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 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund is conducting an inquiry into NTRBs and s.206(b). Submissions close 30 May 2004.Terms of reference: http://www.aph.gov.au/senate/committee/ntlf_ctte/index.htm

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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Indigenous Facilitation and Mediation Project – Singapore Conference

The Minerals Council of Australia funded airfares for Toni Bauman and Rhiân Williams to attend the 2nd Asia Pacific Mediation Forum 19-22 November 2003 in Singapore.

Attendance at the Conference was less than expected because of the SARS virus, however the opportunity to have an international discussion of cultural issues and approaches in mediation was worthwhile. In particular, visiting the Community Mediation Centres in Singapore was a highlight.

Rhiân Williams and Toni Bauman gave a conversational style presentation, outlining the broad issues of their project. Professor Lim Lan Yuan, in summing up the Conference commented favourably on the presentation, describing it as 'engaging'.

Rhiân also gave a separate paper titled 'Towards a new definition of Mediation'. Mr Graeme Neate, President of the National Native Title Tribunal, presented a joint paper with Associate Professor Craig Jones of the Native Title Unit at James Cook University.

Kaytetye Cultural Material Launch

On 5 February 2004 Grace Koch, Native Title Research and Access Officer, represented AIATSIS at a launch, held at Nyinkka Nyunyu Culture Centre at Tennant Creek, NT, of two books and a CD of Kaytetye cultural material.

The books, published by the Institute for Aboriginal Development Press, were *Growing Up Kaytetye: Stories by Tommy Kngwarraye Thompson* (compiled by Myfany Turpin) and the *Kaytetye Picture Dictionary* (compiled by Myfany Turpin and Alison Ross). In 1990, Grace Koch had worked at length with Tommy Thompson in compiling the book, *Kaytetye Country; An Aboriginal History of the Barrow Creek area*, which contained the first published texts in Kaytetye.

The audio recording, *Awelye Akwelye; Kaytetye women's traditional songs from Arnerre, Central Australia*, published by the Papulu Apparr-Kari Language and Culture Centre in Tennant Creek, contained songs recorded by Grace Koch in 1976 along with other performances of the same song series recorded in 1999. Arnerre country, an important Rain Dreaming area northwest of Barrow Creek, has figured in a recent ILUA being negotiated with Newmont Mining Corporation, which was referred to in the last AIATSIS Native Title Newsletter.

Seminar Series: 22 March – 31 May 2004

Titled: Regionalism, Indigenous Governance and Decision Making

The NTRU is convening the current AIATSIS seminar series on 'Regionalism, Indigenous governance and decision making'. The series explores the way understandings of 'regionalism' impact upon Indigenous peoples and influence the way they govern themselves and make decisions. It investigates the way different groups are seeking control of their own lives and their regions, the barriers to this control, and possibilities for increasing control in the future.

The series was launched on 22 March by the Chair of AIATSIS, Professor Mick Dodson. The first speaker was the Institute's inaugural Visiting International Indigenous Fellow, Professor John Borrows. More than 50 people heard Professor Borrows speak on 'Living Traditions: The Resurgence of Traditional Law'.

All are welcome to attend future seminars and hear from speakers including Mr Brian Wyatt, Executive Officer, GLSC; Senator Kerry O'Brien, Shadow Minister for Reconciliation and Indigenous Affairs; Mr Sam Jeffries, Chairman, Murdi Paaki Regional Council; Dr Will Sanders, CAEPR; Mr Robert Blowes, Barrister, ; Dr Sarah Holcombe, CAEPR; Mr Parry Agius, Executive Officer, ALRM; and Dr Patrick Sullivan, AIATSIS.

For more details on the seminar series go to:
http://www.aiatsis.gov.au/rsrch/seminars.htm

FEATURES

WA Pastoralists and Aboriginal People Agree on Access to Land

Goldfields Land and Sea Council

It wasn't an 'earth-shattering' agreement but its significance for putting Aboriginal people back in touch with their traditional lands should not be underestimated.

For the Goldfields region of WA, the Pastoral Access Principles, signed into effect on February 3 by representatives of the Goldfields Land and Sea Council and the Pastoralists and Graziers Association, was a milestone.

