

NATIVE TITLE NEWSLETTER

DECEMBER 2012



AIATSIS

AUSTRALIAN INSTITUTE OF
ABORIGINAL AND TORRES STRAIT
ISLANDER STUDIES

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WELCOME TO THE NEW LOOK *NATIVE TITLE NEWSLETTER*

The *Native Title Newsletter* has been redesigned to enhance readability, with an emphasis on native title feature articles. The Newsletter will now be produced three times a year (April, August and December). Content that is published in the monthly publication *What's New in Native Title* will no longer be published in the *Native Title Newsletter* so as to eliminate duplication. This information — native title case law, Indigenous land use agreements, *Native Title in the News*, publications, events and professional development opportunities — will still be available through *What's New* and at <http://aiatsis.gov.au/ntru/overview.html>

The Newsletter will continue to include feature articles, including traditional owner comments, articles explaining native title reforms, book reviews and NTRU project reports. The *Native Title Newsletter* is distributed to subscribers via email or mail and is also available at <http://aiatsis.gov.au/ntru/newsletter.html>

We welcome your feedback and contributions. For more information, please contact: gabrielle.lauder@aiatsis.gov.au



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Cover image: Tony Inkerman, Monica Josiah and other participants at the Awin Udnum workshop held at the Crossing, Kowanyama in August 2012.

Credit: Gabrielle Lauder

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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NATIONAL NATIVE TITLE CONFERENCE 2013 SHAPING THE FUTURE

ALICE SPRINGS, 3–5 JUNE 2013

MacDonnell Range surrounding Alice Springs.
Credit: Lisa Strelein

WE ARE NOW CALLING FOR PAPERS

By Shiane Lovell

The National Native Title Conference is recognised as one of the leading Indigenous policy conferences in Australia. The 14th annual conference will be held from Monday 3 June 2013 to Wednesday 5 June 2013 at the Alice Springs Convention Centre. The 2013 conference will be co-convened by AIATSIS and the Central Land Council and hosted by the native title holders of the Alice Springs area represented by the Lhere Artepe Aboriginal Corporation.

The conference promotes public debate about native title and Indigenous peoples' interest in land and waters; fosters knowledge acquisition in this dynamic area of agreement making, natural resource management and economic development, and provides an opportunity for native title parties to share information and experience and broader policy intent.

The conference program includes one day of closed workshops for Indigenous people and their native title representative bodies (Monday 3 June 2012) followed by the two day public program for registered delegates (Tuesday 4 June–Wednesday 5 June). The dynamic cultural program will include a Welcome to Country ceremony for all conference delegates on the evening of Monday 4 June.

Shaping the Future

The conference title 'Shaping the Future' is reflected in the following themes:

The Native Title Act 20 years on, where to from here?

Native title and social justice
Native title rights and recognition in an international context
Emerging issues in native title

Indigenous governance

Getting the right 'cultural fit'
Taking the long-term view, strategic planning
Building capacity

The Indigenous estate and development options

Planning and investment priorities
Natural resource management
Culture and country

Building a future

Economic and community development
Keeping culture strong
Education and jobs

Call for papers

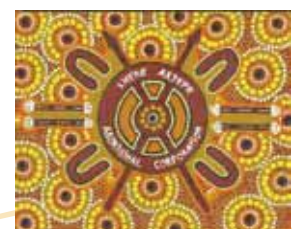
Proposals for papers, panels, dialogue forums and Indigenous talking circles are invited for consideration by the conference convenors.

Please submit your proposal with an abstract (up to 200 words) and biography (up to 150 words for each presenter) by Monday 4 March 2013 to ntconference@aiatsis.gov.au

Please send proposals in with the 'call for papers' application which can be found on the conference website: <http://www.aiatsis.gov.au/ntru/ntc13.html>



Central Land Council



Lhere Artepe
Aboriginal Corporation

THIS IS ARABANA COUNTRY:

AN INTERVIEW WITH DAVID HULL, DIRECTOR OF ARABANA ABORIGINAL CORP RNTBC



David Hull, Director of Arabana Aboriginal Corporation RNTBC.

Credit: Gabrielle Lauder

“ARABANA PEOPLE TRAVELLED FROM NEAR AND FAR”

My country, my people

In May 2012, the Federal Court granted the Arabana People native title to almost 70,000 square kilometres in South Australia's north, including Lake Eyre. The majority of the area is covered by pastoral lease, including Anna Creek Station, the largest working cattle station in the world. It also includes three reserves, Elliot Price Conservation Park, Lake Eyre National Park and Wabma Kadarbu Mound Springs Conservation Park as well as the towns of Marree and William Creek.

Our native title experience

Our claim has been going for a long while; I really can't remember when it first started. The claim was lodged in 1998 but there was a lot of work preceding that. At the time a few of our elders were involved in providing evidence of connection to country. It has been a long process and a frustrating one at times, with all the bureaucracy and red tape we have had to go through. We also had lengthy consultations with other native title holders.

The state assisted in pushing our claim along, in pointing us in the right direction, and letting us know what we needed to do to achieve the final outcome. They were more of a help to us than a hindrance.

There have been a number of challenges along the way, including sorting out our claim boundaries with other groups. Although the government was helpful, at times we had to strategise to overcome certain obstacles in our negotiations with the state. We also encountered some upsets with recreational visitors to Lake Eyre. Through our Chair Aaron Stuart we have indicated to those people, the State, and DEWNR [Department of Environment, Water and Natural Resources] that boating on Lake Eyre—when it is full—is disrespectful to Arabana People as it disrupts our Dreaming stories. We have had researchers ask to go on country to look at bird populations and we have negotiated permission for such research purposes. But we won't compromise our integrity or the sacredness of our sites where there is disrespect.



