

Native Title *Newsletter*

August 2016



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL
AND TORRES STRAIT ISLANDER STUDIES



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Welcome!

to the Native Title Newsletter

The Native Title Newsletter is produced three times a year and includes feature articles, traditional owner comments, book reviews, research project reports and other various articles. The Newsletter is distributed to subscribers via email or mail and is also available at www.aiatsis.gov.au/ntru/newsletter.html. We welcome your feedback and contributions.

For more information, please contact: ntru@aiatsis.gov.au

Native Title Research Unit (NTRU) also produces monthly electronic publications to keep you informed of the latest developments in native title throughout Australia.

You can subscribe to NTRU publications online, follow @NTRU_AIATSIS on Twitter or 'Like' NTRU on Facebook.



Cover: Upai Purri Torres Strait Islander Dancers performing on Day 3 at the National Native Title Conference 2016.

Photographer: Andrew Turner, Public Engagement, AIATSIS.

Aboriginal and Torres Strait Islander people are respectfully advised that this publication may contain names and images of deceased persons, and culturally sensitive material. AIATSIS apologises for any distress this may cause.

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An interview with

JEREMY CLARK

Member of the Tjap Whurrong / Peek Whurrong of South Western Victoria & General Manager of Eastern Maar Aboriginal Corporation



GREW UP AT THE FRAMLINGHAM

Aboriginal Trust and lived there most of my life. I'm the current General Manager of Eastern Maar Aboriginal Corporation.

In 2011 we were successful in gaining Native Title which is a shared determination with the Gunditjmara; their PBC is the Gunditj Murring and ours is the Eastern Maar.

We have a second claim lodged with the Federal Court but it is currently on hold while we explore a settlement with the Victorian State Government. This area encompasses the Great Ocean Road down to Port Fairy and up to the Grampians National Park. It includes the Otway National park and Twelve Apostles Marine National Park.

When we lodged our second native title claim it caused a bit of reaction which was anticipated we arranged a press release and other things to allay people's fears and their

prejudice as to how they see Native Title. But we were open to working with whomever on our country to achieve a good outcome for all. Native title could actually be a benefit; traditional owners being recognised as having native title rights could actually benefit a range of people, even those who think it may not. There was some media interest; we happily spoke with them, so the reaction was overall fairly positive.

I think the hardest thing with native title, with the process, is getting the information to your own mob; to your traditional owner group and ensuring that they understand what it is and what potential outcomes there may be. Our communities have their own way of communicating with one another and there are definite factions within our communities so a lot of the time, coming together with a common goal can raise suspicions, doubts, and the like. Native Title requires a different sort of mindset as to what we're used to.

In Victoria we had a lot of Aboriginal co-operatives and people were taken from their land and put on to missions and everything else. There's been a shift from community based organisations to Traditional Owners based organisations. For many years traditional country was what co-op you were associated with or what community you were a part of so it's required a different type

of thinking. It's probably opened up a lot of old wounds and skeletons in the closet as people have had to verify their genealogy and a lot of the time there's one family history that comes through oral history; and then there's some differences when the research is done through records. It shows different things! Some people are uncomfortable with that.

I think the TO based organisations will ultimately be better; the community structure served a purpose and achieved many great things. I think we all respect where they came from but those community Co-ops were all set up in the early '80's. They achieved a lot in regards to health, housing, community programmes and community strengthening, but over the years through the funding cuts and different funding arrangements, they've all migrated to be pretty much health services like primary health services and health providers. So they don't serve the function they once did.

I think it's an ideal time for TO corporations to step into the role and TO organisations don't just look after traditional owners; a lot of historical blackfellas on our country that are from different areas, from different places; we want to ensure they're able to access services but at the same time respecting that TO's are the TO's.

I'm also involved with Victoria's Federation of Traditional Owner

Corporations which provides a collective voice for a lot of Victorian TO's. Victoria is not a large state and our people have a myriad of connections between different mobs around the state so Victorian blackfellas have come together over the years for common things. We were marching in the streets in the '60's and '70's and '80's and we have connections through people being put on various missions and locations. So we all have a connection and we have family connections as well so while each of the traditional owner groups are separate, we have those connections which enable us to be able to work together and I think the federation is a coming together of a lot of those but not all. Traditional owner corporations that have native title agreements themselves are pursuing that. It was born out of a want from us to come and talk together about common issues and problems, opportunities, to assist each other and so on. We formalised that a few years ago and that has allowed us to have a bit of a collective voice in responding to government policy and pursuing our own policy agendas and pursuing economic opportunities. There's strength in numbers! Not all of our corporations

are well resourced, some are but others have no resources, so working together and wanting to help each other is very important.

The good thing about native title is the chance to come together and be recognised as traditional owners of our country. We have always asserted our rights on our country. Our delay in pursuing native title is because we always just asserted those rights anyway. Our thoughts have shifted in that now we can see some benefits in pursuing native title; we can see that there's potential opportunities available to us which weren't there before. If we can set up a future for our younger generations so they can grow up being recognised as to who they are and strengthen and reconnect with their culture. We can provide an economic future for them. It's a pretty big step in itself because we haven't been recognised and unfortunately even groups that have had native title outcomes or agreements, they still struggle with that issue.

I suppose we have a fairly clear idea about what agenda we want to try to achieve. Native title can be different for different people and different mobs around the country and depends on

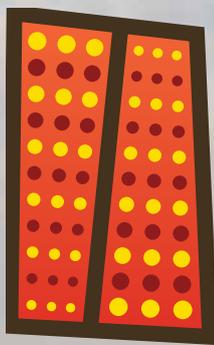
where you are. We've talked about this amongst ourselves and one of the things is just about healing our people and at the same time you want to try and secure a future for us and not be dependent on welfare and all those things. So that means exploring economic opportunities. As people say, we want jobs.

I've always seen creating jobs as the easy part. It's getting people work ready to take those jobs on. And it's hard to be work ready when your family might be dysfunctional or when none of your family has ever worked before and when there is a lack of role models and leaders within your own family; and we have a lot of single parent families.

You need to heal first. So we see that at the same time you can't lose sight of everything else you need to achieve as well. We're working through ways we can achieve that and I don't think there is any clear path but we need to heal people, families, individuals. We need to do some cultural strengthening; a lot of younger ones particularly are disconnected from our ways and culture so we need to reconnect that. We need to look after our elders and make sure that all the hard work they have put in over the years, that they get to see some reward.



Hopkins Falls, Eastern Maar country, Victoria.



