



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.

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

The Native Title Conference 2003

We are delighted to announce that we have an international guest who will deliver a paper at *The Native Title Conference 2003: Native Title on the Ground*.

Associate Professor of Law, Christine Zuni Cruz, is from The University of New Mexico. A member of the Isleta Pueblo, Zuni Cruz helped establish the South West Indian Law Clinic in 1993 which provides students with an opportunity to practice Indian law. She has served as a tribal judge and a tribal gaming commissioner. In her research and teaching, Zuni Cruz explores the interface between law and culture, including the impact of law on Indian families, the practice of Indian law and the internal and modern law of Indigenous peoples nationally and internationally.

In addition to our international guest, the conference will open with the Mabo lecture, which will be presented by Noel Pearson. His paper, "The implications of the developing native title law for Indigenous land rights" will consider the consequences of the misinterpretation of the Native Title Act by the courts.

Other plenary speakers at the conference include Richie Ahmat, Fred Chaney, Murray Chapman, Geoff Clark, Mick Dodson, Bill Jonas, Murray Jones, Marcia Langton, Bonita Mabo, Shirley McPherson, Monica Morgan, Graeme Neate, Darryl Pearce, Aden Ridgeway, David Ross, Warwick Soden, Russell Taylor, Pat Turner and representatives of the Lhere Artepe.

For a copy of the brochure and program, follow the links on the AIATSIS webpage at <www.aiatsis.gov.au>.

New Issues Paper

The April Issues Paper has been published. Issue number 22, "Abandonment' or Maintenance of Country? A Critical Examination of Mobility Patterns and the Implications for Native Title" is by Dr Peter Veth. In this paper, Dr Veth argues that studies of patterns of historical mobility illustrate that it is normal for groups to practice different kinds of 'abandonment' over time. This is for a variety of social and historical reasons. Thus Dr Veth suggests that these well-documented and long term historic processes should inform the legal standard for continuity of occupation and use of country.

Video Archives of Federal Court Judgment Summaries

In an effort to improve public access to Federal Court cases, live and archived broadcasts of judgment summaries are available through the Federal Court website in audio/video narrowband and broadband formats. Four native title judgments are available. These are: *De Rose v State of South Australia* [2002] FCA 1342; *Meriam People v State of Queensland* [2001] FCA 697; *Yorta Yorta Aboriginal Community v State of Victoria* [2000] FCA 45; *State of Western Australia v Ward* [2000] FCA 191. These are available at:<www.fedcourt.gov.au/judgments/judgmts_video01.html>.

Facilitating Indigenous Decision and Agreement Making and Managing Disputes in Land Issues

Toni Bauman, Visiting Research Fellow, NTRU

Introduction

Over the last twelve months, AIATSIS has been holding discussions with a range of key stakeholders concerning the need for developing culturally appropriate procedural expertise in native title. There has been general agreement that disputes and decision making processes within and between stakeholder groups (and not just among Indigenous people) are major blockages. Integrated dispute management and decision making design systems are a priority. Of major concern is the lack of shared understanding of what constitutes good mediation and facilitation practice and the need for an emphasis on long term relationship building and sustainable outcomes.

Whilst it is recognised that all stakeholders need to develop skills in this area, the initial focus of the AIATSIS project rests upon developing capacity amongst Indigenous people in agreement and decision making and managing disputes through the NTRBs. This focus is timely, as ATSIC has been examining capacity building needs in NTRBs which have statutory responsibilities for managing Indigenous disputes.

AIATSIS has entered into partnerships with ATSIC and the NNTT for Stage One of the research project outlined below. There are opportunities for a range of other partnerships over the life of the project with industry groups such as the Mining Industry Council, with farmers, pastoralists, members of the fishing industry, local government, environmentalists and land managers among others.

NTRBs will be asked to partner AIATSIS in the research through providing direction for and participating in a number of workshops, in the first instance, through a facilitated workshop of the CEOs of NTRBs.

The Research Project

Stage One:

AIATSIS will establish a research team within the Native Title Research Unit to carry out the project.

