



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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Native Title Conference 2004 Adelaide

[Please note that at the time of going to print the Conference had already taken place]

The Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal Legal Rights Movement are working to convene *The Native Title Conference 2004: Building Relationships* to be held in Adelaide, from **Wednesday 2 June to Friday 4 June 2004**.

This national conference is now in its fifth year having been previously held in Melbourne, Townsville, Geraldton, and Alice Springs. Participation has been capped at five hundred delegates and will include staff and council of the native title representative bodies, native title claimants and holders, their legal counsel, native title practitioners such as anthropologists, government institutions and departments, politicians, judges, academics and South Australian Indigenous community members.

The theme for Conference 2004 is *Building Relationships: It's the people that matter, It's the people that make it work*. It is an opportunity for networking and information sharing between the staff of representative bodies, academics, legal counsel and government. The conference is also a community capacity development opportunity for native title representative body staff, executive and practitioners and all who wish to remain informed of current practice, governance, law and policy development.

IFaMP Update

IFaMP Web Site

Research has been progressing on the web site for the Indigenous Facilitation and Mediation Project (IFaMP). It will be launched at the Native Title Conference, July 2004. The web site will be available at: www.aiatsis.gov.au/ifamp and will provide comprehensive research materials on Indigenous Facilitation and Mediation.

Survey of Native Title Mediation Practitioners

IFaMP has conducted a survey of mediation practitioners who work in native title. Over 40 practitioners were surveyed. Rich and comprehensive data was obtained and is still being analysed. A report will be presented by Rhiân Williams at the Native Title Conference, Adelaide and a final written report is in preparation.

IFaMP Workshops

At the ATSIIS Leaders Forum of CEOs and Chairs of Native Title Representative Bodies (NTRBs) in March 2004 it was decided that workshops, to be funded by the National Native Title Tribunal (NNTT), on conflict management and decision-making should take place with the following NTRBs: Bundaberg (Gurang Land Council Aboriginal Corporation/Central Queensland Land Council Aboriginal Corporation); Cairns (North Queensland Land Council/Torres Strait Regional Authority); Kalgoorlie (Goldfields); Perth (Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation).

The workshops are aimed at assisting NTRBs to reflect upon decision-making and conflict management processes and identifying training needs.

A general summary of the issues raised will be presented to the CEOs at a one-day workshop in Adelaide on 1 June immediately prior to the 2004 Native Title Conference. These workshops will be reported on in the next NTRU Newsletter.

Issues Papers

Land, Rights, Laws: Issues of Native Title is a series of occasional papers published by the Native Title Research Unit on issues relating to native title.

Publication in *Land, Rights, Laws: Issues of Native Title* is an excellent opportunity to showcase smaller, issue-directed papers relating to native

title. Mail-out circulation of the series is high and the papers are also available online through the AIATSIS website (http://www.aiatsis.gov.au/rsrch/ntru/ntru_suespprs.htm).

Previous issues papers include John Borrows' paper 'Practical Reconciliation, Practical Re-Colonisation?' which was also the Mabo lecture delivered at the Native Title Conference 2004.

FEATURES

Human Rights and Equal Opportunity Commission Native Title Report 2003

Summary by Serica Mackay

The Native Title Report ('the Report') and the Social Justice Report 2003, prepared by the Human Rights and Equal Opportunity Commission, were tabled in Parliament on 10 March 2004.

Whereas the 2002 Native Title Report dealt with the repercussions of four significant native title decisions, *Yarmirr*, *Wilson v Anderson*, *Miriuwung Gajerrong* and *Yorta Yorta*, and their implications for native title law, this year's Report evaluates native title as a framework for economic and social development.

The Report is separated into four chapters advocating this approach – native title and international standards on development and sustainability, native title policies and practices of governments throughout Australia, evaluating native title policies as a framework for economic and social development, and a comparative study of legal and policy frameworks in Canada and the United States of America.

Generally speaking, the Report notes that 'the failure in Australia to perceive native title and land rights as the basis on which to address Indigenous economic and social development has been evident at legal, policy and administrative levels' (p.167)

Issues papers are peer reviewed and are between 8 and 12 pages in length. If you would like to submit a paper to the issues paper series, please contact Serica Mackay on serica.mackay@aiatsis.gov.au or 02 6246 1171. In particular, people who presented a paper at the Native Title Conference 2004 but have not yet forwarded a copy of their paper to the NTRU should do so.

Chapter 1 uses the international law principles of sustainable development and the Right to Development to provide a human rights 'framework' for the economic and social development of Indigenous people. The Report points out that native title has so far had a disproportionate impact on Indigenous people through the sacrificing of land and community structures to make way for growth and development. It suggests that 'where the State is sincere about transforming the economic and social conditions in which Indigenous peoples live in Australia, native title can provide an opportunity to lay the foundations for development within the framework of traditional laws and customs and consistently with international human rights principles.' (p.10)

Chapter 2 looks at the State, Territory and Commonwealth governments' native title policies and practices in reference to two questions - whether these policies contribute to the economic and social development of the group in accordance with international human rights principles, and whether these policies were formulated with the effective participation of Indigenous people.

