



Native Title Newsletter

AIATSIS Native Title Research Unit

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The Native Title Newsletter is published every second month. The Newsletter includes a summary of native title as reported in the press. Although the summary canvasses media 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.

STOP PRESS

The Native Title Conference 2003: Native Title on the Ground

Registration close 23 May 2003

The Newsletter is also available in ELECTRONIC format. This will provide a FASTER service for you, and will make possible much greater distribution. If you would like to SUBSCRIBE to the Native Title Newsletter electronically, please send an email to ntru@aiatsis.gov.au, and you will be helping us provide a better service. Electronic subscription will replace the postal service, please include your postal address so we can cross check our records. The same service is also available for the Issues Papers series.

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NEWS FROM THE NATIVE TITLE RESEARCH UNIT

New Visiting Research Fellow

Toni Bauman has joined the Native Title Research Unit as a Visiting Research Fellow.

Toni Bauman is an anthropologist with over twenty years experience in a wide range of Indigenous matters including land claims and native title, facilitating meetings, conducting social impact studies and feasibility studies for Indigenous cultural centres. She has worked for a range of Indigenous organisations such as Land Councils, ATSIC and the Aboriginal Areas Protection Authority in Darwin. In 1979, she established Mimi Aboriginal Arts and Crafts in Katherine, Northern Territory.

Toni is an accredited LEADR mediator, an Aboriginal Adult Educator and has worked as the editor of the Indigenous Law Bulletin in the Faculty of Law at the University of New South Wales. She is also a Director of Dodson, Bauman and Associates, Legal and Anthropological Consultants.

Her most recent project has been an AIATSIS publication which is a guide to sites of importance to Aboriginal people in Darwin in the past and the present and a kind of alternative social history. The publication is the third in a series following similar publications about Sydney and Melbourne.

While at the NTRU, Toni's project will be directed at facilitating decision and agreement making and managing disputes in native title. The next edition of the Newsletter, will detail the aim, purpose and extent of this project.

The Native Title Conference 2003

The Native Title Conference 2003: Native Title on the Ground is being convened by AIATSIS and the Central Land Council. It will be held in Alice Springs from the 3-5 June. The Conference provides a national opportunity

for all native title parties to address the difficulties of the native title system and to focus on issues of importance to native title holders and native title representative bodies. An important part of the conference is to provide an opportunity for staff from NTRBs to exchange ideas and technical advice, debate, listen and respond to the views of claimants, government and other parties involved in the native title process.

Conference themes include:

- what does native title mean for native title holders;
- native title and agreement making;
- national approach to native title policy;
- alternative funding models for greater Indigenous autonomy;
- keeping native title out of court: implications of recent decisions;
- compensation/ extinguishment/ settlement;
- mediating community disputes and healing community trauma;
- native title decision making and good governance;
- the need for an integrated approach to indigenous aspirations, and;
- native title in practise.

Registrations for the conference are now being accepted. A registration form can be found at the end of this Newsletter, or alternatively, can be obtained from the AIATSIS website <www.aiatsis.gov.au> and follow the links.

Registrations close 23 May 2003.

New Issues Paper

The NTRU has published a new Issues Paper. The February Issues Paper, volume 2 number 21, '*Members of the Yorta Yorta Abo-*

iginal Community v Victoria [2002] HCA 58 (12 December 2002) - Comment' is by Dr Lisa Strelein, Research Fellow and Manager of the Native Title Research Unit. Strelein explains how the High Court, in relying on the act of state doctrine, has attempted to disavow any continuing authority within Indigenous societies capable of recognition by the courts once native title has come into existence. Strelein argues that the High Court's decision in *Yorta Yorta* confirms that the legal outcomes of native title are becoming more and more elusive.

Seminar Series Reminder

Just a reminder that the AIATSIS Seminar Series for first semester, "Intellectual Property and Indigenous Knowledge: Access and Ownership of Indigenous Cultural Material" has started. A collection of the papers will be placed on the AIATSIS website in the following weeks. The Seminar Series program is available on the AIATSIS website. <<http://www.aiatsis.gov.au/rsrch/seminars.htm>>. To join the Seminar Series contact list contact <nigel.bennet@aiatsis.gov.au>.

FEATURES

Noongars Unite for Single Native Title Claim

by Stuart Bradfield, NTRU

After a series of meetings organised by the South West Aboriginal Land and Sea Council (SWALSC) and facilitated by the NNTT, Aboriginal people in the region have agreed to join together to pursue a single native title claim.

