



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

NATIVE TITLE NEWSLETTER

March and April 2000

No. 2/2000

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.

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

NEWS FROM THE NATIVE TITLE RESEARCH UNIT

Grand Chief Charles Fox

Grand Chief Charles Fox of the Nishnawbe-Aski Nation spoke at a seminar organised in Canberra by the Canadian High Commission and the Native Title Research Unit. The central theme was self governance by Indigenous people, an arrangement that he believes will inevitably come to Australia. The Grand Chief noted that Canadian politicians and public servants, who would not have said the word self-governance until recently, have now come to accept the arrangement. He also stressed the importance of First Nations asserting sovereignty, in particular when negotiating with industry for resource development. Grand Chief Fox explained how the nation-within-a-nation approach to Indigenous self-government allowed consultation at any level of government on an equal footing, sovereign to sovereign.

Native Title in the New Millennium
Native Title Representative Bodies legal conference
16- 20 April 2000

Mirimbiak Nations Aboriginal Corporation hosted a legal conference for Representative Bodies' lawyers in Melbourne in April. The Commonwealth Attorney General, the Commonwealth Solicitor General and the Minister for Aboriginal and Torres Strait Islander Affairs addressed the conference, as did Victoria's new Attorney General, Rob Hulls. A number of barristers, including many QCs who had worked on some of the foundation cases in the native title field, discussed recent federal and High Court decisions such as *Miriuwung Gajerrong* and *Croker Island*, and many legal officers from NTRBs discussed some of the cutting edge issues for their organisations including taking of evidence and management of claims and hearings, as well as resourcing. There were also updates on the various state government policies, proposed state regimes and discussion of agreements and economic opportunities. The convenor, Mirimbiak's Principal Legal Officer, Bryan Keon-Cohen QC, managed to bring together an excellent group of speakers and secure wide participation from lawyers and others involved in native title processes. The comprehensive collection of papers is currently being edited for publication.

Lisa Strelein
Native Title Research Unit, AIATSIS

Native title issues papers

The Institute's Native Title Research Unit publishes issues papers in the occasional series, *Land, Rights, Laws: Issues of Native Title*. The Unit is seeking expressions of interest and submitted papers for this series. Future issues this year will focus on natural resources, particularly biodiversity and water and environmental management; later in the year, the focus will include self-government and the management of native title lands. The papers are subject to peer review and are generally written at an academic level. They should be 3,500 words in length and sent on disk or via e-mail.

Contract Research

The Native Title Research Unit also commissions small research projects which generally result in publications in the *Land, Rights, Laws* series. Should you be interested in being included on the register of consultants which the Unit uses to commission projects, send your expression of interest, briefly addressing the selection criteria listed below, with an accompanying curriculum vitae and list of recent publications to

Publications Officer
NTRU
AIATSIS
GPO Box 553
Canberra, ACT 2601

Further information is available from George Boeck on 02 6246 1183,
gab@aiatsis.gov.au

Selection criteria:

Understanding and awareness of issues affecting Indigenous cultures and societies in Australia today
Demonstrated experience in native title
Highly developed analytical and policy skills
Evidence of the ability to write reports for publication within a set time-frame

CURRENT ISSUES

Indigenous Governance

Governance is on the agenda as a key issue in the development of native title and Indigenous land aspirations. The unspoken dilemma of the *Mabo* decision and for Australian jurisprudence is the source of native title. It is easy to say it is sourced in the traditions, laws and customs of Aboriginal and Torres Strait Islander peoples, but just what does this mean? The Australian tenure system recognises that everything is sourced from the Crown, yet as the common law recognises at least in words, the traditions, laws and customs of Aboriginal and Torres Strait Islander peoples do not come from the Crown. The legislative framework administering the recognition of native title attempts to regulate and control the scope and content of these laws, traditions and customs in land aspirations. Yet these laws, traditions and customs existed prior to the coming of the Crown and continue to exist with or without official recognition of the Crown. The inability of the Courts to recognise the prior and continuing sovereign status of Aboriginal and Torres Strait Islander peoples will continue to be an issue until it is satisfactorily addressed. How it is to be satisfactorily addressed is the dilemma.