The Project team will include:

- a Visiting Research Fellow over three years – Toni Bauman;
- a Consultant Research Fellow (mediation specialist) – Rhian Williams; and
- a Research Assistant (to be appointed).

The Visiting Research Fellow and the Consultant Research Fellow will carry out the substantial part of the research and coordination. Where appropriate, research and consultations will also be shared amongst other Fellows in the NTRU.

The Project team will:

- continue and expand the existing research;
- carry out case studies;
- create a research network and establish dialogue groups with a range of stakeholders;
- facilitate and record a number of focus group workshops particularly with NTRBs; and
- publish results of research and consultations in issues or discussion papers and on the NTRU web site.

Stages Two and Three:

Stage Two will involve the development of training modules, and Stage Three, the rolling out of the training program. Details of Stages Two and Three will depend upon the research outcomes of Stage One.

For further information, contact Toni Bauman 02 6246 1195 or email Toni.Bauman@aiatsis.gov.au.

Native Title Indigenous Youth Forum

Alice Springs Convention Centre, Tuesday 3 June 2003, 9am until 5pm.

The Native Title Conference has grown into an annual event. This year the Native Title Conference 2003 is being co-hosted by the Central Land Council, and will be held at the Alice Springs Convention Centre. The Lhere Artepe Aboriginal Corporation which represents the Arrernte native title holders from the Mparntwe, Antulye and Lrlpme estate groups in Alice Springs will be speaking about what native title has meant for them and discussing the challenges of native title in an urban context. Presenters from across Australia will talk about the avenues available for Indigenous people to address native title concerns, hopes and aspirations.

The national network of NTRBs is very much aware that native title issues, in many parts of the country, have become an increasing part of the experience of Aboriginal people and their communities. With this comes the need for more people to participate in native title claims, negotiations and concerns. Often they have had to move very quickly to overcome the gaps in their understanding and knowledge of native title laws. Many Indigenous leaders now believe that their young people will also be required to develop an understanding of native title and its importance to their future.

The CLC already has an active policy of encouraging young people to develop their skills and understanding of traditional Aboriginal land issues in Central Australia. This policy of mutual responsibility can help to assist communities to prepare young people to pursue an active and positive future roles as traditional land owners and leaders of their communities.

For these reasons the CLC will host a Native Title Indigenous Youth Forum on the first day of this year's Native Title Conference. The Indigenous Youth Forum will be a one-day event of talks, discussions and workshops. It will create an important occasion to engage young people in discussions about the meaning of native title and of the native title concerns within their communities.

Significantly, senior traditional landowners will be present at this forum to explain why young people have to start learning about native title, land and culture. Young people will have the chance to ask their elders what they want to know about native title and to talk about their concerns for the future.

Representatives from the current national Indigenous leadership attending the Native Title Conference will also address the Indigenous Youth Forum. It will be a unique opportunity for Indigenous leaders from different regions across Australia to discuss their understanding of native title with young people; to be able to say what has been gained and to speak about their concerns for the future. They will be able to describe the skills and knowledge that the future Indigenous leaders will require in order to respond to native title issues in their traditional homelands. The forum also provides an opportunity for Indigenous leaders to hear what young people have to offer and their preferred directions.

Some of the questions that young people are asking include:

- what are the outcomes of native title claims and how do young people benefit from these claims?
- why should a young person be interested in native title?
- how do you participate?
- who do you go to for help?
- what is leadership?
- how do you plan to lead and survive the stress of being an Indigenous leader?
- how do you overcome the gaps of inequality? and,

- why bother becoming involved if someone else is doing the job?

The Native Title Indigenous Youth Forum will be a frank exchange of views on the native title vision for the future: how are the steps built to achieve benchmarks, goals, and the realisation of dreams? How do we work together to achieve common goals?

The CLC is inviting the NTRBs, high schools and Indigenous youth groups in Central Australia to nominate young Indigenous people to attend this important forum. This forum provides a space for the future generation of Indigenous leaders to come together and discuss matters of critical importance for the future.