Support for a single Noongar claim came after well-attended community meetings in Perth, Busselton, Quairading, Katanning, Port Kennedy and Mogumber held throughout February. The six existing individual native title claims will now be re-

Staff Movements

In the last two months there have been a few staff changes at the NTRU. Jessica Weir, Native Title Research Officer, has left us to begin a PhD at the ANU in land management issues. Sarah Arkley, Administration Officer, has also left NTRU to begin full time studies in the Law Faculty at the ANU.

We have been joined by Glen Fairfoot as the NTRU Administration Officer. Glen was previously employed at the NNTT in Cairns for nineteen months.

Wayne Deans is working as the Conference Co-ordinator. Wayne is also currently undertaking his PhD in Anthropology at the ANU.

Serica Mackay is working as a part-time Research Assistant on the Treaty publication. Serica is in her fifth year of an arts/law degree at ANU and is interested in doing further research in the area of Indigenous intellectual property.

placed by a single Noongar claim covering the entire region.

The move to a single claim indicates a desire amongst Indigenous leaders to limit the damaging effects of native title claims which are a major cause of conflict within and between communities. By contrast, this historic pursuit of a single claim may have important implications for increasing Indigenous regional autonomy. SWALSC chief executive Darryl Pearce suggested, "From the community perspective it is a very powerful situation. The Noongar community, for the first time, are coming together as a community and negotiating as one - they are identifying as a Noongar nation."

Mr Pearce said the aim of the single Noongar claim was to provide the State Govern-

ment with an opportunity to mediate native title and non-native title issues with one claimant group. Mr Pearce said it was now time for the State Government to realise that a single claim existed.

He explained, "What Noongars are saying is that they don't want their claims run individually, but as a single claim. This provides opportunities for Indigenous and non-Indigenous parties to benefit from a process that delivers many economies of scale."

"It seems the Government is ignoring the express wishes of native title claimants in the south west – wishes that were legally authorised through a series of properly constituted community meetings."

Despite the State Government's 'Statement of Commitment to a new and Just Relationship', Mr Pearce questioned the stated preference for negotiating with native title claimants, rather than proceeding to litigation. He said while the Government "constantly talks about wanting to negotiate with native title claimants...in private the Office of Native Title is doing the exact opposite. Since May last year the Office of Native Title has walked away from every opportunity for mediation. Noongar claimants are willing to sit down and talk as a single group. We desperately need a sign from the Government that they are also willing to do so."

However, the State Government recently withdrew its offer to mediate on the south west claims before the Federal Court. While the Western Australia Government suggested the Combined Metro claim be run separately to the rest of the single claim, this effectively ignored SWALSC's own consultation processes. While the Government insisted on a deadline of a matter of days, consultations to endorse a single claim policy had taken weeks of meetings. These followed months of preparation after an agreement in principle was reached more than a year prior to this. It is unfortunate that the State Government effectively pressured SWALSC to act independently of native title claimant's instructions, something Mr Pearce said SWALSC could not do. This highlights the pressure placed on Indigenous

processes when they are expected to fall into line with externally produced timeframes.

Native Title Research and Access

by Grace Koch, NTRU

Each year many individual researchers and Native Title Representative Bodies contact AIATSIS in order to locate relevant library and archival material in preparing native title claims. Requests may be made by Institute visitors and remote clients. The Native Title Research and Access Officer (NTRAO) offers a range of services to help clients find what they need at the Institute.

Clients beginning their research

At the beginning, it is necessary to get all of the facts together about the claim, such as the geographical spread of the claim, names of claimants and related family groups, language groups, and any historical detail about removals, missions, reserves and/or other relevant information. These will give the search terms necessary when looking up information on the Institute's on-line catalogue.

Clients will find listings of most of the Institute's materials on the MURA catalogue which is accessible both on the Internet and on computer terminals in-house. Alternatively, a list of search terms can be sent to the NTRAO, who can prepare a listing of all relevant material. The service is free of charge for up to 200 citations. Some material from the Audiovisual Archive is not yet listed on the Web catalogue; however the NTRAO has access to all listings and can make a comprehensive search. The completed searches can be posted or sent via email.

Some of the material may be restricted by the depositor for a variety of reasons, such as cultural sensitivity or pending publication, and such restrictions, where they exist, are shown for each catalogue entry. Although it is the client's responsibility to contact depositors and to arrange permissions to view, listen to or copy any restricted material, the

NTRAO can assist in providing addresses and other contact details to help in arranging for clearances.