Chapter 3 evaluates State and Commonwealth native title policies by reference to whether they direct the native title negotiation process towards the sustainable economic and social development of the claimant group. The Report identifies seven specific issues - the willingness of the government to negotiate rather than litigate; the relationship between native title policy and Indigenous policy; the frame-

work in which negotiations occur, specifically, whether it is a legal or policy framework and land management framework; the relationship between native title and existing Indigenous land regimes; Indigenous participation in policy formation; and finally, the Commonwealth's participation in the native title process.

The final chapter of the Report compares native title in Australia with developments in the United States and Canada. Although the Report notes that there is a tendency within Australia to discount the experiences of other countries as not being sufficiently relevant, such comparisons are nonetheless of value in providing perspective (p.169). In particular, the positive developments in Canada where government responses to land claims integrate economic and social development into the cultural values of the group are in stark contrast to the 'ongoing social disadvantage and distress of Indigenous communities, the continuing string of judgment negative to native title rights in the Australian courts, and the at times hostile and obstructionist behaviour of federal and some state governments.' (p.187)

The 'curious difference' between developments in the United States and Australia is the interpretation of the acquisition of sovereignty by their respective courts and its implications (p.205). Whereas the implications flowing from the US decision in *Johnson v McIntosh* included Indigenous rights to land sovereignty, Australian courts have adopted the recognition of the Indigenous rights to possess and use the land decided by the Marshall Court but 'without the concomitant residual sovereignty which both logically and in fact goes with it.' (p.206) The Report notes that the 'recognition of a continuing Indian sovereignty in the United States has not seen the collapse of the American legal system or the dismemberment of the nation.' (p.206)

The Native Title Report provides an important opportunity to reflect on native title developments within a human rights framework. In exploring the idea of native title as a vehicle for social justice, the Report recognises the relationship between Indigenous economic and social sustainable development and at-

tainment of native title rights, however it does also acknowledge that there are inherent limitations in a system that operates within the constraints of a legal framework and requires the full cooperation of State and Commonwealth governments to succeed.

***Lardil Peoples v State of Queensland* [2004] FCA 298 (23 March 2004)**

Summary by Serica Mackay

The decision in *Lardil Peoples v State of Queensland* was handed down on 23 March 2004 by Justice Cooper in the Federal Court. The decision recognises the non-exclusive native title rights of the Lardil, Yangkaal, Kaiadilt and Gangalidda Peoples' over land and waters in the Wellesley Island region, although *Lardil* is primarily a sea claim.

The decision in *Lardil* is not a significant development in native title law. However, following the decision in *Yarmirr* and *Ward*, the decision in *Lardil* does confirm that, even where shown as a matter of customary law, control of access to the land and waters of the inter-tidal zone and the territorial seas with the right of exclusion will not be recognised by the common law of Australia [at 164]. The Court reasoned that such a right would be inconsistent with the beneficial right of the Crown, the common law public rights to fish and navigate and the international right to freedom of passage [at 188]. This means it is likely that only non-exclusive native title rights and interests over the seas will be recognised by Australian courts.

However, rights that were recognised by the Court in *Lardil* include the right to access land and water seaward of the high water mark in accordance with traditional laws and customs; the right to fish, hunt and gather, including the right to hunt and take turtle and dugong in accordance with traditional laws and customs; the right to construct, repair and maintain rock fish traps in the inter-tidal zone and to take fish.

Contrary to the decision in *Yorta Yorta*, Justice Cooper's acknowledgement that the majority of the applicant group do not 'live on the

Country to which they belong, and do not live a traditional lifestyle anywhere approaching that which existed at the time of sovereignty' did not prevent him from concluding that 'none of the groups lost their identity or existence as a society' [199] and [200] respectively. Justice Cooper further acknowledged that European contact was largely responsible for the physical dislocation and removal from traditional lands.

The second respondents submitted that the Court should substantially discount the weight given to the written affidavits of the Aboriginal witnesses (approximately 59 affidavits were submitted). The second respondents argued that the written statements were prepared by the solicitors with the assistance of the anthropologists, the language was not that of the deponent, the statements were on occasions prepared in the presence of and with the 'assistance' of other members of the applicant group, and, the Indigenous witnesses were present in large numbers in the Court during the hearing and heard the evidence of their constituent groups. Justice Cooper took an intermediate approach, relying on the oral evidence as the primary source of evidence where written statements were challenged or overtaken by oral evidence because a 'substantial body of oral evidence' had developed as a result of extensive cross examination and could overcome the objections to form and admissibility.

The decision in *Lardil* examines the Indigenous concept of ownership, Justice Cooper noting that it is not based on common law concepts of property but rather it is 'born out of the spiritual connection of the peoples to each of the elements through their spirituality' [147]. After examining the witness evidence, Justice Cooper found that the right 'to be asked' is central to the applicants' concept of ownership and emphasises that the right claimed is, in practice, the right to control access and conduct. However these rights of ownership were not recognised in *Lardil* because of the decision in *Yarmirr*.

