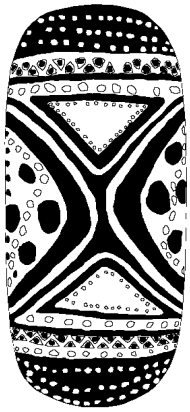

A I A T S I S

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

NATIVE TITLE NEWSLETTER

January and February 2001

No. 1/2001

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

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

Contents

Due to the relocation to the new premises on Acton Peninsula the fax number for the Native Title Research Unit (including the Research and Access Officer clients) has changed. The new fax number is 6246 1122. Phone and email contact details have not changed.

List of abbreviations

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

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

NEWS FROM THE NATIVE TITLE RESEARCH UNIT

The Native Title Research Unit is pleased to announce the release of our latest publication *Native Title in the New Millennium.* The publication, edited by Bryan Keon-Cohen, is a selection of papers from the Native Title Representative Bodies Legal Conference held in Melbourne on 16-20 April 2000. The conference was jointly sponsored by the Mirimbiak Nations Aboriginal Corporation and the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies. The papers were presented by legal practitioners, industry leaders, academics, consultants and staff from Representative Bodies and the National Native Title Tribunal. Their coverage is inclusive and the intention has been to offer a thorough description of the current state of native title law and practice. A CD of the complete proceedings is included.

The book has sections on constitutional issues, the federal court's case management, State and Territory alternative schemes, economic development, alternative approaches, issues related to particular claims and methods, Indigenous Land Use Agreements, Indigenous land claims in Canada, New Zealand and South Africa and the application of international law and conventions in Australia. The CD provides the complete proceedings of the conference as well as links to cases and statutes.

Native Title in the New Millennium is available for $59.95 through Aboriginal Studies Press, phone 02 6246 1186 or email on sales@aiatsis.gov.au

Members of the Yorta Yorta Aboriginal Community v State of Victoria

[2001] FCA 45 (8 February 2001)

Black CJ, Branson and Katz JJ

Most observers of native title are aware of the devastating findings by Justice Olney in relation to the native title application of the Yorta Yorta people of the Murray and Goulburn Rivers region. Olney J determined that native title did not exist in relation to the country of the Yorta Yorta nations because the 'tide of history had washed away' their observance of the traditional law and custom, which is required to support common law native title. Justice Olney took this expression of the tide of history from the judgement of Justice Brennan in the *Mabo* case. However, it has been questioned whether the idea was appropriately applied in the circumstances before the court in Yorta Yorta where there is clearly a continuing cultural community, descended from the original inhabitants, identifying as the owners of the area. Olney J was influenced by the greater impact of colonisation in the more settled areas of New South Wales and Victoria and the resulting impact on the way of life of Indigenous people in such areas. Because of this finding, his Honour found it unnecessary to give substantial consideration to the extent of extinguishment or inquire into the current culture and practices of the Yorta Yorta.

The decision was appealed to the Full Federal Court. In his last case, the late Ron Castan QC argued on behalf of the Yorta Yorta that Olney J had wrongly adopted what was described as a 'frozen in time' approach to the question of traditional connection. Olney J failed, the appellants argued, to give sufficient regard to the capacity for evolution and change in traditional law and custom and the adaptation to the pressures of colonisation. Rather, Olney J had equated native title and the maintenance of connection with the maintenance of a 'traditional' lifestyle

Because of this perception, it was suggested that Olney J took a wrong approach to the questions before him. Instead of considering the current customs and practices of the applicants, Justice Olney sought to trace an unbroken chain of connection from pre-contact to the present. As I and others have argued elsewhere, this led his Honour to focus on the

discontinuities rather than the continuities of Yorta Yorta culture and society.

On appeal, all of the judges agreed that 'a frozen in time' approach was incorrect. This was clearly established by the High Court in *Mabo*. In the language of Deane and Gaudron JJ (at 110), 'the traditional law or customs is not… frozen at the moment of establishment of a Colony'. Brennan J (at 61), too, said that:

Of course in time the laws and customs of any people will change … But so long as the people remain as an identifiable community … living under its laws and customs, the communal native title survives to be enjoyed by the members of according to the … traditionally based laws and customs, as currently acknowledged and observed.