Print collections

Once relevant material has been identified, it may be accessed at the Institute free of charge or copies may be made for a fee. Copies must be made in accordance with the *Copyright Act 1968* (Cth) and within the conditions of access as set by the depositors. A large proportion of the Library's holdings are in the form of published material available in the open stacks; however there is a considerable collection of original manuscripts, rare books, personal papers, microfilm, rare serials and language materials held in a closed room. The NTRAO can assist clients in gaining access to this material; however it is best to request such information in advance by email or by phone before visiting the Institute.

Audiovisual collections

Native Title researchers can find much valuable documentation for their claims within the Audiovisual Archives. Recording and images can show important aspects of land ownership and tenure. Listings of much of this material is available on the Web-based catalogue; contact the NTRAO for complete searches of this material. Visitors and remote clients can order up to 50 images or 15 tapes per request. Copies of film and video holdings can be arranged with the NTRAO. Researchers visiting the Institute should make an appointment to view or to listen to the material in-house.

To contact the Native Title Research and Access Officer, Grace Koch phone 02 6246 1103, fax 02 6249 7714 or email <grace.koch@aiatsis.gov.au>.

NATIVE TITLE IN THE NEWS

Native Title News now contains, where applicable, the application numbers for native title claims mentioned in the news. Following the news summary is the NNTT Application number and the Federal Court number.

National

Mining giant Rio Tinto has called upon the Commonwealth Government to increase funding for Native Title Representative Bodies. Rio Tinto stated one of the main impediments to native title was inadequate resources for representative bodies. It called on the Federal Government to review what they feel is a funding imbalance. Rio Tinto also repeated concerns previously raised by ATSIC that representative bodies had not been granted any additional funding since 1996, and that this funding was vital to obtaining determinations. *ABC Online*, 21 February 2003.

Northern Territory

The Northern Territory has agreed to release up to 60 lots of land in the Larapinta area in conjunction with the Lhere Artepe Aboriginal Corporation. Lhere Artepe Chairperson Brian Stirling said the Arrente native title holders had waited along time for this decision and for something real to come out of native title. Stirling explained that a lot of hard work had gone into achieving this outcome and that overall everyone was very pleased. It provides the first opportunity for the Lhere Artepe Aboriginal Corporation to work with the Government and establishes a new direction for development in the Alice Springs area. Sacred sites are now able to be protected as the blocks can not be sold. He concluded by saying that the corporation was looking forward to working with other organisations in the area and that it was a new beginning for all involved. *Lhere Artepe Aboriginal Corporation*, 11 March 2003.

The Federal Court has issued the list of parties to the Torres Strait Regional Sea Claim. Papua New Guineans have been included as parties to the 44,000 sq km claim. This is the first native title claim to include representatives from another country, in this case Papua New Guinea. The claim has now been referred back to the NNTT for mediation. *Talking Native Title*, March 2003. Torres Strait Regional Claim: QC01/42, Q6040/01.

South Australia

The South Australian Government has decided to pursue consent determinations in native title. This has been warmly welcomed by the Native Title Unit of the Aboriginal Legal Rights Movement. Where possible consent determinations of native title as an adjunct to negotiated ILUAs, will be pursued. *Aboriginal Way – Issue no. 17*, March 2003.

Western Australia

An historic settlement in the Pilbara region has the potential to secure a promising future for the three Aboriginal groups in the region. The Wong-goo-tt-Oo, was the third and final party to sign an agreement over key areas of the Pilbara, including Karratha and the proposed Maitland industrial estate. The other two registered claimant groups, the Yaburara Mardudhunera and the Ngarluma Yindjibarndi signed the agreement last year and were waiting for the Wong-goo-tt-Oo claimant group to make their decision. The agreement now potentially provides Indigenous people in the area with an economic future, and also affirms the protection of heritage and environmental values in the region. *North West Telegraph*, 22 January 2003. Ngarluma Yindjibarndi claim: WC99/14, WG6017/96; Yaburara Mardudhunera claim: WC96/89, WG127/97. Wong-goo-tt-Oo claim: WC98/40, WG6256/98.