In his book *Sovereignty* Henry Reynolds has written about the sovereignty of Aboriginal and Torres Strait Islander peoples. Reynolds demonstrated the historical gaps in how the Australian social, legal and political culture have dealt

or failed to deal with the question of sovereignty, thereby leaving the question open. In other former British colonies the question was dealt with by treaty. The two most commonly cited examples are Canada and New Zealand. The resolution of this question of sovereignty will be the central feature of Indigenous and non-Indigenous relations for this century. Since the 1970's there has been a push for a treaty in Australia, the Reconciliation process sought to subsume this movement. The movement for a treaty and recognition of Aboriginal and Torres Strait Islander sovereignty has not really left the agenda but is channelled through a variety of governance structures, including ATSIC, community organisations and Native Title Representative Bodies.

The move toward autonomy in the Torres Strait and the adoption of a discussion paper by ATSIC and Senator Herron in September 1999 titled, *Regional Autonomy for Aboriginal and Torres Strait Islander Communities*, all point to an opportunity for an expansion of self governance through ATSIC. Other related developments include greater focus on improved service delivery and the allocation of responsibility for that service delivery. The model of endorsing self-governance will need to be discussed and debated.

On the 31 March 2000 the NTRU hosted a workshop associated with the ARC Collaborative Research Project, *Governance Structures for Indigenous Australians on and off native title lands*. The Discussion Papers in this project use native title and land aspirations as the point of departure for greater recognition of appropriate governance structures. The way in which Indigenous Australians gain recognition of their continuing connection to their lands and how they are supported to develop their social, political and economic structures will contribute to addressing the questions arising from lack of recognition of prior sovereignty and the lack of a treaty.

On 12 April Grand Chief Charles Fox of the Nishnawabe-Aski Nation gave a seminar on the experiences in Canada. The Canadian models demonstrate the opportunities available for recognition of first nation sovereignty within the modern nation state. In Australia we have not yet progressed sufficiently through the process of native title recognition to engage in debates about establishing a Nunavut territory or negotiating a Nishga'a type treaty. As the native title process develops these will become unavoidable outcomes.

There are many challenges and restrictions, the most obvious being the negative attitudes of Governments toward native title and self-governance. However

these negative attitudes are slowly being challenged. The Victorian State government recently announced a policy of mediating native title outcomes rather than litigating. In Queensland the government has reached agreement on a number of native title consent determinations. Even the Western Australian government has an agreement with the Spinifex People, which is apparently coming to fruition. The other great challenge is access to sufficient resources and a smooth and efficient process of native title recognition in order to develop appropriate governance structures. The Native Title Representative Bodies have always been under resourced. At this moment many native title claimant groups are faced with the burden of not knowing who their Native Title Representative Body will be. This translates into uncertainty about representation in mediation, future act proceedings, registration test proceedings and Federal Court proceedings. The transitional NTRB's have continued to deliver a service to native title claimant groups but this service is clearly affected by the uncertainty of their status. To deliver the optimum outcome to native title parties and develop the native title process NTRB's need to be adequately resourced.

Native title claimants and NTRB's play a fundamental role in addressing the questions of sovereignty, self-governance and treaties. The motivation is the relationship of Aboriginal and Torres Strait Islander peoples to their lands and waters and how this relationship is maintained within the modern Australian nation state. Native title claimants declare their country and their status as a first nation when they lodge native title applications. The NTRB's then operate to facilitate appropriate recognition of the relationship between native title claimants and their country. To date this has been a process of establishing the benchmarks through litigation. However there is increasingly a shift into a process of mediation and negotiation that serves to address the social, economic and political aspirations as well as the land aspirations. The land is integral to realising social, cultural and economic aspirations. The outcomes of mediation and negotiation are currently termed agreements but how long before the agreements become much more formal relationships between the original owners and the respective governments.

