Native Title Newsletter

April 2015

AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

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Welcome! to the Native Title Newsletter

The *Native Title Newsletter* is produced three times a year (April, August and December). The Newsletter includes feature articles, traditional owner comments, articles explaining native title reforms and significant developments, book reviews and NTRU project reports. The Newsletter is distributed to subscribers via email or mail and is also available at www.aiatsis.gov.au/ntru/newsletter.html. We welcome your feedback and contributions. For more information, please contact: alexandra.muir@aiatsis.gov.au or amity.raymont@aiatsis.gov.au.

The Native Title Research Unit (NTRU) also produces monthly electronic publications to keep you informed of the latest developments in native title throughout Australia.

You can subscribe to NTRU publications online, follow @NTRU_AIATSIS on Twitter or 'Like' NTRU on Facebook.

Subscribe

Cover and above right: Mr Jacky Green
Photographer: Sean Kerins 2014

Aboriginal and Torres Strait Islander people are respectfully advised that this publication may contain names and images of deceased persons, and culturally sensitive material. AIATSIS apologises for any distress this may cause.

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AIATSIS

AN INTERVIEW WITH MR JACKY GREEN

Member of the Garawa, southwest Gulf country, Northern Territory

I am a Garawa man. My country is in the southwest Gulf of Carpentaria.

I was born under a coolabah tree in one of the creek beds running out from the main creek at Soudan Station in the Northern Territory. I was born in the elbow of Irinju in Wakaya Country where my father was working.

When I was young there was no whitefella schooling for us Aboriginal kids. My school was the bridle and the blanket, learning on the pastoral stations where my father worked. Our future was set as labourers on whitefella pastoral stations.

I was taught our law by my grandfathers, father, uncles and other senior kin from the southwest Gulf peoples: the Mara, Gudanji, Yanyuwa and Garawa. Knowledge came to me through our ceremonies, hunting, fishing and gathering, and travelling through our country with the old people.

All my life I have fought hard for our land and culture. For the last thirty years I have been working with all the Aboriginal people of the southwest Gulf fighting to get our country back in our ownership and then to protect and care for it. There's lots of important sacred sites and song-lines throughout our country. Many of them are powerful places that have to be cared for, looked after the proper way.

Jacky Green co-presented a seminar with Dr Seán Kerins from the Australian National University at AIATSIS on Friday, 20 February 2015. The seminar was entitled 'Developing the North: who benefits and who bears cost? A case study from the Gulf Country'. You can view the full video at: http://50years.aiatsis.gov.au/publications/presentations/developing-north-who-benefits-and-who-bears-cost-case-study-gulf-country.

After my days as a stockman I worked for the Northern Land Council in the Northern Territory. For a number of years I was a director on the Carpentaria Land Council Aboriginal Corporation in Queensland, where I represented Garawa people. I am currently a council member of the Northern Land Council.

In 2005 I started the Garawa and Waanyi/Garawa Ranger groups in the southern Gulf region. I did this because many Waanyi and Garawa people living on their homelands were forced to move back to the old mission in Doomadgee and other places when service delivery failed on the homelands. When the people moved off the country it was suffering from late-season wildfires.

The Northern Territory and Queensland governments were trying to get on top of the wildfires but couldn't do it. It was when we got involved and started to do things our way and working with a few whitefellas who were helpin' us that we managed to stop the hot late-season wildfires and replace them with cooler early-season controlled fires.

Why I paint

I started painting so I can get my voice out. I want to show people what is happening to our country and to Aboriginal people. No one is listening to us. What we want. How we want to live. What we want in the future for our children. It's for these reasons that I started to paint. I want government to listen to Aboriginal people. I want people in the cities to know what's happening to us and our country.

There's a lot of mining going on in our country. The mining companies are coming into our country and they aren't talking with us properly. They seem to just want us to agree to things their way. They might talk to one or two people but not to the Minggirringi (owners) and Junggayi (boss for country/managers) for

the places they want to explore or mine. Things are always rushed. It's always about someone else's plan for our country and not our own plans.

You just have to look at the McArthur River Mine. They are destroying an important sacred site that sits in that area. We are worried about the damage to the site and about leaks and pollution from run-off that might come down the river and go into the sea. It worries us that the sacred sites aren't being protected. We can't do what we are supposed to do to protect these places and this makes us feel no good. It plays with our people's minds. It's not good for them. This is serious business. Why won't anyone listen to us?

I want the government and mining companies to know that we are still here. We aren't going anywhere. We aren't dead yet. We are still here, feeling the country.

Jacky Green has had a number of sellout shows in Melbourne and Sydney, and his artworks are held in a number of national and private collections.

Desecrating the Rainbow Serpent

Jacky Green (2014)/Waralungku Arts

At the top of the painting (above), guarded by the Junggayi (boss for country) and Minggirringi (owner of country), are the eyes of the Rainbow Serpent. The Junggayi and Minggirringi are worried that the Snake is being desecrated. The Rainbow Serpent is one of our spiritually powerful ancestral beings. It rests under McArthur River in the southwest Gulf of Carpentaria. Under our law we hold responsibility for protecting its resting place from disturbance, and responsibility for nurturing its spirit with ceremony and song—just as our ancestors have done for eons.

The left of the painting represents a time when we had authority over country. We lived on country, hunted, fished and gathered our food on country. We used fire to care for it, and, most importantly, we protected our sacred places within it. By protecting and nurturing our sacred sites we protect and nurture our spirituality and our wellbeing as Gudanji, Garawa, Mara and Yanyuwa peoples.

The right of the painting represents the present time (2014) when we still have no authority over all of our ancestral country. The artwork illustrates how the resting place of the Rainbow Serpent looks now. It's been smashed by McArthur River Mine. Country, torn open to make way for one of the largest lead, zinc and silver mines the world has ever seen. To do this they cut the back of our ancestor—the Rainbow Serpent—by severing McArthur River and diverting it through a 5.5 kilometre diversion cut into our country.

A lot of people have died because of the desecration of our sacred places. Interfering with these powerful places, it pulls people down. The stress of seeing our land suffer means we suffer. Men tried to fight but got pulled down. I might be the next one, or the Junggayi will go down. The mining executive might go too. All this pressure, it's no good.

Same Story, settlers—miners

Jacky Green (2012)/Waralungku Arts

This painting (right) shows Wet season time when the storms bring life to our land and fill the rivers and creeks with water. Its story is about how we tryin' to pull up the mining companies and stop them from wrecking our country. We live in this country. It belongs to us. In the bottom left of the painting are the miners entering our country. First they come with their 'agreements', but they override us, they still come, it doesn't matter what. Then they come with their dozers. Lined up on the edge of the river are Aboriginal people with spears ready to drive the miners out of our country. It's not the first time that we have had people invade our country. It happened, first time, back in the 1870s when white explorers with their packhorses started moving through our country, looking round to see what was there. Aboriginal people were watching them from a distance, staying back, not wanting to be seen. Others were ready to spear them. You can see this story in the bottom right-hand side of the painting. Above this is a group of Aboriginal men at the foot of the stone country. They have been watchin' what is going on and talking about what to do, how to protect our country. Nothing has really changed since whitefellas came into our country. First time it was horses and now it's bulldozers.