Goldfields pastoral 'stations' were hewn from an area bigger than Texas by a rough and tough band of pioneers in a wave of government-sanctioned 'settlement' that occurred early last century. Their cattle and the fences that corralled them, served also to isolate Aboriginal people from land that is vital for the survival of Indigenous culture.

The history books show conflicts and resentments on both sides. And while many station owners can today boast excellent relationships with local Aboriginal people, for some, the old prejudices linger. The occasional land holder still acts as if the fences across the land they lease from the State are there to deny Aboriginal people their traditional connection to country, despite the State's *Aboriginal Heritage Act* saying differently.

The Mabo decision of 1992 brought a resurgence of pastoralists' fears of an Indigenous land grab, prompting strong opposition to native title by their representative body, the WA Pastoralists and Graziers Association (PGA). Long forgotten resentments suddenly re-emerged in the court rooms and in the media.

So, when the PGA put pen to paper in February this year to lay down a set of principles by which Aboriginal people's access to their land could be harmoniously negotiated, it was a very welcome development. At last, here was a solid foundation on which sustainable, neighbourly relations could be built for the future.

The principles were an idea of the region's native title representative body, the Goldfields Land and Sea Council (GLSC), which has worked hard since Mabo to negotiate a string of milestone memoranda with a wide range of stakeholders in Goldfields land. Whether the MOUs have been with government, miners or pastoralists, the GLSC's aim has always been to advance the lot of Indigenous people and to protect their cultural heritage, while ensuring development in this highly prospective (minerals) region continues unhindered.

Success for bringing the principles to reality was in no small part due to the efforts of the National Native Title Tribunal, which guided the year-long discussions to their conclusion. There was no way that NNTT member Bardy McFarlane, would accept anything short of success.

The Goldfields Pastoral Access Principles were signed into effect by PGA President Barry Court and GLSC Chairman Ian Tucker. To underline their significance the State's Deputy Premier, Eric Ripper MLA, witnessed the signing. Nowhere in Australia had an agreement of this kind for a region the size of the Goldfields been concluded before.

The preamble to the agreement acknowledges the importance of coexistence, noting the reality that pastoralists and Aboriginal people share the same land. It goes on to confirm the importance to Aboriginal people of access to traditional lands, including lands subject of pastoral leasehold; and the importance to pastoralists of being able to use and enjoy their pastoral leases in a secure and efficient manner.

The same conciliatory spirit is embodied in the 14 principles. They address the rights of both groups in a fair and equitable way, covering issues such as the rights of pastoralists to graze commercial livestock, protection of Aboriginal sites of significance, recognition of the traditional responsibilities of Aboriginal people to look after country, and acknowledging the need for orderly processes for resolving access disputes.

In a gesture aimed at building on the good progress thus far, the agreement notes the 'extensive goodwill' that already exists between the parties and the need for this to continue in an environment of 'mutual respect and open communication'.

GLSC Executive Director Brian Wyatt described the principles as a significant step forward for Indigenous culture and for defining the rights of Aboriginal people.

"Pastoral lease areas and our traditional lands are one and the same. We congratulate the PGA for its commonsense approach to the burning and enduring need for Indigenous people to stay close to their country," Mr Wyatt said.

PGA President Barry Court said the PGA had always believed that negotiation was far better than litigation and had encouraged its members to take this path. 'These Access Principles give pastoralists the ability to formalise the goodwill that has continued to exist between station owners and their Aboriginal friends,' he said.

The NNTT's Bardy McFarlane said the groundbreaking agreement would assist Indigenous groups and pastoralists to identify their rights to the land and determine how those rights will successfully coexist.

'This set of principles is a major step forward as it provides a guide for the development of agreements between Indigenous groups and pastoralists, and relationships between the groups should further strengthen as a result of this first step."

'The Tribunal congratulates all the parties involved. This is yet another example of what can be achieved through straight talking and cooperation,' Mr McFarlane said.