Kado Muir
Native Title Research Unit
AIATSIS

NATIVE TITLE IN THE NEWS - MARCH & APRIL 2000

National

A panel to provide advice and assistance to people involved in native title cases (other than native title claimants) has been established by the Commonwealth Attorney-General's Department. The panel includes solicitors, barristers, mediators, anthropologists, historians and archaeologists. (*NTN News (Qld) Feb 2000, p4*) (see report p15)

A web site has been launched to help mediate disputes over native title claims. The site offers a step by step guide to use mediation in land claim issues. The web site is sponsored by the Department of Immigration and Multicultural Affairs and can be located at <http://www.tcgproject.org> (*Robinvale Sentinel, 30 March, p3*)*

The Hon Chris Sumner and the Hon Fred Chaney AO have both been re-appointed to the National Native Title Tribunal as full-time Deputy Presidents for a period of three years. Dr Mary Edmunds has been re-appointed as a part-time member of the Tribunal also for a period of three years. (*Attorney General, News Release, 12 April*)

The annual Native Title and Social Justice Reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner was tabled in Federal Parliament. The Reports consider the principles upheld by the UN Committee on the Elimination of Racial Discrimination (CERD). (see report page 18) (*HREOC Media Release, 6 April*)

Federal Opposition Aboriginal Affairs spokesman the Hon. Daryl Melham stated in a television interview that a Labor government would not repeal the *Wik* amendments to the *Native Title Act 1993* which extinguished native title on leased lands. (*Aus, 10 April, p6*)

New South Wales

The title deeds for a 100 hectare property known as Toms Gully, located 40 kilometres west of Kempsey, have been handed back to the Wunduayn Gunggu Barrunggin (Big River Dreaming) Inc, which is made up of 50 traditional owners. The property was purchased in 1995 by the Indigenous Land Corporation. (*Koori Mail, 5 April, p15*)*

The full bench of the Federal Court has ruled that pastoral grazing leases do not extinguish native title. The majority decision relates to Western Division land leases in New South Wales covering 32.5 million hectares and reinforces the 1996 *Wik* decision. A native title application was lodged by Michael Anderson on behalf of the Euahlay-I Dixon Clan of north west New South Wales. The claim area included land 30 kilometres south of the Queensland border which was held under this unique kind of tenure. (*Aus*, 6 April, p4)*

Anderson v Wilson

On 5 April the full Federal Court, in *Anderson v Wilson* ([2000] FCA 394), determined whether Western Division land leases in New South Wales extinguished native title or left open the potential of co-existence of native title rights over their particular form of lease.

The lessees, who were the applicants in the case, asked whether the lease conferred the right of exclusive possession on the lessee, either first by virtue of the *Western Lands Act 1901* (NSW), the regulations pertaining to the Act at the time of the grant of the lease, or second any of the terms or conditions of the lease. If the answer to either of the first two questions was yes, a third question asked the Court to decide on whether the grant of the lease extinguished native title altogether or suspended native title rights for the duration of the lease.

In making their judgements, all of the justices noted the problems with the questions and how they had been set out. In this instance the questions raised were similar to those raised in *Wik* and had similar problems in that they obscured the main issue at hand. The full bench agreed that the central focus of the inquiry should not be whether Mr Wilson's lease granted exclusive possession but whether the rights conferred on him as lessee were inconsistent with any native title rights that may exist over the land.

The Court followed the majority findings of the High Court of Australia in *Wik*.

All Judges found that in the provisions of the lease itself there was nothing to suggest that the rights conferred on the lessee were inconsistent with every incident of native title that may exist in relation to the leased land. This stemmed from the conditions placed on the leaseholder by the terms of the lease, including the restrictive nature of the lease (in this instance, grazing) and the exceptions and reservations to the lease which allowed resumption of land

without compensation or persons authorised by the Western Lands Commissioner to carry out certain activities. To ascertain what native title may exist in relation to the leased land it would be necessary to look at the evidence which in the present case was not before the Court. In short, nothing inherent in the leasehold contract necessarily extinguished native title.

The Judges adopted the view as expressed in *Ward* that it was possible that there could be partial extinguishment of native title rights. In the case before the court, however, it could not be certain that all native title rights and interests had been extinguished or indeed which particular native title rights had been extinguished as no evidence had been taken in relation to native title rights.

