Native Title Newsletter

AIATSIS Native Title Research Unit

AIATSIS
Australian Institute of Aboriginal and Torres Strait Islander Studies

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Contents

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.

If you would like to SUBSCRIBE to the Native Title Newsletter electronically, send us an email on ntru@aiatsis.gov.au. If you wish to receive hard copy by post as well, let us know when you set up the e-mail subscription, otherwise, we will assume that electronic subscription will suffice.

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Issues Papers

Paul Sheiner has written an issues paper on 'The beginning of certainty: Consent determinations of native title', number 12 in the current series. The paper discusses the use of Federal Court consent determinations to resolve native title determination applications. Among the initial comments to the paper, the following observations seem particularly noteworthy:

Regarding the relationship of the NNTT and the Court in initiating mediation procedures, prior to the amendment of the NTA the NNTT could refer claims to the Court. Under the NTA currently, the Court initiates the process, referring claims to the NNTT for mediation (s.86B(1)) and report (s.86C(5)). The NNTT can submit voluntary reports (s.136G) and refer questions of law or fact the Court. In fact, the power of the Court depends upon such referred questions.

The method whereby claimants define themselves for the purposes of the registration test has generally through apical ancestry simply because they find this to be appropriate and expedient. While other methods have been used, they have tended to give rise of problems of internal inconsistencies and connection to other interested Indigenous parties, particularly members of subsequent generations. The *Ward* decision, in fact, relieves the claimant community of the requirement of biological descent.

In Queensland the NNTT has played a role in the majority of the state's consent determinations which, arguably, may be a factor in the relatively greater frequency of this method of determining native title in Queensland (15 of the 21 consent determinations). Of course, the NNTT has been engaged in the early stages of mediating claims in Western Australia, some of which have subsequently proceeded to determination either by litigation or consent.

Conferences in the Offing

Mining Minerals and Sustainable Development: International Workshop on Indigenous People and Relationships with the Mining Sector will be held in Perth on 4 - 6 February 2002. The Workshop will seek to promote positive change in indigenous peoples' associations with the mining sector. It will address key indigenous concerns and perspectives; review current industry practice; and identify practical steps to ensure resource development respects the rights of host communities and enables an equitable distribution of impacts and benefits. The Workshop will bring together an international group of 50-60 stakeholders from indigenous communities, industry, government and non-governmental organizations, to discuss the role of the mining industry in promoting sustainable development among indigenous communities. For further information contact Bren Sheehy The Australian Minerals & Energy Environment Foundation Tel: +61 3 9214 6697 Email: bren@ameef.com.au

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Murdoch University will host a three day conference entitled Treaty - Advancing Reconciliation - A National Conference in a Global Context Concerning Racism, Land and Reconciliation on 26 -28 June 2002. Day one will be devoted to Treaty relations between British colonials and Indigenous Peoples in North America and New Zealand, day two to Historical Roots to the 'Treaty Question' and day three to Should Australia seek to negotiate a treaty / agreement ? and if so what should it seek to accomplish ? The due date for proposed papers is 28 February. Further information is at www.treaty.murdoch.edu.au

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ATSIC will convene an inaugural policy conference on 25 –27 March 2002. It will focus on developing an improved understanding of the principles of self-determination and rights and how they can be put into practice. Particularly, the conference will explore how policy affects self-

determination and rights. The conference will run for three days. The first day will be a workshop concentrating on the practical and more technical aspects of the policy process. The following two days will focus on self-determination and rights with keynote speakers engaging and challenging participants to look anew at current policy approaches. The intended outcomes are: adoption of new approaches to the policy process and decision making in Aboriginal and Torres Strait Islander affairs, improved understanding of self-determination and Indigenous rights,and improved Indigenous policy directions. National Convention Centre 31 Constitution Avenue,Canberra ACT 2600 Tel:02 6257 4905 Fax:02 6257 6405.

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ATSIC is also involved in a three day conference on the treaty process from 27 through 29 August. The details are being worked out by ATSIC and ANTaR currently, but the topics to be considered are reconciliation, sovereignty, treaty making, the economics of the process, social impacts and the treaty framework. They are also planning a televised debate for later in the year. More information will be available in March on the TreatyNow website www.treatynow.org.au

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The NTRU plans to jointly host a conference for Representative Bodies with Yatamtji and ATSIC Queensland. While the details are yet to be decided, it will be held in September or October and will be devoted to legal issues, research and practice and capacity building.

New AIATSIS Research Fellow Appointed

Patrick Sullivan has begun duties as the Visiting Research Fellow in Regional Organisation and Governance in the Institute's Research Section. While not a member of the Unit, Patrick's interests in native title and governance will likely see his involvement in projects organised by the NTRU.