***Neowarra v State of Western Australia* [2003] FCA 1402 (8 December 2003)**

Dr Lisa Strelein

The application for a determination of native title by the people of the Ngarinyin, Worrorra and Wunambal areas of the Wanjina-Wunggurr region of the Kimberley in Western Australia was determined by Justice Sundberg in December 2003. The judgement in *Neowarra v WA* [2003] FCA 1402 recognised exclusive possession native title over a part of the determination area and co-existing rights with a variety of tenures, predominantly pastoral leases.

Treatment of expert evidence

The judge acknowledged that the primary genealogical evidence and evidence of the laws and customs and normative system was that provided by the Aboriginal claimants themselves [42]. Supported by archaeological anthropological and historical evidence, his Honour found that Indigenous people were present in the area at the acquisition of sovereignty and were established in an organised society [61(3)].The genealogies, assisted by expert witnesses, established that the claim group were the descendents of the previous inhabitants of the area.

The judge largely accepted the anthropological and linguistic evidence from experts for the applicants. Criticisms from the respondents that the 'experts' were too close to the applicants were rejected by Sundberg J. His Honour expressed his respect for the candour of the experts in discussing the inherent risks of anthropological research, in working closely with communities whilst retaining a level of professional objectivity, and he accepted that the evidence was not only 'expert' but, in fact, the closeness to the community was part of the qualifications and expertise that made the evidence reliable and useful to the court [113, 116].

Defining the Group

The judge was not concerned with the idea that the 'Wanjina-Wunggurr' community may be an anthropological construct or of recent origin as a descriptive label and accepted that it need not even be a term used by the claimants themselves [395] (see also *Ward* [239]). While the claimants identify as Ngarinyin, Worrorra and Wunambul, and by their Dambun (clan) relationships, they also clearly articulate the extent of the society with which they share a system of law and custom, particularly in relation to land, and that is the extent of the Wanjina-Wunggurr community.

Despite repeated objections from respondent parties, various kinds of conglomerate groups have been accepted in a large number of determinations under the NTA. His Honour suggests that the reasoning of the High Court and lower courts in *Ward* is directly comparable, in which the Miriuwung Gajerrong community was accepted as the appropriate native title holding group. Variants on this theme include *Hayes (the Alice Springs determination)* (1999) 97 FCR 32, in which three estate groups were recognised as holding title; in *Yarmirr* (1998) 156 ALR 370 five clans claimed a communal title; and, most recently, in *Lardill (Wellesley Island)* a composite of groups were recognised as sharing laws and customs that define them as a normative society for the purposes of native title.

His Honour distinguished the findings of Justice O'Loughlin in *De Rose* at first instance in which the submissions of one expert, that there was a Yankunytjara, Pitjantjatjara, Antikurinjawa community, were dismissed. Sundberg J noted that, unlike the case before him, that opinion was not supported by either literature or, most importantly, by the evidence of the claimants [398]. Interestingly, the full Federal Court in the appeal in *De Rose* found that, in fact, the claimants in that case were part of a much larger normative society of the Western Desert and that their entitlement under native title over a particular area must be determined under the traditional laws and customs of the Western Desert community.

Justice Sundberg described this inquiry as the question of the 'native title recognition level' when determining rights held as 'communal, group or individual' rights and interests under s223(1). His Honour determined that it was appropriate for the community to claim communal rights to the area, within which certain groups and individuals will hold various rights and interest as determined by the laws and customs that define the broader Wanjina-Wungurr community. More ever, he suggested that a determination at any lower level would not fully reflect the basis upon which rights and interests were conferred or transmitted.

It appears that in its application, the definition of the community in *Yorta Yorta* based on the operation of a body of law and custom, rather than the specific rights and interests over land, provides a degree of flexibility in the way that groups are determined for the purposes of recognising native title.

Law and Custom

The claimants gave evidence of the Wanjina belief system that was the central differentiating factor that defined the 'boundaries' of the society [167]. Together with the laws that defined the rights and interests of individuals – the Wunggurr place and the Wanalirri story – a broad normative system was established. The judge also considered evidence of the knowledge and use of language, kinship relationships with respect to land and marriage, naming practices, maintenance of sites and stories, ceremonial rituals and performance, mourning/burial practices, and transmission of knowledge to younger generations.