To find out more about the Native Title Indigenous Youth Forum and to register your nominations please contact:

Alexis Wright, Central Land Council
 P O Box 3321, Alice Springs NT 0871
 Telephone: 89 516 358
 Email: alexis.wright@clc.org.au

Agreements Database - the launch

Dr Lisa Palmer

The research team working on the ARC Linkage Project, *'Agreements, Treaties and Negotiated Settlements with Indigenous Peoples in Settler States: their role and relevance for Indigenous and other Australians'* is pleased to announce the upcoming public launch of our online Agreements Database. The launch of the first phase of the Agreements Database will be held at the Native Title Conference in Alice Springs on June 4. This database is an important part of a broader project that is examining treaty and agreement-making with Indigenous Australians and the nature of the cultural, social and legal rights encompassed by past, present and potential agreements and treaties. This project will include an examination of the legal history and foundations of agreements and treaties, an audit of current agreements, their purposes, status and outcomes, and will include international comparative research on treaty

and agreement-making. While many of the agreements examined relate to land, the research also includes non-land based agreements such as those agreements made in the areas of health, education and research.

The project began in March 2002 and the research will be conducted over three years. Outcomes of this project will also include the publication of a collection of papers.

It is anticipated that the project will contribute to the efforts of Indigenous organisations to secure political and economic rights through agreements with governments, industry and the broader Australian community.

Along with our industry partner, ATSIC, this project involves researchers from both The University of Melbourne (Professor Marcia Langton, Chair of Indigenous Studies, and Ms Maureen Tehan of the Faculty of Law, and Dr Lisa Palmer, Postdoctoral Research Fellow) and The University of Technology Sydney (Professor Larissa Behrendt of the Faculty of Law and Jumbunna Indigenous House of Learning and Ms Lisa Briscoe, PhD candidate). The project is also supported by AIATSIS.

We have written to many stakeholders requesting their assistance with this project. Such assistance may, in the first instance, involve the provision of actual agreements or information relating to agreements for inclusion in our database. We continue to seek any individuals and organisations able to provide information on and/or make available agreements (or parts of agreements) which contain information which could be made available in the public domain.

If you can assist us with our research or if you would like further information about our project please contact us. Dr Lisa Palmer, Postdoctoral Fellow, on 03 8344 3462 or email lrpalmer@unimelb.edu.au or visit our website:

<http://www.indigenous.unimelb.edu.au/atn>
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Native Title News 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

Noel Pearson recently delivered the Sir Ninian Stephen Annual Lecture at Newcastle University's Law School. In his lecture Pearson argued that the High Court was misinterpreting the *Native Title Act 1993* (Cth). Using the recent claims of the Miriung-Gajerrong people and the Yorta Yorta people, Pearson described native title litigation as a battle for 'leftover land'. He added that the misinterpretation of fundamental provisions of the Native Title Act, meant the judges were destroying the opportunity to finally settle the outstanding question of Indigenous land justice in Australia. *Sydney Morning Herald*, 18 March 2003.

The Human Rights and Equal Opportunity Social Justice Commissioner, William Jonas, recently tabled his annual reports on native title and social justice in Canberra, calling on the Federal Government to lift its game. He said reconciliation and native title have dropped off the national agenda and have been replaced with an antagonistic and adversarial view towards indigenous policy overall. He did commend certain aspects of indigenous policy, such as commitments to partnerships, but was disappointed in the lack of consistency. Dr Jonas suggested that it was time to re-evaluate native title and amend legislation in line with Australia's international law obligations. *West Australian*, 21 March 2003.

South Australia

Around sixty people gathered at Stenhouse Bay on the 6-7 March to participate in talks regarding native title in the area. These par-

ticipants consisted of local Aboriginal groups, peak bodies and organisations with an interest in native title. The ultimate aims included: determining any uncertainty over native title issues; getting to know all parties; and, listening to particular issues and concerns. The discussions were initiated by the State Government and the York Peninsula Region of Councils as part of a State wide approach to settle native title matters through negotiation rather than litigation. *York Peninsula Country Times*, 7 March 2003.