The majority of the Full Court in this appeal, Justices Branson and Katz, adopted this language of traditionally *based* laws and customs to explain their evolving nature (para 122). Their Honours suggested, however, that the laws and customs must remain 'traditional' in the sense that they maintain rather than break the connection with the past.

Their Honours finding (para 126-127) that, contrary to the argument from the appellants, the test of whether a law was traditional was an objective one, did not necessarily mean that adoption of the dominant colonial culture necessarily meant an abandonment of traditional connection. Moreover, it is not the laws and customs, or the particular native title interest, that burdened the Crown's radical title at the time of sovereignty, it was the fact of the existence of native title. The traditional laws and customs, or the title's nature and incidents may evolve and change over time.

However, the majority held that the finding that the community had lost its traditional connection to the land was open to the trial judge to make. They held that no sufficient argument had been made for the appeal court to disturb that finding or to inquire whether they should replace their opinion for that of the trial judge. The majority therefore dismissed the appeal.

The Chief Justice, however, found (paras 67-68) that although the trial judge had not adopted a strict frozen in time approach as envisaged in *Mabo*, Olney J had nevertheless made an error in his approach to what is considered 'traditional' and failed to give proper recognition to adaptation and change. The Chief Justice criticised (at para 50) the failure to

investigate issues of fact, especially the current customs and practices of the Yorta Yorta. Indeed, the Chief Justice posited this as the starting point of the inquiry. This had the advantage, his Honour argued, of seeing adaptations and evolution for what they are. His Honour was also cautious (at para 55) of the weight attributed to historical accounts, with their cultural preconceptions, and often written for their own purposes, over oral histories of the Indigenous applicants. The Chief Justice would have allowed the appeal and sent the case back to the trial judge for further consideration.

It is expected that the decision will be appealed to the High Court and Chief Justice Black's judgement gives some support to the Yorta Yorta nations' case. The High Court has recently heard appeals in the *Yarmirr* (Croker Island) and *Ward* (Miriuwung Gajerrong) cases. Although decisions have not yet been handed down (and indeed are not likely for some time), some of the judges in those hearings repeatedly warned against a 'frozen in time approach' as well as an undue emphasis on 'traditional lifestyle' as an indicator of 'traditional connection' in the native title context. The judges emphasised the Act as the starting point in investigating whether native title exists. They drew attention to the provisions of section 223, which refer to traditional law and custom in the present tense, not by reference to pre-contact society.

This emphasis is consistent with the observations made by Chief Justice Black in the Yorta Yorta appeal (paras 40, 49). Chief Justice Black summarised his view (at para 49) in saying that the laws and customs presently observed must reflect a continuity of tradition and be rooted in the past but may adapt and evolve. Moreover, native title may exist despite profound impacts upon the Indigenous community, including dispossession and the cessation of a 'traditional' lifestyle.

The different judgements at trial and on appeal highlight the significance of the understanding of 'tradition' that is to be adopted by the courts, and the nature of the inquiry into continuity of law and custom, to the outcome in a particular case. Given the arguments and the comments from the High Court, the forthcoming decisions in *Yarmirr* and *Ward* may provide further guidance before the Yorta Yorta bring their case in due course.

Lisa Strelein
Native Title Research Unit

NATIVE TITLE IN THE NEWS – JANUARY & FEBRUARY 2001

National

The President of the National Native Title Tribunal, Mr Graeme Neate, addressed a gathering of international mining companies at an Australian Mining Seminar at Australia House in London and stated that negotiating with traditional owners was increasingly becoming a standard way of doing business in Australia. There were clear signs that the mining industry had recognised that native title was a permanent part of the legal landscape and had incorporated it into business practice, as it had done with environmental protection laws, he stated. 'The workability of the system is as much about goodwill and the commitment of everyone involved to negotiation as it is about the legal framework. Those companies who are coming to grips with the law and entering into good faith negotiations with traditional owners are reaping the rewards,' he said. The native title environment in Australia in 2001 was vastly different to that of three years ago:

- today native title claimants wanting to have a say over mining and exploration must first pass a stringent registration test;
- seven out of 10 exploration and other low impact applications go through without the need for native title negotiations;
- there has been a one third net reduction in the total number of native title applications over the last three years;
- there are now 13 consent determinations of native title compared to three in 1998;
- there are now nine registered Indigenous Land Use Agreements.