FEATURES

Exercising Your Culture: Indigenous Cultural Heritage and the Environment

Paper presented at The Past and Future of Land Rights and Native Title Conference Townsville, 28-30 August 2001 by Commissioner Rodney Dillon

Introduction

My name is Rodney Dillon. I am a Palawa Aboriginal man from Tasmania and the Commissioner elected for the Tasmania Zone of the Aboriginal and Torres Strait Islander Commission (ATSIC).

I want to talk about native title and how it relates to sea rights for Aboriginal and Torres Strait Islander peoples. I also want to talk about the concerns our people have about marine resource management and the adverse impact that various non-indigenous groups have on our ability to continue practicing and enjoying our traditional customs as they relate to the sea and its resources.

The Native Title Act 1993 and sea rights

Native title is based on the laws and customs of Aboriginal people and Torres Strait Islanders. Whilst the High Court of Australia and Australian governments have given some recognition to these rights, especially by the passing of native title legislation, they fail to adequately recognise exclusive native title rights in relation to the seas. The right to maintain an exclusive native fishery or rights to control access to waters where native title exists is not recognised under current laws. This concerns me because it denies our people the right to manage and control natural resources which have been part of our cultural traditions for countless generations.

Section 24HA of the *Native Title Act 1993* (the Act) is the major provision relating to the management of water and living aquatic resources. Under the Act all Aboriginal

people and Torres Strait Islanders may claim native title over Crown lands and waters that are located within traditional estate boundaries. However, we do not, under current laws, have any right to negotiate in relation to proposed future acts involving marine areas below the high water mark. Also, contrary to our traditional rights as sea estate custodians, we are not able to claim exclusive rights of ownership of the seabeds and its resources or claim exclusive user rights. For example, under the current arrangements our people have to share the resources with existing commercial fishing licence holders and accept other user group rights.

The present legal position under common law and under the Act falls well short of affording native title claimants a level of protection that ensures that either their traditions or the rights themselves can be fully enjoyed. Moreover, all other interest groups competing on a commercial or economic stake in the sea take priority over Indigenous rights.

The impact of current laws on Aboriginal and Torres Strait Islander customary laws

Our communities, in particular, coastal peoples, have enjoyed a continued and strong relationship with the sea and its resources. We have inherited rich traditions, beliefs and customs about the sea from our ancestors. Fundamental to the way we interact with the sea is our belief that we are part of the sea, and the sea is part of us. This belief is maintained through stories passed down from one generation to the next. Even in coastal areas where a community has been historically dispossessed, cultural associations and concerns for the sea and its resources have remained strong.

Our people are concerned about dispossession from traditional land and sea estates and the loss of ancient fishing and hunting rights. We are concerned about the destruction of the environment through development, pollution and the intensive harvesting of our resources. The blatant disregard for culturally sensitive areas affects us deeply. We are also concerned about the lack of consultation with local communities on sea related matters and the lack of opportunities for us to participate in decision making about the sea and its resources.

The government continues to allow large companies to engage in the practice of intensive harvesting of fish and shellfish to satisfy domestic and overseas market demands. Moreover, they are doing it without ensuring these resources are maintained at sustainable levels for generations to come.

They would do well to recognise our 50,000 years of cumulative knowledge about the oceans and to actively seek our views and input into the development of conservation, fisheries and other policies affecting the sea and its resources. Seeking our involvement in the management of fisheries and other ocean-related activities is also important.

Equally, contemporary Australian society would benefit from recognising our customary law system. When European settlers first came to Australia they assumed we did not have ownership of the land and the sea. Because of our traditional nomadic lifestyle, they failed to realize that we had protocols and elaborate laws in place to protect the rights of owners, managers and custodians of particular tracts of land and sea.

Recognition of Indigenous sea rights - How do we get adequate recognition ?

The time has come for Aboriginal and Torres Strait Islander peoples to regain control over the sea and its resources to ensure the social, spiritual and traditional rights, customs and practices of our ancestors are preserved for our children and their children's futures.

It appears highly unlikely that the Act will enable us to reach this aim. We should, therefore endeavour to take our crusade for recognition of sea rights outside of the native title debate and outside of the Court system.

Regional agreements

Traditional owners should be allowed to sit down and negotiate with commercial and recreational fishing bodies to reach agreements about the management of the seas

and the resources which they are dependent on. I am talking about agreements that will allow traditional owners to be directly involved in managing their sea country, protecting areas of particular importance and allowing them to participate in the commercial fishing industry.

National agreements

Our leaders could negotiate directly with Commonwealth and state and territory governments to seek an enforceable and long-lasting agreement. The kind of agreement I would envisage is one that gives recognition to our customs, rights and aspirations, similar perhaps to those negotiated in Canada and New Zealand by the Indigenous groups in those nations. The structure of this type of agreement could vary and may form part of a TREATY that would ensure legal recognition of our inherent sea rights.