The decision in *Lardil* also recognises the succession of land from one group to another provided the transfer occurs under the tradi-

tional laws and customs at the time of sovereignty. This was the case with the Gangalidda People who claimed to have succeeded the land of the Mingginda Peoples, who did not survive European contact, under the traditional laws and customs observed by the Gangalidda Peoples at the time of sovereignty. The Court held that the interests of the Gangalidda peoples in respect of those lands and waters will be recognised and protected under the *Native Title Act* [at 131].

Further information on the *Lardil* decision, in particular the deficiencies of the legal recognition of Indigenous sea cultures and the inability of the Court to translate the spiritual into the legal, is available from a paper delivered by Jason Behrendt at the Native Title Conference 2004. This paper will be available through the Conference website shortly (<http://www.aiatsis.gov.au/rsrch/ntru/conf2004/home.html>)

Capacity of Anthropologists in Native Title Practice: Report to the National Native Title Tribunal by David F Martin (Anthropos Consulting Services, April 2004)

Summary by Lara Wiseman

Based on a survey of fifty-five anthropologists who identified themselves as native title practitioners, this report provides an overview of the diverse roles played by anthropologists engaged in native title practice and suggests that anthropological practice will need to adapt to changes in the native title environment.

The report presents age, gender and qualification profiles of anthropologists currently working in native title, distinguishing between those employed by Native Title Representative Bodies (NTRBs), consultants and academic anthropologists. This reveals that native title anthropology is dominated by older (over 40) and well-qualified practitioners, most of whom are consultant or academic anthropologists. Less than a third of respondents were aged under 40, suggesting that there is a need to attract a new generation of anthropologists into native title practice. Martin notes that a substantial number of new

graduates working within NTRBs graduated from universities where native title practice is actively supported.

The survey sought information about the skills and knowledge (both anthropological and general) required by anthropologists involved in native title work and considers to what extent anthropologists are (or should be) prepared for native title work through their university studies. The survey also sought feedback from practitioners on the extent to which they believed that native title work made a positive contribution to the development of their careers.

The report also examines the position of native title anthropology within the discipline more broadly. Martin observes that applied native title practitioners feel that their form of anthropology is marginalised or dismissed by many in the academy. Exploring this theme the report considers recent debates among subscribers to the electronic discussion forum operated by the Australian Anthropological Society (AAS) regarding the role and status of native title anthropology. This discussion also examines the position of anthropology within the academy more broadly citing the keynote address given by Professor Annette Hamilton at the 2002 AAS conference which outlined a

number of the challenges facing Australian anthropology.

The Report concludes with discussion of the challenges facing anthropologists engaged in native title practice. Martin suggests that there is a certain degree of 'entrenched amateurism within anthropology as a form of professional practice...which in turn means that anthropology is ill equipped to engage as an equal with the other professions involved in native title practice'. The survey results indicate that there are ongoing difficulties in the relationship between native title anthropology and native title law. Such difficulties often extend to relations between anthropologists and lawyers through the provision of inappropriate or inadequately scoped instructions, or a lack of understanding of the role of expert witnesses as outlined in the Federal Court's guidelines. The report highlights the need for more effective cross-disciplinary understanding and communication between native title anthropologists and lawyers.

The report also includes an extensive bibliography relating to anthropology and native title compiled by Dr Hugo Green of the National Native Title Tribunal. The report is available at <http://www.anthropos.com.au/>.

NATIVE TITLE IN THE NEWS

National

ATSIS has ordered all tax-payer funded native title representative bodies to cease all cash payments to traditional owners in relation to native title claims. Indigenous Affairs Minister Amanda Vanstone said this has occurred as some of these organisations may not have accounted for taxpayer funds properly. *The Australian*, pg 7. 11 March 2004.

The National Native Title Tribunal has produced a new video/DVD titled 'Native Title Stories - Rights, Recognition, Relationships'. The DVD explains native title through real

stories of people around Australia, focusing on six different communities, and looking at the ways people handle the challenges of the native title process. For a free copy of the video/DVD, contact the NNTT on freecall 1800 640 501 or e-mail publicaffairs@nntt.gov.au. *Koori Mail*, pg 4. 10 March 2004.

New South Wales

Lake Cowal will be the location of a peaceful bid by the Wiradjuri people from central western New South Wales to show their opposition to the Cowal Gold project. The gathering will be led by Wiradjuri elder Neville "Chappie" Williams. Mr Williams

who has been litigating against Barrick for more than two years, said that Lake Cowal must be protected for future generations. West Wyalong, pg 5. 30 March 2004. Wiradjuri People.

Supporters of Wiradjuri elder Neville Williams, have renewed protests in relation to a sacred site at Lake Cowal near West Wyalong. This is days before site clearing is due to commence for development firm Barrick Gold's \$278 million dollar mine. Mr Williams has also mounted a number of legal actions, in regards to this development including lodging a native title claim. Daily Advertiser (Wagga Wagga), pg 4. 19 April 2004.

Northern Territory

An Indigenous Land Use Agreement, which will lift native title from Crown land at Larapinta is expected to be signed within two weeks. This agreement, which took years of negotiation, will be the first of its type in Australia, being a commercial resident development in a municipal area on land subject to native title. Centralian Advocate, pg 1. 19 March 2004. Lhere Artepe ILUA.