Arabana Aboriginal Corporation RNTBC committee with Justice Finn at the native title determination hearing in May 2012.

Credit: Colleen Strangways

The Arabana determination

Countrymen, Arabana People, travelled from near and far. People came from as far as Darwin and Sydney to celebrate with us. Many people who grew up and lived at Finnis Springs, where the determination was heard, went up early and camped at the creek. SANTS assisted 80 cars in getting there. Station owners and mining companies were also present. Some news teams came in, one with their helicopter.

The elders did a formal welcome in Arabana. We went through the formal sitting and the Federal Court finally endorsed the determination of native title. We were then given the legal documentation and we did the formal signing of the ILUAs. This was followed by entertainment: music and dancing. People had the opportunity to visit the burial sites of their elders. Many people stayed on until the next day.

The determination, declared under a tent on the Finnis Springs station, brings to an end a 14-year claim by our traditional owners. Under the terms of the consent order the Arabana people will have access to the land for hunting, camping, fishing and traditional ceremonies.

Into the future

I am hopeful that good things will come from native title into the future. It's already getting people back on country. We have already talked about having a celebration every year at Finnis Springs. We plan to make that an annual event for people so a lot more people can come home, as many people missed out this year.

Our Chair has alluded to changing the name of the lake to its traditional name: Kati Thanda. We are still in the discussion stage but the feelers are out there. This is something that the whole Arabana group would have to endorse before it went through the legal hoops.

Through our native title negotiations with the state we have been able to secure some compensation through ILUAs. This includes some blocks of lands, some money to run the PBC, and the funding of work projects at Finnis. We will also receive funding to build ablution blocks

and provide for running water at Finnis, to build camping areas to allow people to come back on country, and to restore the old mission houses. With this money we also hope to provide employment for some of our younger folk living in Marree. We also have money for some environmental work and later on we hope to develop a tourism project. So there will be a little bit of money for the community there.

The significance of this determination is that it gives our people certainty: Arabana people can go back on country now without fear of station owners and other parties. We have rights to fish and hunt and camp on any part of our lands. We also have the right to negotiate with companies regarding any mining activities on our country. It gives us the acknowledgement of what we have always known: this is Arabana country.

**“OUR LAND IS OUR IDENTITY;
IT'S WHO WE ARE”**

**Aaron Stuart,
Chair of Arabana Aboriginal Corporation RNTBC**



Justice Finn, Arabana elder Reg Dodd, and children at Finnis Springs. Credit: Colleen Strangways



PRESCRIBED BODIES CORPORATE (PBCs) SUPPORT PROJECT UPDATE

By Claire Stacey & Toni Bauman

AIATSIS has been conducting extensive research with PBCs, or Registered Native Title Bodies Corporate (RNTBCs) as they are more formally known, since 2006 and started a PBC Support Project in 2011. The PBC Support Project has now become part of the 'business as usual' of the Native Title Research Unit, and continues to take direction from PBCs through recommendations made at national and regional meetings, as well as individual requests from PBCs.

AIATSIS invites all PBCs to send us your feedback and suggest ways that our research can best support your needs.

AIATSIS continues to look after:

- The PBC website: a collection of information, news and advice for PBCs (www.nativetitle.org.au)
- PBC funding toolkits: lists of funding, grants, training and events that might be useful to PBCs
- PBC email network: for sending through any news, information, updates or events that might be useful to PBCs
- PBC profiles: summary of each PBC with contact details

AIATSIS also aims to support PBCs by:

- Following up on the recommendations made by PBCs at regional and national PBC meetings
- Providing PBC forums at the Native Title Conference 2013
- Creating new information resources for PBCs
- Working with other organisations such as Aurora, FaHCSIA and ORIC to better coordinate PBC training and support

- Coordinating a state wide meeting of PBCs in Western Australia in 2013
- Speaking with NTRB/NTSP staff who work with PBCs to better coordinate the flow of information, resources, knowledge and advice that might be of use to PBCs

AIATSIS will also be inviting PBCs to be a part of a national PBC survey in 2013. The survey is being done by AIATSIS in order to gather information about how much assistance native title groups are getting with running their native title business. The survey will ask PBCs questions about the different types of activities they are engaged in, the current capacity of the PBCs and PBC relationships with NTRBs/NTSPs.

Once the survey is completed, AIATSIS will collate all the information it collects and write a report which sets out the findings of this research. If appropriate, this report can then be used by native title groups and research organisations such as AIATSIS, to argue for more support and better policies for PBCs into the future.

PBC profiles, funding toolkits, news and advice can be found on the PBC website: www.nativetitle.org.au. For any enquiries or suggestions please contact Claire Stacey on claire.stacey@aiatsis.gov.au or (02) 6246 1158.

Aurora pilots 'Understanding and managing native title for PBCs'

In 2012, the Aurora Project ran two four-day pilot programs to help Prescribed Bodies Corporate (PBCs) manage their native title. Funded

by FaHCSIA, 'Understanding and managing native title for PBCs' was available for members of Prescribed Bodies Corporate (PBCs) and their staff, as well as PBC support staff from NTRBs and NTSPs. The pilots were facilitated by Toni Bauman (AIATSIS), Angus Frith (University of Melbourne) and Duane Vickery (ETMP consultants).