International forums

Another alternative would be for a delegation of our people to present our case to the United Nations Human Rights Committee. We have a right, recognised in international legal principles, to use our marine resources on a sustainable basis and to protect those resources for future generations by being involved in management regimes, by exercising our right to negotiate over proposed marine developments and by participating in the implementation of agreements with other stakeholders.

The native title Act has been a great disappointment to my people. I believe we should be looking ahead positively, past reconciliation and towards TREATY. It is in TREATY that we may achieve recognition of our sea rights.

A Human Rights Approach to Native Title Agreements

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

I wish to pay my respects to the traditional owners and thank them for permitting me to speak on their land.

This conference has confirmed that native title agreements are emerging as an important tool in defining the rights of native title holders over their land.

As suggested by David Bennett QC and others in the course of this conference, agreements are not negotiated in a vacuum but are taking place against a background of rather confused and uncertain legal principles contained primarily in the Native Title Act (NTA). Indeed some would suggest that it is because of the uncertainty of these principles that so many native title agreements are taking place at this time

The concern from a human rights perspective is that the legal principles contained in the NTA which currently form the benchmark for agreements making are inconsistent with Australia's international human rights obligations.

Last year the NTA was considered by three international human rights committees. The UN human rights committees oversee the performance of signatory States under the treaty and consider the periodic reports submitted by States regarding their obligations under the treaty. The periodic reports are considered by the committee at a meeting in Geneva where states attend to put oral submissions. NGO's and national human rights institutions like HREOC do not have speaking rights at this meeting but attend as observers and can provide information to the committee informally.

Most people will be aware of the decision of the Committee on the Elimination of Racial Discrimination in March 1999 which found significant sections of the amended NTA to be discriminatory, in particular the validation, confirmation and primary production upgrade provisions as well as the winding back of the right to negotiate.

This same Committee met 12 months later in March 2000 to consider Australia's periodic report for the six preceding years. In their Concluding Observations the Committee stated:

> Concern is expressed at the unsatisfactory response to decisions 2 (54) (March 1999) and 2 (55) (August 1999) of the Committee and at the continuing risk of further impairment of the rights of Australia's indigenous communities. The Committee reaffirms all aspects of its decisions 2 (54) and 2 (55) and reiterates its recommendation that the State party should ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5 (c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of securing the 'informed consent' of indigenous peoples. The Committee recommends to the State party to provide full information on this issue in the next periodic report.

The CERD Committee reiterated the finding that the amended NTA is discriminatory:

> The Committee notes that, after its renewed examination in August 1999 of the provisions of the NTA as amended in 1998, the devolution of power to legislate on the 'future acts' regime has resulted in the drafting of state and territory legislation to establish detailed 'future acts' regimes which contain provisions further reducing the protection of the rights of native title claimants that is available under Commonwealth legislation. Noting that the Commonwealth Senate on 31 August 1999 rejected one such regime, the Committee recommends that similarly close scrutiny continue to be given to any other proposed state and territory legislation to ensure that protection of the rights of indigenous peoples will not be reduced further.

Four months later in July 2000 Australia's performance under the International Covenant on Civil and Political Rights was considered by the Human Rights Committee which said:

> The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).
>
> The Committee is concerned, despite positive developments towards recognizing the land rights of the Aboriginals and Torres Strait Islanders through judicial decisions (*Mabo*, 1992; *Wik*, 1996) and enactment of the Native Title Act of 1993, as well as actual demarcation of considerable areas of land, that in many areas native title rights and interests remain unresolved and that the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and affects their interests in native title lands, particularly pastoral lands.

One month later, in September 2000, the Committee on Economic Social and Cultural Rights, considering Australia's performance under that Covenant also commented on the Native Title Act:

> The Committee notes with regret that the amendments to the 1993 Native Title Act have affected the reconciliation process between the State party and the indigenous populations, who view these amendments as regressive.

In the past two years all three UN Committees that monitor the major human rights treaties have expressed their concern that the amended NTA does not meet Australia's obligations at international law.

While the Federal government has not acted upon the recommendations of these UN Committees by amending the NTA, the international dialogue around native title has produced some significant developments.

It is now accepted by the Federal Government that the standard of equality at international law is a substantive one. That is, that the recognition and protection of cultural identity by differential treatment is permitted and, at times, required by the notion of equality at international law. It is certainly not an act of discrimination. This can be contrasted to a formal equality approach in which any differential treatment, no matter what its purpose, is discriminatory and requires everyone be treated the same.