The trial judge considered the High Court's interpretation in *Yorta Yorta* of the word 'tradition' when used to explain law and custom under s223 of the NTA. He noted that in order to be 'traditional' the claimants must demonstrate first, the laws and customs must have been passed from generation to generation, second, they must have existed before the assertion of sovereignty and, third, have had a continuous existence since then [162].

Care must be taken when applying this reasoning. The High Court in *Yorta Yorta* talked

about a system of laws and customs that define a society. That is what must have existed at the time of sovereignty. Justice Sundberg noted that although he would examine the laws and customs individually, the system must be looked at as whole in order to obtain an accurate picture.

His Honour recognised a connection between the law and customs now acknowledged and observed by the claimants and those laws and customs in existence at the acquisition of sovereignty finding that they derive their content from the normative system in existence at the time. However Sundberg J also acknowledged that such a connection may be inferred by the Court from the evidence.

The respondents contended that the acknowledgement of laws and customs has been washed away by the impacts of European settlement, the settling by the claimants in communities and the dilution of knowledge about the laws and customs and lack of enforcement. His Honour referred to the High Court decision in *Yorta Yorta* and held that an interruption to exercise is not necessarily fatal to a claim unless the interruption is so substantial that it results in the creation or requires the recreation of an altogether different normative society (*Yorta Yorta* HCA [89]).

Mere change and adaptation of laws and customs, while operating within the traditional norms was not an interruption under the reasoning of *Yorta Yorta*. Similarly, laws and customs need not be 'mandatory' in order to be normative. A custom does not cease to exist, and nor to does a person cease to be a member of a society if they do not obey the normative rules. His Honour uses the example of speed limits in Australian Road Traffic Laws to demonstrate this point [310]. His Honour considered that change and adaptation of the manner in which laws and customs are observed should accommodate modern circumstances including opportunities to take commercial benefits from traditional practices such as painting.

Physical absence, like absence of the exercise of rights generally, is not fatal to a claim. Justice Sundberg highlights that it is the possession of rights and interests, not the exercise of those rights and interests that is central to the inquiry [40]. In relation to 'connection' under s223(1)(b), his Honour suggests that 'little is required to constitute continuing connection'. It was certainly not considered necessary to live permanently on the claim area in order to maintain connection. Relying on the High Court in *Yorta Yorta*, his Honour held that the maintenance of connection depends upon the content of the laws and customs, and on the evidence in this case the traditional laws and customs accept that connection is maintained through assertion and acceptance [350-1].

<u>Native title rights and interests</u>

Justice Sundberg suggests that to determine the rights 'possessed under traditional law and custom' under s223(1)(a), the laws must be looked at from the Indigenous perspective. His Honour found that the claimants possessed what they would describe as the right to speak for country, to control access, or to own or rule it [495]. While the claimants do not use Australian property law terms to express their own law and custom, the judge found that the evidence sustains a claim to 'possession, occupation, use and enjoyment to the exclusion of all others. His Honour noted that the claims were not disputed by any other Indigenous group and indeed were supported by witnesses from neighbouring groups [379].

With the evidence sustaining a comprehensive right to the land, in the absence of any other non-indigenous interests, s225(b) would not require any greater particularity. More detail may be required where the evidence of laws and customs reveals a more limited set of rights, for example where rights are be shared with other groups. Referring to the applicability of the form of the order in *Mabo* (1992) 175 CLR 1, Sundberg J suggested that even in *Ward* the High Court had accepted that absent extinguishing acts, the trial judge's finding of exclusive possession would have been sufficiently described by the form 'possession, occupation, use and enjoyment' [380-1].

Despite the recognition that traditional laws of the Wanjina-Wunggurr region translated into native title rights and interests in this way, Justice Sundberg suggested that the compre-

hensive right would need to be 'unbundled' into its component parts to determine the impacts of extinguishment [382].