NATIONAL NATIVE TITLE CONFERENCE 2016

strong **culture**, strong **country**, strong **future**

AMY WILLIAMS **CONFERENCE MANAGER** AIATSIS
BELINDA BURBIDGE **RESEARCH FELLOW** AIATSIS

THE AUSTRALIAN INSTITUTE OF Aboriginal and Torres Strait Islander Studies (AIATSIS) has been organising and hosting the annual National Native Title Conference since the first one in Townsville 2001. The conference this year was held in Darwin, 1-3 June and was co-convened with the Northern Land Council (NLC) and hosted by the Larrakia people.

A national meeting of Prescribed Bodies Corporate (PBC) was held on Tuesday 31 May 2016, the day before the Conference. The meeting was attended by 60 participants from at least 28 PBCs from around Australia and the Torres Strait.

Following the meeting, a small group of PBC representatives held successful meetings with Minister for Indigenous Affairs Nigel Scullion and separately with Glen Kelly, CEO,

National Native Title Council to discuss the future of PBCs, focusing on resources and capacity building.

The conference, running from the 1-3 June 2016, was attended by a record number of 800 registered delegates from around Australia and the Torres Strait.

AIATSIS CEO Russell Taylor AM was pleased to see the large number of delegates this year and an increase in sponsorship which supports Indigenous delegates to attend the conference.

'At the heart of the conference is the community spirit, giving people from all over Australia an opportunity to discuss issues important to them and to just catch up in a culturally supportive environment,' said Mr Taylor.

Each year the conference attracts an expanding number of Indigenous organisations, native title holders and claimants, lawyers, academics and representatives from government agencies.

The conference program, of 151 speakers and 80 presentations over three days, highlighted being on country, practising and learning culture, community and recognition. It's an opportunity for delegates to network, connect, showcase and share.

'Our keynote speakers make thought-provoking presentations that require all of us to take stock, they speak frankly about our past and the impacts, they ask where are we heading and how can we, as First Nations people, ensure we have a voice,' said Mr Taylor.



Top: Professor Mick Dodson gives the welcoming speech at the National Native Title Conference 2016.

Above: National PBC meeting, PBC delegates.

Credit: Andrew Turner, AIATSIS.

During his keynote address, NLC CEO Joe Morrison, took the opportunity to highlight the positive work of Indigenous rangers managing and caring for country in the Territory. This was followed by a session dedicated to celebrating and acknowledging the 40th anniversary of the *Aboriginal Land Rights (NT) Act 1976* and the history of land rights in the NT.

Glen Kelly, CEO of the National Native Title Council (NNTC) delivered the Brian Wyatt Memorial Lecture. Mr Kelly paid respect to the late Mr Wyatt and his family, and provided the audience with a warm and humorous account of Mr Wyatt's achievements in native title and land rights, 'whose life's work opened doors for all of us.' Mr Kelly's lecture captured the recent developments, reforms and strategic direction of the NNTC including the recent move to invite PBCs into the NNTC membership.

Keynote speaker, Professor Gerald Taiaiake Alfred from University of Victoria in Canada spoke of restoring Indigenous presences on the land and water, reinvigorating language and traditional cultural practices.

Professor Alfred took time to participate in the Indigenous youth talking circle where delegates discussed their native title experiences, barriers experienced as Indigenous youth and how they might be overcome.

The conference dinner provided a well-deserved opportunity for delegates to relax and enjoy themselves after a busy week of presentations, workshops and networking. The conference dinner featured local entertainment acts from Constantina Bush, Shellie Morris and David Spry and The Moral High Ground.



The conference also recorded its highest online engagement with the **#nativetitle16 hashtag being used over 3000 times** and reaching over a million Twitter users.

Video and audio of the conference presentations will be available on our conference page soon.

Media enquiries: commsmedia@aiatsis.gov.au or 02 6246 1605



Top: Keynote speaker, Professor Gerald Taiaiake Alfred presenting Land Claims, Reconciliation, and the Resurgence of Indigenous Nationhood, on Day 2.

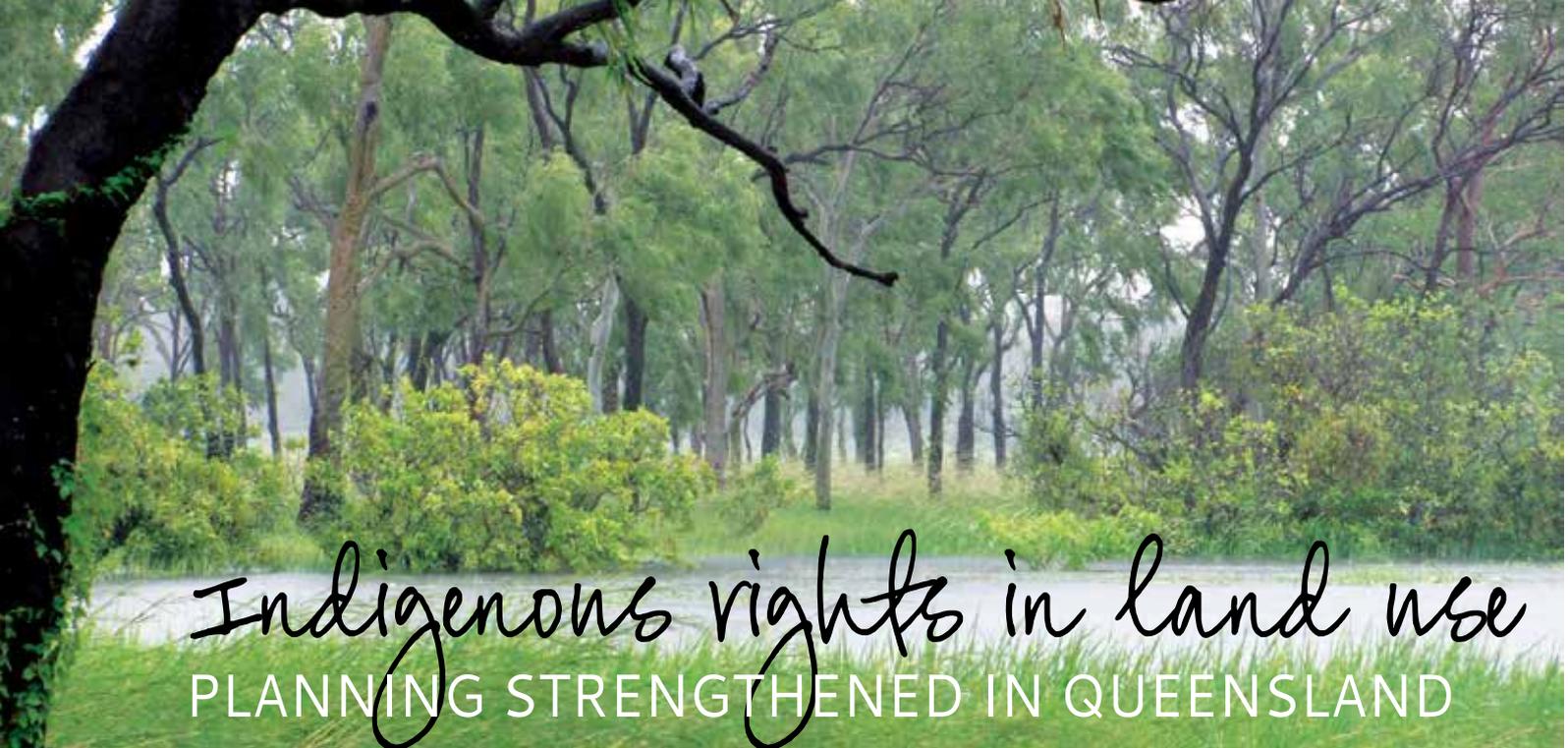
Right: Keynote speaker, Melissa George at the Mabo Lecture, Day 3.