FIFO

Jacky Green (2013)/Waralungku Arts

I call this painting (left) *Fly in and fuck off*. It tells the story how the government mob and mining mob fly into our country to talk at us. They fly in and tell us one thing and then they say they will be comin' back but we never see them again. They fly in, use complicated words and then fly right back out, real quick. The people sitting on the ground in the painting are us Aboriginal people. We all focused on the government people standing with their whiteboard. They bring ladies in sometimes who do all the talkin'. But we not really understandin' what they sayin'. Many of us don't read and write, so the words on the board mean nothing. It's really hard, getting our heads around what it really means. That's why some of them just sittin', scratchin' their heads and others they got their hands up wantin' to ask questions. Why they here in our country? The government story doesn't go through to us properly. Their paperwork and their story always two different things. They just put something in front of us and when they think they got it right they outta here real quick and we don't know what they really meant. This top-down way of talking with us been going on too long. Things gotta change. We want things to be explained to us proper way so we can sit and talk about it amongst ourselves. We be switched on then and make our own decision to say yes or no. None of this gotta hurry up 'cos our aeroplane is leavin'. They gotta give us time. No more of this Fly In and Fuck Off stuff.

stories for paintings

LEADERSHIP LEGACY and Opportunity 2015

NATIONAL NATIVE TITLE CONFERENCE Port Douglas, Qld | 16-18 June

Register now

SHIANE LOVELL Conference Manager AIATSIS

This year's National Native Title Conference will be convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Cape York Land Council (CYLC) in Port Douglas, Queensland from **Tuesday, 16 June to Thursday, 18 June**.

Expected to attract some 700 delegates in 2015, the National Native Title Conference provides a unique opportunity for a diverse range of native title stakeholders from across the country to come together to review current native title practice, policy and law.

The conference is the leading Indigenous policy conference in Australia and the annual professional development event for staff of native title representative bodies/service providers and relevant government agencies, as well as independent native title practitioners and academics.

The conference program includes keynotes and plenary speeches, dialogue forums, technical workshops, topical workshops and Indigenous talking circles.

This year's title, 'Leadership, Legacy and Opportunity', is reflected in the following themes:

Platform for inspirational leadership

- Building on our legacy
- Passing the flame – new generation leadership
- Youth engagement

Springboard for economic success

- Sustainable development
- Foundation for cultural resurgence
- Learning from our elders
- Cultural practice and wellbeing
- Support structures that work
- Law and policy reform

Gathering from the four corners

- Collaboration and regional coordination
- Stories of challenge and triumph
- A place for big ideas

The conference will feature three days of presentations:

Day 1: NTRB and PBC Program – Tuesday, 16 June

The conference begins with the NTRB and PBC Program on Tuesday 16 June. This Program is for NTRB/NTSP and PBC staff, native title claimants and holders and Indigenous people only.

Day 2 and 3: Public Program – Wednesday, 17 – Thursday, 18 June

The Public Program is open to all delegates. This program includes keynote speeches, dialogue forums, Indigenous Talking Circles, workshops and papers presented by native title holders, claimants, practitioners, NTRB/NTSP staff, researchers, government representatives, academics and others.

Conference Dinner – Thursday, 18 June

The Conference Dinner is held on the evening of Thursday 18 June and concludes and celebrates the conference.

Through this structure the conference promotes public debate about native title and Indigenous peoples' interests in land and waters and provides an opportunity for native title parties to share information and experiences.

The conference also features an expanded cultural program of local performers, artists and dance groups and offers a special guided walking tour of Mossman Gorge by traditional owners.

Public program day 1 keynote speaker

We are pleased to announce **Noel Pearson** of the Cape York Institute will be presenting the Keynote speech on Public Program Day 1.

Noel Pearson is the Founder and Director of Strategy of Cape York Partnerships, a lawyer and Indigenous activist. Noel comes from the Guugu Yimidhirr community of Hope Vale on south eastern Cape York Peninsula, and is the primary architect of the Cape York Agenda. In 1990 Noel co-founded the Cape York Land Council and played a key part in negotiating the Native Title Act 1993 after Mabo. He has written and spoken extensively on Indigenous rights and the reinstatement of Indigenous responsibility.

In pursuit of a regional, reciprocal responsibility, settlement for Cape York: what is the right package of reforms for Indigenous social, political, economic and cultural development?

Indigenous people want to take charge of our own affairs and lead our own development agendas. In Cape York, we are working towards a comprehensive regional, reciprocal responsibility, settlement to set in place structures for a more equal partnership with government. This requires a package of constitutional, institutional and legislative reforms to give us an authoritative voice in our own affairs. Only we can decide our paths towards social, political, economic and cultural development, such that we can prosper both as self-determining peoples and as equal citizens.

Become an indigenous sponsored delegate

We are now inviting applications from Aboriginal and Torres Strait Islander people who would like to attend the National Native Title Conference 2015. The conference is a great opportunity for Indigenous people to participate in discussions of native title.

The conference team obtains sponsorship funds from organisations and companies around Australia, which are used to subsidise the conference registration and to sponsor Indigenous people to attend the conference as speakers, facilitators and delegates.

Sponsored delegates may receive assistance to cover the costs of travel, accommodation, meals and the conference registration fee.

If you would like to attend the conference and don't have access to other sources of funding, please visit our website or contact the conference team to obtain an application. **Applications close 14 May 2015.**

For further information and to register please visit the AIATSIS website: www.aiatsis.gov.au

Contact Us

Conference Manager
Shiane Lovell
P: 02 6246 1108
E: Shiane.Lovell@aiatsis.gov.au

Left: Mossman Gorge
Photographer: John Paul Janke
Above right: Noel Pearson

AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Cape York Land Council
we've been kicking the dust 1990-2015 for 25 years

MANAGING INFORMATION IN NATIVE TITLE (MINT)

LUDGER DINKLER, NTRU

With over 20 years of information being collated and created in the field of native title, it comes as no surprise that the culturally and legally appropriate management, storage and use of this information is an important issue for many native title organisations, but also government organisations, like the National Native Title Tribunal or the Federal Court.

AIATSIS wants to work with native title organisations and the wider native title sector to develop shared solutions to the challenges posed by looking after this vast amount of information and ensuring its accessibility for future generations.

As a first step towards this goal, the Native Title Research Unit (NTRU) at AIATSIS hosted a two day workshop on 16 & 17 March 2015 on Managing Information in Native Title (MINT).