Native title negotiations can be difficult and time consuming but State and Territory governments, and exploration and mining companies, are coming up with their own solutions within the broad legal framework laid down by the Commonwealth, stated Mr Neate. He urged companies to creatively explore the best options for achieving commercial objectives while establishing or consolidating community relationships. *(NNTT Media Release, 7 February 2001)*

New South Wales

The National Native Title Tribunal has called for landholders and other interest holders affected by four native title applications in north western New South Wales and southern Queensland to register to become parties for mediation talks.

The advertised applications are

- The Nyoongah Biblah Bibbil Gubbie Clan of the Euahlayi People's application in the vicinity of Brewarrina.

of Bogan, Bourke, Brewarrina and Cobar.

- The Hall Murray Clan of the Euahlayi People's application located approximately 26 kilometres north east of Lightning Ridge and falling within the Shire of Walgett.
- The Moorawarri Aboriginal People's application located between Bourke and Cunnamulla and falling within the Shires of Bourke and Brewarrina in New South Wales and the Queensland Shires of Balonne, Bulloo and Paroo.

NSW State Manager Andrew Solomon stated that anyone with an interest in the land or waters subject to the applications can be involved in discussions about whether native title exists in the area and if so how it might be recognised and respected in a way that preserves everyone's interests. *(NNTT Media Release, 7 February 2001)*

Victoria

A series of community consultation meetings is being held across Victoria during early 2001 as part of Victoria's native title protocol and framework agreement. The protocol is a statewide agreement that commits ATSIC, Miriambiak Nations Aboriginal Corporation and the Victorian Government to negotiate a resolution to native title claims in Victoria. The framework agreement will not replace native title claims in Victoria but will provide the means to resolve claims by negotiation rather that litigation and will give Indigenous people the chance to express their views. *(Ararat Advertiser, 2 Jan, p4)**

The Full Bench of the Federal Court dismissed an appeal by the Yorta Yorta People against the 1998 ruling that they could not demonstrate a continuous connection to the land in the claim area. Following the ruling the Victorian Attorney General, Rob Hulls, announced that the Bracks' Government would enter into discussions with the Yorta Yorta People to try and achieve a negotiated settlement.(see report page 3) *(Aus, 9 Feb, 2001)**

Queensland

The Cape York Land Council has been recognised as the Native Title Representative Body for the Cooktown invitation area. Applications for the Cairns area are still being considered. *(Senator John Herron, Media Release, 12 January 2001)*

A native title agreement with the Kangoulu and Ghungalu people has cleared the way for the development of a coal mine near Emerald in central Queensland. Following the agreement the Queensland Government is expected to issue a mining lease to GA Togara Pty Ltd to begin work on the $350 million mine. Construction is expected to begin in 2002. A separate agreement with the Kangoulu and Ghungalu people has allowed for the issue of 45 leases for sapphire mining near Emerald.

native title legislation was providing the means by which Indigenous groups could pursue their rights to a share of income from mines on their land. *(CM, 23 January, p4)*

The Queensland South Representative Body Aboriginal Corporation has been recognised as the Native Title Representative Body for the Queensland South invitation area. The new organisation is the restructured Goolburri Land Council. *(CM, 31 January, p2)**