Above: Kenbi dancers with Ned David at the Welcome Reception.

Credit: Andrew Turner, AIATSIS.



Top left: Upai Purri Torres Strait Islander Dancers performing on Day 3 at the National Native Title Conference 2016; Top right: Rachel Perkins chairing the seminar on Substantial Constitutional Reform and Indigenous Rights.
Middle left: Dr Belinda Burbidge and Anaisel G. Lopez de Garcia showcasing the NTRU Work Tracker; Middle right: the Mills Sisters performing at the Welcoming Reception.
Above: NSW delegates at the conference.
Credit: Andrew Turner, AIATSIS.



Indigenous rights in land use PLANNING STRENGTHENED IN QUEENSLAND

ED WENSING AIATSIS visiting fellow, PhD candidate, NCIS ANU

FOR THE FIRST TIME IN THE history of planning legislation in Australia, the *Planning Act 2016* (Qld) contains a clause that requires the land use and environmental planning system to value, protect and promote Aboriginal and Torres Strait Islander peoples' knowledge, culture and tradition. This is a historic first. Up until now, no planning legislation anywhere around Australia has required planning agencies to take account of Aboriginal and Torres Strait Islander peoples' rights and interests; not even as a consequence of the Commonwealth's *Native Title Act 1993* (Cth).

The *Planning Act 2016* (Qld) amendments, sections 5(1) and 5(2) need to be read together:

5. Advancing purpose of Act

1. An entity that performs a function under this Act must perform the function in a way that advances the purpose of this Act.
2. Advancing the purpose of this Act includes (amongst other matters):
 - (d) valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition.

The inclusion of s 5(2)(d) in the new *Planning Act 2016* (Qld) came about because the Queensland Government was reviewing its *Sustainable Planning Act 2009* (Qld). The credit for its inclusion goes to Dr Sharon Harwood of James Cook University. Dr Harwood made several submissions to the Queensland Government during the consultation phases on the development of the new legislation, and in those submissions Dr Harwood drew the Queensland Government's attention to s 4 the *Legislative Standards Act 1992* (Qld) which prescribes the minimum standards for legislation in Queensland. The *Legislative Standards Act 1992* (Qld) includes a set of fundamental legislative principles, which require that legislation should have sufficient regard to the rights and liberties of individuals and to the institution of Parliament. In turn, sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation 'has sufficient regard to Aboriginal tradition and Island custom'. Dr Harwood pointed out that the new planning legislation therefore has to have 'sufficient regard to Aboriginal tradition and Island custom' in accordance with Section 4(3)(j) of the *Legislative Standards Act 1992* (Qld).

Section 5(2)(d) in the *Planning Act 2016* (Qld) is 'tenure blind'. This means that the provision operates regardless of whether native title exists or not, regardless of whether the land in question is part of a land transfer or grant under the *Aboriginal Land Act 1991* (Qld) or the *Torres Strait Islander Land Act 1991* (Qld), and regardless of whether the land is subject to an Aboriginal or Torres Strait Islander heritage listing or site of significance.

Furthermore, the provision applies to all entities performing functions under the *Planning Act 2016* (Qld), namely the Queensland Department of Infrastructure, Local Government and Planning as well as a host of other State Government departments and agencies, all local governments in Queensland, and any other entities performing functions under this Act throughout Queensland. Functions under this Act include for example, state planning policies, regional plans, local planning schemes, temporary local planning instruments (TLPs), planning scheme policies, and the State's development assessment system (the State Assessment and Referral Agency (SARA)).

The inclusion of section 5(2)(d) in the new *Planning Act 2016* (Qld) raises a number of important questions. Such as:

1. Why should 'valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition' be included in planning legislation?
2. What constitutes 'Aboriginal and Torres Strait Islander knowledge, culture and tradition'?
3. Who holds the appropriate information about 'Aboriginal and Torres Strait Islander knowledge, culture and tradition'?
4. How can entities operating under planning statutes go about accessing the necessary information about 'Aboriginal and Torres Strait Islander knowledge, culture and tradition' so that their actions can value, protect and promote them?
5. How can 'valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition' be factored into planning functions under statutory planning instruments such as State Planning Policies, regional plans and planning schemes?
6. What criteria can be applied to ascertaining whether *Aboriginal and Torres Strait knowledge, culture and tradition* have been appropriately valued, protected and promoted in the particular function or functions being performed under the relevant planning statute?

The obvious answer to the first question lies in Dr Harwood's reasoning about the requirements in the *Legislative Standards Act 1992* (Qld). There are also a number of other imperatives including the United Nations Declaration on the Rights of Indigenous Peoples, the recognition of native title rights and interests by the High Court in *Mabo (No. 2)* and the increasing number of native title determinations and Indigenous Land Use Agreements (ILUAs) arising from the *Native Title Act 1993* (Cth).

Images: Kowanyama landscape, QLD.
Credit: Tran Tran, AIATSIS.

The answers to the subsequent questions will depend in very large measure on the input of the Aboriginal and Torres Strait Islander peoples and communities as the 'place-owner' of the place that is the subject of the particular planning instrument or activity that is being performed under the *Planning Act 2016* (Qld). To put it another way: entities preparing planning instruments, such as local planning schemes, regional plans or state planning policies, will need to engage with the relevant Aboriginal and Torres Strait Islander peoples in the preparation of the document or instrument right from the very beginning of the process if they are to demonstrate that they have 'advanced the purpose of the Act' with respect to 'valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition'.