Facilitated by Pam McGrath and Ludger Dinkler from the NTRU, the objective of the workshop was to bring together native title organisations to find out what it is that organisations want to do with their native title information, exchange success stories, identify the challenges standing in the way of achieving their information management aspirations and look at ways in which organisations can work together to overcome some of those hurdles.

The workshop was attended by 42 delegates, comprising 22 representatives from 13 NTRB/SPs, 17 delegates from 12 PBCs/native title groups, a barrister, representatives from the Federal Court and the National Native Title Tribunal and eight AIATSIS staff. A big thanks to everyone for making the —often long— journey to attend and for sharing your personal and organisational experiences with other participants. A big thank you also to all AIATSIS staff who worked hard to make the workshop possible and, as the great feedback suggests, a resounding success.

After a warm welcome by AIATSIS Principal Russell Taylor, delegates introduced themselves and their organisation's successes and aspirations. The remainder of day one was set aside for presentations.

In the first of those, Pam McGrath provided a short summary of the initial findings of a survey most organisations had participated in. With the survey respondents including newly incorporated PBCs as well as longstanding and large land councils, it comes as no surprise that the survey showed that organisations varied widely in age, number of employees and information management capacities. However, it also indicated surprising commonalities like the fact that audio-visual material, maps and field notes were identified as the least organised and most at risk materials held, or that the majority of organisations had an electronic filing system and 50 per cent had digitisation programs.

Next Grace Koch linked the theme of the workshop to the issues arising from AIATSIS' previous collaborative work on the future of connection material. While that work did not focus on PBCs specifically, but more on NTRB/SPs, the issues identified in the project running between 2005 and 2008 were surprisingly similar, including rapid technological change, availability of trained staff and organisational commitment to prioritise information management to name but a few.

The MINT workshop then heard from Tom Eccles on issues regarding the fragility of film and sound materials, with some practical advice on how to counteract or halt destructive chemical processes and other issues. It was a highly topical presentation directly addressing survey findings identifying at risk materials. Tom was followed by Melany Laycock, who shared her expertise in developing record management protocols and made a convincing case for why good record keeping practices are beneficial.

Left: Delegates at the MINT workshop
Photographer: Andrew Turner

Monday afternoon saw presentations from NTRBs/SPs on their journey towards managing information. Damein Bell shared Gunditj Mirring's native title and information management journey, Claire Greer introduced Central Desert Native Title Services' Cultural Geography Database and found that a number of other organisations at the workshop share the same database software, and Nyapuru Rose, Sanna Nalder, and Olivia Norris reported on Yamatji Marlpa Aboriginal Corporation's endeavours to return materials.

The first day of the workshop closed with a session on legal issues in which Angus Frith presented on the use and control of evidence given in native title hearings and Ian Irving informed the audience of the Federal Court's processes and thoughts about managing native title related documents.

Michelle Patterson, AIATSIS Deputy Principal, opened day two of the MINT workshop. She provided an overview over the aims of the soon to be launched AIATSIS Foundation and linked the workshop theme to AIATSIS' efforts to maintain and share the world's largest collection of Aboriginal and Torres Strait Islander material. For the remainder of day two, the delegates worked on identifying the different challenges standing in the way of native title organisations' information management goals, and developing and prioritising shared solutions to address the shared challenges identified. The last sessions of the workshop focussed on the next steps each organisations are going to take on their information management journey, how they can share their learning and what support and advice AIATSIS might be able to offer for the future of managing native title information.

With opportunities to meet and discuss important issues few and far between, everyone worked extra hard to make the workshop count; an approach reflected in the 100 per cent positive feedback on the workshop's usefulness. Many delegates also used the opportunity to stay on for another day or two to access material relevant to them held in the AIATSIS collection, or to meet with AIATSIS staff or relevant government representatives.

Some immediate outcomes of the workshop, like pooling resources to ask legal advice on a shared matter or planning a session on cultural databases for the National Native Title Conference in June, are already underway.

As requested by delegates, over the coming weeks the NTRU will establish and host an information management network and will make the workshop presentations available on its website. The information provided in the workshop will provide the basis of an extensive report that will be distributed to key stakeholders in an attempt to raise awareness for information management issues and impact future funding decisions. The report will also be provided on the AIATSIS website, with key findings presented in a paper at the National Native Tile Conference in June 2015.

THE AIATSIS FOUNDATION

AIATSIS is in the process of establishing a charitable foundation to assist with the important work it does. The AIATSIS Foundation will raise funds to secure the future of the world's largest and most significant collection of Indigenous Australian culture, history and heritage. Through forging new partnerships in Australia and internationally the AIATSIS Foundation will support innovative projects and new directions that will have, at their core, deep engagement with Aboriginal and Torres Strait Islander peoples. The Foundation will assist AIATSIS to meet current and urgent challenges to

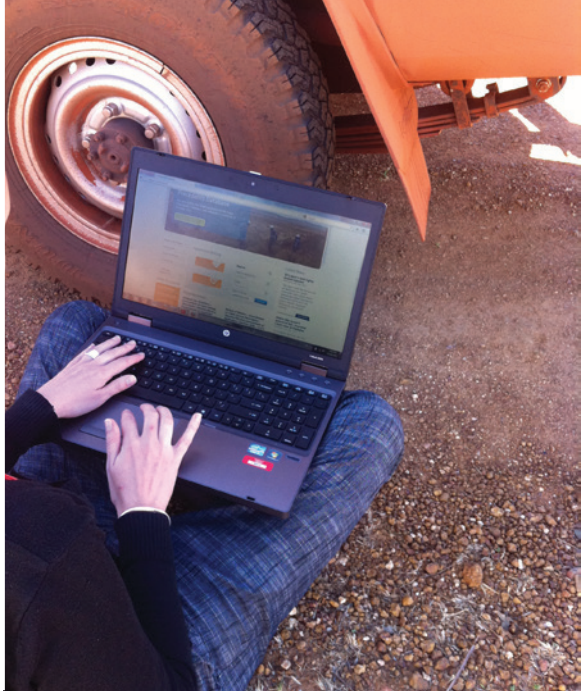
- preserve important parts of the audio and visual collection that are threatened by degradation and require urgent preservation
- improve discoverability and usability of the collection especially for Aboriginal and Torres Strait Islander people, as well as all Australians and the global community
- find and protect items of unique significance - videos, oral histories, historical records of people and organisations, and digital expressions of cultural life that contain the contemporary stories of Indigenous Australians.

AIATSIS FOUNDATION

The AIATSIS Foundation will be officially launched in May 2015.

For further information please contact Jonathan Wraith, Director Development, AIATSIS Foundation at jonathan.wraith@aiatsis.gov.au.

NTRB LEGAL PRECEDENTS DATABASE



DONNA BAGNARA Project Manager NTRU

A reminder for all lawyers, negotiators and agreement implementers at **participating Native Title Representative Bodies and Native Title Service Providers:** The NTRB Legal Precedents Database is a resource produced by participating members to support the work and improve outcomes by members. It is jointly funded by PM&C and NTRBs/NTSPs themselves. It is here to make your work faster and easier, and to improve outcomes for your clients.