The applicants had suggested that with this underlying recognition of exclusive possession the most appropriate way to determine the impact of extinguishment was by what I would describe as an 'exclusive possession – minus' methodology. That is, the exclusive possession title is reduced by the extent of the interests granted. The Court would assess the rights and interests conferred by the non-indigenous interest and the native title would be extinguished only to the extent necessary to give effect to the right. The exercise of the laws and customs relied upon by the native title holders in establishing their claim would be exercisable subject to the rights of the interest holder. The judge rejected the notion of what he called 'conditional rights' based on decisions of the High Court in *Ward* and *Yarmirr* [475]. His Honour favoured a direct comparison of each law and the rights it confers against the rights conferred. In the result, as demonstrated in *Ward* and later determinations, the grant of any interest in the land, by taking away the 'exclusivity' of the title, denies any ongoing role on the part of the native title holders to make decisions in relation to access and use of their country.

The result of the extinguishing impacts of pastoral leases in the area means that the rights in relation to large tracts of country are limited to general access, hunting and fishing rights for personal communal or ceremonial and non-commercial use. Because the surviving rights are so limited on this approach, the judge took the advice of the High Court in *Ward* and resorted to considering the kinds of activities that could be exercised in pursuit of the native title. These activities, it was said, do not define the legal content of the right but, nevertheless now express the relationship between native title and the other interests in the area.

Such invasive extinguishment is not necessary in order to give effect to the limited rights encompassed by many of these interests, and unnecessarily trenches upon the rights of the native title holders. It does not allow any scope for the operation of rights and interests that continue to exist under traditional law and custom. The compensation implications of the courts' approach to this matter are yet to be explored.

NATIVE TITLE IN THE NEWS

New South Wales

A prominent Aboriginal elder has called for a treaty to be signed between the Albury City Council and its Indigenous community. Pastor Cec Grant, a senior member of the Wiradjuri council of elders, said he was eager to see an agreement, memorandum of understanding or a treaty with the council which would recognise the traditional ownership and role of the Indigenous community. Albury Mayor Cr Patricia Gould said she was not aware of the proposal, but expected it to be given some thought. *Border Mail (Albury Wodonga)* pg 13. 21 February 2004.

The West Wyalong region is set to receive an economic boost with Barrick Gold commencing construction of the Cowal gold mining development project. Barrick has formed a native title agreement with the Wiradjuri Condobolin native title claim group. Promotion and protection of Wiradjuri cultural heritage will take place in the area, with benefits to flow into the community during the life of the mine. Around 350 construction and 200 permanent jobs are expected to be created over the next 21 months. *Forbes Advocate,* pg 6. 28 February 2004. Wiradjuri claim: NC02/03, N6002/02.

Northern Territory

The first mining/petroleum native title agreement mediated in the Northern Terri-

tory was set in motion recently. The Territory government recently granted two exploration permits to Sweetpea Corporation to explore 14,000 sq km of land in the Newcastle Waters region with the traditional owner's agreement. Tribunal deputy president Christopher Sumner, who facilitated the mediation, said the agreement demonstrated what resource companies and Indigenous groups could achieve under the native title act if issues were talked through with the aim of reaching an agreement. *NNTT media release,* 04 February 2004. Eva Downs claim: DC01/34, D6035/01, Tandyidgee/Powell/Helen Springs claim: DC01/35, D6036/01. Tandyidgee claim: DC01/36, D6037/01. Powell Creek claim: DC01/37, D6038/01, Nutwood Downs claim: DC01/59, D6059/01, Daly Waters claim: DC01/71, D6071/01, Tanumbirini claim: DC02/35, D6036/02.

The Northern Land Council wants to establish a crocodile hunting industry in the Northern Territory in a bid to achieve economic independence. Traditional Aboriginals landowners would run safari-style trophy hunts in remote Northern Territory communities. The NLC has put a submission to the federal government to allow trial hunts of 25 saltwater crocodiles a year at Maningrida, in Arnhem land. *Ballarat Courier,* pg 20. 12 February 2004.

Alcan's proposed $1.5 billion alumina refinery expansion in the Northern Territory is moving closer to final approval. The Canadian aluminium giant said it had submitted its Environmental Impact Statement (EIS) to the Northern Territory government. Aboriginal traditional owners, through the Northern Land Council, have indicated they would like to buy an equity stake of up to $100 million in the pipeline project, which crosses Aboriginal land and land covered by native title claims. *National Indigenous Times,* pg 5. 18 February 2004.

