It is the hope of Canada and British Columbia that the *Nisga'a Agreement* will set the parameters for future agreements and negotiations in British Columbia, because British Columbia is unsundered territory. What I mean by unsundered is that there are no treaties in British Columbia, and so therefore the First Nations people in British Columbia maintain that they still have Aboriginal title to the land and that the governments of Canada and British Columbia have to negotiate with them in good faith regarding First Nations jurisdiction and governance.

I am hoping that the Aboriginal people of this country and the Government of this country will reach reconciliation, that they will find that path to reconcile the past grievances of the Aboriginal people of this continent, and that there will be best efforts, major efforts, made to develop a process of healing that is very much needed so individuals and families can regain their positive identity and sense of hope.

So to the Aboriginal people and to the Australian people, to their governments, I would say to you that you need to develop a partnership. One that is built on trust, good faith, goodwill, respect, understanding, and particularly one that is built on equality.

In Canada, 15 years ago, the bureaucrats, the politicians, would never have said the word 'self-government'. And now it is bandied about, it is coffee talk, it is lunchroom talk. Then, it was taboo yet now First Nations are in fact exercising some degree of self-government right across Canada. So it is inevitable. Self-government for Aboriginal people in Australia will happen. Perhaps not today, but in 10, 15, 20 years time Aboriginal people on this continent will have self-government.

NATIVE TITLE AND THE NET

Native title now has a significant presence on the Net. This forms an important resource, not only for those with a general interest in native title but also for those studying or working in the area.

The following list of sites is by no means comprehensive but does provide a good starting point from which to investigate native title on the Net. It is split into a number of areas depending on individual interests.

Many of the internet addresses listed have links pages to other sites of relevance. Although many links are repeated between sites, it is worthwhile having a look as some links may be unique to a particular site.

Commonwealth and State Government Departments administering Native Title

<http://www.fedcourt.gov.au> - Federal Court.

This site contains information on native title proceedings, forms for lodging applications as well as for other parts of the native title process, full text judgements, *Native Title Act 1993*.

<http://www.nmtt.gov.au> - National Native Title Tribunal.

This site is updated daily and has a timeline showing the progress of native title applications and their status, publications of relevance to native title, summaries of registration test decisions and general information on the operation of the Native Title Act 1993.

<http://www.ilc.gov.au> - Indigenous Land Corporation (ILC).

Contains comprehensive information on ILC policy regarding land acquisition as well as information on land purchases to date.

<http://www.atsic.gov.au> - Aboriginal and Torres Strait Islander Commission (ATSIC).

Provides information on ATSIC policy regarding Native Title programs as well as an issues section dealing largely with issues surrounding the amendments to the Native Title Act 1993. There is a brief overview of the *Delgamuukw v British Columbia* court case and some useful links for native title.

<http://www.premiers.qld.gov.au/about/nativetitle> - Queensland Native Title Services.

The site contains general information on native title and how to prepare connection reports.

Representative Bodies and Indigenous Organisations

<http://www.faira.org.au/niwg> - National Indigenous Working Group (NIWG).

The site contains the NIWG position paper on native title as well as information relating to the amended *Native Title Act 1993*.

<http://www.faira.org.au> - Foundation for Aboriginal & Islander Research Action (FAIRA).

This site is one of the most comprehensive Indigenous sites. It has a large issues section relating to amendments to the Native Title Act as well as information relating to the recent Committee on the Elimination of Racial Discrimination (CERD) proceedings.

General Note: Most representative body web sites have similar content in terms of information on the areas and communities they represent as well as current projects. Set out below are a few of the native title representative bodies.

<http://www.tsra.gov.au> - Torres Strait Regional Authority.

<http://www.ozemail.com.au/~nlc95> - Northern Land Council.

<http://www.cylc.org.au> - Cape York Land Council.

<http://www.clc.org.au> - Central Land Council.

<http://www.indiginet.com.au/mirimbiak> - Mirimbiak Aboriginal Corporation.

Research

<http://www.aiatsis.gov.au> Australian Institute of Torres Strait Islander Studies (AIATSIS).

The site contains research from the Native Title Research Unit, including issues papers and recent newsletters. Information on the Institute's native title research service is also available. The AIATSIS library catalogue, Mura can be accessed from this site.

<http://www.archivenet.gov.au>

This site gives links to all archives within Australia at both State and Commonwealth government levels.

<http://www.nla.gov.au> - National Library of Australia.

This site contains the National Library catalogue as well as links to other libraries around Australia.

(Note: State Libraries and Universities Libraries also have their catalogues online.)

Legal Research Sites

<http://scaleplus.law.gov.au> - The Commonwealth Attorney General's Department legal search site contains a search facility for looking up legislation and cases.

<http://www.austlii.edu.au> - Australian Legal Information Institute (AUSTLII).

One of the most comprehensive sites for legal research, this site contains a search facility for looking up legislation, court decisions and cases.

Scrutiny of the *Native Title Act 1993*

http://www.humanrights.gov.au/social_justice - Human Rights and Equal Opportunity Commission (HREOC).