If the provision is to make a difference in terms of genuinely valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, cultures and traditions, in land use and environmental planning, then all entities performing functions under the new Act need to take the time to develop a constructive and long term working relationship with the relevant Aboriginal and Torres Strait Islander peoples and communities. All entities performing functions under the Planning Act will need to understand and accept that the information they need in order to satisfy s 5(2)(d) is the province of Aboriginal and Torres Strait Islander peoples – it is not for others to decide what this might comprise or entail.

The first step the Queensland Government could take toward implementing this provision is to consider establishing a reference group comprising representation drawn from the network of Native

Title Representative Bodies/Service providers, Registered Native Title Bodies Corporate, the Aboriginal and Torres Strait Islander Land Trusts and from the Aboriginal Shires and Torres Strait Regional Councils and Local Government in Queensland so that a dialogue may commence, especially about the questions I have posed above. This reference group could take on the task of developing some guidance notes for entities performing functions under the new Act and how they may be able to work with the relevant Aboriginal and Torres Strait Islander peoples and communities in order to satisfactorily 'value, protect and promote Aboriginal and Torres Strait Islander knowledge, culture and tradition'.

The Deputy Premier and Minister for Planning indicated in the Queensland Parliament when the legislation was in its final debating stages in May 2016, that the Government was not going to rush the introduction of the new *Planning Act 2016* (Qld) because it will require a considerable amount of work to bring the necessary administrative and support arrangements into place. The new Planning Act will therefore not come into effect until sometime in mid-2017 at a date to be announced.

The Queensland Government is to be commended for inserting this provision into its new land use and environmental planning legislation. The challenge will be for other jurisdictions to follow suit when they next review their planning legislation.



LAUNCH OF TORRES STRAIT LAND AND SEA MANAGEMENT STRATEGY

NED DAVID **CHAIRPERSON** GUR A BARADHARAW KOD TORRES STRAIT SEA AND LAND COUNCIL
MIYA ISHERWOOD **LAND AND SEA MANAGEMENT UNIT** TORRES STRAIT REGIONAL AUTHORITY
CLARE BARCHAM **PROJECT OFFICER** AIATSIS

THE ISLAND OF MER IN THE Torres Strait was the first place to secure native title recognition in *Mabo v Queensland (No 2)*. Since 1992 more than 20 Prescribed Bodies Corporate (PBCs) have been established in the Torres Strait to preside over their respective land and sea country. This includes the Sea Claim PBC Malu Lumar, which covers the 40,000 square kilometres of traditional marine estate in the Torres Strait.

Torres Strait Traditional Owners established Gur A Baradharaw Kod Torres Strait Sea and Land Council (GBK) in 2012 to act as a peak body to promote the collective interests of native title holders and to develop a culture of governance that aligns with Ailan Kastom. The directors of GBK comprise the Chairs of all the PBCs in the region.

GBK and the Torres Strait Regional Authority have recently endorsed the revised the *Land and Sea Management Strategy for Torres Strait* (2016-2036) ('the Strategy') and the Strategy was released earlier

this month (see www.tsra.gov.au). The Strategy aims to help Torres Strait communities work together to protect the people, sea, and land of the Torres Strait. The vision for the Strategy is:

Empowering Torres Strait Islander and Aboriginal peoples to sustainably manage and benefit from their land, sea and cultural resources into the future, in accordance with Ailan Kastom, Aboriginal Lore/Law and native title rights and interests.

The new Strategy builds on the achievements of the 2005 *Land and Sea Management Strategy for Torres Strait* and further draws upon western science, management experience, and advice from Torres Strait Traditional Owners to determine the region's natural and cultural values and priorities. The development of the Strategy included extensive collaboration and consultation with a range of stakeholders. The planning process engaged Torres Strait Traditional

Owners and their representative organisations jointly determining the values, vision, and desired outcomes for the region's islands and sea.

The process involved a number of regional workshops and meetings. A draft Strategy was taken to a regional workshop held in September 2015 with input and feedback from this workshop used to revise the Strategy. Comment was then sought from all Ranger groups, RNTBCs, and other key regional stakeholders. In February 2016, a meeting was held with representatives from the five nation groups in Torres Strait represented by the GBK Working Group as well as Kaurareg, Gudang and Yadhaykenu Traditional Owners from Cape York. This meeting was to ensure that the Strategy aligned with Traditional Owner interests and priorities, and resulted in amendments to reflect the importance of Ailan Kastom and Aboriginal Law and Lore throughout the document. The TSRA Board then approved the final Strategy.

There are several key aspects to the Strategy: the identification and assessment of sixteen key values including a state of the environment regional report card, and the creation of island profiles summarising the key environmental features and management priorities of each island.

As its core, the Strategy identifies sixteen key values under the themes of people, sea, and land which make the Torres Strait unique. The Strategy details what each value is, its current condition, its desired outcomes, and the strategic management directions to be taken to achieve the desired outcomes. The current state of each of the key values was also assessed in the state of the environment regional report card included in the Strategy. The report card measures the current condition, significance, and level of threat to each value, identifies any trends in the value, and provides the level of confidence in information available based on qualitative assessment and professional judgement using available evidence.

As a part of the report card process, island community land and sea profiles were prepared for each of the 17 inhabited islands. The profiles outline key environmental features

and community management priorities of each island. The information in the profiles can be used to support local planning and decision-making, and as educational and promotional tools. The profiles will help communities better understand their unique circumstances and aid them in making informed choices about future priorities for land and sea management.

The report card will be updated every five years and the island profiles every three to five years, allowing for comparison of measures, priorities, and outcomes.

Strong foundations have been laid for partnerships with a range of organisations including native title holders, representative bodies, community members, government, research institutions, and industry. The Strategy will seek further opportunities for existing and potential partners to contribute time, resources and effort towards implementing the Strategy, particularly its Indigenous community-based management initiatives. The TSRA is also looking to collaborate with GBK to develop a model which will see a staged devolution of agreed land and sea management responsibilities to GBK and RNTBCs. This is in line with the intention with which GBK was set up.

The implementation of the Strategy will occur according to the guiding principles set out in the Strategy.