A Northern Territory Aboriginal leader has backed Labor's pledge to scrap ATSIC. Galarrwuy Yunupingu, Northern Land Council chairman, welcomed ALP leader Mark Latham's idea of replacing the organisation with a new regionalised framework. Prime Minister John Howard, has also stated that his party are considering totally abolishing Indigenous self-representation all together. Northern Territory, pg 4. 01 April 2004.

An Indigenous Land Use Agreement is expected to be signed on 22 April 04 between the Territory Government and the Lhere Artepe Aboriginal Corporation. This deal is expected to free up land in the Central Australia region and should lay the foundation for future land releases. Northern Territory, pg 6. 08 April 2004. Territory Government

and Lhere Artepe Aboriginal Corporation ILUA.

The Mirrar people of the Northern Territory have recently signed an historic agreement with Rio Tinto's Energy Resources Australia (ERA). The landmark deal will give the traditional owners the right to veto any future developments in Kakadu National Park, in particular, uranium mining. The Northern Land Council, on behalf of the Mirrar People have also unanimously voted to ratify the agreement. Canberra Times, pg 2. 23 April 2004. Mirrar People.

Traditional owners were joined by Lhere Artepe Chairman Brian Stirling and Chief Minister Clare Martin in the signing of Stage Four of a land release agreement at Larapinta. This ends years of negotiations and setbacks. This is the first agreement of its type to be signed in Australia for the release of land in a municipal area subject to native title. Centralian Advocate, pg 4. 23 April 2004.

Queensland

The Department of Main Roads has said upgrades planned for creek crossings on the Barkley Highway are being held up by native title claims over the stretch between Mount Isa and Camooweal. The delay has frustrated the Queensland Livestock Transport Association (QLTA) as floodwaters regularly cut the crossing in the wet season. The overlapping native title claims were lodged on behalf of the Indjilandji-Dithannoi people and the Kalkadoon people. North West Star (Mt Isa), pg 4. 04 March 04. Indjilandji-Dithannoi claim: QC02/36, Q6034/02. Kalkadoon claim: QC02/34, Q6032/02.

Two registered Indigenous Land Use Agreements (ILUAs) in the north-west of Queensland are expected to be signed in May. The agreements cover Mount Isa and Boulia and Cloncurry shire council areas and covers almost 3000sqkm. The joint ILUA lodged on behalf of the Yulluna and Kalkadoon people,

is the first time two Indigenous groups with overlapping claims have worked together for the benefit of cultural heritage. North West Star (Mt Isa), pg 2. 05 March 2004. Yulluna ILUA & Kalkadoon ILUA.

Winton's opal miners hope that an increase in the number of mining leases will boost the western Queensland region. In the past two months nineteen leases have been approved, which is an increase on previous years. Queensland Boulder Opal Association president Colin Duff said that miner numbers had dramatically decreased since the introduction of native title in 1997. Mr Duff further stated miners were starting to reap the benefits of ILUAs, but the industry still required assistance in cutting some red tape. Cairns Post, pg 19. 10 March 2004.

The National Native Title Tribunal has welcomed the finalisation of an ILUA which will enable Queensland's central highlanders to mine gemstone. The agreement was mediated by NNTT member John Sosso, between the Queensland Sapphire Producers' Association, the State of Queensland and the Kangoulu people. The ILUA has brought together the local Indigenous group and the small miners from Sapphire, Rubyvale and Emerald. Mr Rosso also stated that the ILUA will bring many benefits into the community and certainty to small miners who are able to have their mining tenement applications processed. Koori Mail, pg 51. 10 March 2004. Kangoulu people ILUA: QI01/47.

Five north Queensland pastoralists have recently signed agreements with the Ewamian Indigenous group. Pastoralists from Ballynure, Percyvale, Eight Mile, Ados and Gum Flat joined with representatives from the Ewamian group at the township of Kidston about 500km south-west of Cairns to sign five separate Memorandums of Understanding. The agreements acknowledge the Ewamian people as traditional owners of the area, and give them an assurance that significant sites on the pastoral land will be protected. Ballynure pastoralists George and Miranda

Ryan said the agreements were a good starting point towards negotiating an ILUA in the future. Cairns Post, pg 7. 16 March 2004. Ewamian people MOU.

The Federal Court has recently made a decision that native title exists over areas of sea in Queensland's Gulf of Carpentaria. This decision has been welcomed by Aboriginal groups in the region and the commercial fishing industry. Murradoo Yanner from the Carpentaria Land Council has said that this native title decision would improve relationships between gulf fishermen and Indigenous groups. The Queensland Seafood Industry is also pleased with the decision, as it clarifies what their rights are under state and federal fisheries laws. Torres News (Thursday Island), pg 3. 02 April 2004. *Lardil Peoples v State of Queensland* [2004] FCA 298 (23 March 2004)

James Cook University is looking to lead the way in native title research and assistance through the facility's native title centre. The centre will act as a focal point for research and assisting negotiating parties in an effort to avoid unnecessary court cases. To date, the centre has already started delivering a 'Future Acts' program to the majority of land councils in Queensland. Koori Mail, pg 13. 07 April 2004.