Queensland

The State government and the Waanyi people have signed two Indigenous land use agreeements (ILUAs) in the Doomadgee area. These two agreements are part of a group of six in the north Queensland region which were signed in December last year. The signings are expected to allow more than 130 mining and exploration permits to be granted. *North West Star (Mt Isa)*, pg 3, 08 January 2004. Waanyi ILUA QI2003/62.

A native title claim has been lodged over parts of Kurrimine and Mission Beach by the Djiru people of Far North Queensland. The National Native Title Tribunal has invited those with interests in the land and waters in question to register for talks aimed at reaching negotiated settlements. Of the two applications the Djiru people have lodged, one of the applications covers 96.23 sq km, whilst the other covers 4.56 sq km. Both claims fall within the Cardwell and Johnstone shire council areas. *Cairns Post*, pg 9. 15 January 2004. Djiru claim: QC03/6, Q6006/03.

The Gia people have lodged a native title application over a 4808 sq km area. The application covers Bowen and Mackay and includes Proserpine and surrounding areas. Private freehold land within the area is excluded. The National Native Title Tribunal has invited people with interests in the land and waters covered by the application to register for talks aimed at reaching negotiated agreements. The application covers crown land, national parks, reserves and pastoral interests where native title has not been extinguished. *Proserpine Guardian*, pg 9. 21 January 2004. Gia claim: QC99/24, Q6023/99.

Unwanted State government land will be given back to Torres Strait traditional owners after a commitment from the Qld labor government. This decision follows a recent Federal Court decision that public works built prior to 1996 extinguished native title on Torres Strait Islander lands. Torres Shire Mayor Pedro Stephen, one of the Traditional Owners who voiced concern over the issue, hailed the decision as "a very positive way for the affected traditional owners to sit

down with the State government and conduct negotiations clear of all doubts and fears." *Torres News (Thursday Island)*, pg 1. 23 January 2004.

Three Indigenous Land Use Agreements (ILUAS) between nine traditional owner groups and the North Queensland Gas Pipeline Project group has been finalised. Representatives from the National Native Title Tribunal, the North Queensland Gas Pipeline Project and the nine Indigenous groups gathered in Townsville to celebrate the finalisation of the ILUAs after 14 months of negotiations. The ILUA's allow the Pipeline Project Group to proceed with plans to construct a 390km gas pipeline from Moranbah to Townsville while ensuring the protection of cultural heritage for the nine traditional groups. *Koori Mail*, pg 52. 28 January 2004. Jangga People claim: QC98/10, QG6230/98, Wiri People claim: QC98/5, QG6242/98, Wulgurukaba People claim: QC98/30, QG6221/98, Juru People claim, Barada Barna Kabalbara & Yetimaria claim: QC97/59, QG6224/98, Bindal People claim: QC99/21, Q6020/99, Birri People claim: QC98/12, QG6244/98, Kudjala People claim: QC00/1, Q6001/00 & inland Nebo claim.

The Jagera Indigenous group has lodged a native title claim over a large area of land in south Queensland, a portion of which is part of Warwick Shire's north east. The claim extends from Redland Shire, west to Toowoomba and south to Warwick. Early analysis of the claim by Warwick Shire council indicates the claim should have no effect on the majority of the shire. *Southern Free Times,* pg 3. 04 February 2004. Jagera claim: QC03/15, Q6014/03.

Torres Strait Island communities and the Federal Government have recently signed an Indigenous Land Use Agreement. This agreement will enable a radar to be erected to boost border protection and target illegal fishing. Defence Minister Robert Hill and Customs Minister Chris Ellison flew to Dauan Island then south to Badu Island in the central strait, for signing ceremonies with the Island councils. The agreement paves the way for the siting on uninhabited Pumpkin Island, off Badu Island, and a receiving antennae on Dauan Island. Dauan Island council chairperson Margaret Mau said the radar was strongly supported by the Island people and would create local jobs and help protect traditional fisheries. *Courier Mail, pg 10.* 26 February 2004. Pumpkin Island (Koey) Ngurtai ILUA & Dauan Island ILUA

South Australia

The Full Bench of the Federal court has ordered all parties in the De Rose Hill native title claim case to participate in a case management conference this month, to try and resolve the matter. Justices Wilcox, Merkel and Sackville said their deliberations so far favoured the native title claimants. Aboriginal Legal Rights Movement executive officer Parry Agius, said the case proved litigation was not the way to go, and makes all parties re-think how to go about resolving native title. *Koori Mail*, pg 55. 14 January 2004. Yankunytjatjara claim: SC94/2, SG6001/96.