The South Australian Government is planning to use ILUAs as their mechanism to produce native title outcomes within the State. This approach is an attempt to resolve their current native title issues. Included in the talks are the South Australian Government, the Farmers Federation, Chamber of Mines and Energy, Fishing Industry Council and the Seafood Council. *Koori Mail*, 14 March 2003.

Due to the successful negotiation of native title agreements in South Australia, more than \$1.5 billion is expected to be invested into the State's oil industry in the next four years. It will include fifteen new access agreements for petroleum exploration licences in the Cooper Basin area. Paul Holloway, Minister for Mineral Resources Development, announced native title agreements in the Cooper Basin area now cover twenty-seven exploration licences worth an estimated \$275 million of investment to the State. These agreements will provide employment, royalties to the State and production payments to the registered native title claimants. *Adelaide Advertiser*, 22 March 2003.

The Federal Court has struck out the largest native title claim ever lodged in South Australia due to dissension and legal wrangling. Justice Mansfield dismissed the claim, and suggested the applicants lodge a new appli-

cation. The claim over 120,000sq km of land including Lake Eyre, was filed in 1997 on behalf of the Dieri Mitha people. Problems arose when a different group, the Edward Landers Dieri people also sought a determination over parts of the same claim area. Justice Mansfield stated, 'it was regrettable that the issue could not be resolved, so that the Dieri people, as a native title group could press ahead with an application for determination of native title'. *Adelaide Advertiser*, 1 April 2003. Dieri Mitha claim: SC95/2, SG66/98.

The Yankunytjatjara people are appealing the decision that native title does not exist in their lodged claim area. In December 2002, Justice O'Loughlin dismissed the case. It will go to the Federal Court on 22 May 2003. The case was the first in South Australia to reach the courts and covers 1,865sq km of land in the far north region of South Australia. For the first time, evidence for this case was heard on country. *Koori Mail*, 9 April 2003. Yankunytjatjara claim: SC97/9, SC6022/98.

Western Australia

Newmont Australia and BHP Billiton have been acknowledged for their contributions to native title and building good relationships with Indigenous communities. They were the inaugural winners to the Yamatji Land and Sea Council's Snakewood Awards. The awards recognise commitment to the native title process and Indigenous communities. BHP invested around \$500,000 to heritage projects, well above the normal contribution. They also ensured the traditional owners benefit from the mining exploration by increasing Aboriginal employment for the project. *Pilbara News*, 6 March 2003.

The State Government's intentions to negotiate settlements is currently being questioned by the Ngarla people. State representatives failed to attend a recent mediation conference with the Ngarla claimant group. The Ngarla peoples claim covers

10,086sq km of land and water north of Port Hedland. The mediation meeting was called by the NNTT to be held on the De Grey riverbanks more than a month ago. *West Australian*, 26 March 2003. Ngarla claim: WC99/26, WG6085/98.

Geraldton is the location for a testimonial to the contribution Aboriginal people and early pioneers have made to Australia, in the form of public artworks. Still in the planning stages, the commemoration will take the form of a \$150,000 heritage trail. The Naaguja people are currently in discussion with the Geraldton City Council to ensure Aboriginal heritage and culture is reflected in the foreshore design, and business, training and employment opportunities are created. Project consultant Paul Rajan, stated the heritage trail could be incorporated into the Francis Street precinct. Geraldton Aboriginal organisation Wila Guthara would be invited to compete for tenders in the foreshore redevelopment. *Geraldton Guardian*, 4 April 2003. Naaguja claim: WC99/73, WG6194/98.

Esperance was recently the location of a preservation hearing. The historic occurrence saw the Noongar native title claimants give evidence to support the Esperance Noongar claim. These proceedings give witnesses the opportunity to give evidence, which then may be used in the main Federal Court native title hearing. This was the first time such a hearing had taken place in Esperance. The date for the Federal Court hearing is yet to be set. *Esperance Express*, 10 April 2003. Noongar claim: WC95/56, WG6048/98.