Please take the time to log on and familiarise yourself with the content.

If there is content that you think the database should have but does not, let the project manager know.

What's on the database?

- Agreement-making resources for infrastructure, heritage, mining, exploration, etc
- NTRB agreement-making resources — consultancy contracts, costs agreements, etc
- court documents — including pleadings, affidavits, consent determination materials, etc
- tribunal documents — including expedited procedure objections, submissions, etc
- trust, corporation, Prescribed Bodies Corporate documents — including selected rulebooks with notes, trust deeds, etc
- useful links and resources for agreement-making
- online forum and comment function for particular clauses or documents.

NTRB LEGAL PRECEDENTS DATABASE

Please speak to your Principal Legal Officer or other database contact person about the contributions you can make to the database. Its quality and usefulness depends on your contributions of content.

If you need the login information, or have any other questions, please contact the project manager Donna Bagnara: donna.bagnara@ aiatsis.gov.au, 02 6246 1602.

The NTRB Legal Precedents Database can be found at: www.ntrbprecedents.org.au.

RNTBC NATION BUILDING SUMMIT

SHERIDAN WARD
Media & Communications Coordinator QSNTS

On 10 and 11 December 2014, Queensland South Native Title Services (QSNTS) together with Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) co-convened a Nation Building Summit specifically designed for Registered Native Title Bodies Corporates (RNTBCs) on Minjerribah (North Stradbroke Island).

The purpose of this Summit was for RNTBCs to gain ideas and knowledge from industry experts; share information, successes and experiences; learn about different methods and tools to expand on existing knowledge, and provide a networking opportunity for Traditional Owners to explore business or partnership opportunities.

Day one was designed to deliver information and empower the groups. The presenters' topics on the theme of nation building included, funding and partnership opportunities, compliance, decision making, governance, strategic planning, education and training.

After a long and informative day, QYAC volunteers took some time to coordinate a cultural tour of Minjerribah for the visiting traditional owners. The tour showcased how formal recognition of native title has the ability to not only strengthen and protect culture but provide economic development opportunities.

Day two was designed to be an interactive day. QSNTS representatives and industry experts facilitated the day and assisted groups to consider questions about the direction of their corporations, including how they are culturally distinct and diverse from other groups, what their native title rights and interests are, and how those rights and interests should be governed. These concepts were workshopped to discuss and formulate ideas on how corporations can leverage their native title to pursue nation building and economic development opportunities.

The Summit received positive feedback from traditional owners in attendance. There was particularly strong interest in the funding and partnership opportunities session, as well as discussions around compliance, education and training. At the culmination of the Summit, the RNTBC delegates took home ideas, frameworks and knowledge to assist in strengthening their own corporations into governing entities as part of their own First Nations.

QSNTS would like to thank the Quandamooka People not only for co-convening the first Nation Building Summit but also for the warm welcome to their country. We also thank the traditional owners who participated, whose enthusiasm, knowledge and experience was invaluable to the success of this Summit. We look forward to working with native title holders to shape future events.

QSNTS

QYAC

(From top right to bottom) Quandamooka Dancers performing at the RNTBC Nation Building Summit

Queensland South Native Title Services CEO, Mr Kevin Smith, introducing the Nation Building Summit

University of Melbourne academic Dr Mark McMillan assisting with the workshop

SYMPOSIUM: CULTURAL STRENGTH – RESTORING THE PLACE OF INDIGENOUS KNOWLEDGE IN PRACTICE AND POLICY

Wednesday, 11 February 2015

Presenter: Professor Taiaiake Alfred

Panel members: Professor Taiaiake Alfred, Dr Lawrence Bamblett, Professor Kerry Arabena, Mr Tony Lee, Dr Lisa Strelein, Professor Mick Dodson (chair)

A DISCUSSION BY **ARISHA ARIF**, WITH APPROVAL FROM DR LISA STRELEIN

ON THE SAME DAY THAT THE Australian Prime Minister's seventh *Closing the Gap* report was released, a different assessment of 'reconciliation' took place across the lake at AIATSIS.

Here, a symposium led by Professor Taiaiake Alfred of the University of Victoria, British Columbia, and featuring several Australian thought leaders, re-framed 'reconciliation' to focus on the restitution and cultural resurgence of indigenous peoples.

In his opening presentation, Professor Alfred posed a powerful challenge to the contemporary understanding of reconciliation. Adopting this understanding, he argued, would accept and legitimise the coloniser's understanding of what indigenous people were denied. Restitution must be incorporated into this understanding because:

> *Without massive restitution made to indigenous peoples, collectively and as individuals, including land, transfers of federal and provincial funds, and other forms of compensation for past harms and continuing injustices committed against the land and indigenous peoples, reconciliation will permanently absolve colonial injustices and is itself a further injustice.*[1]

Professor Alfred characterised the profound loss experienced by indigenous peoples as the inability to function as their ancestors did. Settlement destroyed important cultural relationships, practices and reciprocal relationships with the land, and any efforts at decolonisation would continue to be incomplete without the preservation and renewal of indigenous knowledge of culture.

Naturally, Professor Alfred looked to the situation in Canada, where reconciliation continues to be framed in terms of individual suffering. As a result, collective needs for reinvigoration and restoration of culture are unmet and Indigenous people remain psychologically, physically and spiritually disconnected from their land.

For the other panellists, Professor Alfred painted a very familiar picture. In the dawn of native title negotiations and litigation

for compensation in Australia, Professor Alfred's presentation provided a timely opportunity to re-examine what restitution *should* look like. The panel's discussion drew on their own personal and professional experiences, and developed Professor Alfred's push for a 're-presencing' of indigenous people on their land.

First, Dr Bamblett addressed how the dominant narrative of Indigenous disadvantage could be replaced with a narrative of a vibrant and proud culture. For Professor Alfred:

> *Language is power – [Indigenous peoples] must recover ways of knowing and relating from outside the mental and ideational framework of colonialism by regenerating themselves in a conceptual universe formed through Indigenous languages.*[2]

Professor Alfred noted in his presentation that young people needed to be back on their land to experience it wholly and to remember it when they returned to the world of the coloniser. Dr Bamblett echoed this sentiment and stressed the importance of language in restoring cultural strength, sharing his own experience in passing down the Wiradjuri language to his son.

Tony Lee, as a member of the Nyamba Buru Yawuru native title corporation, provided an insight into the practical limitations of purely economic restitution. Reinvigorating the Yawuru culture needed sustainable policy and practices that looked beyond the immediate needs of the community. For Lee, this had only ***started*** with the recognition of native title. The importance of choice and agency was developed by Professor Kerry Arabena, who argued that activism and cultural strength in a regional context was the key to empowerment for that community, unlike a mere focus on making money.