The Ngalia Kutjungkatja people have lodged an application over land covering an area of 61,782 sq km in the North West Goldfields. Interested parties have been invited to attend negotiations. The claimed area covers pastoral leases, vacant crown land, Aboriginal reserves, conservation and management reserves and the Darlot Stockroute. Interested parties are to contact the Federal Court by 12 May 2003. *Kalgoorlie Miner*, 30 January 2003. Ngalia Kutjungkatja claim: WC00/14, Q6011/00.

The Swan River and Swan Coastal Plains Native Title claimants have joined the Ngalia Heritage Research Council in a bid to protect the Yakabindie Heritage Site. WMC Resources have proposed mining nickel in this area, with estimates of the return reaching up to six billion dollars. The spokesperson for The Federal Heritage Minister, Dr Kemp, said no decision had yet been made and further information was required from the claimant groups before an outcome could be decided. *Kalgoorlie Miner*, 5 February 2003.

Mediation has been instigated by the NNTT between interested parties and native title claimants, over land south of Dongara, in mid west Western Australia. Any person with interests in the land and waters in question may apply to become a party to the application. The Taylor Group are seeking recognition of their traditional rights over more than 10,000 sq km of land south of Dongara and west of Perenjori. *Geraldton Guardian*, 7 February 2003. Taylor Group claim: WC01/4, WG6006/01.

The South West Aboriginal Land and Sea Council (SWALSC) held community meetings during March to inform native title claimants about the benefits of lodging a single native title claim. This has come about due to the Noongar People in the south west, being asked to consider combining all of their six current claimant applications into one. SWALSC CEO Darryl

Pearce, has stated that this is the best way to achieve a negotiated outcome for the Noongar people. By combining all applications, it would be less costly for the taxpayer, less time consuming and easier for the State Government and local authorities to deal with. *Donnybrook Bridgetown Mail*, 13 February 2003. Noongar claim: WC96/70, WG6102/98.

The Walman Yawuru people have been successful in their case to be represented by a non-legally trained person in proceedings before the Federal Court for the determination of native title. Prior to this, the claimant group had been legally represented but were no longer able to pay the fees for such representation. Under s85 of the *Native Title Act 1993* (Cth), leave can be granted for a representative, other than a barrister or solicitor, at the discretion of the Court. Leave was granted subject to conditions. *Native Title Hot Spots – Issue 4*, March 2003.

Western Australia's annual Pastoralist and Graziers Association conference was held in Perth during late February. The conference included several workshops focusing on native title. *Broome Advertiser*, 25 February 2003.

Queensland

Justice Goldberg of the Federal Court has issued an order to native title claimants in the South Burnett area, to quickly settle their overlapping claims on public land. The two overlapping claims are Wakka Wakka People No. 2 and the Jarowair People. Stakeholders are currently in the process of developing an ILUA, involving a number of local authorities. A further directions hearing has been set down for 16 April 2003 when progress with the South Burnett ILUA will be reassessed. *South Burnett Times*, 21 February 2003. Wakka Wakka #2 claim: QC99/33, Q6032/99; Jarowair claim: QC00/5, Q6005/00.

The Jagera People have recently lodged a native title claim over their traditional land and waters. Esk Shire Council were recently contacted by the NNTT and advised that this claim was within their local government area. The NNTT will now test the application and then advise all affected local governments. Information will also be provided on how to become a party to the application. The area covered in the claim includes the area from Nundah to Toowong to Mt Crosby, and from Esk to Murphy's creek. *Queensland Times*, 28 February 2003. Jagera claim: QC02/33, Q6031/02.

The Queensland Government has handed back parcels of land in Kingaroy, south-east Queensland, to the Wakka Wakka people. The Department of Resources and Mines, Native Title and Indigenous Land Services executive director Jim McNamara, said "in handing over this land, the Queensland Government recognises and respects the traditions, observances, customs and beliefs of the Wakka Wakka people as the custodians of the land". *Koori Mail*, 29 January 2003. Wakka Wakka claim: QC98/47, QG6129/98.

New South Wales

The Wonnarua people have lodged an application for native title over 18 sq km of land within the areas of Singleton, Cessnock and Lake Macquarie. The Wonnarua group are applying for use, ownership and control of access to the land, and the right to receive a portion of any resources taken from the sites. If the claim is successful, the group will also be granted the right to manage animals, plants and minerals in the area. *Newcastle Herald*, 30 January 2003. Wonnarua claim: NC96/20, NG6038/98.