Eighteen individuals from twelve PBCs and two NTRBs from Queensland attended in Cairns from Monday 6 August to Friday 10 August, and twenty participants from eight PBCs and one NTRB from Western Australia attended in Broome from Monday 3 September to Thursday 6 September.

The four-day pilots focused on PBCs' legal obligations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), PBC Regulations and the *Native Title Act* with practical activities and group discussion based on real situations faced by PBCs. The course was in two parts:

- Part 1: Understanding future acts and ILUAs for PBCs; and
- Part 2: Managing native title: Group consultation and decision making

Part 1 reviewed important information that PBCs need to know regarding future acts and ILUAs so as to be able to manage their native title, and explored ways to share this information with the whole native title group. Part 2 dealt with free, prior and informed consent, and PBCs legal obligations for group consultation and native title decision making. A scenario activity focused on how to set up processes for consultation and decision making which meet legal requirements and are right for the native title group.

Materials developed specially for PBCs were also provided, to be taken back to the PBC to help with future work. Resources from the program will be available in December 2013 for PBCs and those who work for PBCs at: www.auroraproject.com.au/PBC_resources

Enquiries about this program can be made to:

philippa.pryor@auroraproject.com.au

Image: Participants at the Aurora PBC training pilot in Cairns in August 2012.

Credit: Jacinta van Lint

CHANGES TO COME? PROPOSED AMENDMENTS TO THE NATIVE TITLE ACT

By Nick Duff

Moves are underway to make some changes to the native title system. Just what those changes will be, and how much of a difference they will make, is yet to be seen.

In March 2011, Greens Senator Rachel Siewart introduced a private member's Bill into parliament. That Bill was intended to change the *Native Title Act* to take away some problems that had caused serious frustration and disappointment for many traditional owners and others. These problems had been raised by high profile figures including several successive Aboriginal and Torres Strait Islander Social Justice Commissioners and the Chief Justice of Australia. The most significant changes proposed in the Bill were:

- Requiring the *Native Title Act* to be interpreted consistently with the United Nations Declaration on the Rights of Indigenous Peoples, including principles of self-determination and free, prior and informed consent
- Improving the 'right to negotiate' provisions in the 'future acts' regime by:
 - Requiring parties to use all reasonable efforts to reach agreement about developments on native title land (so that the standard six month period is merely a minimum time for negotiation)
 - Setting specific minimum standards for negotiations in good faith
 - Requiring the party seeking arbitration (usually the development's proponent) to prove that they negotiated in good faith, instead of the other party having to prove that there were no good faith negotiations, and

- Allowing the Tribunal to impose profit-sharing conditions when making determinations about whether developments can go ahead
- Allowing parties to disregard the extinguishing effect of historical tenures or legislation by mutual agreement, and
- Removing some of the difficulties in proving that law and custom is 'traditional' and that connection to the land has been 'continuous' since the pre-colonial period—the amendments would effectively reverse the onus of proof for those issues

The Greens Bill was referred to the Senate Committee for Legal and Constitutional Affairs in May 2011, and the committee delivered its report in September 2011. Senator Siewart introduced a substantially similar Bill into parliament in February 2012.

At the same time as the Greens Bill was progressing, the government had been working on a parallel process of developing reforms. In June 2012 at the National Native Title Conference in Townsville, the Attorney General announced that the government would be introducing its own amendments to the *Native Title Act*. An exposure draft of these amendments was released for public comment in October 2012, and the Bill was introduced into Parliament the following month. Much of the substance of the government's proposed changes is similar to the Greens Bill, but there are some significant differences. The main differences are:

- There is no reference to the Declaration on the Rights of Indigenous Peoples
- The 'good faith negotiation' standards are not set as minimum criteria but instead are just 'indicators' of good faith

- There is no proposal to allow the Tribunal to impose profit-sharing conditions
- The provisions allowing the historical extinguishment of native title to be disregarded are limited to national parks and conservation reserves, and exclude off-shore areas
- There is no proposal to change the processes for how traditional owners are required to prove their traditional connection to their lands and waters

In relation to the 'right to negotiate' process, the government's proposed reforms would increase the minimum period before the Tribunal can be asked to mediate, raising it from six months to eight months. Further, the government has proposed changes to the authorisation processes for Indigenous land use agreements (ILUAs), clarifying the requirements for situations where there are people who claim to have native title in an area but who are not included in a registered native title claim.

AIATSIS made submissions to the senate committee inquiry into the Greens Bill and to the Attorney General's Department's exposure draft legislation. In general, AIATSIS was supportive of the proposed changes but considered that they (particularly the government's reforms) should go much further. In response to the government's exposure draft, AIATSIS recommended:

- Additional strengthening of the 'right to negotiate' process to ensure a more equal playing field between native title parties and developers and to allow for better quality agreement-making
- Making the disregarding of historical extinguishment automatic for parks and reserves, removing the exclusion of offshore areas, and allowing parties to agree on disregarding extinguishment in other areas
- Leaving in place the current period of three months for objections to be lodged against the registration of ILUAs, rather than reducing the period to one month as proposed

AIATSIS' submission can be accessed at: <http://www.aiatsis.gov.au/ntru/submissions.html>

AWIN UDNUM DAY 1

Abm Elgoring Ambung Aboriginal Corporation invited the Native Title Research Unit to participate in the *Awin Udnum* ('Good Path') Project, a series of workshops held in Kowanyama and its surrounding areas. The *Awin Udnum Project* was developed in collaboration with the community, who determined that getting out on country was central to Aboriginal people's wellbeing. On 15 August 2012, a two-day bush workshop was held on Kowanyama country at Patha Pakalin ('The Crossing').