A proposal has been put forward to traditional owners in the Torres Strait in relation to resolving native title issues for five Islands in the region. The QLD Government proposal will recognise native title over all land outside of townships on the affected Islands, as well as concluding ILUAs for the townships. This approach is hoped to settle the problems which occurred following the 1996 public works extinguishment decision. Torres News (Thursday Island), pg 1. 14 April 2004.

Fishing and mining industry leaders will be negotiating with four Aboriginal groups, after the Federal court established that native title exists over waters off the Gulf of Carpen-

taria. One of the claimants, Murandoo Yan-ner, said the decision now gave the Aborigi-nals of Mornington Island the legal right to negotiate with industries. *The Australian*, pg 6. 25 March 2004. *Lardil Peoples v State of Queensland* [2004] FCA 298 (23 March 2004)

The Murweh Shire Council and the Bidjara Indigenous group have recently signed a deed to allow the continued construction of the Charleville levee bank that is designed to pro-ject against flooding. The deed was signed by Rodney Mailman and Patricia Fraser on their own behalf and on behalf of the native title claimants. *Western Times* (Charlesville), pg 1. 25 March 2004. Bidjara group.

An ILUA which will enable the granting of four backlogged exploration permits has been registered with the National Native Title Tri-bunal. The Kalkadoon and Waluwarra ILUA has been accepted by the respective parties and also allows for part of another explora-tion permit to be granted. *North West Star* (Mt Isa), pg 3. 26 March 2004. Kalkadoon and Waluwarra ILUA: QI2003/30.

People claiming native title rights and inter-ests in the Central Highlands region are being urged to respond to an application to register Indigenous Land Use Agreements (ILUAs) for mining areas. The National Native Title Tribunal has issued a notice of application for the agreements which will streamline mining applications near Clermont and on the Gemfields. Any party claiming to hold native title in relation to the above mentioned areas has three months to object against the registration of the agreement. *Central Queen-land News* (Emerald), pg 2. 26 March 2004.

South Australia

The first South Australian Indigenous Land Use Agreement between a pastoralist and native title claimants has recently been signed. The agreement involves Todmorden station, a 7167sq km property in South Aus-tralia's far north, the Lillecrapp family and the

Yankunytjatjara/Antakarinja Indigenous groups. Michael Atkinson, South Australia's Attorney-General said the agreement allowed the local Indigenous people to access the property to practice their culture in the area. Parry Agius from the Aboriginal Legal Rights Movement has urged other pastoralists to follow suit. *Ballarat Courier*, pg 13. 15 March 2004. Yankunytjatjara/ Antakarinja claim: SG6002/98, SC97/9.

Victoria

The Gourditch-Mara native title claim in-volving 20,350 sq kilometres of crown land and coastal waters has been adjourned. Areas involved in the claim are in the shires of Glenelg, Moyne, Northern Grampians, Southern Grampians and West Wimmera. *Warrnam-bool Standard*, pg 8. 18 March 2004. Gourditch-Mara claim: VC99/7, VG6004/98.

Baw Baw Shire councillor, David Balfour has called for a report on native title claims in the shire. Counsellor Balfour has said these na-tive title claims are affecting proposed devel-opments in the area in specific Walhalla. *Warragul Gazette*, pg 8. 20 April 2004.

A mediation conference has been called by the NNTT in relation to the Gourditch-Mara claim in south-western Victoria. The dates are the 05/06 May 2004, at Cape Bridgewater. The claim incorporates, Hor-sham Rural City, the shires of Northern Grampians, West Wimmera, Southern Grampians, Moyne and Glenelg, and the Dis-trict Council of Grant, in South Australia. A Federal Court directions hearing for the claim is listed for 09 June 2004. *Wimmera Mail Times*, pg 10. 26 April 2004.

Western Australia

The Kimberley Land Council has been forced to withdraw from native title litigation due to inadequate resources. The KLC will suspend representation of Kimberley tradi-

tional land owners currently before the court until further funding is secured. KLC executive director Wayne Bergmann said the representative body was being denied the funding and resources it needed to secure justice for Indigenous people. The KLC has called for meetings with the Minister for Indigenous Affairs to discuss options for further funding. Broome Advertiser, pg 2. 04 March 2004.

Mediation in the Esperance Nyungar claim will continue until a directions hearing in the Federal Court later this year. The claim covers 49,115 sq km of land and sea. The parties involved include the Goldfields Land and Sea Council, on behalf of the Esperance Nyungar people, Commonwealth and Western Australian Fishing Industry Council and the State Government. An early neutral evaluation process has been received which may help speed up the mediation process. Kalgoorlie Miner, pg 4. 11 March 2004. Esperance Nyungar claim: WC96/64, WAG6097 and part WAG6130, WAG6221 & WAG6181/98.