- **Be culturally appropriate** (reinforcing native title rights and interests, respecting Ailan Kastom and Aboriginal Law/Lore, incorporating Traditional Ecological Knowledge, and aligning with Traditional Owner interests)
- **Empower Traditional Owners** (supporting self-determination at the local and regional scale)
- **Deliver enduring outcomes** (providing environmentally, economically and socially sustainable solutions)
- **Adopt integrated decision making** (using evidence-based approach that takes a long-term holistic perspective and considers all relevant factors)
- **Demonstrate strong adaptive management** (applying flexible approaches that incorporate learning from experience)
- **Focus on protecting and managing key values** (keeping the unique features of Torres Strait secure for the benefit of future generations)

For further information, please visit www.tsra.gov.au or contact Ned David on maganmabaig@gmail.com



AIATSIS at the East Arnhem RANGER FORUM

LUKE SMYTH RESEARCH OFFICER AIATSIS

IN THE SECOND WEEK OF JUNE, THE first ever East Arnhem Ranger Forum was held at Gulkula, the home of the Garma Festival. AIATSIS Native Title, Land and Water Director Rod Kennett and Research Officer Luke Smyth were lucky enough to be invited to attend.

The Dhimurru Rangers of the Nhulunbuy region hosted the forum to enable Aboriginal ranger groups in East Arnhem Land to share their work, discuss common problems and co-ordinate their activities. Ten different ranger programs from across East Arnhem Land were represented at the Forum, as well as a number of Northern Territory and Commonwealth Government agencies.

A wide range of topics were discussed, including controlled burning, invasive plant and animal management, endangered species monitoring, alternative funding sources, potential uses for aerial drones, ways to share knowledge and skills between ranger groups, and protecting and maintaining sacred sites.

Rod Kennett held a session at the forum about the proposed AIATSIS Caring for Country Archive. The Archive project will work with Indigenous land and sea management organisations to collect and secure documents and media relevant to the history of the Caring for Country movement. The end product will be an online database and reference tool, which will map the Caring for Country movement across time and space.

The proposal was well received by the forum, and AIATSIS will work with ranger groups and other partners to develop appropriate permissions and access frameworks for material which will be part of the Archive.

The forum was also an opportunity for Rod and Luke to spend some time working with the Crocodile Islands Rangers. The Crocodile Islands Rangers and AIATSIS Native Title, Land and Water are working together on a project to identify Indigenous fishing values, with field work to begin in September. On the sidelines of the forum they spent some time planning the upcoming trip, and discussing current fishing-related issues on the Crocodile Islands. This included the signing of a formal research agreement between AIATSIS and the Crocodile Islands Rangers for the project.



Above: Dhimurru Rangers and the Yirralka Rangers signing an MOU.
Background: escarpment near Bulman, NT.
Credit: Luke Smyth, AIATSIS.



LAND RIGHTS & TOWNSHIP LEASING

DR BELINDA BURBIDGE RESEARCH FELLOW AIATSIS

THIS YEAR MARKS THE 40TH anniversary of the passing of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRA) and 50 years since the Wave Hill walk-off by Gurindji people in protest of low wages and poor working conditions.

In celebrating this anniversary, land rights were a key feature of this year's National Native Title Conference in Darwin, Northern Territory. Panel addresses by both David Ross, CEO of the Central Land Council (CLC) and Northern Territory's first Indigenous minister, Jack Ah Kit reminded us of the long history of battles and achievements by key Indigenous leaders from the CLC and Northern Land Council (NLC) since the enactment of the ALRA.

Although there was much to celebrate, the anniversary of the ALRA at the conference was also a moment of reflection and critique; an examination of both the benefits of and issues within land rights. This article addresses one aspect of land rights – township leasing, which was the topic of a thought-provoking presentation by Michael O'Donnell, Principal Legal Officer, NLC.

Township leasing was officially introduced in 2007, after amendments to the ALRA in 2006.

Township leasing 'was not formally part of the *Northern Territory National Emergency Response Act 2007* (Cth) (NTER) but was introduced as an amendment at the same time as the intervention.'¹ The introduction of township leasing was preceded and accompanied by 'a well-publicised debate about communal and individual ownership of Aboriginal land'.² This debate tended to view communal title as a European notion of communalism, rather than reference to the complex systems of Aboriginal land tenure, regulating variable rights and interests.³ By reducing Aboriginal land tenure to European communalism; it then became logical to juxtapose 'communal' Aboriginal land tenure with individual development in an oppositional manner.

Leon Terrill (lecturer at UNSW, and previously, senior lawyer, CLC) noted how the debate around the NTER popularised the perceived 'dualism between communal ownership/culture on the one hand and individual ownership/economic development on the other'.⁴ O'Donnell lent support to this understanding by reminding the conference audience of a quote by Minister Brough in 2006 when he introduced township leasing:

The days of the failed collective are over. The bill provides for a new tenure system for township leasing on Aboriginal land that will allow for individuals to have property rights.

Brough's quote is indicative of the political rhetoric of that time where local community development was synonymous with home ownership. Township leasing was introduced as another mechanism for community members to individually and formally rent housing with the view towards a longer term goal of ownership.

A township lease is a voluntary, long-term lease over the whole of a community, typically but not always 99 years in length.⁵ Township leases have been entered into by communities on the Tiwi Islands at Wurrumiyanga, Milikapiti and Wurankuwu and on Groote Eylandt at Angurugu, Umbakumba and Milyakburra.⁶ Township leasing has been targeted at the larger communities on ALRA land, which includes 50 per cent of the land area in the Northern Territory.⁷

The process for obtaining a township lease in the Northern Territory generally begins when traditional owners and the local land council consider and negotiate a lease proposal by the Australian

Government, which must be formally approved, with traditional owner consent, by the land council under the ALRA.⁸ A Land Council's statutory function in this case is to ensure that the traditional aboriginal owners as a group understand the nature and purpose of the proposed lease and consent to it, ensure that any Aboriginal groups or community that may be affected are consulted and have an opportunity to express their views and to ensure that the terms and conditions of the lease are reasonable. To date, the lease has been held by the Executive Director of Township Leasing (EDTL), an independent Commonwealth statutory office holder who works with local traditional owners through a consultative forum.⁹ A range of financial incentives including housing have been offered generally from the ABA by the Commonwealth to aboriginal traditional owners when being asked to consider these leases.