Talks this week may determine the future of South Australia's only Aboriginal legal service, the Aboriginal Legal Rights Movement. The legal service has been unable to seek clarification from ATSIS over ongoing funding and only has enough money to remain until the 05 March 2004. ALRM's head office is in Adelaide and regional offices include Port Augusta, Port Lincoln, Murray Bridge and Ceduna. The legal service employs 47 people. *Koori Mail,* pg 5. 25 February 2004.

A native title directions hearing will resume in the Federal court on March 17 in relation to the Gournditch-Mara claim. The claim covers south-western Victoria and a small part of the south-east of South Australia. The Gournditch-Mara claimants have provided preliminary connection material and a

document setting out their aspirations to the State government. *Wimmera Mail Times,* pg 7. 27 February 2004. Gournditch-Mara claim: VC99/7, VG6004/98.

Tasmania

Tasmania's three political parties have agreed to acknowledge the traditional owners of the land in the state. A statement to acknowledge the Mouheneener people will be read at the beginning of each parliamentary sitting. *ABC News Online,* 05 January 2004. Mouheneener People.

Western Australia

Owners of the Monkey Mia Resort in Shark Bay, 850 km north of Perth, are negotiating with the State government to expand the resort area from 4ha to 7ha. The resort is jointly owned by the local Yadgalah Aboriginal community, Indigenous Business Australia and co-founder Graeme Robertson. The idea behind the partnership is to include the 100-strong local Shark Bay Aboriginal community in the ownership and operation of the resort, rather than sell out and employ another resort operator. *Weekend Australian*, pg 8. 17 January 2004.

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Late last year a meeting occurred between two local native title claimant groups to establish a working group. This meeting was held by the Yamaji Land and Sea Council to provide the opportunity for Wilinyu claimants and Naaguja native title claimants to discuss arrangement for working with an overlapping native title claim. A positive and encouraging resolution was passed in relation to working together on their native title claims from Jurien Bay to Bowes River inland. *Yamaji News (Geraldton)*, pg 1. 28 January 2004. Wilinyu claim & Naaguja claim: WC97/73, WG6194/98.

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The Federal government has rejected an application by native title claimants for work to stop on the Champion Lakes rowing complex. Planning and Infrastructure Minister Alannah MacTieran said she welcomed the Federal Government's decision that there was no justification for a stop-work order. Two members of the Nyoongar Circle of Elders lodged the application, with the rest of the application still to be considered by Federal Environment Minister David Kemp. *Armadale Examiner*, pg 5. 29 January 2004. Combined Single Noongar claim: WC03/6, W6006/03.

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During March, the Federal court will hear the final submissions in the long-running Wongatha native title claim. The Goldfields Land and Sea Council and the State Government both called for mediation but were not able to reach agreement. The Wongatha claim, which commenced in February 2002, covers Kalgoorlie-Boulder to Laverton and includes mining and pastoral leases. *Kalgoorlie Miner*, pg 5. 30 January 2004. Wongatha claim: WC99/1, WAG6005/98.

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An Esperance native title claim has become the first claim in Western Australia to be assessed by a neutral party outside the court process. Retired Federal Court Judge John Lockhart is conducting the early neutral evaluation which covers 49,115sq km of land and sea around Esperance. Executive director Anne De Soyza from the state Office of Native Title, said the early evaluation was designed to assist mediation and was quicker than the court process. *Kalgoorlie Miner*, pg 4. 03 February 2004. Combined Single Noongar Claim: WC03/6, W6006/03.