Dr Lisa Strelein acknowledged that native title could be both a decolonising and colonising force, and had the potential to disempower Indigenous peoples. To that end, she argued, it requires a conscious deliberate effort to ensure that culture is seen as essential to the *future* picture. Conversations about compensating loss of native title need to be reframed to be about maintaining and restoring identity, culture and connection to country, rather than economic benefits alone. As Professor Alfred has previously argued:

> *We do not need to wait for the colonizer to provide us with money or to validate our vision of a free future; we only need to start to use our indigenous languages to frame our thoughts, the ethical framework of our philosophies to make decisions and to use our laws and institutions to govern ourselves.*[3]

This prioritisation would also reflect international law which, as Professor Mick Dodson later noted, lists financial restoration as the last resort for compensating loss of land.

The panel echoed Professor Alfred's concern about the normalisation of an individual or community's status as a colonised subject. Rather than accept the coloniser's indicators of decolonisation, the panel agreed that the answer was to establish a just relationship that had existed before the harm took place. Only then could culture be transmitted to future generations, and true reconciliation be achieved.

1 Gerald Taiaiake Alfred, 'Restitution is the Real Pathway to Justice for Indigenous Peoples' *Response, Responsibility, and Renewal: Canada's Truth and Reconciliation Journey* (Aboriginal Healing Foundation Research Series, 2009) 181. http://web.uvic.ca/igov/uploads/pdf/GTA.AHF%20restitution%20article.pdf

2 Gerald Taiaiake Alfred and Jeff Corntassel, 'Being Indigenous: Resurgences against Contemporary Colonialism' (2005) 40(4) *Government and Opposition: An International Journal of Comparative Politics*, 597, 613.

3 Ibid, 614.

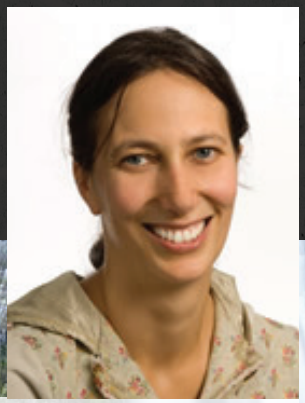
Far left: Professor Taiaiake Alfred presenting at the symposium

Left: The panelists at the symposium

NEW ZEALAND'S TE UREWERA ACT 2014

A Trans-Tasman perspective on Indigenous governance of lands and water: the legal personality solution

Summary and discussion of Dr Jacinta Ruru's recent seminar by Arisha Arif[1] with approval by Dr Ruru



National park lands encase the…homes of Indigenous peoples. Today, the law reflects a new societal goal that seeks to reconcile with Indigenous peoples for the past wrongs of taking their lands and denying them the very means to be true to themselves, their ancestors, and their grandchildren. National parks have the potential to play an instrumental role in committing to this reconciliation journey. National parks are symbolic of our national identity and our future, and the parks contain Crown lands that thus enable the Crown to lead in implementing a new way of thinking about owning and managing lands.

In her seminar in Canberra at the Australian National University, on 19 February 2015, Dr Jacinta Ruru reflected on this passage from her PhD with some nostalgia. Three years ago, Dr Ruru, now Associate Professor of Law at Otago University in Aotearoa New Zealand, could not have predicted the monumental legal change that has taken place.

An expression of this change is in the enactment of New Zealand's Te Urewera Act 2014 (the Act). Te Urewera is an area of the central North Island of Aotearoa New Zealand that is the historical home of the Tuhoe Maori *iwi* (tribe). The area was named a national park in 1954 and has been managed as Crown land by the Department of Conservation since. However, with the recent passage of the Act, Te Urewera is now a legal entity with 'all the rights, powers, duties, and liabilities of a legal person': s 11(1). This is the first instance of the removal of a national park from Crown ownership in New Zealand. It is also a potentially revolutionary step in conservation management and indigenous reconciliation worldwide.

In her presentation, Dr Ruru explored the concept of legal personality as a solution to indigenous ownership, management and governance of land and water. Undoubtedly, for many schooled in the Western legal tradition, the legislative reform is conceptually challenging. In common law legal systems, a trust is a relationship bound by obligations of good conscience.[2] The trustee manages the trust property on behalf of the beneficiary, who must be a legal entity (a person or a corporation). If a trust is established for a charitable purpose, the trustee administers the trust property to fulfil this purpose.[3] The trust's objects (beneficiary/charitable purpose) are separate to the subject

Above: Dr Jacinta Ruru
Centre: Mokau Falls, Te Urewera

of the trust (the trust property). Te Urewera blurs this distinction.

Indigenous peoples throughout the world often view natural landscapes and the people, plants and animals supported by it as a sentient being where traditional owners have a cultural role in taking care of it.[4] The new legal arrangement created for Te Urewera reflects that ontology. Under the Act, Te Urewera is managed by a board whose members act as its trustees. The board implements Te Urewera's management plan (similar to other national parks) and is designed with a view to move to a larger, predominantly Tuhoe membership. It is guided 'to act on behalf of, and in the name of, Te Urewera'' (s 17(a)) and may 'consider and give expression to Tuhoetanga [and] Tuhoe concepts of management

such as rahui, tapu me noa, mana me mauri, and tohu' (s 18(2)).

The concept of trusts in the management of Indigenous held land and seas in the Australian context is expressed in the formation of Registered Native Title Bodies Corporate (RNTBCs), who hold native title rights and interests in trust on behalf of recognised claimants. However, the obligation of the trustee is to the beneficiary

traditional owners, not to country. For Te Urewera, where the latter is the case, the ability of the Tuhoe to speak for country is centralised in the board. The guidance given to this board is of enormous significance. It challenges the tight rules for managing national parks that Dr Ruru highlighted as having failed to recognise the cultural and spiritual importance of the lands to Maori peoples across New Zealand. These rules privileged a monocultural perspective of the significance and value of the land in contrast to the new Act, which is woven throughout with Tuhoe concepts of cultural and spiritual importance.

There have been similar tensions between conservation and Indigenous interests in Australia. The debate over Wild Rivers in Queensland is just one example where conservation efforts have attracted criticism for operating against the interests of Indigenous peoples. However, the joint or co-management of national parks and other protected areas has come to be seen as the minimum standard expected by many Australian conservation managers and Indigenous peoples.[5] These arrangements were first introduced in the Northern Territory between 1979 and 1989,[6] and have increased in number with the emergence of native title claims.[7] Indigenous peoples have also substantially contributed to the growth of Australian national protected areas through 'voluntary declarations of their intent to manage their lands in perpetuity for conservation and associated ecosystem services and livelihood outcomes'.[8]

Such institutional arrangements have been slower to take place in New Zealand. A long-running inquiry by the Waitangi Tribunal into the Tuhoe claim had, in 2012, concluded that Te Urewera was the most appropriate situation for 'title return and joint management arrangements [such as] have been carried out successfully for national parks in Australia'.[9] Yet, as Dr Ruru noted, none of the Australian arrangements met the Tuhoe criterion of unencumbered title — and the Tuhoe would not settle for anything else. Another solution was needed and, in 2014, another solution was realised.