Victoria

More than 1000 people attended the Yorta Yorta National Survival weekend, held on the 25 and 26 January 2003. The theme of the two day event held in the Barmah For-

est, situated on Yorta Yorta land, was to acknowledge their struggle for justice. The celebration included concerts, Yorta Yorta dance performers, speakers, forums and activities for the children. Monica Morgan announced the end of her official position as the representative for the Yorta Yorta people. The Elders Council has nominated Henry Atkinson to resume the role. *Koori Mail*, 18 February 2003. Yorta Yorta claim: VPA94/1, VG6001/98.

Yorta Yorta native title claimant group member and lead co-ordinator Monica Morgan, said yesterday her people had run out of options under Australian law in relation to their native title application. Last year's High Court decision dismissed the Yorta Yorta appeal, following an earlier decision that native title did not exist. The court found the claimants could not prove continuous connection to the land which covers around 2000 sq km around the Murray River in Victoria and New South Wales. Ms Morgan also stated that a submission to the United Nations Working Group on Indigenous Populations would also be made when a representative of the group visits Australia later this year. *Herald Sun*, 14 February 2003.

For the first time a delegate's decision to register an ILUA has been challenged. The parties in this particular agreement, were Ms Carolyn Briggs on behalf of the Boonerwung people and Blairgowrie Safe Boat Harbour Limited. The agreement in Victoria dealt with the construction of a safe harbour on Crown land and waters, over which there

was no native title claim. Under the ILUA consent had been given for any future acts that might be involved in the construction of the harbour. *Native Title Hot Spots - Issue 4*, March 2003. Boonerwung claim: VC98/4, VG6025/98.

The mediation process in the Wotjobaluk native title claim is proving successful. The Wotjobaluk people are seeking two per cent of the original claim area along the banks of the Wimmera River, including the right to hunt, fish, gather, and camp along the river (still subject to all existing laws and regulations). Their rights would not limit public access, grazing licences, water frontage licences or other existing interests. *Wimmera Mail*, 31 January 2003. Wotjobaluk claim: VC99/51, V6005/99.

Tasmania

A native title claim at Circular Head is the first claim on Tasmanian land to progress to the public notification stage. The claim covers 1.3 sq km between Arthur River and Temma, known as Sundown Point. The application was originality lodged in September 2000 but was not accepted for registration because the application failed to establish the claimant group's physical connection to the land, including a factual basis for the claim. After the notification period the court has determined that the claim will go to mediation. If a suitable agreement can not be reached through mediation the claim will go on to litigation in the Federal Court. *Burnie Advocate*, 16 January 2003. Sundown Point claim: TC00/1, T6001/00.

REGISTRATION TEST

The National Native Title Tribunal posts summaries of registration test decisions at <www.nntt.gov.au>. The following decisions are listed for January to March. The first number following the name is the NNTT Application Number, the second is that of the Federal Court. If an application has not been accepted, this does not mean that native title does not exist. The applicants may still pursue the application for the determination of native title. If an application does not pass the registration test, the applicant may seek a review of the decision in the Federal Court or re-submit the application.

Bunthamarra People #2	QC02/17 Q6014/02 Not Accepted	Mugina Group	QC02/38 Q6035/02 Accepted
Kullilli People #2	QC02/28 Q6025/02 Accepted	Dunghutti People #2	NC01/6 N6021/01 Accepted
Kullilli People #3	QC02/29 Q6026/02 Accepted	The Githabul Peoples #2	NC95/11-2 NG6019/98 Accepted
Mrs Betty Atkinson Family Claim	NC02/14 N6018/02 Not Accepted	The Githabul Peoples # 3	NC95/11-3 NG6019/98 Accepted
Richard & William Gilbert Family claim	NC02/13 N6019/02 Not Accepted	Goolagong Family Claim	NC02/16 N6021/2002 Not Accepted
Wiradjuri People	NC02/3 N6002/02 Accepted	Sloan Family Claim	NC02/15 N6020/02 Not Accepted
Bintharra Group	QC02/37 Q6036/02 Accepted		

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
12/05/03	WC02/2	Ngalia Kutjungkatja #2
	WC01/4	Taylor Group
26/05/03	NC01/6	Dunghutti People
	NN02/6	The Bahtahbah Local Aboriginal Land Council
11/06/03	QC01/32	Bar-Barrum People #4
	QC01/33	Bar-Barrum People #5
	QC01/34	Bar-Barrum People #6
	QC01/35	Bar-Barrum People #7
	QC02/25	Wuthathi People #2
25/06/03	QC02/24	Kudjala & Jirandali People #2
	QC02/23	Kutjala & Gugu Badhun People
	QC02/22	Kutjala Jirandali & Mbara Ngawun People
	QC02/19	Mbara Ngawun Group
	QC02/18	Kudjala People #4
	QC02/31	Kudjala People #3

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

RECENT PUBLICATIONS

Postcolonial Liberalism

by Duncan Ivison,
Cambridge University Press 2002.