While the Aboriginal and Torres Strait Islander Social Justice Commissioner has some concerns about the type of differential treatment that the government's definition of substantive equality permits, he welcomes

the move away from the idea that racial equality is no more than identical treatment.[1]

I would suggest that a major factor in the Federal government's acceptance that the international law standard of equality is a substantive one is that the subject of the dialogue concerning equality is native title. It is hard to maintain a formal equality approach to native title. Native title is a unique interest that only Aboriginal people can enjoy. A formal equality approach would find that the recognition and protection of an interest that can only be enjoyed by one race would itself be discriminatory.

Nor can native title be classified a special measure; an act of beneficence extended for a limited period of time by the government to Indigenous people to overcome their historical disadvantage. Native title is a right *inherent* to the culture Indigenous people.

It can be seen from what Sarah Pritchard and Bret Walker QC said earlier in this Conference that international law has been and should be influential in developing the domestic law on native title. What I am suggesting is that Indigenous people, by taking their struggle to an international forum, have been significant in shaping that international law, especially the concepts of equality and self-determination.

In view of the current international dialogue around native title and human rights and the acceptance of the obligation to recognise and protect Indigenous culture, native title agreement making should occur in the context of the following human rights principles:

- *Non-extinguishment principle*. Native title parties should not be required to give up native title in order to access or enjoy the benefits that arise from negotiation.
- *Effective participation*. International human rights principles recognise that Indigenous people have a right to effective participation in decisions affecting their traditional lands. In relation to the negotiation of native title agreements this right should lead to:
  - recognition of native title parties as owners or joint owners and managers of the land, and
  - recognition of Indigenous governance on native title land.
- *Native title is a group right*. Under the principle of self-identification (see General Recommendation VIII of CERD Committee) the group itself should determine its own membership. Compensation should also be based on the inter-generational nature of the right.

How then can native title agreements be framed by these principles?

First, the NTA should, after negotiation with Indigenous people and with their informed consent, be amended consistently with Australia's international human rights obligations. The *Lardil* decision, discussed here by Andrew Chalk, has raised an area of the NTA where amendment is desperately needed.

Second, the Social Justice Commissioner has advocated in his submission to the Inquiry into Agreements by the Parliamentary Joint Committee on Native Title, that state and territory government, together with peak industry bodies, enter into negotiations (not consultations) with native title holders to agree upon frameworks on either a regional or state-wide level which establish a human rights basis for site specific or project specific agreements.

These framework agreements should:

- apply the non-extinguishment principle,
- protect native title to the same extent as non-indigenous interests,
- encourage and allow continued observance of Indigenous law and culture, and
- recognise Indigenous governance on traditional lands

If native title agreements are framed by these principles they will form a stable and enduring basis for the long-term co-existence of interests on country.

If, on the other hand, native title agreements are based on legal principles that are discriminatory, then they will always be contin-

[1] The Aboriginal and Torres Strait Islander Social Justice Commissioner's concerns are explained in his *Native Title Report 2000*, chapter one.

gent upon the eradication of these principles.

NATIVE TITLE IN THE NEWS

National

The Yorta Yorta People have been granted special leave to appear before the High Court of Australia in a long running native title claim for Crown land and water in the Goulburn Valley and Southern Riverina, from Euroa to Jeriderie and from Cohuna to Corowra. The process gives access to the High Court to demonstrate that their case is of national importance. This comes ten months after the full bench of the Federal Court dismissed the Yorta Yorta People's appeal of the 1998 decision rejecting the claim. (*Riverine Herald* 17 December 2001)

New South Wales

A native title claim in area of 14,490 sq km by the Nucoorilma Clan of the Gamilaaroy Aboriginal People has prompted the Bingara Shire Council to become a registered party to the claim. The Council will also make an application to the federal government for legal cost involved in participating. (*Bingara Advocate* 30 October 2001)

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Two hundred ha of Wellington Common in the state's central west has been handed over to Wiradjuri families, resolving one of the nation's oldest native title claims. Principal claimant Rose Chown, who two years ago moved into the century old tin house on the land where her grandmother Matilda Bell lived, said she does not know why the claim took so long to come to a conclusion. Mrs. Chown shares the Common with her husband and is planing to ask ATSIC to help build about 25 houses for claimant's families. (*SMH* 8 November 2001)

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A native title claim in the New England region prompted the NSW Farmers Association to warn lease and license holders that the deadline to become a party was 7 November. The application was lodged by the Gumbangirri People and involves many interests in the region, particularly regarding water and grazing licenses. Registering with the Federal Court ensures that interested parties have a say in the native title process. (*Guyra Argus* 8 November 2001)

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The Darug Tribal Aboriginal Corporation lodged an application covering three sites in the Woollahra area, including historic Strickland House. The application covers parcels of unallocated Crown land in an area running from South Head through to Wiseman's Ferry, Katoomba and Campbelltown. (*Wentworth Courier* 21 November 2001)