The site contains reports by the Social Justice Commissioner on the operation of the *Native Title Act 1993*.

http://www.aph.gov.au/senate/committee/ntlf_ctte - Parliament of Australia.

The site contains information on the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee which reports on the operation of the *Native Title Act 1993*. Also available elsewhere on the site are the Parliamentary Hansards which are transcripts of parliamentary proceedings.

Online Articles

AIATSIS Native Title Research Unit - Please see entry under Research above.

<http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary> - Reconciliation & Social Justice Library - The site contains articles and issues papers of relevance to native title.

<http://hna.ffh.vic.gov.au/aav/lib/region3.htm> - Bibliography: Regional Agreements.

This site is hosted by the library of Aboriginal Affairs Victoria. As the title suggests, it has a number of articles on Regional Agreements.

International

<http://www.bloorstreet.com/300block/ablawleg.htm>

This site is well set out, containing links to sites of relevance to Aboriginal law and legislation in the United States, Canada, New Zealand and Australia. The links to Aboriginal resources on the net expands to South America.

Community Organisations

<http://www.antar.org.au> - Australians for Native Title and Reconciliation (ANTaR).

Contains information on the activities of ANTaR as well as media releases.

<http://www.tcgproject.org> - Towards Common Ground.

Community based group promoting local mediation and resolution of native title.

Recent publications

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

Governance Bodies and Australian Legislative Provision for Corporations and Councils, Garth Nettheim, Discussion Paper 7, Governance Structures for Indigenous Australians on and off Native Title Lands, University of New South Wales and Murdoch University, 1999.

This discussion paper looks at governance structures devised for Aboriginal and Torres Strait Islander people, apart from the structures devised for land holding and land management purposes. The paper includes substantial excerpts from legislation and reports. Nettheim steers away from arguments, preferring instead to list brief comments and discussion points at the end of each chapter. The paper is one of a series and is part of a project to develop recommendations for more effective interaction between Indigenous and non-Indigenous governance structures. For example, in order to receive title from the Indigenous Land Corporation, Indigenous people are required to incorporate under the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* (Cth), the *Aboriginal Councils and Associations Act 1976* (Cth), or other legislation. This requirement can present tensions between the requirements of Australian law and the traditional laws and authority structures of the particular Indigenous group for whom a land purchase is proposed.

Another area of tension is the design of Native Title Representative Bodies (NTRBs) to perform various functions under the Native Title Act. Nettheim asks, "What is

the likelihood that NTRBs will be capable of being constituted, and of proceeding in ways that are 'culturally appropriate' without falling foul of the 'external' accountability regime?" Other governance structures covered by the paper are the Aboriginal land councils and Aboriginal legal services of New South Wales, and Aboriginal and Torres Strait Islander bodies in general.

The discussion of governance structures for Indigenous Australians by papers such as this one is critical if the current community debate about a treaty is to be an informed debate.

A copy of this paper is available from the Indigenous Law Centre at the University of New South Wales, telephone 02 9385 2787, or from Austlii at <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/index.html>

Indigenous Governance by the Inuit of Greenland and the Sami of Scandinavia, Donna Craig and Steven Freeland, Discussion Paper 8, Governance Structures for Indigenous Australians on and off Native Title Lands, University of New South Wales and Murdoch University.

This discussion paper is an overview of Indigenous land holding and governance structures in Greenland and the Scandinavian countries with a Sami population - Norway, Sweden and Finland. Examples of contemporary arrangements between Indigenous and non-Indigenous peoples in other countries provide a contrast to Australia's historical neglect of constitutional guarantees for Indigenous Australians. This paper is in the same series as the governance discussion paper reviewed above, and is part of a project to develop recommendations for more effective interaction between Indigenous and non-Indigenous governance structures.

The establishment of the Greenland Government (previously referred to as 'Home Rule') was not benevolently granted by the Danish state, rather it was a result of the struggle by Greenlanders for increased rights. This achievement made the Inuit of Greenland the first population of Inuit to achieve a degree of self-government over a large region of the high Arctic. It has meant a relatively high degree of political autonomy, however Greenland remains partially dependent on Denmark, especially for economic support. The Sami are the native people of the area in northernmost Europe formerly known as Lapland. They have managed to maintain access to much of their traditional land in spite of living under the jurisdictions of four different governments and the ongoing debate regarding the true legal ownership of the land. The Sami have historically regarded the reindeer as the basic guardian of their culture and their efforts to maintain their reindeer herding rights have represented an important focus for the ongoing existence of Sami culture.

A copy of this paper is available from the Indigenous Law Centre at the University of New South Wales, telephone 02 9385 2787, or from Austlii at <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/index.html>

Native Title Research Unit publications

The following NTRU publications are available from AIATSIS. Please phone (02) 6246 1186, fax (02) 6246 1143 or email: sales@aiatsis.gov.au. Prices listed include postage.

Native Title in Perspective: Selected Papers from the Native Title Research Unit 1998- 2000 Edited by Lisa Strelein and Kado Muir, 2000. (\$21.50).