Members of the Nanda Indigenous group were recently handed back their land in an ceremony at the Department of Indigenous Affairs (DIA) in Perth. This outcome has been achieved about 27 years after the Nanda people lodged their first application. The area returned was Mt View Farm, located in the Yamatji region. *Koori Mail*, 9

April 2003. Naanda claim: WC96/111, WG6136/98.

The Western Australian Government is currently in talks with the Miriuwung-Gajerrong people about settling their ongoing claim. The Government is offering the Miriuwung-Gajerrong people freehold title over 50,000ha of Crown land, if the traditional owners agree to settle their claim. Western Australian Aboriginal Affairs Minister, Eric Ripper, stated that the claim group had been seeking native title rights for more than nine years, and the State Government was trying to bring the matter to conclusion through negotiation. *Koori Mail*, 9 April 2003. Miriuwung-Gajerrong claim: WC94/2, WG6001/95.

Queensland

A native title claim lodged late last year by the Jagera People, covers more than 40 percent of the Boonah Shire. The claim covers over 6,103sq km of land and also includes land in the Brisbane, Gold Coast, Toowoomba and Redlands local authority areas. The claim covers all State owned land, waterways, lakes, river and creek beds, mountain ranges and beaches, and does not include land under freehold title. Boonah Shire Council will have an opportunity to join as a party to the application. *Fassifern Guardian (Boonah)*, 11 March 2003. Jagera claim: QC02/33, Q6031/02.

There are currently twelve native title claims in the North Queensland region, in the notification stage. They include the Bar-Barrum people who have lodged four native title claims over 2,323sq km of land in the Herberton and Mareeba shires; the Wuthathi people (No.2), who have laid claim over an area of 1,176.6sq km adjacent to Shelbourne Bay in the Cape York Peninsula; the Kudjala people (No.4); Kudjala and Jirandali people (No.2); Mbara Ngawun group; Kutjala Jirandali and Mbara Ngawun people; Kutjala and Gugu Badhun; Kudjala Jirandali (No.3); and, the Kudjala (No.5). These groups have lodged a series of native title claims mainly

over exploration areas in the Dalrymple, Flinders, Etheridge and Richmond Shires covering an area of 1,775sq km. NNTT will directly notify all affected landholders. *Queensland Country Life*, 27 March 2003. Bar-Barrum #4 claim: QC01/32, Q6030/01; Bar-Barrum #5 claim: QC01/33, Q6031/01; Bar-Barrum #6 QC01/34, Q6032/01; Bar-Barrum #7 claim: QC01/35, Q6033/01; Wuthathi claim: QC02/25, Q6022/02; Kudjala claim: QC02/18, Q6015/02; Kudjala and Jirandali #2 claim: QC02/24, Q6016/02; Mbara Ngawun claim: QC02/19, Q6017/02; Kudjala Jirandali #3 claim: QC02/31, Q6028/02; Kudjala #5 claim: QC02/32, Q6030/02; Kutjala Jirandali and Mbara Ngawun claim: QC02/22, Q6020/02.

The travelling art show 'Native Title Business', opened in Townsville during late March. The work of sixty Indigenous artists from around Australia, was opened by Mrs Bonita Mabo, widow of native title pioneer Eddie 'Koiki' Mabo. The main purpose of the exhibition is to promote understanding of why Indigenous people are fighting for land and water rights. 'Native Title Business' is officially presented by the Gurang Land Council. The exhibition aims to broaden public perceptions of native title. *Townsville Bulletin*, 29 March 2003.

The Gugu Badhun people of North Queensland and mining company Kagara Zinc have recently signed an ILUA, following registration with the NNTT. The two groups reached the agreement over the 1,234ha area, approximately 235km southwest of Cairns near Greenhale, after eighteen months of negotiations. The ILUA allows Kagara Zinc to mine in the area and provides the Gugu Badhun group with benefits to enable them to pursue their native title aspirations. Through the agreement, the Gugu Badhun people will gain employment and training opportunities. The claimants will also be offered natural and cultural heritage protection management opportunities along with future business

development opportunities. *Mining Chronicle*, 11 April 2003. Gugu Badhun claim: QC02/23, Q6021/02.