Section 19 of the ALRA already provided a mechanism for granting leases over Aboriginal land, although there have been only a small number of s19 leases granted prior to 2007. Instead, communities used a more informal arrangement for land allocation and there were few lease arrangements or formal agreements in place between the landowners and occupiers of particular buildings or lots.¹⁰ O'Donnell drew on a quote by Justice Brennan about the flexibility of s19 leasing, which 'empowered Aboriginal people of the country to use their land in a non-traditional way if there was a consensus to do so.'¹¹

The move to township leasing is one way of 'formalising tenure', resulting in more structured arrangements for the allocation of land and infrastructure in communities.¹²

However, O'Donnell argued that the introduction of township leases was an example of 'internal sovereign risk', which is the risk and uncertainty Aboriginal and Torres

Strait Islander people face in relation to their rights to land when the legal rules and terms of investment are constantly changing.¹³

O'Donnell's observations reflect one of the key issues surrounding the introduction of township leasing, which is community governance.¹⁴ Within township leasing, although original consent by traditional owners is provided at the level of the head lease, the remainder of the decision-making powers sit with the EDTL. The EDTL has a general obligation to consult with the consultative forum; however, even if the EDTL acts in good faith, there is no legal obligation for the EDTL to accommodate the views of the community members about decisions regarding the grant of individual subleases and development proposals.¹⁵

According to the Australian Government there are advantages to the decision-making powers of the EDTL:

As the EDTL does not have to consult with traditional owners on every sublease, it can make decisions more quickly. The EDTL may also have greater resources than Land Councils for community planning.¹⁶

There is an alternative argument that faster decisions and subsequent planning and development are not as important as considered local decision-making by community members. O'Donnell stated that township leasing has moved decision-making powers further away from local Indigenous owners, placing them at 'arm's length' from the consultative process.¹⁷

In addition, Terrill has argued that the development of a 'traditional owner's consultative forum' is a 'simplistic' approach to address the tension that exists between traditional owner and non-traditional owner residential community members in local Indigenous decision making.¹⁸

Another critique has been made in relation to whether township leasing is achieving its goal of individual home ownership and economic development. In 2014 the Indigenous Law Centre reported there had only been 16 grants for home ownership and that most residents in township leasing communities live in rental housing.¹⁹ They also question whether township leasing has increased economic development, as at that time there had not been a substantial increase in home ownership or the development of individual businesses.²⁰ Home ownership and the Indigenous Business Australia (IBA) home ownership loans program on Aboriginal land is also available in relation to section 19 leases.

Township leasing does, however, provide a financial benefit to local community from rental income. The EDTL sets the rent for township leasing, whereas in communities without township leasing the land councils set the rent with the consent of traditional owners. The Indigenous Law Centre reports the rent amounts have been similar,²¹ suggesting the EDTL are acting in good faith in this regard. And although rental income benefits the 'traditional owners' it does not necessarily benefit businesses and service providers.²² Significant rental monies are now also flowing to some traditional owner groups through s19 leases administered by Land Councils.

According to Terrill, township leasing is the preferred model by governments but is less popular among Indigenous landowners.²³ Anindilyakwa Land Council chairman Tony Warramarrba critically reported to The Australian newspaper that township leasing had 'taken away our self-determination'.²⁴ Other community members and the Australian Government are now seeking alternative models within the existing township leasing legislation to provide more autonomy to community organisations and local decision making.

In the past, the Central Land Council had proposed a model involving the wholesale formalisation of leases through s19 of the ALRA.²⁵ Another model involves a community entity holding the township lease rather than the Executive Director. For example, Thamarrurr Council has previously proposed that a town corporation could hold the head lease.²⁶ A similar model has been developed for the community of Gunyangara, Northern Territory via a Memorandum of Understanding between Gunyangara and the Commonwealth.²⁷ Within this MOU, signed in July 2015, the Gumatj Aboriginal Corporation representing traditional owners of the town area will hold the head lease and have the power to issue sub-leases without having to seek approval from the Northern Land Council or the Government.²⁸ The Commonwealth is also working with traditional owners in Mutitjulu and Pirlangimpi to implement community entity township leases that vary according to the needs of each community.

The advantage of this model is that the entity that holds the head lease may be a traditional owner corporation, rather than a Commonwealth officer, that already has strong community relationships and local cultural authority. This model may strengthen local organisations, businesses and decision-making within communities.