Te Urewera's new legal personality solution may have particular significance in Australia, where the success of joint or co-management arrangements is limited by exigencies, such as historic power imbalances,[10] and many groups continue to aspire to sole governance.[11] The Act overturns what Dr Ruru described as a presumption of sovereignty over the natural world. But, more than that, it demonstrates that a new way of thinking *is* possible and often necessary to settling long-standing grievances and redressing injustice.

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1 Aurora Intern, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies.

2 Thomas Lewin 1837 *A Practical Treatise on the Law of Trusts and Trustees*. Maxwell, United Kingdom, 2: *'the parents of the trust were Fraud and Fear, and a court of conscience was the Nurse'*.

3 Alun A Preece, *The Laws of Australia* (at 1 October 2014) WestlawAU [15.30.20].

4 Rodney Harrison and Deborah Rose 2010 'Intangible Heritage'. In Tim Benton, *Understanding global heritage and memory*. Manchester University Press pp 238-276: 250.

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6 S. Woenne-Green, R. Johnston, R. Sultan, and A. Wallis 1994 *Competing interests: Aboriginal participation in national parks and conservation reserves in Australia: A review*. Melbourne, Australian Conservation Foundation.

7 Toni Bauman, Chris Haynes and Gabrielle Lauder 2013 'Pathways to the co-management of protected areas and native title in Australia' 32 *AIATSIS Research Discussion Paper* 59.

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9 Waitangi Tribunal 2012 'Te Urewera: Pre-publication, Part III' *Wai 894 - Combined Record of Inquiry for the Urewera District Inquiry* 3: 890.

10 Bauman et al, above n 7, 62.

11 Ibid, 63.

FEDERAL COURT REJECTS CLAIMS OF NATIVE TITLE IN THE BRISBANE AREA

Sandy on behalf of the Yugara/Yugarapul People v State of Queensland (No.2)

Case summary and discussion

CHRISTINE DENG, DONNA BAGNARA & DR LISA STRELEIN NTRU

On 27 January 2015, Justice Jessup of the Federal Court of Australia handed down his first native title decision in *Sandy on behalf of the Yugara/Yugarapul People v State of Queensland (No.2)* [2015] FCA.

Jessup J's finding that native title does not exist over a large area of land and waters in and around the Brisbane metropolitan area related to applications for recognition of native title made by two different groups:

1. the Turrbal People, whose claim was made in 1998 over several discrete areas in the greater Brisbane region; and
2. the Yugara/Yugarapul People, whose 2011 claim covered Brisbane and some bordering regions.

Neither the Turrbal People nor the Yugara/Yugarapul People had legal representation.

Background

After its registration in 1998, the Turrbal claim languished in the Court lists until its inclusion in the Federal Court's prioritisation list, which provided greater impetus for its resolution.[1]

In 2011, three individuals from the Yugara/Yugarapul group applied to be joined as respondents to the Turrbal claim.[2] Justice Reeves of the Federal Court did not allow joinder because the applicants were acting in a representative capacity and not pursuing their own personal claim or interest. Furthermore, even if the applicants had been pursuing valid personal claims, Reeves J said that he would not have allowed joinder:

> given their late applications, the absence of any explanations for the delay and the likelihood that their presence as respondents would jeopardise the imminent trial of these proceedings.[3]

The Yugara/Yugarapul People lodged a separate application for recognition of native title over Brisbane and surrounding areas. The Federal Court then consolidated the two applications and, on 30 October 2013, ordered that the matter go to trial to determine:

1. whether native title existed in the claim area; and
2. if so, who are the people holding native title rights and interests and what is the extent of those rights and interests.

Because the ultimate finding in this case was that native title did not exist, Jessup J reasoned, at paragraph [318], that he was not required to answer the second question.

Orders sought by the parties

The State asked the Court to find that native title did not exist for both the Turrbal and the Yugara/Yugarapul claimants.

Both applicants asked the Court to find that native title exists in relation to all land and waters in their respective claim areas.

The Yugara/Yugarapul applicants also asked, if the Court did not find in favour of their application, that the matter not be determined.. The Yugara/Yugarapul applicants submitted that this would afford them the opportunity:

> to cause a thorough, professional, assessment of their connection, and the connection of their ancestors, to the land and waters of the claim area.

Jessup J rejected that submission on the basis that it was not made until the final stages of the hearing.

Legal Framework

In finding that native title did not exist, Jessup J looked at what constitutes native title, by reference to s 223 of the *Native Title Act 1993* (Cth) (NTA) and the treatment of that provision by the High Court in the *Yorta Yorta* decision of 2002.[4] It is noteworthy that the Judge did not consider how the law has developed and been applied in other decisions in the 12 years since.

Yorta Yorta requires that the applicant prove the existence of a normative system at sovereignty, under which traditional laws and customs existed and also prove that these traditional laws and customs, from which native title rights and interests arise, have been acknowledged and observed continuously without substantial interruption from generation to generation.[5]

In applying the *Yorta Yorta* test to the present case, Jessup J explained at [14] that

> Absent the continuous existence of a visible society some of whose members were possessed of the relevant interests, it is

> inevitable that the applicants, in both applications, would seek to make good their claims that they are the ones now so possessed by reference to their biological descent. The present case has become the occasion to test the viability of those claims.

Jessup J then explained at [71] that the Court would look at whether filiation (descent) was used by groups to transfer rights and interests in land and water from one generation to another. This was regardless of whether the generation to generation holders of those rights and interests actually inhabited the area.

The Turrbal claim

The Turrbal group were defined at paragraph [16] as:

> Connie Isaacs and her biological descendants, being the only known descendants of the Turrbal man known as the "Duke of York", and the only known descendants of those people who comprised the Turrbal People as at 7 February 1788.

The Turrbal applicants argued that, although the original inhabitants of the claim area had been displaced, the Turrbal People had continued to acknowledge and to observe their traditional laws and customs. Jessup J rejected their argument, noting at [129]:

> I would not hold that patterns of behaviour which is revealed by the evidence of Ms Isaac, her son and daughter bespeak the existence of a society characterised by a normative system of laws and customs in the *Yorta Yorta* sense. To have been told, as these witnesses were, about traditional customs, even those implying obligation, is not enough.

Jessup J noted, at [81], that the evidence provided by the Turrbal People was 'unsystematic and fragmentary', and was not:

> a picture from which the continued acknowledgement and observance, without substantial interruption, of a body of laws and customs could be inferred.

Jessup J found that there was not an uninterrupted acknowledgement of traditional laws, or observance of traditional customs on the part of the Turrbal group, stating at [131] 'Indeed, on the evidence in this case, I would hold the contrary to be the situation.'