The Central Queensland Land Council has congratulated the Flinders Shire Council for taking the lead in their native title negotiations. Two agreements between the Yirandali traditional owners and the Flinders Council have been formalised. The first agreement resolves issues with the creation of a 38ha parcel of land in Hughenden, intended for future industrial expansion. The second, was to ensure a continued solid working relationship remain between the Council and the Yirandali people. *Townsville Bulletin*, 30 April 2003. Yirandali claim: QC00/9, Q6008/00.

New South Wales

Over 30 Yaegl native title members recently participated in a successful workshop at Yamba. The Yaegl native title claim covers the lower reaches of the Clarence River from Harwood to the river mouth at Yamba. The workshop considered issues arising from an anthropologist's draft report and progress was made with the genealogical study recording the details of claimant group families. There are also plans to work closely with the Birrigan, Gargle and Yaegl Local Aboriginal Land Councils to deal with overlapping issues. *Koori Mail*, 18 March 2003; *National Indigenous Times*, 2 April 2003. Yaegl claim: NC96/38, NG6052/98.

The fourth Living Centres Inspirational Planning Seminar was held in Pambula recently. Around fifty people attended, including representatives from Bombala Council, Bega Valley Shire Council and local Aboriginal land councils and community representatives. Native title lawyer, Sharon Payne, facilitated the seminar. Ms Payne provided an overview of Aboriginal cultural perspectives, a history of Australian property law and native title and an outline of the impact it has had to date. *Eden-Imlay Magnet*, 3 April 2003.

Victoria

Intensive mediation meetings will take place on the Wotjobaluk people's native title claim over the next three weeks. Kerryn Shade chief executive officer of Horsham Rural City, said the Wotjobaluk people, government representatives and other parties had agreed to a timetable of meetings. Mr Shade who is representing Wimmera municipalities, also said Wimmera Council had offered no objection to the State Government's in-principle agreement to settle the claim. This agreement would grant the Wotjobaluk People native title rights and interests to two per cent of their original claim area. In 1995 when the claim was first lodged, it was the largest in Victoria covering almost a million hectares. *Wimmera Mail Times*, 3 March 2003. Wotjobaluk claim: VC95/2, VG6002/98.

The NNTT formally registered the last of three ILUAs paving the way for gold mining at three central Victorian sites. The Tribunal's Victorian State manager, Tony Shelley, stated the agreements made with the Dja Dja Wurung people, were a good example of native title working on the ground to deliver real benefits for the whole community. The commitment from miners to protect Aboriginal heritage on site and consultation with the native title group about environmental protection are among the benefits to flow from the ILUA. The three sites in agreement were: 4.48ha near Amherst, 67km south-west of Bendigo; 17.8ha near Huntly, 13km north-northeast of Bendigo; and, 4.96ha near Rheola, 54km west-northwest of Bendigo. All three sites are subject to the same mining licence. *Bendigo Advertiser*, 27 March 2003.

Tasmania

Circular Head Mayor Ross Hine, is keen to meet with Lance Lesage, leader of a native title proposal in the local area. A date has not yet been established. The native title claim which is being pursued encompasses a large area on the west coast of Tasmania,

including a portion of the Arthur Pieman Conservation Area. Mr Hine said that some of his fellow councillors did not fully understand the implications of a native title claim

being lodged in their local government area.
Circular Head Chronicle, 13 March 2003.

REGISTRATION TEST

The National Native Title Tribunal posts summaries of registration test decisions at <www.nntt.gov.au>. The following decisions are listed for March/April. 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.