A landmark native title agreement has been finalised between mining giant Hamersley Iron (a subsidiary of Rio Tinto) and the Eastern Guruma Indigenous people of the Pilbara region. This agreement will unlock millions of dollars in potential iron ore exports for the mining company and allow them to explore and mine 8700sq km area near the town of Tom Price. The eastern Guruma people in the state's northwest around the towns of Karratha and Roebourne will receive \$38 million dollars over 20 years, held in trust, to fund education, employment, training and community development. Australian, pg 6. 16 March 2004. Eastern Guruma claim: WC97/89, WG6208/98.

Land access and native title negotiations between Indigenous groups and the mining industry will be streamlined after amendments to the *Mining Act 1978 (WA)*. The WA government's proposed amendments to the Mining Act now mean that explorers will not be forced to convert to a mining lease after five

years of exploration. The current 5,400 mining lease applications will be able to be converted back to exploration licenses. According to National Native Title Tribunal member Barty McFarlane, this is a positive development in the recent success of the Heritage Protection Working Group in developing template agreements. Mining Chronicle, pg 10. March 2004.

Two Goldfield Land and Sea Council senior leaders have claimed that the Federal Government has been hampering native title applications and denying Indigenous people their rights by under-funding the land council. Chairman Ian Tucker and executive director Brian Wyatt said they would raise these concerns at the annual Aboriginal and Torres Strait Islander Studies leaders forum in Canberra during late March. Kalgoorlie Miner, pg 5. 24 March 2004.

The shire of Derby/West Kimberley and the Nyikina Mangala Indigenous group have recently signed an agreement outlining steps for negotiating native title agreements in the shires. The signing ceremony took place at the Jarlmadangah Burrup community, 188 km east of Broome and 88 km south-east of Derby. The agreement sets out the process for developing an ILUA, outlines a process for the development of agreements and cooperative working relationships in relation to cultural and community matters, and the delivery of services to communities. Kimberley Echo, pg 5. 25 March 2004. Nyikina Mangala agreement.

The Bunuba people and the Kimberley Diamond Company have drafted a multi-million dollar agreement that would trade shares and royalties for mining rights in the west Kimberley. Under the ILUA the Bunuba people would receive a direct stake in the company in the form of 250,000 shares, valued at \$400,000, plus five million share options over five years. The deal has to be approved by Company shareholders by 30 April 2004. West Australian, pg 54. 27 March 2004. Bunuba ILUA.

Four native title applications in relation to petroleum permits located in the Perth Basin involving Empire Oil and Gas, have been settled. This settlement is a legal requirement before the Western Australian Government can formally grant the permits. Empire has no more matters of concern in the Perth Basin region. Business News (WA), pg 26. 01 April 2004.

A senior Indigenous Goldfields Land and Sea Council member has warned Aboriginal unemployment would rise between 70 and 80 per cent if ATSIC was to be shut down. Mr Bryan Wyatt also said that there needed to be a forum available to promote interests and culture for Aboriginal people, and that ATSIC was the biggest employer of Indigenous people in the Goldfields region. Kalgoorlie Miner, pg 5. 02 April 2004.

Federal Heritage and Environment Minister, David Kemp, recently overturned a heritage claim, which will allow mining at Yakabindie, north of Leinster. Aboriginal groups were distraught at the announcement to allow WMC Resources \$10 billion nickel project to commence, which is likely to effect culturally sensitive sites in the area. Mr Kemp has

promised to release a report outlining his reasons. Kalgoorlie Miner, pg 3. 07 April 2004. Swan Coastal Plains group.

In a bid to clear a backlog of exploration and mining leases, the State Government has drawn up major changes to the Mining Act.1978 (WA). This backlog is holding up more than 12,000 applications for many years. This proposal will allow explorers to convert existing mining lease applications back to exploration licenses if they are not immediately seeking commencement of mining operations. West Australian, pg 79. 24 April 2004.

The Wadjari people of Murchison Gascoyne will have a collection of sacred objects returned to them. This is due to a grant to Geraldton's NgunhungurNgurra from the Western Australian Indigenous Affairs Department. Geraldton MP Shane Hill has said the sacred items will be returned from the Museum of WA to a storage site at the group's traditional land. This grant is among 12 community projects totalling \$54,820 to benefit from Indigenous heritage grants around Western Australia. Geraldton Guardian, pg 8. 28 April 2004.

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 March/April.

Claimant Applications

Date Filed	Application Name	State/ Territory	Tribunal File No.	Federal Court File No.
19/04/04	Amangu People	WA	WC04/2	WG6002/04
23/04/04	The Ngaanyatjarra Lands Native Title Claim	WA	WC04/3	W6004/04

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 March to April. 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.