At [156]-[254], Jessup J considered the Turrbal ancestry evidence.. His Honour's comments on the evidence presented by the descendants of Connie Isaacs included that it was highly derivative (at [167]) and even that it was crafted to be consistent with material, in anticipation of, or in the prosecution of the native title claim (at [170]).

Jessup J identified anomalies between oral and written testimony of the Turrbal applicants and the 'objective historical records'. For example, at [253], Jessup J found that records showed that Connie Isaacs' father, an essential link in the ancestral chain, did not himself have the ancestry required for the case to be viable. Jessup J preferred the objective historical records to the oral evidence of the applicants, stating at [253]:

> I am not prepared to put aside the objective evidence in favour of the less reliable, and generally more equivocal, oral history set out in the affidavits of Ms Isaacs, of her children and of her friend...'

The Yugara/Yugarapul Claim

The Yugara/Yugarapul group was defined, at [17], as the biological and/or traditionally adopted descendants of seven named ancestors.

Jessup J found, at [129], that the evidence going to continuity of connection was concerned with 'stories, beliefs, fears, taboos and habits' that were relevant only at a personal level, rather than that expected to prove the continued existence of a society. Also, at [153], Jessup J noted that the evidence presented did not cover enough of the requisite period of time.

At [255]-[315], Jessup J discussed the evidence about descent, as it related to the seven named ancestors. This included the applicants' affidavit evidence and the 'objective evidence' of newspaper articles, genealogy charts, various memoranda to Government officials and death certificates. Jessup J found that the applicants' affidavit evidence was not consistent with the objective evidence.

In considering the descent and connection for each of the named ancestors, Jessup J found either:

1. members of the claim group could not prove descent from the identified ancestor; or
2. the identified ancestor did not have any relevant rights or interests in the land or waters.

Jessup J concluded at [315]:

> I reject the case of the Yugara applicants that they, and the group they represent, are descended from people who had any relevant rights or interests in land or waters in the claim area.

Objective histories v oral histories

Jessup's J overreliance on the 'objective' evidence cannot be understated.

The preferential approach to objective written histories was first applied in the *Yorta Yorta* trial, where Olney J heard evidence from 201 witnesses, including 54 *Yorta Yorta* community members, two anthropologists, an archaeologists and a linguist.[6] The claimants also supplemented their oral and anthropological evidence with two works by Edward Curr, an early European pioneer. Olney J found that Curr's written accounts of Aboriginal culture compared unfavourably with the oral accounts by community members.[7] Although finding the

claimants evidence of cultural practices, including hunting and fishing, were worthy objectives, Olney J stated 'they could not be regarded as matters relating to the observance of traditional laws and customs as observed by Curr'.[8]

Olney J's approach to evidence has been extensively critiqued[9] including for a failure to contextualise Curr's writing as reminiscences of his youthful exploits, written around thirty years after removing from the region and aimed at entertaining 'a British readership avid for exotic news of their far flung empire'.[10]

Chief Justice Black, in his dissenting decision in the Full Federal Court hearing of *Yorta Yorta*, cautioned against overreliance on historical records to inform a claim that must, of its nature, be based on oral transmission of culture, particularly those details recorded by 'untrained observers', writing from their own cultural viewpoint and with their own cultural preconceptions and for their own purposes.[11]

In this matter, Jessup J relied on the historical writings of Constance Petrie, who based her writings on conversations with her father Thomas Petrie, an untrained observer who spent substantial time with the Aboriginal people at Moreton Bay. His Honour used Petrie's account of her father's experience to discount the applicants' evidence of an essential link to the Duke of York. His Honour stated at [184]:

> as a boy, Petrie spent a lot of his time with the aborigines of Moreton Bay area ... apart from anything positive from which it might be inferred that Kulkawara was the Duke of York's daughter, it is in my view, almost unthinkable that Petrie, who otherwise laid out his reminiscences in great detail .... would have omitted to mention that the kidnapped girl was the daughter of the Chief of the tribe, Duke of York'.

It is arguable that the preferential treatment given to objective historical evidence is not consistent with the general approach in native title where the laws of evidence need to be flexible. This is especially considering that s 82 NTA provides for the Court to order that the laws of evidence do not apply so as to reflect the cultural concerns of Indigenous parties.[12]

The importance of oral evidence was demonstrated in the case of *Daniels v Western Australia*[13] where the rule of hearsay was waived so oral histories could be admitted into evidence. Similarly, the Federal Court may order a hearing to be held in private or in closed sessions, to respect the cultural concerns of Aboriginal Peoples.[14].

Equally, the Canadian Courts have demonstrated the need for special rules of evidence in native title cases. For instance in *R v Van Der Peet,*[15] the Supreme Court of Canada stated, at [559]:

> a court should approach the rules of evidence, and interpret the evidence that exists, with a consciousness of the special nature of Aboriginal claims, and of the evidentiary difficulties in proving a right which originates in times where there were no written records of the practices, customs and traditions engaged in.

While evidence rules must apply in all Court cases, it is important to recognise that in native title cases, general principles of evidence should be adapted to the demands of intercultural recognition and historical documents are contextualised to have influence in both cultures.

Implications of the Decision

This decision highlights the obstacles native title claimants face in proving connection. Judicial interpretation of s 223 NTA creates more than a definition of native title. Applicants are faced with requirements of proof based on 'numerous interpretive layers to the terms of the provision.'[16]

The ambiguous language used in the construction of s 223, coupled with the high standard of evidence required, means that native title holders find it difficult to prove an ongoing connection with land and waters since sovereignty,[17] especially where 'objective' written histories are privileged.

The impact of the interpretation of s 223 NTA is the subject of much debate, some of which was recently discussed by the Australian Law Reform Commission (ALRC) in its review of the NTA.[18]

Another issue highlighted by this decision, also considered by the ALRC's review of the NTA, relates to the length of time that some native title cases have been on the Court lists. Concerns about timeframes include that some applicants who initiated native title claims may pass-away before the Court arrives at its determination. Not only do those applicants not see their efforts bear fruit, but the claim group itself loses valuable knowledge that may otherwise assist their claim.

In an attempt to ensure the resolution of all existing native title applications as soon as practical, the Federal Court introduced the prioritisation initiative.[19] This initiative supports the general principle underlying the Federal Court's case management requirements, which is to encourage the just, orderly and expeditious resolution of disputes.[20]

Nevertheless, the timely resolution of native title determinations should not be encouraged at the cost of achieving just recognition of the rights of Aboriginal and Torres Strait Islander People. Rather, reform should take a 'principled' approach and promote claimants' opportunity to thoroughly engage with their evidence before attending Court. One of Justice's Reeves considerations in dismissing the individual applications for joinder was the impact these application would have on the imminent trial of the matter. Similarly, the strong focus by the Courts on the orderly and expeditious resolution of disputes

could be inferred as a significant factor in Justice Jessup's rejection of the Yugara/Yugarapul submission to further research their connection to the claim area.