This workshop facilitated the sharing of traditional knowledge, community cultural engagement and intergenerational activities, including fishing, hunting, gathering and preparing bush foods, medicines and natural resources.



Vera Raymond is a member of the clan that hosted the workshop, Yir Thanyedl Mel Thiw ('Eye of the Owl'). Vera knows her country well and shared her knowledge of bush plants. Credit: Gabrielle Lauder



Yellow dye is extracted from the bark of the *Morinda citrifolia* to dye the fibre for string bags. Credit: Gabrielle Lauder



Jarral Henry with a pandanus armband, what is worn around the upper arm in certain ritual circumstances. Credit: Gabrielle Lauder



Lillian Josiah cutting cabbage palm (*Corypha elata*) fronds to strip silk for weaving. Credit: Gabrielle Lauder



Lawyer cane/supplejack (*Flagellaria indica*) leaves in bailer shell have many customary medicinal uses. Credit: Gabrielle Lauder



Vera Raymond collecting bush toffee from toffee tree (*Atalaya hemiglauca*). Credit: Gabrielle Lauder

GOOD PATH DAY 2

AIATSIS has been working with Abm Elgoring Ambung Aboriginal Corporation on building PBC capacity through the role that they play in climate change decision making. Abm Elgoring Ambung participated in the first state wide meeting of Queensland PBCs in October 2011, facilitated by AIATSIS. They have since participated in case study research throughout 2012 into social-institutional barriers in climate change adaptation, focusing on the role of native title holders as decision makers over their traditional lands.

Abm Elgoring Ambung was formed in September 2009 after a successful determination of native title over the traditional lands of the Yir Yoront, the Kokoberra and Kunjen, in *Kowanyama People v State of Queensland* [2009] FCA 1192. Kowanyama has a long history of asserting its independence and practising 'sovereignty' in its decisions about land management, research, and the development of community capacity and resources. Established in 1990, the Kowanyama Natural Resources Land Management Office facilitates and supports Aboriginal people's management of the natural and cultural resources of Kowanyama country.



Manager of Kowanyama Aboriginal Land and Natural Resources Management Office, Vivian Sinnamon and Edgar Bendigo, blackening spears with wallaby blood and black ash. Credit: Daniel Whitfield



L-R Abm Elgoring Ambung Aboriginal Corporation RNTBC Director Anzac Frank, General Manager Rodney Whitfield and Director Charlotte Yam. Credit: Gabrielle Lauder



Lillian Raymond & Shantaye Martin collecting mudshells/ mangrove mussels (*Geloina coaxans*). You can see the edge of the shell in the mud in the mangroves or feel for shells in the mud with your feet. Credit: Gabrielle Lauder



Monica Josiah with palm raffia stripped from cabbage palm (*Corypha elata*). Credit: Daniel Whitfield



David Patrick from the neighbouring Scrub Turkey Clan with a mangrove jack he caught earlier. Credit: Gabrielle Lauder

NATIVE TITLE ANTHROPOLOGY PRE-CONFERENCE ASSEMBLY 25 SEPTEMBER 2012

By Cameo Dalley, Centre for Native Title Anthropology, ANU

In September, native title anthropology practitioners from around Australia converged on Brisbane to attend an assembly hosted by the Centre for Native Title Anthropology (CNTA) at The Australian National University (ANU), held in partnership with the Native Title Research Unit at AIATSIS, The University of Queensland and The University of Adelaide. The assembly was run in conjunction with the annual Australian Anthropological Society (AAS) Conference which took place at the University of Queensland during the same week and brought together over 200 anthropologists on the topic 'Culture and Contest in a Material World'. With over 45 attendees, the pre-conference assembly included students, consultants and Native Title Representative Body (NTRB) staff, including a large contingent from Queensland South Native Title Services. Attendees were warmly welcomed to country by Des Sandy, a traditional owner from the Brisbane area. Des noted the Aboriginal history of the suburbs surrounding the university and encouraged attendees to make the most of the opportunity to gather and discuss native title and related issues.

Toni Bauman from AIATSIS facilitated the afternoon including a panel discussion on the topic 'Native title anthropology in the age of the resources super-boom'. The panellists were Professor David Trigger (School of Social Sciences, University of Queensland), Professor Saleem Ali (Centre for Social Responsibility in Mining, University of Queensland), Craig Jones (Arrow Energy), Barry Hunter (Rio Tinto Coal) and Michael Thompson (Queensland South Native Title Services). Each of the presenters spoke for fifteen minutes, reflecting on their experiences of working with Aboriginal people and resource extraction companies, particularly in Queensland.



Professor David Trigger (UQ) discusses the development of native title anthropology in the age of the resources 'super-boom'. Credit: Jodi Neale

The establishment of 'free and prior informed consent' from Aboriginal people in agreement making was a continuing theme in the presentations, with varying interpretations of what the concept means and how it is currently being realised in different contexts. Audience members were encouraged to contribute to the discussion about the intersection of native title and cultural heritage under particular legislative frameworks. One of the attendees, **Diana Romano**, a research officer at Queensland South Native Title Services, noted that 'The focus on the resources industry helped solidify and explore questions we have been asking ourselves in our own work and rarely get to discuss on a broader level. These include questions about how mining impacts native title claims and cultural heritage rights on both micro and macro levels, and what this means for the work of consultants and in-house NTRB researchers with respect to everyday work on native title claims'.