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The construction of a defence wharf and naval ammunition facility has been given the go ahead in Eden after an ILUA was signed in an historic move that acknowledged Indigenous ownership of the site. The Twofold Bay native title group, representatives from the Defence Department and government officials met at the facilities location to finalise the land management documents. Following a traditional Aboriginal welcoming ceremony, Merv Penrith and Neville Thomas signed the agreement on behalf of the Twofold Bay native title group and Monaro-Yuin nations. (*Eden-Imlay Magnet* 22 November 2001)

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The Aboriginal Community in Condobolin have started action to save the sacred Dreamtime Lake at the Lake Cowal Gold Project site near West Wylong. Despite claims by project owners Homestake Mining Company that the native title process has not been breached, the local Aboriginal group claims they have conducted exploratory drilling in the heartland of Wiradjuri country. (*Daily Advertiser* 6 December 2001)

Victoria

An historic agreement was signed at the junction of the Murray and Darling rivers at Wentworth in traditional Barkindji country. The agreement was signed between the Murray Lower Darling River Indigenous national elders and the NSW Department of Land and Water Conservation. Yorta Yorta Nation spokesperson Monica Morgan said, 'The agreement establishes a process that ensures that Indigenous peoples can be involved in the management of the Murray and lower Darling Rivers.' (*Sunraysia Daily* 15 October 2001)

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Notices have been sent out by the NNTT inviting people with an interest in land covered by two native title applications which take in areas of Mildura, Robinvale and Ouyen to register for talks aimed at reaching negotiated agreements. Acting state manager Tony Shelly of the NNTT said, 'Separate native title applications by the Latji Latji and Wergaia peoples seek recognition for traditional rights over the area. People and organizations with interest in areas claimed may want to be involved in working out how their rights may co-exist with the native title holders.' (*North West Express* 25 October 2001)

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Members of the Gournditch – Mara native title claim group say Mirimbiak Nations Aboriginal Corporation is not communicating collectively nor consulting with claimants before holding meetings with the state government. Coastal claim member Christina Saunders said action needed to be taken immediately to address the clan's concerns, especially since no other body has been established to represent native title claimant groups. (*Portland Observer* 17 October 2001)

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Assessment of native title claim on Wilson Promontory is likely to begin in March after a lengthy delay in the registration of the claim. The claims on these areas are being brought jointly by the Gunail Kumai and Bunurong People. Ian Campbell-Fraser, the NNTT case manager, said that the claim has not passed the registration test but once this was completed the claim would go to the public notification stage. Then the public will have the opportunity to apply to the Federal Court to become parties to the claim. (*Star Leongatha* 23 October 2001)

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The Dja Dja Wurrung People have asked that their rights be recognised over an area in central Victoria west of Bendigo in four applications affecting 12 shires. To publicise the claim and call for interested parties to register as parties to the claim, Bendigo Mayor Barry Ackerman and officers from the local councils met with representatives of the NNTT on 10 December. As well, the Dja Dja Wurrung People have registered claim which covers a massive 16,830 sq km in the Woodend, Kyneton, Maimsbury area, but does not include the Macedon Ranges Shire's tourism icon Hanging Rock. (*Macedon Ranges Guardian* 30 November 2001, NNTT Press release, 10 December)

South Australia

A native title claim over the Port Lincoln area has the Barngara Aboriginal People opposing the fate of the Parnkalla Walking Trail. Committee Chairperson of Barngarla area Howard Richards issued a letter to the Port Lincoln City Council highlighting the group's opposition to major changes to the trail. 'We are wanting it known, as native title claimants and traditional owners of the area, that we are opposed to further destruction of native title vegetation that is adjacent to the existing trail,' Mr. Richard said. (*Port Lincoln Times* 20 November 2001)

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The Kaurna Aboriginal group has filed a claim to 8000 sq km of land in and around Adelaide. The claim covers mainly public reserves, beaches, the River Torrens and other sites of Aboriginal significance. Holdfast Bay Council's Chief Executive, Stephen Gawler, said that the district would not be largely affected. 'We don't see that it's a

major issue for this area because it's so heavily settled now, but it could have some significance, particularly for the coastal stretch, and we are very happy to be a party of the process so we can have a say if required. This council has already developed a very good relationship with the local Kaurna people.' NNTT state manager Peter Hutchison described the public response to the claim as 'level-headed', saying, 'Most people understand now that a native title application does not overturn other people's valid interest in land.' (*Adelaide Advertiser* 20 December)