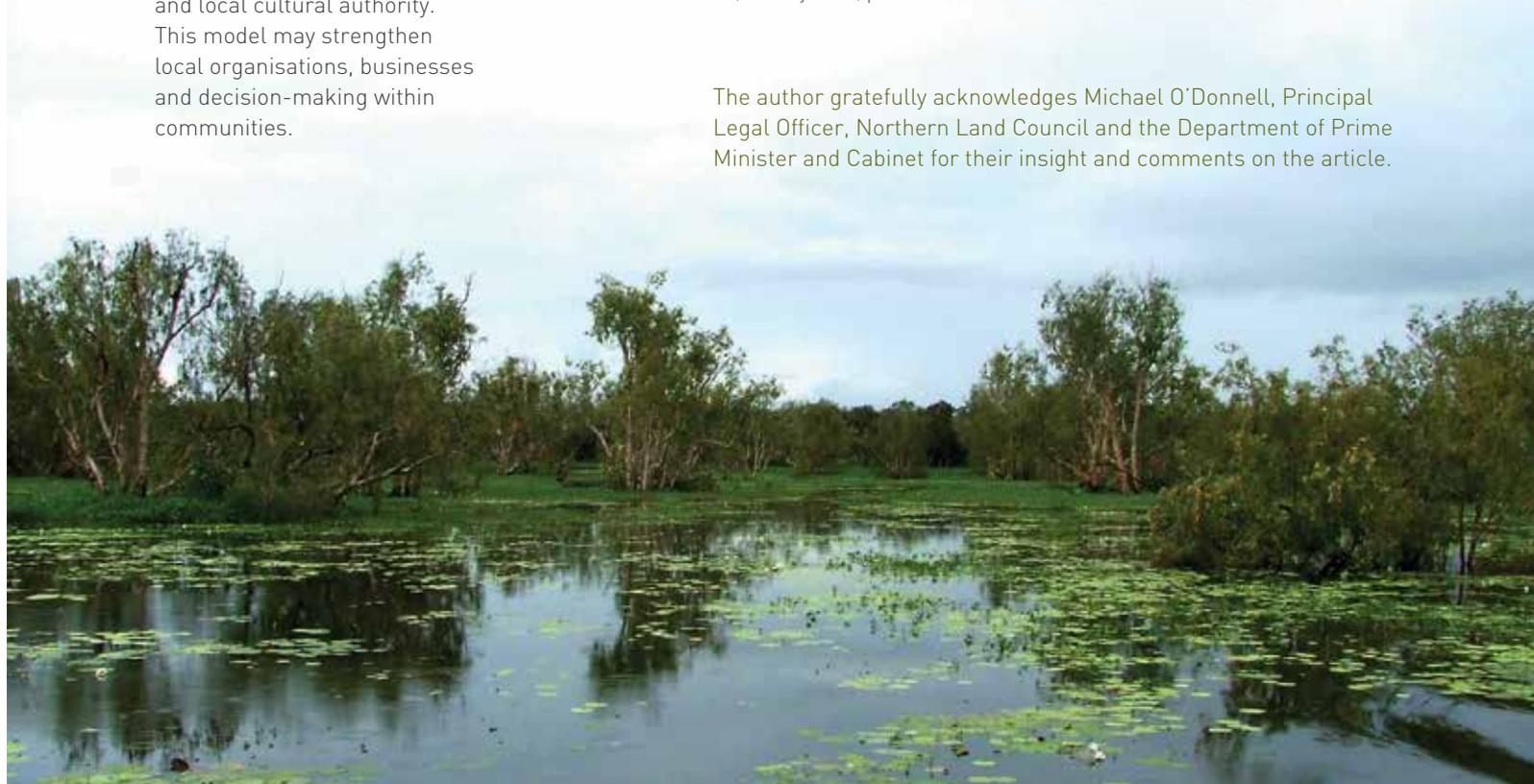
Endnotes

- ¹ O'Donnell, 2 June 2016.
- ² Terrill, 2011: 164.
- ³ Dodson and McCarthy, 2006: 16–17.
- ⁴ Terrill, 2011: 164.
- ⁵ Indigenous Law Centre, July 2014: 1.
- ⁶ Department of Prime Minister and Cabinet, September 2015: 2.
- ⁷ Indigenous Law Centre, July 2014: 1 and AIATSIS 2016.
- ⁸ Department of Prime Minister and Cabinet, September 2015: 2.
- ⁹ Department of Prime Minister and Cabinet, September 2015: 1.
- ¹⁰ Terrill 2011: 163 and Indigenous Law Centre, July 2014: 2.
- ¹¹ Brennan J quoted in O'Donnell, 2 June 2016.
- ¹² Indigenous Law Centre, July 2014: 2.
- ¹³ O'Donnell, 2 June 2016.
- ¹⁴ Indigenous Law Centre, July 2014: 3.
- ¹⁵ Department of Prime Minister and Cabinet, September 2015: 1.
- ¹⁶ Indigenous Law Centre, July 2014: 4.
- ¹⁷ O'Donnell, 2 June 2016.
- ¹⁸ Terrill, 2011: 173.
- ¹⁹ Indigenous Law Centre, July 2014: 4.
- ²⁰ Indigenous Law Centre, July 2014: 4.
- ²¹ Indigenous Law Centre, July 2014: 4.
- ²² Indigenous Law Centre, July 2014: 4.
- ²³ Terrill, 2011: 160.
- ²⁴ The Australian, 18 April 2016, p.1.
- ²⁵ Terrill, 2011: 161.
- ²⁶ Terrill, 2011: 161.
- ²⁷ Department of Prime Minister and Cabinet, July 2015: 1.
- ²⁸ The Australian, 31 July 2015, p.1–2.

References

- Aikman, Amos. Galarrwuy's dream fires new lease plan for Arnhem Land. *The Australian*, 31 July 2015: 1–3.
- Aikman, Amos. Community leaders want overhaul of 'resented' township leases. *The Australian*, 18 April 2016: 1–2.
- Australian Institute of Aboriginal and Torres Strait Islander Studies 2016, Land Rights, viewed 20 July 2016, <http://aiatsis.gov.au/explore/articles/land-rights>
- Department of Prime Minister and Cabinet. Fact Sheet: Gunyangara Community Entity Township Lease. July 2015: 1.
- Department of Prime Minister and Cabinet. Fact Sheet: Township Leasing. September 2015: 1–4.
- Indigenous Law Centre. What is Township Leasing? Research Brief. July 2014:1–4.
- O'Donnell, Michael. The Northern Territory Land Rights Act: local decision making the role of land councils and recent developments in township leasing. Presentation at the National Native Title Conference, 2 June 2016, Darwin Convention Centre, Darwin.
- Terrill, Leon. 2011. Five years on: Confusion, illusion and township leasing on Aboriginal land. *Property Law Review*: 160–178.
- Watson, N. 2007. Implications of land rights reform for Indigenous health. *Medical Journal of Australia* 186(10): 534–6.

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INAUGURAL YOUTH FORUM A SUCCESS

REPORT ON THE INDIGENOUS YOUTH TALKING CIRCLES AT THE National Native Title conference 2016

THAARRAMALI PEARSON EXECUTIVE ASSISTANT AIATSI

THE ISSUE OF YOUTH INVOLVEMENT in native title has been steadily gaining interest over recent years. AIATSI research showed that in 2012 almost three quarters (74%) of PBC directors were aged 40-69 with only 6.9% of PBC directors falling between the ages of 20-29.¹ This lack of youth involvement within the sector has caused concern in recent years, and has recently prompted AIATSI to seek ways to improve youth representation.

In early June, the National Native Title Conference was co-convened by AIATSI and the Northern Land Council, and hosted by the Larrakia people of Darwin, Northern Territory. The three day event hosted a wide range of native title themed discussions, and gave those involved in native title a rarely found place to gather and talk.

Talking circles for Indigenous men and women are held each year at the conference and provide an important and rare opportunity for men and women to separately and safely discuss issues they face.

Recognising their success, AIATSI began to plan a space Indigenous youth could voice their concern, experiences and thoughts of the Native Title Sector.

The inaugural Indigenous Youth Forum, comprising two talking circles, was held at this year's conference in response to the growing recognition of the importance and value of Indigenous youth voices to the native title sector. The youth forum was facilitated by Natalie Rotumah, CEO, NTSCorp and attended by 24 delegates from the Northern Territory, Western Australia, Queensland, New South Wales and the Australian Capital Territory.

I attended the Youth Forum, where, during two 90 minute sessions the delegates took the opportunity to share their views, stories and concerns of the native title sector.

The forum began with my fellow delegates talking about their backgrounds and the importance of native title. During the session we began to share stories about

our experiences of native title and, while talking together, we began to see the similarities in the problems we each faced. We found that a main problem was the experience barrier between our generation and that of our elders. We lacked both the experience and knowledge of the native title sector, and without that we had no way of getting our foot in the door. With our shared problems uniting us, we began to recognise the importance of pooling our experience and knowledge and applying a community approach to our issues as we began to devise a strategy to overcome them.