In 1995, in his Third Report as Social Justice Commissioner, Mick Dodson suggested that 'in a policy area like Indigenous affairs, matters of philosophy are central'. Yet investigations of these 'matters of philosophy', particularly from an Indigenous perspective, are generally absent from the Australian scene. While in Canada for example, Indigenous writers such as Taiaiake Alfred, Dale Edwards and John Borrows question the legitimacy of state control of Aboriginal peoples, in Australia this fundamental work is generally undertaken by non-Indigenous academics such as Paul Patton, Sue Dodds, and latterly Duncan Ivison.

So who cares? What relevance could a theoretical investigation of Australia's dominant mode of political thought ('liberalism') be to Aboriginal people? Even if they had the inclination, what rep body worker has the time to wade through such a complex book? Why worry about new approaches to philosophy when state approaches are determined by a slogan ('practical reconciliation') rather than any carefully considered, let alone mutually acceptable position? And that of course is the point. It is at just such a time when autonomy is being constrained and Indigenous organisations are stretched to the limit that we must go back, interrogate the basis of the system, and imagine and argue for alternatives. Duncan Ivison, a Canadian born philosopher now residing at the University of Sydney sets out on just such a project.

Ivison addresses a question faced not only by the liberal philosopher, but by all in-

volved in the native title process: can whitefella ways be adapted to the point where they do not damage, but respect and recognize Indigenous rights and interests? Ivison believes they can, and he calls this adaptation 'postcolonial liberalism'. This philosophy seeks to create the space whereby Aboriginal perspectives and philosophies are not only heard, 'but given equal opportunity to shape (and reshape) the forms of power and government acting upon them.' The abstract, individualistic ethos of traditional liberalism 'goes local' by addressing the particularity of different Indigenous peoples situations. Accepting the inevitability of argument and disagreement, postcolonial liberalism attempts to remain context sensitive, creating a situation of 'complex mutual coexistence' whereby these tensions are resolved via what he calls a 'discursive *modus vivendi*'.

What he means is that given our different histories, whitefellas and blackfellas will disagree about some things. However, we will share many things, particularly since we have had to live together for over two centuries, including 'liberal' notions such as equality and freedom. Our best chance at getting along is to have a yarn about the issues we disagree on, including how we yarn about them. The result won't be perfect, and it won't last forever, but if we can have dialogue in a way that respects each party, we might just come up with something we can live with, at least until we have another yarn about it.

This will not be definitive enough for some people. It will not deliver the 'certainty' demanded by some in government and industry. But how can we be 'certain' about the nature of Indigenous-state relations in ten, twenty, or a hundred years? Despite the real-

ity of shared powers in a federal democracy, conservatives will inevitably oppose Ivison's notion of Indigenous and non-Indigenous peoples sharing 'co-ordinate sovereignty' in the postcolonial state. This conception may even be too weak for some Aboriginal readers. Similarly, some Indigenous people may not appreciate Ivison's suggestion we need to focus less on the 'rights' Indigenous people have and more on what he calls the 'capability set' which enables them to exercise their freedoms. Others will disagree more fundamentally about the ability of liberalism, implicated as it is so heavily in the colonial enterprise, to act as an agent of liberation for Aboriginal people.

With respect to native title, Ivison suggests it cannot be reduced merely to a question of ownership, but must refer to (Aboriginal) 'governmental interests' as well. He recognises this is not a question of symbolism: faced with the need to negotiate with powerful governments and corporations, the narrower the legal and political protection of Indigenous rights, the more vulnerable they become. This may be almost as true of the growing culture of agreement-making as it is of native title. As such it may be too bold a claim to view ILUAs as 'very close to the ideal of mutual coexistence', given they are not, as Ivison suggests, built 'step-by-step from the ground up', but are negotiated in this context of narrowing Indigenous rights.

Such a criticism does not diminish the need for the kind of analysis contained in *Postcolonial Liberalism*, it confirms this need. Duncan Ivison presents a carefully considered alternative view which gives supporters of Indigenous rights the ammunition to fight on their opponents home turf.