David Leigh
Native Title Research Unit, AIATSIS

Victoria

The Robinvale native title claim has been registered with the Federal Court. The application covers land on the Victorian side of the Murray River as well as the River itself and includes parts of the Hattah-Kulkyne National Park, the Murray-Kulkyne National Park and Bumbang Island as well as State forests, reserves and other Crown land. The application was lodged on 27 March 1996 and passed the registration test on 3 June 1999. People who are accepted by the Federal Court as parties to the proceedings can take part in mediation of the application before the NNTT. (*Swan Hill Guardian, 8 March, p3*)*

The National Native Title Tribunal has welcomed moves by the Victorian Government to try to settle the State's outstanding native title applications through mediation. Tribunal President Graeme Neate stated that litigation of native title cases was a lengthy and costly exercise and that many applications could be settled by mediation. (*NNTT Media Release, 8 March*)

Mirimbiak Nations Aboriginal Corporation announced support for the Portland Cable Tram Project in Glenelg Shire on behalf of the Gournditch-Mara native title claimants. Mirimbiak hopes to have further involvement in the project through discussions relating to employment possibilities during the construction phase and options of incorporating Aboriginal heritage into the Cable Tram project. (*Casterton News, 29 March, p5*)

Victoria's native title policy

At the Mirimbiak NTRB's legal conference (*see report page 3*) convened by Bryan Keon-Cohen QC in April, the Attorney General for Victoria, the Hon. Rob Hulls MP, outlined the State government's approach to native title issues. The Attorney began by acknowledging Indigenous people as the original owners and custodians of Victoria and recognising that 'the centrepiece of reconciliation with Indigenous Victorians is addressing the dispossession of Aboriginal land and culture'. The Attorney confirmed a commitment to negotiation and mediation on a 'whole of government approach' which would see co-ordinated management of issues across all relevant government departments or agencies. In conjunction with the new native title policy, the government is preparing a Mediation Framework Principles document. Framework agreements with applicants and their representatives and other interested parties will 'guide and give structure to the negotiations and mediation process.' While some settlements, the Attorney argued, may be dealt with appropriately by ILUAs or by an alternative package of benefits including employment, education and training or greater involvement in land management, the Attorney reinforced the importance of recognising native title as a possible outcome.

Lisa Strelein

Native Title Research Unit, AIATSIS

Queensland

The Bailai, Gooreng Gooreng and Gurang family groups have agreed to operate as a single reference group for all future negotiations relating to native title. (*LRQ, March 2000, p13*)

Four native title claimant groups, the Kullulli, Wangkamurra and two Bunthamurra people's groups, have rejected a compensation offer from Santos Ltd over land for a gas pipeline and have called for a Queensland Government negotiator. (*Koori Mail, 8 March, p34*)

South Australia

Talks have been held between Native Title Management Committees and Mr Trevor Griffin, the South Australian Attorney General, to discuss the possibility of a Statewide Native Title Framework Agreement to provide a set of agreed rules to deal with native title in South Australia. The advantages and disadvantages of negotiations were discussed and a recommendation was passed allowing the Aboriginal Legal Rights Movement to seek funding from the SA

Government for training and information to enable committees to work out their positions in the future of native title in their regions. (*Aboriginal Way, April 2000, p3*)

Western Australia

The Federal Court has handed down a 2-1 decision in the Miriuwung Gajerrong native title case, upholding the appeal by Western Australia in relation to areas of extinguishment but reconfirming the native title of the Miriuwung Gajerrong people. (*DT, 4 March, p10*)*

The National Native Title Tribunal has called for mediation to settle Western Australia's 151 outstanding native title applications. Tribunal President Graeme Neate stated that Court action to settle native title issues was a lengthy and costly undertaking. 'While test cases such as Miriuwung Gajerrong are necessary, the vast majority of the 561 native title applications in Australia can and should be settled by mediation,' he said. (*NNTT Media Release, 7 March*)