Native title is the last hurdle for the Honeymoon Uranium Mine after the state government met federal environmental conditions. Native title talks are close to being resolved. The project will add about $40 million a year onto Australia's economy, Wayne Mathews the Minister of Minerals and Energy said. *(Advertiser Adelaide* 29 November 2001)

Queensland

The Western Yalanji People have asked for their traditional rights to be recognized over an area south of Laura and south-west of Cooktown, covering an area of about 2252 sq km, including Palmer River Goldfields Reserve. NNTT Regional Manager Gary Lui has issued notices to people with interest in the land to register for talks aimed at reaching negotiated agreements. (*Cooktown Local News* 20 October 2001)

The Gunggari People have won land rights to small parcels of land in tiny outback towns in south-west Queensland after a six year legal battle. The hand over represents a victory because previous cases had failed to prove continual links to the land. The state government accepted claims through a negotiated agreement and the Federal Court is expected to ratify the agreement. The Gunggari People will now proceed with other land claims that will include more than 700 grazing properties in some of the states' prime grazing country between Roma and Charleville. (*Courier Mail* 17 November 2001)

ILUAs between the Kalkadoon People and the Queensland government granting mineral exploration permits are on the verge of completion. The agreements involve a number of exploration companies wishing to work in the Mount Isa region. The permits will be granted subject to protocols regarding cultural heritage protection and access to employment opportunities. (NNTT Press release 12 December)

The Wakka Wakka People have lodged a native title application with the NNTT over land in shires including the Perry and Cherbourg Community Councils. Notices have been issued inviting people with interest in land covered by a native title application to register for talks. (*South Burnett Times* 19 October 2001)

A native title claim over waters, seabed and reefs off far north Queensland has been lodged by local Torres Strait Islanders in an attempt to widen the interpretation of native title rights to seas. Despite the High Court rejecting a native title sea rights bid in October, Chairman of the Torres Strait Regional Authority Terry Waia said the claim, 'Covered the seabed, reefs, shoals, sandbanks and waters within the Torres Strait. The sea country has always been in the back of Torres Strait peoples mind. It's their country; the Torres Strait is their home.' (*AGE* 27 November 2001)

The NNTT has invited people with interest in land covered by a native title claim in central Queensland to register for talks in a claim by the Gangulu People, who have asked for their traditional rights to be recognised over the area which covers shires of Duaringa, Fitzroy, Banana and Mt Morgan plus small parts of Monto Shire. (*Black Water Herald* 4 December 2001)

The Mamu People have lodged a native title claim over an area of 1600 sq km around Innisfail. The NNTT have invited interested parties to register for talks aimed at reaching negotiated agreements. The claim includes unallocated state land inside the boundaries of Johnstone and Eacham Shires and Cairns City. Gary Lui Senior Case Manager of the NNTT invited people who have valid rights and interests to take part in the mediation process to work out how their rights co-exist with native title holders. (*Cairns Post* 8 December 2001)

Western Australia

The NNTT has issued invitations to people with interest in land covered by several native title applications to register for talks. State Manager Andrew Jaggers said the Wajarri native title claimants had asked for their traditional rights to be recognized over 83,030 sq km north-east of Geraldton. Claims in the Goldfields region include one north-east of Wiluna brought by the Ngalia People, one around Kalgoorlie and to its west by the Kalamaia Kabu(d)n People. In the state's southeast, the Mirning People are claiming 40,000 sq km which extends 12 nautical miles out to sea. By registering interested parties may have the opportunity to participate in mediation meetings with the claimants and other parties. (*Geralton Guardian* 14 November 2001 and NNTT Press release 28 November)

Deputy Premier Eric Ripper released a major review into native title operations which found that it was in the interest of all Western Australians that the rights of Indigenous people are properly recognised. In the report the state government backs negotiated settlements of native title applications and recommended sweeping legislation and policy changes to achieve more agreements. Mr. Ripper said, 'Ignoring Indigenous aspirations for recognition of traditional ownership's is an invitation for long, costly and bitter legal battle.' The findings were welcomed by the Kimberly Land Council Executive Director Wayne Bergman, who said, 'One of the findings from the report is that there are insufficient resources to organizations like the KLC to advance quickly and adjust settlements of native title. If the native title holders are to be in a position to participate equally in the native title process, then they must be properly resourced to do so.' *(Esperance Express* and *Kimberly Echo 22 November 2001)*

According to the Pastoralists and Graziers Association, the state government is revisiting extreme elements of the native title debate by reviving problems of non-transferable freehold title to Aboriginal claimants. PGA Native Title Chairman John Chaplin said that the former Burke Labor government had discussed the non-transferable freehold title for Western Australian Aborigines when it was offering pastoralists a trade off of perpetual title in exchange for native title agreement in the mid 1980's. 'Pastoralists never got the perpetual leases they were promised, but the Gallop government now wants to go overboard by offering unique freehold rights to native title claimants,' Mr. Chaplin said. (*Countryman WA* 20 December 2001)