In the latter part of the day, attendees were updated on forthcoming events in native title professional development around Australia and the University of Adelaide's plan to develop a nationally-distributed curriculum for tertiary teaching in native title anthropology. The session also provided the opportunity

for attendees to give feedback on the Attorney General Department's (AGD) Native Title Anthropologist Grants Program which has funded native title events and activities around Australia since 2010, including those offered by the CNTA at the ANU, Cairns Institute at James Cook University and the University of Adelaide. Those in attendance spoke highly of the AGD program, noting both the high quality and uniqueness of the opportunities that the grant scheme has offered.

The Attorney-General's Department is currently conducting a review into the Native Title Anthropologist Grants Program. Further details are available at the website:

<http://www.ag.gov.au/Indigenoula wandnativetitle/NativeTitle/Pages/NativeTitleAnthropologistGrantsProgram.aspx>

For further information about the Pre-Conference Assembly or CNTA activities contact:

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Wik Region - Aurukun Place, Aurukun, QLD, Australia.
Credit: M. Mulvaney & the Australian Heritage Photographic Library

THE 2012 WIK & WIK WAY NATIVE TITLE DECISION

By Pamela McGrath

In early October in the far north Queensland community of Aurukun, the Federal Court held a special hearing at which Justice Greenwood handed down a consent determination that marks the end of one of the longest running and most important cases of the native title era. The orders made by Justice Greenwood granted the Wik and Wik Way peoples title over an area of 4,500 square kilometers; taken together with four earlier decisions in 2000, 2004 and 2009, the Wik and Wik Way peoples are now recognised as having native title rights in an area of more than 20,000 square kilometers.

These two groups are now recognised by the Australian legal system as having a range of rights over much of their traditional estate, which runs from just south of Weipa to north of Pormpuraaw and east to almost Coen. The rights recognised include accessing and camping on Wik and Wik Way land; using and taking natural resources (although not for commercial purposes); maintaining and protecting places and

sites of significance; and using water for a variety of purposes including ceremony and domestic use. There is a specific right to maintain springs and wells for the purpose of ensuring the free flow of water. The determination grants no rights or interests in relation to minerals or petroleum, and all of the rights and interests are non-exclusive.

The determination follows extensive negotiations between the native title claimants and the many respondent parties to the claim, which include the Queensland government, pastoralists, mining companies, local shire councils and an environmental protection group. With an agreement in place, it was possible for native title to be recognised without holding a court trial. Justice Greenwood described the event as a 'proud day for the Wik and Wik Way peoples', and paid tribute to the concerted efforts of all parties involved.

The history the Wik and Wik Way peoples' fight for recognition of their native title is a complicated but

significant one. In 1993, inspired by the success of the Meriam people in the Mabo case and only months before the *Native Title Act* came into effect, representatives of the Wik people lodged their own common law native title claim with the High Court of Australia. Shortly afterwards, in early 1994, they brought an application to the Federal Court under the new *Native Title Act*. Progress on the mediation of their native title claim stalled for a number of years as significant matters of law were argued, decided and appealed. Just before Christmas in 1996, the High Court handed down a decision holding that pastoral leases on Wik land did not necessarily extinguish native title, although the Court did not make any findings about whether the Wik people did actually hold native title.

The 1996 Wik decision had a profound impact nationally and continues to be widely regarded as one of the most important decisions in the history of native title jurisprudence. The principle of co-existence it established vastly

extended the area where native title claims could potentially succeed, raising the hopes of many Aboriginal groups that they would no longer be locked out from traditional lands by inhospitable pastoralists. But the decision was seen by many as destabilising the nation's land use system and creating uncertainty for other interest groups.

Without a majority in the Senate, it took Prime Minister John Howard's Coalition government two years of debate and political negotiation before it succeeded in passing a legislative response to the Wik decision. As one commentator wryly observed at the time, 'A Wik is a long time in politics'. The 'Ten Point Plan', as the 1998 amendments to the *Native Title Act* were known, was criticised by many for eroding the rights of native title holders and shifting the balance of legal power back towards non-Indigenous interest groups, in particular pastoralists.

The Wik and Wik Way peoples' fight for recognition has been won in stages through a protracted process of mediation and agreement making that has taken untold amounts of time, passion and intellectual effort. This has been an