Mick Dodson has been appointed to coordinate native title negotiations with the Aboriginal community on behalf of the Western Australian Government in relation to the release of land for the second stage of the Ord River Irrigation Scheme. (*Koori Mail, 22 March, p17*)

Collie Shire Council has reached an agreement that allows the Council to use part of the reserve on Harris River Road for a new depot while the remainder of the land is handed back to the traditional owners. (*Koori Mail, 22 March, p5*)

The National Native Title Tribunal began mediation meetings to assist 14 new and amended native title applications in Western Australia reach agreements without the need for court proceedings. Landholders and other interest holders have 3 months to register as parties if they wanted to join the mediation. The applications covered land, inland waters and some areas of sea in the Pilbara, Kimberley, Gascoyne, South West, Goldfields and Great Southern areas of the State. (*NNTT Media Release, 4 April*)*

Northern Territory

The Senate has endorsed a negotiated settlement between the Northern Territory Government, pastoralists and the Central Land Council. The Senate voted to deliver three parcels of land to the Territory's Indigenous community

after the Warumungu Land Claim settlement on the Rockhampton Downs Station. This settlement makes a total of 64 parcels of land secured by the community since the *Aboriginal Land Rights (Northern Territory) Act 1976*. (*Northern Territory News*. 20 March, p2)

The National Native Title Tribunal is preparing to begin processing Northern Territory mining and exploration tenement applications. Staff numbers in the Tribunal's Darwin office have been increased to prepare for the expected influx of over 1,000 mining and exploration tenement applications. (*NNTT Media Release*, 23 March)

The National Native Title Tribunal began mediation meetings to assist 8 native title applications in the Northern Territory reach agreements without the need for court proceedings. Landholders and other interest holders have 3 months to register as parties if they wanted to join the mediation. (*NNTT Media Release*, 5 April)

APPLICATIONS

National

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 March and April 2000.

Wiradjuri people	not accepted	Sec's 1706 / 1714	
Wiradjuri (Oberon)	not accepted	Hundred of Guy	accepted
Harry Douglas Pitt (Jnr)	abbreviated	Part NT Portion 4732 Hundred of Guy	accepted
Lot 1348 Katherine Part NT Portion 4732 Hundred of Guy	accepted	Sec's 1706 & 1714 Hundred of Guy	accepted
	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.

The applicant may still pursue the application for 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.

Queensland

Kudjala People [NNTT Ref No QC00/1]

The Kudjala People's new claimant application was lodged in the Federal Court on 6 January 2000. The application covers an area north-west of Lake Dalrymple, in Dalrymple Shire and was lodged in response to a section 29 notice. (*NTN (Qld) Feb 2000, p2*)

Flinders Shire Council [NNTT Ref No QN00/1]

Flinders Shire Council lodged a non-claimant application in the Federal Court on 31 January 2000 covering a specific lot within the township of Hughenden in Central Queensland. (*NTN (Qld) Feb 2000, p2*)

Western Australia

The Wongatha native title claim has again passed the registration test. The claim had previously passed the test but the result was appealed in the Federal Court by the State Government. (*Koori Mail, 8 March, p21*)

Applications currently in Notification

Notification period is 3 months from the Notification start date.

NORTHERN TERRITORY

5 April 2000

Lot 5976 East Point DC99/6
Sec 4131 Hundred of Strangways
DC99/7
Howard River East DC99/8
Howard River East TQ DC99/9
Section 4131 Strangways (TQ) DC99/10
Sec2413 Hundred of Cavenagh DC99/11
Sec 2413 Hundred of Cavenagh (Risk)
DC99/12
Sec 2413 Hundred of Cavenagh (Ludwig)
DC99/13
Dangalaba 13 DC98/14

3 May 2000

Town of Katherine DC99/2
Tennant Creek DC99/3
Pine Hill Station DC99/4
Adelaide River DC99/5
Middle Arm DC99/14
Pine Creek DC99/15
Timber Creek DC99/16
Western Creek DC99/17
Myilly Point Larrakia DC99/18
Pine Creek No.2 DC99/19
Lot 1348 Katherine DC00/1

Notifications (cont'd)