Rockhampton-Brunette Downs	DC03/1 D6001/03 Not Accepted	Town of Larrimah	DC02/24 D6025/02 Not Accepted
Deep Well	DC03/2 D6002/03 Accepted	Bidwell Clan	VC02/1 V6001/2002 Not Accepted
Gan Bruce #2	NC02/5 N6003/2002 Not Accepted	Lorella Nathan River	DC02/30 D6031/2002 Not Accepted
New Wanderrie Road	DC02/31 D6032/02 Not Accepted	Byron Bay Bundjalung People #3	NC01/8-1 N6020/01 Accepted
The Githabul Peoples #3	NC95/11-3 NG6019/98 Accepted		

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
25/06/2003	QC02/32	Kudjala People #5
8/07/2003	QC02/2	Warral & Ului People
	QC02/4	Mualgal People #2
	QC02/34	Kalkadoon People #2
	QC02/3	Badu & Moa People #2

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

Native Title Report 2002.

By Dr B. Jonas

Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission.

The Human Rights and Equal Opportunity Commission recently released the *Native Title Report 2002* by the Aboriginal and Torres Strait Islander Social Justice Commissioner. It is the fourth report written by Dr Bill Jonas, and possibly the final one (in this form), if abolition of Dr Jonas' position, as currently proposed by the Howard Government, proceeds.

Ten years after Mabo, the Report investigates the principles of recognition and extinguishment of native title as enunciated by Australian courts. Dr Jonas notes the broad possibilities opened up by the recognition of native title have been sidelined in favour of 'practical reconciliation'. Despite this diversion, there is widespread agreement in two areas. Firstly that for policy to assist in alleviating deprivation, Indigenous people must participate in its formulation and implementation. Secondly, Indigenous people need a sustainable economic base.

The Report suggests native title still has an important role to play in addressing disadvantage. This importance lies in remembering that the essence of native title refers to relationships between Aboriginal people and their land. In aiming to increase Aboriginal participation in policy formulation and implementation we must be cognisant of the political structures emanating from relationships with land which continue to shape communities. As for economic development, the Report suggests land can be viewed as an asset for development, as seen with the Burup Peninsula, where agreements have been made protecting culture and gaining benefits

as a result of native title. Dr Jonas also points out the limitations imposed by restrictive legal definitions of title, and the failure of governments to implement native title into policy options.

Chapter One focuses on these legal restrictions via a reading of the *Yarmirr*, *De Rose*, and *Yorta Yorta* cases. As to the question of recognition, Dr Jonas suggests these cases show the law has evolved not as a vehicle of, but a barrier to recognition. These barriers specifically refer to a failure to recognise sovereignty, the conceptualisation of native title as rights and interests separate from the laws and customs which create them – the bundle of rights – and the statutory definition of title.

Following the question of recognition, Chapter Two and Three address the issue of extinguishment. Dr Jonas importantly points out there is no possibility of co-existence in the 'hard and driving logic' of the inconsistency test. Chapter Four looks at the implications of *Miriuwung Gajerrong* and *Wilson v. Anderson* for the question of extinguishment, as well as some possibilities for ameliorating its effects.

In looking at 'the way forward', Chapter Five outlines the way human rights principles can be used to alter our domestic law to be consistent with international law. Possible options canvassed by the Report include legislative change, treaty, constitutional reform, or even, as raised by Justice McHugh, a new arbitral system. Given the view of the Court that it is the Act rather than the common law which directs the native title process, Dr Jonas is surely correct in his call for a new process of political evaluation – a process which must look to maximise the potential of native title to benefit Indigenous peoples.

Following those of his predecessor, Professor Mick Dodson, Dr Bill Jonas has produced another important critique of native title in Australia. The *Native Title Report 2002* should be required reading for all those with an interest in the field. The fact that ten years on the promise of Mabo remains largely unfulfilled indicates we need more, not less creative thinking on issues of native title. That the position of Aboriginal Social Justice Commissioner may soon be abolished is

further indication of the loss of bipartisan support for Aboriginal self-determination. It would not just be 'premature' as Dr Jonas has suggested, but another backward step in Indigenous affairs in Australia.

The Native Title Report 2002 is available from the HREOC website at: www.hreoc.gov.au/social_justice/index.html or by contacting the Commission on 02 9284 9600.

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.

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- No. 5 *Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'*
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- 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 – *Miriuwung-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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