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Pastoralists and traditional landowners in the goldfields region have agreed to a set of principles for negotiating access to pastoral leases. The agreement was made between the Pastoralists and Graziers Association (PGA) and the Goldfields Land and Sea Council (GLSC) on behalf of the Indigenous groups. The access principles were negotiated over the last year under the guidance of the National Native Title Tribunal. The agreement acknowledges the importance of co-existence with the 14 principles address-

ing the rights of both groups in a fair and equitable way. *NNTT media release*, 03 February 2004.

The signing of a memorandum of understanding is intended to fast-track the transfer of 64 Aboriginal trust lands in the south-west to Noongar people. Under the agreement, made between the South West Aboriginal Land and Sea Council, the Aboriginal Lands Trust and the Indigenous Affairs Department, 64 properties will be transferred back to traditional Noongar owners. SWALSC CEO Darryl Pearce welcomed the handover, stating that "land is central in achieving sustainable economic independence for Noongar people". *Augusta Margaret River Mail,* pg 3. 11 February 2004. Combined Single Noongar Claim: WC03/6, W6006/03

Experts warned that the lack of funds for native title representative bodies may affect their ability to properly represent Indigenous groups. Kimberley Land Council have already stated they will have to leave a group of traditional owners unrepresented in court due to lack of funds. National Native Title Tribunal deputy president Fred Chaney warned that the funding shortfall could result in travesties of justice. *Weekend Australian*, pg 10, 28 February 2004.

The Kimberley Land Council will have to cease working on four native title claims if critical funding shortfalls are not addressed immediately. A crisis meeting was held with ATSIS, the Commonwealth body responsible for funding native title representative bodies. Executive director Wayne Bergmann said lawyers were withdrawn from the Djabera Djabera claim last week, with Karajrri, Wanjina and Rubibi claims also at risk. *West Australian*, pg 44. 28 February 2004. Djabera Djabera claim: WC96/99, WG6124/98. Karajrri claim: WC00/02, WG6100/98. Wanjina claim: WC02/04, W6006/02 and Rubibi claim: WC99/23, WG91/98.

APPLICATIONS LODGED

The National Native Title Tribunal posts summaries of applications that are lodged with them, on their website, <www.nntt.gov.au>. The following lodgements are listed for January/February.

Claimant Applications

Date Filed	Application Name	State/ Territory	Tribunal File No.	Federal Court File No.
10/02/04	Town of Newcastle Waters	NT	DC04/1	NTD3/04
11/02/04	Wanamara	QLD	QC04/1	Q32/04
18/02/04	Jirrbal People # 3	QLD	QC04/4	Q42/04
18/02/04	Jirrbal People # 2	QLD	QC04/3	Q41/04
23/02/04	Mbara Ngawun (Woolgar People)	QLD	QC04/2	Q37/04

REGISTRATION TEST DECISIONS

The National Native Title Tribunal posts summaries of registration test decisions at <www.nntt.gov.au>. The following decisions are listed for January to February. 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.

There were no Registration Test decisions during January and February 2004.

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
02/03/04	NC03/1	Twofold Bay Aboriginal People
16/03/04	DC03/4	Partta
16/03/04	QC03/9	Olkola & Thaypan People
16/03/04	QC03/8	Olkola People
16/03/04	QC03/1	Jirrbal People #1
16/03/04	QC03/10	Olkola/Fairlight
30/03/04	NN03/5	Kriann Investments Pty Limited
27/04/04	QC03/3	Djiru People #2
27/04/04	QC03/6	Djiru People #3
27/04/04	QC02/36	Indjilandji/Dithannoi
27/04/04	QC99/24	Gia People

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 ADDITIONS TO THE AIATSIS COLLECTION CATALOGUES

The following are newly catalogued items that have just become available on Mura, the AIATSIS on-line catalogue. Please check Mura for more information on each entry, including annotations.

Archaeology

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In *Western Australian Law Review.* Volume 30, May 2001. p 28-49.

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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.

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

Treaty: Let's get it right! Aboriginal Studies Press, Canberra, ACT, 2003.
Through the Smoky Mirror: History and Native Title edited by Mandy Paul and Geoffrey Gray, Aboriginal Studies Press, Canberra, ACT, 2003.

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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.

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.

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