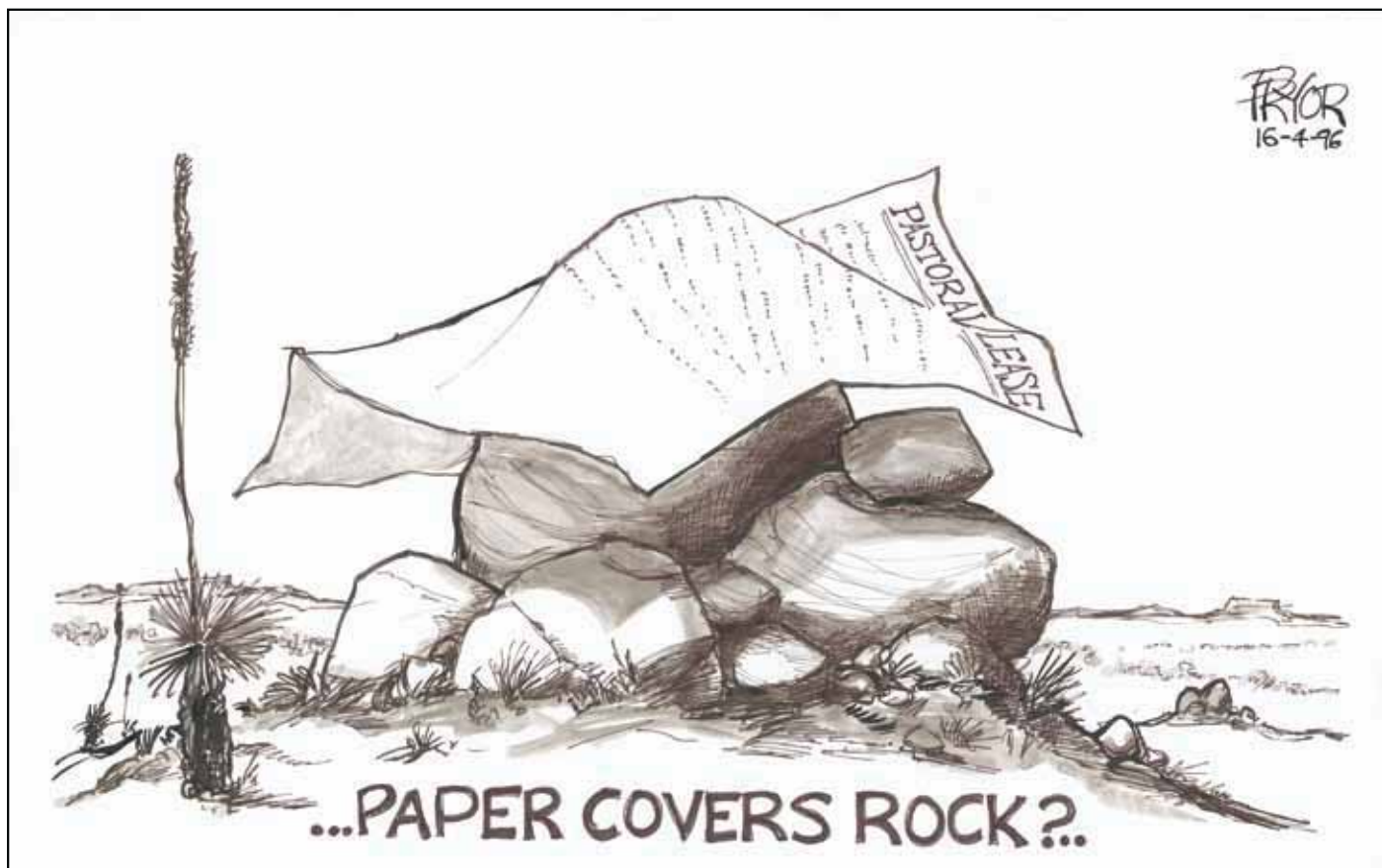
intergenerational struggle. Many older people provided crucial leadership and evidence, generously giving of their knowledge and energy; most of these individuals did not live to see the final outcome of their efforts. They were supported by younger family, many of whom were born in the closing years of the twentieth century when this legal action had only just begun. This young cohort of traditional owners has never known a world without the native title system and its attendant bureaucracy: courts, lawyers, anthropologists, endless meetings, community politics and conflict. Their familiarity with legal processes may well prove crucial to enabling Wik and Wik Way peoples' future strategic management of their traditional estate.

The fortitude and flexibility demonstrated by the Wik and Wik Way peoples in achieving this final agreement is remarkable, and they indeed have much to be proud of. But it is unlikely they have seen the last of the lawyers and the bureaucrats. The future governance and administration of their newly recognised rights will involve considerable and unavoidable administrative burdens, the bulk of

which will be borne by their Prescribed Body Corporate (PBC), the Ngan Aak-Kunch Aboriginal Corporation.

This small organisation has a board of six Aboriginal directors, a membership of over sixty individuals, and represents many more native title holders. The PBC is assisted in their efforts by their long-standing solicitor Philip Hunter. Running a registered native title body corporate such as Ngan Aak-Kunch involves considerable time as well as specialist knowledge and skills. Governance and reporting structures must comply with the regulatory regime set out in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. Meetings must be convened, rule books drafted, records kept, finances acquitted and negotiations and agreements facilitated. In some instances, PBCs are also required to undertake land management activities such as weed control. Large memberships, often scattered across vast distances, must be kept informed. Ngan Aak-Kunch currently manages all this and more on a reported annual income of less than \$10,000.

Moreover, navigating the complex legal definitions and relationships that sit



Geoff Pryor, 'Paper covers rock?', 1996, National Library of Australia, vn3524549.

behind the determination's deceptively simple expression of native title rights will very likely require ongoing specialist legal advice, particularly when those rights intersect with those of other interest groups. (For example, the definition of 'Natural Resources' in the determination relies on definitions of 'Plants', 'Animals' and 'Forest Products' that are in turn defined by various interdependent sections of the *Forestry Act 1959* (Qld) and the *Nature Conservation Act 1992* (Qld).)

Given such bureaucratic and legal burdens, managing native title rights and interests into the future may prove to be as much if not more of a challenge than the process of achieving recognition in the first place. At the moment many PBCs receive crucial administrative support from local native title representative bodies. Others generate income through agreements with mining companies and other parties who conduct activities on native title land. Strategic economic development is encouraged by organisations such as IBA, but in many areas there are few viable business opportunities. Many PBCs are going to require alternative

income streams if they are to effectively govern and manage their peoples' native title rights in accordance with the expectations of Australian law. It is for these reasons that Ngan Aak Kunch are in the process of negotiating a Memorandum of Understanding with Aak Puul Nganttam Cape York, an incorporated community-owned company based in Aurukun which aims to provide support to the PBC, and is developing innovating programs to manage the Wik lands south of the Archer River.