The National Native Title Tribunal has stated that the recent acquittal of two men facing charges in relation to the theft of fish related to the 'specific facts of a case dealt with under the Queensland Criminal Code and did not signal any new right for fish to be taken from commercial fishermen by people claiming native title rights'. Tribunal Deputy President Fred Chaney said that the case has no wider implications for the application of Commonwealth native title law. 'Federal and High Court decisions and the Commonwealth Native Title Act make it clear that native title cannot take away or interfere with the valid rights and interests of other citizens, and that includes commercial fishermen' he said. *(NNTT Media Release, 7 February)**

The National Native Title Tribunal has called for landholders and other interest holders affected by the Bidjara #3 native title application over land and waters in the Charleville region to register for mediation talks. The application falls within the local government areas of Barcaldine, Bauhinia, Blackall, Booringa, Bungil, Emerald, Jericho, Murweh, Paroo, Quilpie, Tambo and Taroom and excludes all private freehold land. NNTT Regional Manager Craig Jones stated that Federal legislation and court decisions had made it clear that native title could not take away the valid rights and interests of other citizens, including lease or licence holders. 'Continued public access to and enjoyment of national parks and other public places is guaranteed by law' he said. *(NNTT Media Release, 21 February)*

South Australia

The National Native Title Tribunal has written to more that 3,500 interest holders and placed newspaper advertisements advising interested parties, including people in the fishing industry, affected by six native title applications that they have three months to register as parties to mediation talks. The external boundaries of the applications range in size from 8,000 square kilometres to 96,000 square kilometres, and are in the western Eyre Peninsula, top of Spencer Gulf, northern Riverland and far north east of the State, including a portion of south west Queensland. All excluded private freehold land, which is not claimable. *(NNTT Media Release, 6 February 2001)**

National Native Title Tribunal for registration. The agreement is between the South Australian Government, members of the Narungga Native Title Management Committee and Paradise Developments Pty Ltd, the developer of the proposed Port Vincent Marina. Tribunal Registrar Chris Doepel said anyone who believed they were native title holders and had not authorised the agreement has three months to lodge a written objection with the Tribunal. If no objections were received the agreement could be formally registered and would be binding on all native title holders whether they were involved in the agreement or not. *(NNTT Media Release, 21 February)**

Joint briefings by the National Native Title Tribunal and the South Australian Fishing Industry Council have been held to address the concerns of people with fishing interests in the Riverland and Lakes & Coorong regions. The information sessions aimed to raise awareness of how their rights can exist alongside those of Indigenous traditional owners and were an important step in preparing the way for mediation to take place over three native title applications in the region. Mr Chris Uren of the NNTT stated that the three applications are seeking recognition of the Indigenous people's native title rights. 'Recognition of native title rights cannot take away or interfere with the rights of other citizens' he said. *(NNTT Media Release, 22 February)*

Western Australia

The National Native Title Tribunal has called for landholders and other interest holders affected by nine native title applications to register for mediation talks. The applications are

- the Wajarri Elders' application, a combination of six earlier applications, which is located 100 kilometres north-east of Geraldton and falls within the Shires of Chapman Valley, Cue, Meekatharra, Mount Magnet, Mullewa, Murchison, Northampton, Upper Gascoyne and Yalgoo;
- the Yugunga-Nya People's application, a combination of six earlier applications, which falls within the Shires of Cue, Meekatharra, Mount Magnet, Sandstone and Wiluna;
- the Hutt River application, which is 25 kilometres north of Geraldton and extended seaward 12 nautical miles. It falls within the Shires of Chapman Valley and Northampton;
- the Naaguja People's application, located in the Geraldton region, and extending 12 nautical miles out to sea and falls within the City of Geraldton and the Shires of Chapman Valley, Greenough, Irwin, Mullewa and Northampton;
- the Yued Families' application, 52 kilometres north of Perth, extending 12 nautical miles out to sea and falls within the City of Wanneroo and the Shires

Toodyay, Victoria Plains and Wongan-Ballidu.