Northern Territory

Talks over a landmark native title compensation claim to the exclusive Darwin suburbs of Cullen Bay and Bayview have reached the negotiation stage. Notices have been issued by the NNTT inviting people with interest in the land to register for talks. The claims have been lodged on behalf of the Danggalaba People and the Yirra Bandoo Aboriginal Corporation in attempt to gain compensation through the Federal Court. (*The Northern Territory* 15 November 2001)

Darwin native tittle claimants became property developers when the Larrakia People gave up over 250 ha of Crown land on the outskirts of Darwin in return for a commercial lease over 20 per cent of it. This

landmark deal with the NT government allows urban development to continue into suburbs of Rosebery and Bellamack free of native title complications over the subdivisions. Larrakia spokesperson Bill Risk said that the deal proved that native title could work in urban Australia. (*AGE* 6 December 2001)

LIST OF ABBREVIATIONS

People are invited to contact the NTRU for additional references. We will try to provide copies of recent items on 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
LR News = Land Rights News
LRQ = Land Rights Queensland
Mer = Hobart Mercury
NTN = Native Title News
SC = Sunshine Coast Daily
SMH = Sydney Morning Herald
TelM = Telegraph Mirror (NSW)
WA = West Australian
WAus = Weekend Australian

APPLICATIONS

The National Native Title Tribunal posts summaries of registration test decisions on http://www.nntt.gov.au. The following decisions are listed for November and December. All were accepted. The first number following the name is the NNTT Application Number, the second is that of the Federal Court.

Lake Nash	DC 01/61, D 6061/2001	Mountain Valley-Mainoru	DC 01/63, D 6063/2001
Gunbara Bulara Group #2	QC 01/36, Q 6034/2001	Wongalara	DC 01/67, D 6067/2001
Nutwood Downs	DC 01/59, D 6059/2001	Puutu Kunti Kurrama and Pinikura	WC 01/5, W 6007/2001
Lower Reynolds Channel Point	DC 01/60, D 6060/2001	Thudgari People	WC 97/95, WG 6212/1998
Big River Urapunga	DC 01/65, D 6065/2001	Cape Holding Group	QC 01/40, Q 6038/2001
Chaterhoochee-Mt McMinn	DC 01/64, D 6064/2001	Baryulgil Bundjalung	NC 96/8, NG 6027/1998
Goondooloo Moroak 2	QC 01/66, Q6066/2001	Kiana West	DC 01/68, D 6068/2001

APPLICATIONS CURRENTLY IN NOTIFICATION

Victoria

Closing date	Application no	Application name
30 January 2002	VC00/2	Latji Latji and Wergaia Peoples
	VC00/3	Latji Latji Peoples
11 March 2002	VC00/1	Dja Dja Wurrung Peoples
	VC98/21	Dja Dja Wurung
	VC99/2	Dja Dja Wurrung People
	VC99/6	Dja Dja Wurrung

Western Australia

Closing date	Application no	Application name
27 February 2002	WC01/3	The Wajarri Elders
	WC97/100	Kalamaia Kabu(d)n People
	WC97/3	Ngalia
11 March 2002	WC00/14	Ngalia Kutjungkatja
	WC01/1	WA Mirning People

Queensland

Closing date	Application no	Application name
30 January 2002	QC98/25	Kangoulu People
	QC99/12	Western Yalanji People #4
	QC99/33	Wakka Wakka People #2
27 February 2002	QC00/10	Djaku-nde & Jangerie Jangerie Peoples
	QC01/15	Mamu People
	QC01/16	Ewamian People #3
11 March 2002	QC97/36	Gangulu People

Northern Territory

Closing date	Application no	Application name
27 February 2002	DC00/11	Timber Creek Township
	DC01/46	Lot 828 Borroloola
	DC01/47	West MacDonnells
	DC01/48	West Mathison
	DC01/49	Bynoe
	DPA98/1	Yirra Bandoo 1
	DPA98/2	Dangalaba 12

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

RECENT PUBLICATIONS

Annual Report 2000 – 2001, Aboriginal and Torres Strait Islander Commission

ATSIC is an independent statutory authority and the main Commonwealth agency within the Reconciliation and Aboriginal and Torres Strait Islander Affairs portfolio. It is also the peak national representative body for

Australia's Indigenous peoples. In Chapter 2, ATSIC Chairman Geoff Clark reviews trends in the larger political environment, and writes that the 'piecemeal, slow and expensive' native title process is a 'powerful example' of the need for a Treaty.
This report is available on the What's New page of the ATSIC website <http://www.atsic.gov.au> or by calling 02 6121 4000.