PUBLICATIONS FROM THE NATIVE TITLE CONFERENCE, TOWNSVILLE, 2001

In response to inquiries about the publication of papers from the *2001 Past and Future of Land Rights and Native Title* Townsville native title conference, we have compiled this bibliography:

Four papers were published in the NTRU series *Land Rights Laws: Issues of Native Title*, Volume 2:

- Parry Agius, Jocelyn Davies, Richie Howitt and Lesley Johns, *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice*, No. 20.
- Sir Anthony Mason, *The International Concept of Equality of Interest in the Sea as it Affects the Conservation of the Environment and Indigenous Interests*, No. 16.
- Greg McIntyre and Geoffrey Bagshaw, *Preserving Culture in Federal Court Proceedings: Gender Restrictions and Anthropological Experts*, No. 15.
- Susan Phillips, *"Like Something Out of Kafka": The Relationship between the roles of the National Native Title Tribunal and the Federal Court in the development of Native Title Practice*, No. 14.

Five papers were published in the NTRU *Native Title Newsletter*:

- Tony McAvoy, *Indigenous Fisheries: Cultural, Social and Commercial*, Issue 1/2002.
- Commissioner Rodney Dillon, *Exercising Your Culture: Indigenous Cultural Heritage and the Environment*, Issue 6/2001.
- Margaret Donaldson, *A Human Rights Approach to Native Title Agreements*, Issue 6/2001.
- Philippa Horner, *Development in Commonwealth agency co-ordination*, Issue 5/2001.
- Richard Bartlett, *A resolution of some outstanding native title issues: Ward on behalf of Miriuwung Gajerrong v Western Australia: High Court Australia March 2001, judgment reserved*, Issue 5/2001.

The *Environmental Planning and Law Journal* vol.19(4) August 2002 published four papers presented on the third day of the conference, which was a joint day with the National Environmental Law Association:

- Gary Meyers, *Native Title Rights in Natural Resources: A Comparative Perspective of Common Law Jurisprudence*, pp.245-257.
- Lee Godden, *Indigenous Heritage and the Environment: 'Legal categories are only one way of imagining the real'*, pp.258-266.
- Tony Foley, *Negotiating Resource Agreements: Lessons from ILUAs*, pp. 267-276.
- Warwick Baird and Rachel Lenehan, *The Process in NSW Leading to Joint Management of Aboriginal Owned Land and the Register of Aboriginal Owners*, pp.277-283.

Balayi: Culture, Law and Colonialism published three papers in their 'Treaty' edition (Vol 4, 2002):

- Jackie Huggins *Reconciliation and Native Title*.
- Mick Dodson *Sovereignty*.
- Jenny Pryor *The Past and Future of Land Rights and Native Title*.

Other publications:

- Diane Smith, *Valuing native title: Aboriginal, statutory and policy discourses about compensation*, CAEPR discussion paper 2001/222.
- Bryan Keon-Cohen - 'Compensation and Compulsory Acquisition under the Native Title Act 1993' (2002) 28 *Monash University Law Review*, pp.17-58.

- Benjamin R Smith (2003) 'Whither 'certainty'? Coexistence, change and land rights in northern Queensland'. *Anthropological Forum* 13(1), May 2003.

Internet publications:

- Published on the AIATSIS website as part of the Treaty Seminar Series – Fred Chaney, *Limits and Possibilities of a Treaty Process in Australia*. www.aiatsis.gov.au
- Anthony Esposito *Issues of cultural and environmental integrity* published on the Native Title and Protected Areas Project website www.indig-enviro.asn.au

NATIVE TITLE RESEARCH

UNIT PUBLICATIONS

Land, Rights, Laws: Issues of Native Title

The Native Title Research Unit Issues Papers are available through the native title link at www.aiatsis.gov.au; or are available, at no cost, from the NTRU. Receive copies through our electronic service, email ntru@aiatsis.gov.au, or phone 02 6246 1161 to join our mailing list.