- the Wagyl Kaip application which falls within the City of Albany and the shires of Boyup Brook, Bridgetown-Greenbushes, Broomehill, Cranbrook, Denmark, Dumbleyung, Gnowangerup, Jerramungup, Katanning, Kent, Kojonup, Lake Grace, Manjimup, Plantagenet, Ravensthorpe, Tambellup, Wagin and Woodanilling.
- the Njamal People's application, located 30 kilometres south east of Port Hedland, falls within the Town of Port Hedland and Shire of East Pilbara.
- the Ivy Bindaye application, located 220 kilometres south of Kununurra, falls within the Shire of Halls Creek.
- The Gnaala Karla Booja application which falls within the cities of Armadale, Bunbury, Cockburn, Mandurah and Rockingham; the towns of Kwinana and Narrogin; and the Shires of Beverley, Boddington, Boyup Brook, Bridgetown-Greenbushes, Brookton, Capel, Collie, Corrigin, Cuballing, Dardanup, Donnybrook-Balingup, Harvey, Kojonup, Murray, Narrogin, Pingelly, Serpentine-Jarrahdale, Wagin, Wandering, Waroona, West Arthur, Wickepin, Williams and Woodanilling.

State Manager Andrew Jaggers said people affected by the applications had three months to register as parties. Mediation aimed to reach native title agreements that respected everyone's rights and interests. If people with an interest in the land and waters wanted to be involved the best way was to become a party to the application. *(NNTT Media Releases, 16 January 2001)*

Northern Territory

The National Native Title Tribunal has launched an information program to brief mining companies operating in the Northern Territory on dealing with native title. Tribunal State Manager Ian Williams said information kits showing the steps in the process to gain native title clearance for access to land for mining or exploration had been sent to every company seeking mining or exploration tenements on land where native title might survive. 'The information kits aim to raise awareness of the native title process so people know where they stand and what options they have' he said. Federal native title law did not give Aboriginal people a veto on development however Aboriginal groups who have passed the registration test have the right to negotiate about mining and exploration proposals. *(NNTT Media Release, 30 January 2001)*

The High Court began hearing an appeal that will determine whether native title sea rights include exclusive hunting and fishing rights. The appeal involves a claim to native title over waters around Croker Island in the Northern Territory. (*CM, 6 Feb, p6)**

APPLICATIONS

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

The following decisions are listed for January and February 2001.

Lorella Downs	accepted
Mary River	accepted
Spring Creek No 1	accepted
Spring Creek No.2	accepted
Wollogorang	accepted
Barada Barna Kabalbara & Yetimarla People	not accepted
Coppabella South	accepted
Mt Ringwood	accepted
Newhaven, NT Portion 2406	accepted
Roper Valley	accepted
Lot 176(A) Adelaide River	accepted
Murranji	accepted
Town of Weddell	accepted
Gumbaynggirr People (amended 31/01/2001)	accepted
McArthur River	accepted
Old Mount Bundey	accepted
Mount Keppler	accepted
Auvergne	accepted
Calvert Hills	accepted
Newcastle Waters	accepted
Bonaparte Gulf	accepted

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

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

If an application does not pass the registration test it may still be pursued for determination through the Federal Court.

Applications currently in Notification

Notification period is 3 months from the Notification start date.

NEW SOUTH WALES

Closing date	Application no	Application name	Location
9 April	NC00/2	Maaiangal Clan	Stockton Bight
	NN00/9*	Glen Davis	Ararat Reserve, Frenchs Forest
17 April	NN01/1*	The Council of the City of Gosford	Ettalong
21 May	NC97/10	Ngempa People	Bourke
	NC97/11	Hall Murray Clan of the Euahlayi People	Narran River to the Big Warrambool
	NC97/24	Moorawarri Aboriginal People	South of Cunnamulla to Bourke
	NC97/6	Nyoongah Biblah Bibbil Gubbie of the Euahlay-i People	Brewarrina NSW

SOUTH AUSTRALIA

7 May	SC96/5	Nukunu Native Title Claim	Spencer Gulf Region, SA
	SC97/10	Barkandji (Paakantyi) #9	Murray Plains north of Renmark and Morgan
	SC97/3	The Wangkangurru/Yarluyandi Native Title Claim	South Australia & Queensland
	SC97/6	Wirangu No. 2 Native Title Claim	Eyre Penninsula & West Coast, SA
	SC97/8	Nauo-Barngarla Native Title Claim	Eyre Peninsula
	SC98/1	Yandruwandha/Yawarrawarrka Native Title Claim	North East SA