Annual Report 2000 – 2001, Indigenous Land Corporation

The Indigenous Land Corporation is an independent statutory authority established to assist Aboriginal and Torres Strait Islander people to acquire and manage land to provide economic, environmental, social or cultural benefits. The ILC is funded by the Aboriginal and Torres Strait Islander Land Fund Reserve, which was one part of the Commonwealth's response to the Mabo decision. Since its inception and up to 30 June 2001, the ILC has purchased 143 properties, of which 92 have been divested to Indigenous corporations. For the 2000-2001 year the ILC approved for purchase 12 proposals, purchased and settled on 18 properties, and divested 16 properties to Indigenous groups. During the reporting period the ILC spent a total of $6.67 million on land management activities.
This report is available on the documents page of the ILC website <http://ilc.gov.au> or by calling 08 8216 4800.

Annual Report 2000 – 2001, National Native Title Tribunal

The *Native Title Act 1993 (Cth)* established the Tribunal and sets out its functions and powers. The Tribunal sees its main role as assisting people to resolve native title issues through agreement-making. The Tribunal also arbitrates in relation to some types of proposed future dealings in land (future acts), and the Tribunal is responsible for the upkeep of three public registers for the registering of native title claimants, native title determinations, and Indigenous Land Use Agreements.
In the reporting period the number of registration tests by native title claimants was reduced by about half the number of decisions made the previous year. Of the 153 registration test decisions made, 94 per cent passed (47 of the claimant applications were tested under the old Native Title Act, and 106 under the revised Act). At 30 June 2001, there were 576 claimant applications at some stage between lodgement and resolution. In the year covered by this report, 17 applications were made for the registration of ILUAs. Twenty-four others were in notification and 43 more were partially processed. The Tribunal also registered 18 determinations of native title, 13 of which were made by consent of the parties and five made after trials.
The annual report is published as a book, and there is also a CD-Rom version, which has Word, PDF, or HTML copies of the report. The CD-Rom has the additional feature of providing links to relevant government legislation and other documents.
The report is available online at <http://www.nntt.gov.au>

Native Title Services Guide: CD – Rom

Since its inception, the *Native Title Act 1993 (Cth)* has undergone several changes, mainly as a result of the *Native Title Amendment Act 1998* (Cth). These changes have had a significant effect on the responsibilities and obligations of both ATSIC and representative bodies, which are defined as recognised bodies that might represent native title holders. The *Native Title Services Guide*, produced by the Native Title and Land Rights Centre, is a helpful guide for ATSIC staff and such representative bodies. The guide is divided into three parts, each part presenting the applicable statutory and common law, interpretations of the law, and providing sample documents.
Part 1 is introductory and addresses the following areas of concern: corporate governance, strategic planning, policy and procedures manual, consultants and service, and conflicts of interest. Part 2 builds on part 1, expanding on the functions of representative bodies, and discusses the topics of fa-

cilitation and assistance, internal review and complaints, dispute resolution, notification functions, certification and agreement making functions. Part 3 is aimed at ATSIC staff and outlines what information staff should know about representative bodies, such as what systems are used for recording requires, what factors influence the actions of decision-makers and how transparent internal processes are.

The overall format of the guide is very user friendly. Each new section has a contents page, allowing users to link on to their areas of interest. The relevant provisions of the law are clearly stated and usefully summarised. Additionally, attachments and sample documents provide users with useful references, ensuring that representative bodies in particular are well informed about their legal responsibilities and obligations.

NATIVE TITLE RESEARCH UNIT PUBLICATIONS

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

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

Native Title Research Unit Issues Papers and Newsletter are available on the AIATSIS Internet Home Page: http://www.aiatsis.gov.au/; or are available, at no cost, from the Unit. To join our mailing list phone (02) 6246 1161 or subscribe on-line email: ntru@aiatsis.gov.au.

Issues Papers: Land, Rights, Laws: Issues of Native Title Volume 2

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

Discussion papers

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

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

Monographs

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

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

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

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

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

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

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

Web Resources

Sea Rights Resource Page: Croker Island and Native Title Offshore
http://www.aiatsis.gov.au/rsrch/ntru/news_and_notes/
The High Court decision on *Commonwealth v Yarmirr*; *Yarmirr v Northern Territory* was handed down on 11 October 2001. This web page presents recent papers about the case, as well as other relevant materials on native title and sea rights issues.

Limits and Possibilities of a Treaty Process in Australia
http://www.aiatsis.gov.au/rsrch/seminars.htm
This series explores some of the issues surrounding the proposal for a national treaty. The issues include current proposals, past obstacles, issues for Indigenous representation, political and philosophical questions, national identity, reconciliation, belonging, public law implications, and comparisons with other countries.