This decision precludes any future more well-developed claim by the Yugara/Yugarapul people. A determination that the claimants could not prove native title is preferable to a determination that native title does not exist, especially where pressure from the Court is a primary driver for bringing claims to trial.

Jessup J seemed to recognise this implication noting at [154]

> ... what is most striking is that, for the most if not the whole part, the evidence of the Yugara/ Yugarapul people related to areas to the South and Southwest of the lower Logan, and around Beaudesert area. That in itself would not be fatal to the Yugara case, but it provides ground for the Court not to say anything more on the subject than is necessary to decide that case, concerned as it is with the claim area. In particular, I would not want to say anything that might later be used to compromise any claim to other parts of South East Queensland that the Yugara people, or others may wish to make.

Conclusion

The *Yorta Yorta* test and its subsequent application in the Courts led to some commentators concluding that native title has failed dismally in Australia.[21] The onus on the claimants to prove that they have continuously practised their traditional laws and customs without substantial interruption occurs against the backdrop of a brutal history that led to the dispossession of many Aboriginal groups.[22] The *Yorta Yorta* test favours the interpretation of 'traditional' as a character of the past rather than present Aboriginal laws and customs, resulting in the Courts largely ignoring Aboriginal practices that fall outside a strict interpretation of the word. In addition, the preference for 'objective historical evidence' over oral history means that native title claimants are faced with the difficult task of applying their culture to a foreign judicial system.

McHugh J in *Ward*, sums up the position of native title claimants in our current legal system, where he states at [156]:

> The deck is stacked against the native title holders whose fragile rights must give way to the superior rights of the landholder whenever the two classes of rights conflict [23]

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1 Justice Berna Collier, *Prioritisation of native title cases in the Federal Court of Australia* (FCA) [2011] FedJSchol 31.

2 *Isaacs on behalf of the Turbal People v State of Queensland (No 2)* [2011] FCA 942, per Reeves J. For a summary of the case, see AIATSIS What's New in Native Title, August 2011 at http://aiatsis.gov.au/sites/default/files/products/what039s_new_in_native_title/aug11.pdf.

3 Ibid at [34].

4 *Members of the Yorta Yorta Aboriginal Community v State of Victoria* (2002) 214 CLR 422.

5 Justice Jessup also referred to *Risk v Northern Territory* [2006] FCA 404; (2007) 240 ALR 75 at [79], this was only in relation to an observation made in the decision that a claimant group that has been dispossessed of much of its traditional lands and thereby precluded from exercising many of its traditional rights will have a great difficulty in showing that its rights and customs are the same as those exercised at sovereignty.

6 Kirsten Anker, *"Laws in the present tense: Tradition and cultural continuity in Member of the Yorta Yorta Aboriginal Community v Victoria*, (2004) 28 Melbourne University Law Review 13, 6

7 Ibid.

8 *Yorta Yorta* (Federal Court) [1998] FCA 1606 (Unreported, Olney J, 18 December 1998) [125], in Kirsten Anker, above n 6, 8.

9 See Valeries Kerruish and Collin Perrin, *"Awash in Colonialism: A Critical Analysis of the Federal Court Decision in the Matter of The Members of the Yorta Yorta Aboriginal Community v Victoria* (1999) 24 Alternative Law Journal 3; Roderic Pitty, *A Poverty of Evidence: Abusing Law and History in Yorta Yorta v Victoria* (1998)(1999) 5 Australian Journal of Legal History 41.

10 Patricia Grimshaw and Andrew May, '"Inducements to the Strong to Be Cruel to the Weak": Authoritative White Colonial Male Voices and the Construction of Gender in Koori Society' in Ailsa Burns and Norma Grieve (eds), *Australian Women: Contemporary Feminist Thought* (1994) 92, 95, in Kirsten Anker, above n 6, 25.

11 *Yorta Yorta (Full Federal Court)* (2001) 180 ALR 655, 671, in Kirsten Anker, above n 6, 23.

12 *Native Title Act 1993* (Cth) s 82(2).

13 [2000] FCA 858 (Unreported, Nicholson J 26 June 2000).

14 Michael Black, *'Developments in Practice and Procedure in Native Title Cases'* (2002) 13. *Public Law Review* 1, 23–5. See also *Western Australia v Ward* (1997) 145 ALR 512.

15 [1996] 2 SCR 507, in Kirsten Anker, above n 6, 23.

16 Lisa Strelein 'A captive of statute' 93 Australian Law Reform Commission Reform Journal 48, www.austlii.edu.au/au/journals/ALRCRefJl/2009/16.html.

17 Nick Duff, *'What's needed to prove native title? Finding flexibility within the law on connection' AIATSIS Research Discussion Paper no. 35*, Australian Institute of Aboriginal and Torres Strait Islander Studies Press, Canberra, 2014.

18 Australian Law Reform Commission, Review of the *Native Title Act* 1993, Discussion Paper 82, 2014. www.alrc.gov.au/sites/default/files/pdfs/publications/discussion_paper_82_october2014.pdf

19 Above n1.

20 Federal Court of Australia, 'Individual Docket System' accessed 13/ 03/ 2015 <http://www.fedCourt.gov.au/case-management-services/case-allocation/individual-docket-system>

21 See, eg Jennifer Clarke, *Why It's (Almost) Not Worth Lodging a Native Title Claim* (2003), <http://www.onlineopinion.com.au/2003/Jan03/Clarke.htm>; Phil Glendenning, *'Yorta Yorta Decision a Further Act of Dispossession and Cultural Genocide'* (Press Release, 12 December 2002) <http://www.erc.org.au/issues/text/yy02.htm>.in Kirsten Anker, above n 6, 22.

22 Above n 6, 26.

23 *Western Australia v Ward* (2002) 191 ALR 1, 156, (McHugh J ("Ward")

The Native Title Research Unit (NTRU) was established through collaboration between the Aboriginal and Torres Strait Islander Commission and AIATSIS in 1993 in response to the High Court decision in Mabo v Queensland [No 2], which recognises Indigenous peoples' rights to land under the legal concept of native title. The NTRU's activities are currently supported through a funding agreement with the the Department of the Prime Minister and Cabinet.

The NTRU provides high quality independent research and policy advice in order to promote the recognition and protection of the native title of Aboriginal and Torres Strait Islander peoples. We facilitate access to the Institute's records, materials and collections and publish the results of our research both as a source of public information and in academic publications.

Located within the wider AIATSIS research program, the NTRU aims to provide ongoing monitoring of outcomes and developments in native title; independent assessment of the impact of policy and legal developments; longitudinal and case study research designed to feed into policy development; ethical, community based and responsible research practice; theoretical background for policy development; recommendations for policy development; and policy advocacy designed to influence thinking and practice.

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