WESTERN AUSTRALIA

8 March 2000

Karajarri (Combined Application
WC00/2

5 April 2000

Gobawarra Minduarra Yinhawanga
WC97/43

Eastern Guruma WC97/89

Malgana 1 WC98/17

Leregon #2 WC98/21

Mayala WC98/39

VJ & CF Isaacs WC98/42

South West Boorah WC98/63

Birriliburu People WC98/68

Innowonga People WC98/69

Wanjina/Wunggurr-Willingin WC99/11

BAUMGARTEN WC98/11

19 April 2000

Ngadjungarra WC97/105

Wong-goo-tt-oo WC98/40

Nyangumarta People WC98/65

18 May 2000

Scotty Birrell & Ors (Combined
Application) WC98/28

Ning Bingi WC99/31

Pamela Simon WC99/32

Doris Fletcher WC99/34

Madigan Thomas & others WC99/37

Arnold Franks WC98/57

Wiluna (Combined Application)
WC99/24

Nyiyaparli People (Combined
Application)

WC99/4

Palyku (Combined Application WC99/16

Thudgari People WC97/95

Martu Idja Banyjima People WC98/62

NEW SOUTH WALES

22 March 2000

Darbinjung LALC (Non Claimant)
NN99/10

3 May 2000

NSW Government #55 (Non Claimant)
NN00/1

Council of the City of Lake Macquarie
(Non Claimant) NN99/8

VICTORIA

15 March 2000

Robinvale Aboriginal Community VC96/1

QUEENSLAND

23 Feb 2000

Western Yalanji #3 QC98/39

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

AGREEMENTS

Queensland

AGL Petroleum Pipelines Ltd and Interstate Pipelines Pty Ltd advertised their intention to begin an Indigenous Land Use Agreement (ILUA) process relating to the construction of a gas pipeline between Woodroyd gas fields and the Roma to Brisbane pipeline at Condamine. (*NTN (Qld) March 2000, p1*)

FAIRA Aboriginal Corporation advertised a proposed Indigenous Land Use Agreement for a proposed gas pipeline between Gatton and Gympie. *NTN (Qld), March 2000, p1*)

The Attorney General's Department establishes Native Title Practitioners Panel

Following enactment of the *Native Title Amendment Act 1998*, new guidelines for the Provision of Financial Assistance by the Attorney General in Native Title Cases commenced operation, following approval by the Attorney General under s 183(4) of the *Native Title Act 1993*, on 30 November 1998.

In accordance with paragraphs 7.9 and 7.10 of the guidelines the Commonwealth Attorney General's Department has established a Native Title Practitioners Panel to assist in the provision of financial assistance and legal services to people (other than native title claimants) involved in native title cases. The panel includes both legal and non-legal practitioners, for example solicitors, barristers, mediators, anthropologists, historians and archaeologists.

Unless a practitioner is a member of the panel, he or she will not be eligible for payment from the Attorney General's Department on behalf of assisted persons.

The individuals and organisations generally eligible to apply for legal and other assistance include pastoralists, farmers, small miners, fishermen, local government authorities and recreational clubs and associations. A list of the native title practitioners on the panel can be obtained by contacting the Attorney General's Department at the address below.

The Attorney General's Department is accepting expressions of interest from practitioners in having their names included on the panel. The period of appointment is three years. Practitioners should have relevant professional

qualifications and demonstrated experience in native title matters. Applications for appointment will be considered having regard to the following criteria:

1. demonstrated experience and competence as a practitioner (legal and non legal) in native title matters,
2. demonstrated knowledge of native title law,
3. previous experience in financially assisted native title proceedings and demonstrated willingness to assist Legal Assistance Branch achieve its statutory objectives,
4. the quality of the services provided by the practitioner in those previously financially assisted matters as assessed by the Legal Assistance Branch,
5. reputation or standing within the profession as assessed by the Legal Assistance Branch,
6. demonstrated capacity to deal with other practitioners and NNTT/Federal Court representatives in a cooperative manner designed to achieve effective and efficient outcomes in financially assisted cases,
7. willingness to represent financially assisted clients on the basis of Legal Assistance Branch's performance standards, fee structures and so on outlined in the material enclosed with the information kit and in accordance with the Native Title Guidelines,
8. demonstrated capacity to provide services which satisfy reasonable client expectations.