WESTERN AUSTRALIA

16 April	WC00/1	Hutt River	Hutt River, Murchison
	WC00/15	The Wadjarri People	South West of WA
	WC00/4	Wajarri Elders	South West WA
	WC00/5	Njamal People #10	SW/Pilbara
	WC97/71	Yued	Northern Sand Plain, WA
	WC97/73	Naaguja Peoples	Greenough Shire including Geraldton
	WC98/70	Wagyl Kaip	South West and Great Southern WA
	WC99/33	Ivy Bindaye	NorthWest
	WC99/46	Yugunga-Nya People	SW Pilbara
17 April	WC98/58	Gnaala Karla Booja	Lower South West

NORTHERN TERRITORY

21 May	DC00/10	Singleton	NT Portion 653
	DC00/9	Lot 3160 Katherine	Lot 3160 Katherine

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

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

AIATSIS Family History Unit

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) holds a wealth of historical and contemporary information about the lives of Aboriginal people from across Australia. This information is extremely valuable as it provides Indigenous people with a tangible link to their culture and to each other. Family history is often a key part of heritage research.

The Family History Unit began with the creation of an index of names with brief biographical entries of Indigenous people referred to or depicted in material held in AIATSIS collections. The Aboriginal and Torres Strait Islander Biographical Index (ABI) is available from the AIATSIS catalogue, via the internet at www.aiatsis.gov.au.

Some major journals have already been indexed, including *Dawn* and *New Dawn* magazines, *Australian Evangel, Aboriginal and Islander Identity, The Lutheran*, the *Australian Board of Missions Review*, the *Newsletter for the Aboriginal People of Victoria* and Government Protector's reports from Victoria, Thursday Island, and Western Australia.

The ABI presently has 54,000 name entries. Material is constantly being added to the index, for example: Don and Beverley Elphickís *Kinchela Aboriginal home and school : alphabetical index of students* and the Northern Territory's *Land Claim Reports*.

The Family History Unit has recently received funding from the ATSIC Bringing Them Home Task Force to further assist members of the Stolen Generations with heritage research. A **1800 730 129 freecall** number has been set up to provide greater access to the AIATSIS Family History Unit services.

Records from every State and Territory are continually being added to the Family History and Library Collection. For example, Births Deaths and Marriage registrations as they become released, Cemetery Records and privately owned indexes of research. The Unit is trying to track down all of the early Blanket Distribution Records, along with Church Records and Historical Journals.

The Family History Unit can be contacted on 1800 730129.

Recent publications

Sutton, P ***Aboriginal country groups and the 'community of native title holders'***, National Native Title Tribunal, *Occasional Paper Series*, No 1/2001.

Sutton, P ***Kinds of rights in country: recognising customary rights as incidents of native title***, National Native Title Tribunal, *Occasional Paper Series*, No 2/2001.

The Research Unit of the National Native Title Tribunal publishes the *Occasional Paper Series* as an electronic series only. It is intended to provide a forum for the rapid dissemination of papers that are generally either produced under commission for the Tribunal or by agency staff in the course of their ongoing work. Unsolicited papers are also considered for publication. The papers are not submitted to external referees. The papers are available at www.nntt.gov.au

Aboriginal country groups and the 'community of native title holders'

The paper includes a selective history of anthropological ideas of Aboriginal local organisations and discussion of conceptual matters, estates and estate sets, and linguistic identities and territories. Sutton writes in his conclusion 'I have suggested, partly for reasons of sheer Aboriginal cultural complexity, that no single level of territorial grouping in Aboriginal Australia is overwhelmingly the natural candidate for translation into the legal concept of the set of native title holders. This has implications not only for how native title determination applications are framed, but also how they are researched and, in the event of litigation, what kinds of evidence are appropriate to the process of proof. In the end, also, this complexity represents a serious challenge to the bureaucratic incorporation process that accompanies recognition of native titles.'