Volume 2

- No.21 *Members of the Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 (12 December) – Comment*
Lisa Strelein
- No. 20 *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice*
Parry Agius, Jocelyn Davies, Richie Howitt and Lesley Johns
- No. 19 *'Winning' Native Title: The Experience of the Nharnuwungga, Wajarri and Ngarla People*
Michelle Riley
Pastoral Access Protocols: The Corrosion of Native Title by Contract
Frances Flanagan
- No. 18 *Diaspora, Materialism, Tradition: Anthropological Issues in the Recent High Court Appeal of the Yorta Yorta*
James F Weiner
- No. 17 *Western Australia v Ward on behalf of Miriuwung Gajerrong, High Court of Australia, 8 August 2002: Summary of Judgment*
Lisa Strelein
- No. 16 *The International Concept of Equality of Interest in the Sea as it Affects the Conservation of the Environment and Indigenous Interests*
Sir Anthony Mason
- No. 15 *Preserving Culture in Federal Court Proceedings: Gender Restrictions and Anthropological Experts*
Greg McIntyre and Geoffrey Bagshaw
- No. 14 *"Like Something Out of Kafka": The Relationship between the roles of the National Native Title Tribunal and the Federal Court in the development of Native Title Practice*
Susan Phillips
- No. 13 *Recent Developments in Native Title Law and Practice: Issues for the High Court*
John Basten
- No. 12 *The Beginning of Certainty: Consent Determinations of Native Title*
Paul Sheiner
- No. 11 *Expert Witness or Advocate? The Principle of Ignorance in Expert Witnessing*
Bruce Shaw
- No. 10 *Review of Conference: Emerging Issues and Future Directions*
Graeme Neate
- No. 9 *Anthropology and Connection Reports in Native Title Claim Applications*

- Julie Finlayson
 No. 8 *Economic Issues in Valuation of and Compensation for Loss of Native Title Rights*
 David Campbell
 No. 7 *The Content of Native Title: Questions for the Miriuwung Gajerrong Appeal*
 Gary D Meyers
 No. 6 *'Local' and 'Diaspora' Connections to Country and Kin in Central Cape York Peninsula*
 Benjamin Smith
 No. 5 *Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'*
 Katie Glaskin
 No. 4 *Bargaining on More than Good Will: Recognising a Fiduciary Obligation in Native Title*
 Larissa Behrendt
 No. 3 *Historical Narrative and Proof of Native Title*
 Christine Choo and Margaret O'Connell
 No. 2 *Claimant Group Descriptions: Beyond the Strictures of the Registration Test*
 Jocelyn Grace
 No. 1 *The Contractual Status of Indigenous Land Use Agreements*
 Lee Godden and Shaunnagh Dorsett

Discussion papers

Discussion papers are published in conjunction with the AIATSIS Research Program and are available from the Research Program on telephone 02 6246 1144. The Discussion papers are also available online at <http://www.aiatsis.gov.au/rsrch/rsrch_dp/discussion_papers.htm>.

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

Monographs

The following NTRU publications are published by Aboriginal Studies Press and are available from the AIATSIS Bookshop located at AIATSIS, Lawson Cres, Acton Peninsula, Canberra, or telephone 02 6246 1186 for prices and to order.

Through the Smoky Mirror: History and Native Title, edited by Mandy Paul and Geoffrey Gray, Aboriginal Press, Canberra, 2003.

Language in Native Title, edited by John Henderson and David Nash, Aboriginal Studies Press, Canberra, 2002.

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

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

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

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

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

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

Earlier publications dating back to 1994 are listed on the Native Title Research Unit's website at www.aiatsis.gov.au, go to the Native Title Research Unit and then click on the 'Previous Publications' link. Orders are subject to availability.

Web Resources

The NTRU has developed a number of on-line resource pages which provide relevant and up to date information regarding specific native title cases and concerns. These pages can be accessed from http://www.aiatsis.gov.au/rsrch/ntru/news_and_notes/

At present there are five resource pages:

- Authenticity and Tradition – The *Yorta Yorta* Case
- The concept of native title – *Miriwung-Gajerrong* Determination High Court 8 August 2002
- Compensation and native title
- Sea Rights – The *Croker Island* Decision and Native Title Offshore
- General native title resources

Papers from the AIATSIS seminar series *Limits and Possibilities of a Treaty Process in Australia* are also available on-line. This series explores issues surrounding the proposal for a national treaty, such as current proposals, past obstacles, Indigenous representation, political and philosophical questions, national identity, reconciliation, belonging, public law implications, and comparisons with other countries. The papers are at, <http://www.aiatsis.gov.au/rsrch/seminars.htm>

ABOUT THE

NATIVE TITLE RESEARCH UNIT

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

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

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For previous editions of this Newsletter click on the native title research unit link at www.aiatsis.gov.au

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