Decision Date	Application Name	State/Territory	Tribunal File No.	Federal Court File No.	Decision
05/03/04	Mandandanji People #3	QLD	QC01/21	Q6019/01	Not accepted
11/03/04	Jagera People #2	QLD	QC03/15	Q6014/03	Accepted
15/03/04	Mapoon People	QLD	QC02/9	Q6010/02	Accepted
17/03/04	Town of Elliott	NT	DC01/45	D6046/01	Accepted
22/03/04	Angkamuthi People	QLD	QC02/08	Q6008/02	Not accepted
23/03/04	Mbara Ngawun (Woolgar) People	QLD	QC04/2	Q37/04	Accepted
01/04/04	The Yaegl People	NSW	NC96/38	NG6052/98	Not accepted

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
10/05/04	QC03/12	Ayapathu and Olkola Peoples
10/05/04	QC03/14	Olkola/Strathleven, King Junction
23/06/04	QC01/21	Mandandanji People #3
23/06/04	QC03/11	Kudjala People #6

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 selected items relating to Native Title have just become available on Mura, the AIATSIS on-line catalogue. Please check Mura for more information on each entry, including annotations. In addition to the print and electronic sources given below, the Audiovisual Archive has recently listed three reels of film taken by Curtis Levy and John Von Sturmer in 1975 of the Hermannsburg outstation movement.

Archaeology

Bednarik, Robert G.
Title: First dating of Pilbara petroglyphs

Publication info: In *Records of the Western Australian Museum*
Vol.20, no.4 (2002), p.[415]-429, ill., map.

Gregory, Robin Louise.
Northern Territory University.
Title: *Aboriginal settlement patterns in the Ord-Victoria River region* [manuscript].
Publication info: 1998.

Brockwell, C. J. (Celia Jane)
Northern Territory University.
Title: *Archaeological settlement patterns and mobility strategies on the lower Adelaide River, Northern Territory* [manuscript]
Publication info: 2001.

Pate, Frank Donald
Title: Bone chemistry and paleodiet : reconstructing prehistoric subsistence-settlement systems in Australia
Publication info: In *Journal of Anthropological Archaeology* ;
Vol. 16, 1997: p. 103-120

Pate, Frank Donald
Title: Stable carbon and nitrogen isotope evidence for prehistoric hunter-gatherer diet in the lower Murray River Basin, SA.
Publication info: In *Archaeology in Oceania* ;
Vol. 33, 1998 : p. 92-99

Land acquisition and land management

Hamilton, Ian
Country Arts SA
Title: Can culture save the river and wetlands
Publication information: *Artlink* Vol. 24, no. 1, (March 2004), p. [42]-43, ill.

David, Bruno
Lourandos, Harry
Title: Landscape as mind : land use, cultural space and change in North Queensland pre-history
Publication info: In *Quaternary International* ;
Vol. 59 1999 : p. 107-123

Verran, Helen
Title: A postcolonial moment in science studies : alternative firing regimes of environmental scientists and Aboriginal landowners.
Publication info: In *Social Studies of Science* ;
Vol. 32, no. 5-6 : p. 729-76

Behrendt, Jason.
Thompson, Peter.
Healthy Rivers Commission of New South Wales.
Title: The recognition and protection of Aboriginal interests in NSW rivers.
Publication info: Sydney : Healthy Rivers Commission of New South Wales, 2003
Also available online at:
<http://www.hrc.nsw.gov.au/site/pdf/OCP/OCP8.pdf>

History – exploration and accounts

McCombie, Thomas, 1819-1869. Essay on the aborigines of Australia.

Title: *The colonist in Australia, or, The adventures of Godfrey Arabin*
Publication info: London : George Slater, 1850.

Sullivan, Jack, 1931-
Paterson Historical Society.
Title: *A fortunate liaison : Dr. Adoniah Vallack and Jackey Jackey*.
Publication info: Paterson, N.S.W.:Paterson Historical Society, 2003.

McLeod, D. W. (Donald William)
Title: *How the West was lost : the native question in the development of Western Australia*.
Publication info: Port Hedland, W.A. : The author, [1984]

Nugent, Maria
Title: Botany Bay : voyagers, Aborigines and history
Publication info: In *Journal of Australian Studies* no.76 (2003), p. [27]-33

Turnbull, John, fl. 1800-1813.
Title: *A voyage round the world in the years 1800, 1801, 1802, 1803, and 1804 : in which the author visited the principal islands in the Pacific Ocean, and the English settlements of Port Jackson and Norfolk Island*.
Publication info: London : Printed for Richard Phillips by T.Gillet, 1805.

Petrie, Constance Campbell
Title: *Tom Petries reminiscences of early Queensland*.
Publication info: Brisbane : Queensland Book Depot ; Sydney : Angus & Robertson , 1932

Native Title – Anthropology and other disciplines

Toussaint, Sandy, ed.
Title: *Crossing boundaries : cultural, legal, historical and practice issues in native title*.
Publication info: Carlton, Vic.: Melbourne University Publishing, 2004.

Reilly, Alexander
Title: *Cartography and native title*.
Publication info: In *Journal of Australian Studies* no.79 (2003), p. [3]-14

Legal issues - Australia

French, Robert

Title: The evolving common law of native title.

Publication info: In *Flinders Journal of Law Reform* ; Vol. 6 no. 1 2002 : p.1-10

McNamara, Luke

Grattan, Scott

Title: The recognition of Indigenous land rights as "native title" : continuity and transformation.

Publication info: In *Flinders Journal of Law Reform* ; Vol 3, no. 137 : 1999 : p.137-161

Castan, Melissa

Title: *The High Court, human rights and the new jurisprudence of denial.*

www.law.monash.edu.au/castancaentre/events/203/castan_paper.pdf.