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

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

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

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, 1999 and 2000:

Volume 2

- No 5 ***Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'*** by Katie Glaskin
- No 4 ***Bargaining on More than Good Will: Recognising a Fiduciary Obligation in Native Title*** by Larissa Behrendt
- No 3 ***Historical Narrative and Proof of Native Title***
by Christine Choo and Margaret O'Connell
- No 2 ***Claimant Group Descriptions: Beyond the Strictures of the Registration Test*** by Jocelyn Grace
- No 1 ***The Contractual Status of Indigenous Land Use Agreements***
by Lee Godden and Shaunnagh Dorsett

Volume 1

- No. 30 ***Building the Perfect Beast: Native Title Lawyers and the Practise of Native Title Lawyering*** by David Ritter and Merrilee Garnett
- No. 29 ***The compatibility of the amended Native Title Act 1993 (Cth) with the United Nations Convention on the Elimination of All Forms of Racial Discrimination*** by Darren Dick and Margaret Donaldson
- No. 28 ***Cultural Continuity and Native Title Claims***
by Ian Keen
- No. 27 ***Extinguishment and the Nature of Native Title, Fejo v Northern Territory*** by Lisa Strelein
- 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

Our email address is:	ntru@aiatsis.gov.au
Our postal address is:	GPO Box 553, Canberra ACT 2601
Our phone number is:	02 6246 1161
Our fax number is:	02 6249 1046
Our website is located at:	http://www.aiatsis.gov.au

This newsletter was prepared by Ros Percival

Crossing Boundaries

Anthropology, Linguistics, History and Law in Native Title

A workshop organised by the Australian Anthropological Society in conjunction with the Native Title Research Unit AIATSIS .

This two-day workshop will be held on 19 and 20 September, immediately preceding the AAS conference. It will focus on conceptual and practical aspects of native title in Australia, and provide a forum for anthropologists, linguists, historians and lawyers to discuss a broad range of issues across disciplinary boundaries. This will include an examination of the relationships between these disciplines in the native title context, as well as an examination of the practical issues which arise in the involvement of these professions in legal and administrative domains. Papers are invited on any relevant theme, for example:

- commonalities and tensions in the roles of anthropologists, linguists, historians and lawyers
- communication in the native title process: translating and exchanging cultural and linguistic information
- anthropologists, linguists and historians as expert witnesses in court
- relationships between professional experts and Indigenous claimants and witnesses
- issues in the preparation of documents and reports
- the role of professional peer review processes for native title documents
- the question of advocacy in native title research
- availability of professional services to all parties in native title applications

Membership of the AAS is not a requirement of participation in the workshop. Abstracts of 300-500 words should be provided by June 30, 2000. Registration and accommodation information is available via the workshop web page:

<http://www.arts.uwa.edu.au/AnthropWWW/aas2000/workshops.htm>

It is expected that papers presented at the workshop will be published in an edited volume. Interested participants may wish to contact workshop convenors for further information:

Sandy Toussaint
Department of Anthropology
University of Western Australia
Telephone 08 9380 3884
Fax 08 9380 1062
Email: toussain@cyllene.uwa.edu.au

John Henderson
Centre for Linguistics
University of Western Australia
Telephone 08 9380 2870
Fax 08 9380 1154
Email: john.henderson@uwa.edu.au

PRELIMINARY NOTICE

Native Title and Archaeology Workshop

Sponsored by

AIATSIS Native Title Unit

&

Department of Archaeology, Flinders University

To be held in conjunction with the AIMA/ASHA Conference

November 27th, 2000; 9.00am-6.00pm

St Marks College, North Adelaide, South Australia.

Cost: \$20 for the workshop to be paid on registration; meals and accommodation will be optional extras.

Following the successful Post Contact Workshop held prior to the last AAA conference, it was agreed that a workshop using the same informal approach would be held prior to the AIMA/ASHA conference in Adelaide this year.

This notice to is bring you up to date with planning for this workshop and to ask for ideas.

It is proposed that the workshop be divided into four main sessions each addressing a specific issue and that the last hour be spent summarising the outcomes of the workshop. There is to be an invited panel and individual panel members will lead the discussion at each session of the workshop.

Panel members to date include representatives from AIATSIS Native Title Unit, Aboriginal Legal Rights Movement (South Australia) and the S.A. Indigenous Land Use Agreements Negotiation Team. It is also hoped that a representative of the Native Title Tribunal will be on the panel. Other suggestions for panel members, session topics and issues to be dealt with under issue topics are welcome.

Suggested topics to date are:

- Defining the NT Act
- Interpretations of the NT Act (including 1998 amendments)
- Negotiated Agreements
- The role of archaeology

It is expected that the program will evolve over the next two or three months and the final program will be available by September.

Enquiries and ideas to:

Pam Smith, email: Pamela.Smith@flinders.edu.au phone/fax: 08 82788172.

Early registrations to:

Bill Jeffery, email: bjeffery@dehaa.sa.gov.au Phone: 61 8 82049311

registration forms via the web and snail mail will be available shortly.