Many individuals volunteer their time in roles such as PBC directors in order to assist with the management of their group's native title rights. But such involvement comes at a cost. Time spent in meetings is time not spent with family, out on country, enjoying its benefits and imparting knowledge to younger generations. It is also time not spent in a paid job. In short, time spent on governance of rights is time denied to the pursuit of customary activities or profitable employment. The obvious irony is that native title law requires traditional owners to maintain traditional law and custom if they are to

continue to be recognised as native title holders into the future.

So while there is much to celebrate in the Wik and Wik Way peoples' recent achievement, crucial questions remain about the long-term future of the post-determination native title system as it currently exists. The federal government is not indifferent to these issues. The Minister for Families, Community Services and Indigenous Affairs recently announced a review of native title organisations, which will pay particular attention to the needs of groups following a determination of native title. The review, due to commence in 2013, will seek the opinions of a range of stakeholders and communities including NTRBs, PBCs, the National Native Title Council, the Office of the Registrar of Indigenous Corporations, and state and territory governments. This will be an important opportunity for groups to speak frankly about the challenges and burdens of managing their native title rights and to provide some input into designing better policies. At the time of writing, a reviewer has yet to be appointed.

JOINT MANAGEMENT PARTICIPATORY WORKSHOPS



By Gabrielle Lauder & Toni Bauman

Joint management and/or co-management of conservation areas is a major, sometimes the only, native title outcome for many traditional owners. It is also an important means for incorporating Indigenous knowledge into land management and conservation strategies. Although the *Native Title Act* provides traditional owners with a negotiating position

for entering into joint management agreements, native title groups face ongoing challenges in negotiating joint management, including implementation issues on the ground. Traditional owners in the post-determination landscape have to contend with the general inflexibility of the *Native Title Act* and the lack of institutional and resource support for PBCs, or Registered Native Title Bodies Corporate (RNTBCs) as they are more formally known.

Participatory workshops such as the 'Traditional Owner Corporation Joint Management Workshop' held in Melbourne on 12 October 2012 and 'The Workshop on Indigenous Co-management and Biodiversity Protection' held in Cairns on 17 October 2012 provide an opportunity to address some of these issues by building a base of Indigenous knowledge and resourcing traditional owners to drive the joint management agenda.

Image: Joint management workshop for delegates of Victoria's Native Title PBC.

L-R: Ray Ahmat, Yorta Yorta Nations Aboriginal Corporation; David Lucas & Sarah Jones, NTSV; Jeremy Clark, Eastern Maar Aboriginal Corporation; Gabrielle Lauder, AIATSIS; Michael Stewart and Jim Golden-Brown, Barengi Gadjin Land Council; Toni Bauman, AIATSIS; Barry Kenny and Lloyd Hood, Gunaikurnai Land and Waters Aboriginal Corporation. Credit: Drew Berick

Traditional Owner Corporation Joint Management Workshop Melbourne, 12 October 2012

On 12 October 2012, Native Title Services Victoria (NTSV) facilitated a one-day workshop to support an alliance of PBCs working in joint management in Victoria. The event aimed to provide an overview of joint and/or co-management regimes in Victoria and to facilitate the exchange of information between PBCs. It was acknowledged in introductions that PBCs have a significant stake in joint management, it being one of their key functions. Toni Bauman and Gabrielle Lauder of AIATSIIS were in attendance and discussed research needs and the potential for research partnerships. David Lucas of NTSV commenced discussions with an overview of joint management in Victoria.

Joint Management in Victoria

The Department of Sustainability and Environment has overall responsibility for joint management in Victoria. The management of a conservation area is 'joint' in the sense that decision-making and day-to-day management responsibilities are shared between traditional owners and Parks Victoria. Under the Victorian Native Title Settlement Framework, traditional owners may negotiate directly with the state for the joint management of public land. Public land includes reserve land, national park, state forest, vacant crown land, nature reserve, and state wildlife reserve.

The Traditional Owner Settlement Act 2010 (Vic) (TOSA) gives legislative effect to the Victorian Native Title Settlement Framework. Under the TOSA, the Victorian Government may enter into a Recognition and Settlement Agreement (RSA) with a traditional owner group. The state makes a grant of 'Aboriginal Title' subject to the traditional owner group entering into a contract for the transfer to the state of the right to occupy, use, control and manage the land. This means that even where the state makes a grant of an estate in fee simple to a traditional owner group, the beneficial use and

enjoyment of the land remains with the Crown. A grant of Aboriginal Title is also subject to an agreement between the traditional owner corporation and the state to establish a Traditional Owner Land Management Board (TOLMB).

The principal agreement, the RSA, may be supplemented by ancillary land agreements, land use activity agreements, funding agreements and natural resource agreements. Funding agreements may provide funding for the traditional owner group to give effect to the RSA. An RSA may further provide for ongoing financial support for the TOLMB, community benefit payments for work done in jointly managed areas, and the costs of Indigenous ranger and other park positions. A majority of the members on the TOLMB must be traditional owners, nominated by the traditional owner group. The TOLMB is primarily responsible for the preparation and implementation of the joint management plan. The TOLMB is a stand-alone entity, distinct from the PBC, although the TOLMB may contract the PBC to conduct works in the jointly managed areas.

PBC Overviews

Each PBC spoke to a number of points concerning their current arrangements and who is involved in park management at a policy and operational level. Each PBC then gave a global assessment of the successes and challenges of joint management. Participants felt that joint management partners—both traditional owners and state players—were still coming to terms with exactly what joint management is and how it works.