French, Robert Shenton

Title: The role of the High Court in the recognition of Native Title

Publication info: In *Western Australian Law Review* ; Vol. 30 Mar 2002 : p. 129-161

Perry, Melissa.

Lloyd, Stephen.

Title: *Australian native title*

Publication info: Pyrmont, N.S.W. : Lawbook Co., 2003.

Indigenous legal issues: Overseas

Borrows, John J.

Title: *Aboriginal legal issues : cases, materials & commentary :*

John J. Borrows, Leonard I. Rotman.

Publication info: Toronto, Canada : Butterworths (2003)

Borrows, John, 1963-

Title: *Recovering Canada : the resurgence of indigenous law*

Publication info: Toronto, Ont. : University of Toronto Press, 2002

Billing, Philip B. and Mitaki Ra

Title: *Treaty of Waitangi : the gathering storm*

Publication info: Te Kauwhata, N.Z. : Mitaki Ra Publications, 2003.

Place names and site reports

Wagga Wagga Local Aboriginal Land Council
Wagga Wagga (N.S.W.). Council

Title: *A guide to Wiradjuri places of Wagga Wagga*

Publication info: Wagga Wagga, N.S.W. : Wagga Wagga Local Aboriginal Land Council, [200-]

Government reports and Native Title cases: Australia and States

Jawoyn Association Aboriginal Corporation
Australia. Parliament. House of Representatives.

Standing Committee on Aboriginal and Torres Strait Islander Affairs

Title: *Inquiry into the Reeves report on the Aboriginal Land Rights (Northern Territory) Act / submission of the Jawoyn Association Aboriginal Corporation.*

Publication info: [Katherine, N.T.] : Jawoyn Association, 1999

Title: *Transcript of proceedings Aboriginal Land Commissioner : Lower Daly land claim no. 68, traditional evidence.*

Publication info: Darwin : Auscript, 2001

Australia. Office of the Aboriginal Land Commissioner

Olney, H. W. (Howard William), 1934-
Australia. Office of the Minister for Immigration and Multicultural and Indigenous Affairs

Northern Territory. Office of the Administrator

Title: *Seven Emu Region land claim no. 186, Wollogorang Area*

II land claim no. 187 and part of Manangoora Region land claim no. 185 / report and recommendations of the Aboriginal Land Commissioner H.W.

Olney to the Minister for Immigration and Multicultural and Indigenous Affairs and to the Administrator of the Northern Territory

Publication info: [Canberra] : Aboriginal and Torres Strait Islander Commission, 2003

Heritage Issues

Sandford, Marcus H. R.

Title: *Is Aboriginal spirituality open to interpretation as a management tool in the protection of cultural sites?*

Publication info: Indigenous cultural heritage protection program;

Heritage management training project course manual. 1994

Languages and land

Neate, Graeme J.

Title: Land, law and language : some issues in the resolution of Indigenous land claims in Australia.

Publication info:

[www.nntt.gov.au/metacard/files/iafl/Neates IAFL speech July 2003 .pdf](http://www.nntt.gov.au/metacard/files/iafl/Neates%20IAFL%20speech%20July%202003.pdf)

Treaty and reconciliation

Behrendt, Larissa

Title: The link between rights and a treaty: "practical reconciliation".

Publication info: In *Balayi* Vol.4, (2002), p.21-27

Huggins, Jackie

Title: Reconciliation and Native Title.

Publication info: In *Balayi* Vol.4, (2002), p.35-43

Indexes, directories and guides:

Northern Territory. Dept. of Justice.

Title: *[Northern Territory] births, deaths and marriages historical index 1870-1913 - (B1918)* [electronic resource].

Publication info: [Darwin] : Department of Justice, Office of the Registrar General, [2004].

Victoria. Public Record Office.

Title: *Private lives, public records : family history resources at Public Record Office Victoria.*

Publication info: North Melbourne : Public Record Office Victoria, 2003.

National Native Title Tribunal (Australia). Research Unit

Title: *Research report bibliography.*

Publication info: Perth, W.A. : The Tribunal, 1998 -

NATIVE TITLE RESEARCH UNIT PUBLICATIONS

Land, Rights, Laws: Issues of Native Title

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

Volume 2

No. 27 *Practical Reconciliation, Practical Re-Colonisation?*

John Borrows

No. 26 *Agreeing to Terms: What is a 'Comprehensive' Agreement?*

Dr Stuart Bradfield

No. 25 *Native Title and Agreement Making in the Mining Industry: Focusing on Outcomes for Indigenous Peoples*

Professor Ciaran O'Faircheallaigh

No. 24 *Beyond Yorta Yorta*

John Basten QC

No. 23 *'Indigenous Pueblo Culture and Tradition in the Justice System: Maintaining Indigenous Language, Thought and Law in Judicial review'*

Christine Zuni Cruz

No. 22 *'Abandonment' or Maintenance of Country? A Critical Examination of Mobility Patterns and Implications for Native Title*

Peter Veth

MONOGRAPHS

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.

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

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.

ABOUT THE NATIVE TITLE RESEARCH UNIT

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