Practitioners wishing to nominate to join the panel or individuals or organisations wishing to apply for funding for legal assistance can obtain more information by writing to the Attorney General's Department, Legal Assistance Branch, National Circuit, Barton Act 2600, by facsimile on (02) 6250 5934 or by telephoning Frank Tallarita on (02) 6250 6770 or Megan Millard on telephone (02) 6250 6967.

Australians for Native Title and Reconciliation (ANTaR)

Australians for Native Title and Reconciliation (ANTaR) is a national network of organisations and individuals working for moral and legal recognition of the rights of Aboriginal and Torres Strait Islander peoples in Australia. ANTaR is best known for its *Sea of Hands* campaign and the *Citizens Statement in Support of Native Title* which have so far engaged over 250,000 Australians in support of native title rights. In 1998 ANTaR was awarded the *Human Rights Award for Community Action* by the Human Rights and Equal Opportunity Commission for promoting reconciliation. ANTaR appeared before the CERD committee to demonstrate the broad community support for the view being put forward by Indigenous delegates.

ANTaR is concerned that recent native title decisions, the Miriuwung Gajerrong decision in Western Australia and the Lightning Ridge decision in New South Wales, raise a critical question about whether the idea of partial extinguishment has a place in Australian native title law. If the answer is yes, then the consequences are very serious. The law could grant recognition of native title with one hand only to take it away with the other. Alternatively, the Court could opt for a principle of 'minimum necessary harm' under which leaseholders' rights prevail, and inconsistent native title rights are suppressed but not extinguished. That way, when those leases expire, full native title can revive if traditional connection persists. ANTaR is currently communicating these issues to the community.

To get more information about ANTaR or to join your local ANTaR group

1. Log onto our website at www.antar.org.au
2. Phone us

National	02 9555 6138	Vic	03 9419 3613	WA	08 9314 5690
NSW	02 9555 6138	ACT	02 6257 4472	NT	08 8946 6545
Qld	07 3844 9800	SA	08 8227 0170	Tas	03 6234 3870

David Cooper, National Coordinator
ANTaR

Recent publications

The publications reviewed here are not available from AIATSIS. Please refer to individual reviews for information on obtaining copies of these publications.

Native Title in Australia, Richard H. Bartlett, Butterworths, Sydney, 2000. Since its recognition by the High Court the development of native title law within Australia has been so rapid that it has precluded the development of an encompassing text dealing with legislation and legal practice. The result has been a large body of information with no means of approaching the topic with any ease.

Native Title in Australia represents the most comprehensive analysis of native title within Australia to date and provides a well structured means of approaching and understanding native title law.

The book provides a fascinating insight into the development of native title within Australia. It charts this development not only in terms of the case law and legislation, but also the social and historical forces which have influenced the expression of native title law within this country.

The book is divided into 7 sections: The Background, The Nature of Native Title, Extinguishment and Validation, Future Dealings, Resource Development and Traditional Pursuits, Institutions and Jurisdictions, and a comparative section on overseas case law and legislation. These sections are further divided into 28 chapters. All cases and statutes are tabled and cross referenced with the relevant paragraphs in the book giving the reader the opportunity to check on primary sources of information.

The theme stressed by the author, and reiterated at regular intervals throughout the book, is equality before the law for those involved in native title. The conclusions drawn by the author are such that legislation, as it stands in Australia, falls well short of this basic principle.

Native title law developed rapidly and recent decisions in the Federal Court have shown that this is a trend that is likely to continue. Despite this, *Native Title in Australia* is a book which will remain a valuable resource well into the future.

Native Title Report 1999, Report No.1/2000, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Sterling Press, 2000.

Social Justice Report 1999, Report No.2/2000, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Sterling Press, 2000.