Kinds of rights in country: recognising customary rights as incidents of native title

This paper discusses the kinds of rights and interests in country which people hold under Aboriginal traditions. Where different groups, or different kinds of people, claim the same country or part of it under native title processes, and do so on the basis of differently conceived and structured rights, great complexities may arise. The paper was written partly to provide guidance to parties who seek to distinguish holders of significantly different kinds of rights rather than to amalgamate all rights-holders into a single amorphous category. Discussion includes degrees of connection versus kinds of rights, core and contingent rights, use and access of country, individual and collective rights, hunting, fishing, and gathering, and coexisting rights.

Native Title Research Unit publications

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

Native Title in the New Millennium A Selection of Papers from the Native Title Representative Bodies Legal Conference, 16-20 April 2000: Melbourne, Victoria, (includes CD of complete proceedings) Bryan Keon-Cohen editor, Native Title Research Unit, AIATSIS, 2001.

A Guide to Australian Legislation Relevant to Native Title 2 volume set, Native Title Research Unit, AIATSIS, 2000.

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

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

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

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

Working with the Native Title Act: Alternatives to the Adversarial Method Edited by Lisa Strelein, 1998.

Regional Agreements: Key Issues in Australia – Volume 1, Summaries. Edited by Mary Edmunds, 1998.

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

Heritage and Native Title: Anthropological and Legal Perspectives Proceedings of a workshop conducted by the Australian Anthropological Society and AIATSIS at the ANU, Canberra, 14-15 February 1996.

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

Anthropology in the Native Title Era Proceedings of a workshop conducted by the Australian Anthropological Society and the Native Title Research Unit, AIATSIS, 14-15 February 1995.

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

The following publications are available free of charge from the Native Title Research Unit, AIATSIS, Phone (02) 6246 1161, Fax (02) 6246 1122:

Issues Papers published in 1998, 1999 and 2000:

Volume 2

No 8 ***Economic Issues in Valuation of and Compensation for Loss of Native Title Rights*** by David Campbell

No 7 ***The Content of Native Title: Questions for the Miriuwung Gajerrong Appeal*** by Gary D Meyers

No 6 ***'Local' and 'Diaspora' Connections to Country and Kin in Central Cape York Peninsula*** by Benjamin R Smith

No 5 ***Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'*** by Katie Glaskin

No 4 ***Bargaining on More than Good Will: Recognising a Fiduciary Obligation in Native Title*** by Larissa Behrendt

No 3 ***Historical Narrative and Proof of Native Title*** by Christine Choo and Margaret O'Connell

No 2 ***Claimant Group Descriptions: Beyond the Strictures of the Registration Test*** by Jocelyn Grace

No 1 ***The Contractual Status of Indigenous Land Use Agreements*** by Lee Godden and Shaunnagh Dorsett

Volume 1

No. 30 ***Building the Perfect Beast: Native Title Lawyers and the Practise of Native Title Lawyering*** by David Ritter and Merrilee Garnett

No. 29 ***The compatibility of the amended Native Title Act 1993 (Cth) with the United Nations Convention on the Elimination of All Forms of Racial Discrimination*** by Darren Dick and Margaret Donaldson

No. 28 ***Cultural Continuity and Native Title Claims*** by Ian Keen

No. 27 ***Extinguishment and the Nature of Native Title, Fejo v Northern Territory*** by Lisa Strelein

No. 26 ***Engineering Unworkability: The Western Australian State Government and the Right to Negotiate*** by Anne De Soyza

No. 25 ***Compulsory Acquisition and the Right to Negotiate*** by Neil Löfgren

No. 24 ***The Origin of the Protection of Aboriginal Rights in South Australian Pastoral Leases*** by Robert Foster

No. 23 '***This Earth has an Aboriginal Culture Inside' Recognising the Cultural Value of Country*** by Kado Muir

No. 22 ***Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples' Rights in Canada*** by Lisa Strelein

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