Although TOLMBs were generally considered to be a positive outcome of joint management in Victoria, participants questioned whether the current regime unnecessarily duplicates responsibilities and confuses lines of accountability, as there is no requirement for the TOLMB to report back to the PBC. There was a concern that the general members of the TOLMB could exercise power over traditional owner members and, by extension, the PBC. Some PBCs voiced their concerns with the composition of the TOLMB and the fact that general members appointed by the Minister did not necessarily have

any knowledge of the land or other land management expertise to bring to the table. A number of participants involved in establishing the TOLMB and the election process found it resource and time intensive. There were also concerns that the funding duration is limited, meaning traditional owner groups will need to generate their own income to sustain the TOLMB.

Participants emphasised that it is important to allow sufficient time in the negotiation process and to revisit issues where necessary. An example given was the issue of whether rangers would be housed with the PBC or with Parks Victoria. Some corporations felt it was crucial that those ranger positions be housed with the PBC so that traditional owners could delegate work directly, such as site protection. Another PBC said they were seeking to defer the transition of those roles to a later stage when they will be better positioned to effectively contribute to the joint management agenda. They want to ensure that Parks Victoria is confident with the methods employed by traditional owners in park management, including fire ecology and cultural audits. In this sense, joint management has provided those groups with the opportunity to develop their skills base and their ability to manage country. This discussion highlighted that there is no blanket approach to joint management, even within a given jurisdiction. Within Victoria, joint management arrangements are subject to a number of factors and dynamics particular to the traditional owner group, their relationship with the responsible government authorities, the country that is being jointly managed, and the knowledge and financial resources available.

The Yorta Yorta Nations Aboriginal Corporation has an ongoing Indigenous Protected Area (IPA) co-managed consultation project as part of the 'Caring for our Country' initiative. This group was therefore interested in whether this was an effective pathway to joint management. This conversation was taken up by Toni Bauman, who discussed the key features of IPAs, the challenges for co-management IPAs, and the potential for multi-tenured IPAs. The participants also expressed

interest in pursuing cross-border discussions with South Australia in the future, possibly facilitated by AIATSIS. This could benefit groups with protected areas extending across state borders and could also facilitate knowledge sharing around the management of similar country, for example, catchment areas. The participants recognised the potential opportunities and pathways joint management offers, including the opportunity to develop a cohesive lifestyle in the vision of their elders and the opportunity to engage the broader community.

The Workshop on Indigenous Co-management and Biodiversity Protection Cairns, 17 October 2012

The Workshop on Indigenous Co-management and Biodiversity Protection was co-hosted by CSIRO, co-research partners and the Tropical Ecosystem Hub of the Australian Government's National Environmental Research Program (NERP), and was facilitated by Toni Bauman of AIATSIS. The event aimed to revise and further develop a draft joint management framework to analyse progress towards Indigenous co-management and biodiversity protection in the wet tropics.

Traditional owners made the following comments in response to the development of the draft framework:

- There are many pathways to co-management and many vehicles by which to get there
- Co-management is not about two parallel pathways or an 'us' and 'them' approach. The paths of the traditional owner party and the government party intersect and overlap
- The aspirations of traditional owners are to care for and manage country effectively and to transmit that knowledge on to young people
- Formal co-management will always involve the local-level traditional owner groups with the customary law authority for decision making
- Co-management is best driven by effective traditional owner organisations with strong governance and board, and principles



The Workshop on Indigenous Co-management and Biodiversity Protection.

Back row L-R: Bruce Lawson, Nigel Hedgcock, Joann Schmider, Andrew Maclean, Alf Joyce
Second back row L-R: Tony Hobbs, Susan Medway, Toni Bauman, Leah Talbot, Robyn Bellafquih, Vince Mundraby, Lisa Sarago

Second row L-R: Sarah Hoyal, Phil Rist, Judi Enoch, Hurriyet Babacan, Petina Pert

Front row L-R: Dionie Johnson, Whitney Rassip, Sandra Levers, Ro Hill, Carla Wilson.

Photo credit: Julie Tsatsaros (CSIRO)

- Change to mainstream organisations is required: cultural self-awareness and development of intercultural awareness
- Clarity in government policy around co-management is required
- The case for government support needs to highlight the connection between how investment in cultural values, in protecting and transmitting Aboriginal cultural knowledge and land management practices, can deliver outcomes in terms of health, wellbeing, education and employment

The workshop highlighted the need for greater knowledge transfer between co-management stakeholders. Workshop participants concluded that the co-research process is about social

learning, and about knowledge being developed through networks.

The overarching aim of the NERP Tropical Ecosystems Hub Project is to identify the means for effective engagement of Indigenous knowledge and co-management for biodiversity and cultural protection in the region. Toni Bauman represents AIATSIS on the project co-research group, which includes: the Rainforest Aboriginal Peoples' Alliance (including Girringun Aboriginal Corporation, Jabalbina Yalanji Aboriginal Corporation, Central Wet Tropics Institute for Country and Culture), Mandingalbay Yidinji Aboriginal Corporation, as well as a number of government agencies and NGOs.

ABOUT US

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 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

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.

SUBSCRIBE TO NTRU PUBLICATIONS AND RESOURCES

All NTRU publications are available in electronic format. This will provide a faster service for you, is better for the environment and allows you to use hyperlinks. If you would like to SUBSCRIBE to the *Native Title Newsletter* electronically, please send an email to ntru@aiatsis.gov.au. You will be helping us provide a better service.

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