The annual *Native Title* and *Social Justice* reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner Dr William Jonas were tabled in Federal Parliament on 6 April 2000. They are available from the Aboriginal and Torres Strait Islander Social Justice Unit at HREOC (phone 02 9284 9600, fax 02 9284 9611, email atsisju@hreoc.gov.au). They reveal the inadequacies of Australian government policies and practices in effectively dealing with ongoing discrimination against Indigenous people. Both reports recommend a revised approach to Indigenous equality. 'We need special remedial measures to overcome historically-entrenched patterns of racial inequality, as well as active

intervention to protect the distinct cultural characteristics of Indigenous communities.'

'Public debate on Indigenous issues has often been divisive, scape-goating Indigenous people as somehow being "privileged" and enjoying "special treatment" compared to the general population. The reality could not be further from the truth,' said Dr Jonas.

Native Title Report

The *Native Title Report* considers the implications of the March 1999 decision of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination (CERD) which found that the Federal Government's 1998 amendments to the *Native Title Act 1993* are in breach of Australia's obligations under the Convention. The report concludes that the guiding principles of equality and effective participation have been eroded by the Government's amendments and diluted by an ever expanding labyrinth of State legislation. The Report also has chapters on State regimes, the registration test and native title representative bodies. A full copy of the report can be found at http://www.hreoc.gov.au/social_justice/native_title/index.html

Social Justice Report

The *Social Justice Report* focuses on Indigenous young people. Indigenous youth experience many of the issues faced by the broader community. These community issues are reviewed from a human rights and social justice perspective, a discussion of the specific issues that affect young Indigenous people follows. The five chapters are: Introduction (focusing on current themes in Indigenous policy); Indigenous young people and human rights; Identity; Bilingual education; and, Mandatory sentencing and Indigenous youth. A full copy of the report can be found at

http://www.hreoc.gov.au/social_justice/social_justice/index.html

Short Guide to Native Title. National Native Title Tribunal. 2000

The National Native Title Tribunal has produced this plain language guide to explain the key native title concepts, the role of the Tribunal and to answer some commonly asked questions. The guide is available free from the Tribunal. Copies can be obtained on freecall 1800 640 501.

Native Title Research Unit publications

The following NTRU publications are available from AIATSIS. Please phone (02) 6246 1161, fax (02) 6249 1046 or email: ntru@aiatsis.gov.au. Prices listed include postage.

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. (\$19.95)

Regional Agreements: Key Issues in Australia - Volume 2, Case Studies
Edited by Mary Edmunds, 1999. (\$19.95)

A Guide to Overseas Precedents of Relevance to Native Title Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden, 1998. (\$18.95)

Working with the Native Title Act: Alternatives to the Adversarial Method
Edited by Lisa Strelein, 1998. (\$9.95)

Regional Agreements: Key Issues in Australia - Volume 1, Summaries.
Edited by Mary Edmunds, 1998. (\$16.95)

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. (\$12.95)

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 (\$20)

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 (\$15)

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 (\$11.95)

Claims to Knowledge, Claims to Country: Native Title, Native Title Claims and the Role of the Anthropologist Summary of proceedings of a conference session on native title at the annual conference of the Australian Anthropological Society, 28-30 September 1994 (out of print)

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 (\$9.95).

The following publications are available free of charge from the Native Title Research Unit, AIATSIS, Phone (02) 6246 1161, Fax (02) 6249 1046:

Issues Papers published in 1998, 1999 and 2000:

Volume 2

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 ***'Beliefs, Feelings and Justice' Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples' Rights in Canada***
by Lisa Strelein

No. 21 ***A New Way of Compensating: Maintenance of Culture through Agreement*** by Michael Levarch and Allison Riding

No. 20 ***Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime*** by J. C. Altman

Regional Agreements Papers published in 1998 and 1999

- No. 7 ***Indigenous Land Use Agreements: New Opportunities and Challenges under the Amended Native Title Act*** by Dianne Smith
- No. 6 ***The Yandicoogina Process: a model for negotiating land use agreements*** by Clive Senior
- No. 5 ***Process, Politics and Regional Agreements*** by Ciaran O'Faircheallaigh

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