On the second day of the forum, new insight into the issue was provided by International keynote speaker Professor Gerald Alfred Taiaiake. Using his experience as Professor of Indigenous governance and political science in the University of Victoria (British Columbia) as well as his personal experience of youth involvement in the issues of First Nations people of Canada Professor Taiaiake Alfred provided insight and guidance to delegates.





After over three hours of discussion the inaugural Indigenous Youth Forum drew to an end. As the event concluded, delegates drafted a statement, incorporating the vision, goals and views discussed over the forum. The statement was aimed to continue Indigenous youth down the path that the forum had started. Based on the strong feelings and thoughts expressed during the forum, the main goal of the statement was both continuing and expanding the youth network created.



The network created during the forum allows Indigenous youth to support and guide each other, and it was the decision of the delegates that there needed to be a national Indigenous youth network in order to encourage and support youth involved in native title.



The inaugural forum developed into what could become a solid foundation for Indigenous youth interested in native title. The sizeable attendance and strong personal involvement demonstrated that Indigenous youth want to be more involved in native title. Personally, I believe that the youth forum was only the first step of what could be a major process for involving Indigenous youth in native title. With the forum over, it is now up to both the youth, and those who can support them to continue what was created.



¹ Buchanan, G 2015, Gender and generation in native title: Director demographics and the future of prescribed bodies corporate, *Land, Rights, Laws: Issues of Native Title*, Vol.6, no.3, March 2015, p. 10, AIATSIS

Top: Professor Taiiake Alfred with Natalie Rotumah and delegates.
 Second: Natalie Rotumah directs discussion.
 Third, bottom and left: Delegates share their experiences.
 Credit: Andrew Turner, AIATSIS.

Project update

ABORIGINAL FISHING VALUES ON THE NEW SOUTH WALES SOUTH COAST

LUKE SMYTH RESEARCH OFFICER AIATSIS

WALLY STEWART, YVONNE STEWART AND TOM BUTLER ABORIGINAL RIGHTS FISHING GROUP

WHILE FISHING IS A POPULAR pastime and important commercial industry in Australia, for many Aboriginal and Torres Strait Islander peoples it is a way of life. Going fishing can be a central cultural practice, as well as a way of providing sustenance, income, and opportunities to connect with family, friends and country.

Since mid-2015 AIATSIS Native Title, Land and Water has been working with Indigenous communities to identify the livelihood values of Indigenous fishing in three different areas of Australia: the New South Wales South Coast, the Far West Coast of South Australia, and the Crocodile Islands in the Northern Territory. As the recognition of Aboriginal and Torres Strait Islander peoples as important stakeholders in fisheries management increases, it is essential that governments and the private sector understand local cultural perspectives on fishing, and in what ways fishing practices are valued.

On the South Coast of NSW there is a rich cultural fishing tradition that has continued to the present day. As Tom Butler, a Murramarang man and ex-commercial fisherman from the township of Mogo says,

Twice the European people tried to settle at Broulee and they would have starved, only for the Aboriginal fishermen, including my grandfather. We've been doing it in this country thousands of years more than white men put together have been doing it; we know how fish react, we know how they travel, we know where they travel, we know what time of year they travel. Our parents taught us, we were brought up living off the sea.

On the South Coast the AIATSIS project team has been working with the New South Wales Aboriginal Fishing Rights Group (AFRG).

The AFRG is a network of people who have been advocating for the recognition of Aboriginal fishing rights on the South Coast since 2014. They are using the project to record the fishing values of the Yuin nation and other Aboriginal groups on the South Coast, and to document the ways in which fisheries-related regulations has restricted their ability to carry out cultural fishing practices, as well as the broader impacts these restrictions have on the community.

Starting in March this year more than 70 people were interviewed by project staff from communities along the South Coast, from Nowra to Eden. The stories of community members revealed ways in which fishing regulations impact not just Aboriginal fishers, but their families and communities, too. These go far beyond just making it harder to fish; there are flow-on effects that touch every part of people's lives.

cultural

Much harder to practically pass on culture and knowledge

Kids aren't taken fishing or taught culture due to fear of prosecution

Can't use many traditional fishing and collecting sites, or take kids to the sites

Economic

Poorer families need to spend more of their income on food if they can't fish

Limited opportunities to legally make a living from fishing, high unemployment

Fishing-related criminal convictions make it harder to find a job

Social

People who can't go fishing, like Elders, go without healthy seafood

Jailing community leaders who fish for lots of other people leads to dysfunctional communities

People turn to drinking, drugs, and anti-social behaviour when they can't fish

Psychological

Chronic stress, fear of being caught by NSW Fisheries officers

Low self-esteem from being labelled a criminal, unable to provide for family

Going fishing is therapeutic, opportunity to connect with country

Health

Reduced physical activity due to no longer diving or fishing

Less healthy diets, leading to high cholesterol and iodine deficiency

Harder to gather traditional medicines



The project team and representatives from the NSW Aboriginal Fishing Rights Group and the Crocodile Islands Rangers met at the National Native Title Conference in Darwin.
Credit: Andrew Turner, AIATSIS.

In June members of the steering committee for the AFRG attended the National Native Title Conference in Darwin and met with representatives from the two other case study areas, the Far West Coast of South Australia and the Crocodile Islands in the Northern Territory.

Additionally, South Coast Aboriginal fishers Wally Stewart and Danny Chapman presented at the

conference on the history of cultural fishing on the South Coast and the struggle for the recognition of their rights. The AFRG representatives also met with Mohawk academic and activist Professor Taiiaki Alfred about fishing, government regulation and culture.

Following the conference, and inspired by their engagement in the research project, Wally Stewart

and the other member of the AFRG steering committee have been busy preparing a business plan for the South Coast Commercial/Cultural Fishing Corporation. This will be a community-based organisation that will serve as a focal point for fishing-related activities for Aboriginal communities on the South Coast. The AFRG are using the values identified in the project interviews to inform the business plan, and to highlight the need for a uniquely Aboriginal community fishing corporation for the area.

Already in the works are 'fishing clinics' targeted at Aboriginal kids between six and twelve, teaching fishing skills as well as knowledge of culture, the environment and sustainable fishing practises, and encouraging healthy diets and lifestyles. In the near future community members aim to run Aboriginal cultural tours of Montague Island off of Narooma and to establish a co-operative for Aboriginal fishers.

The Livelihood Values of Indigenous Customary Fishing project was made possible with funding from the Fisheries Research and Development Corporation.

Opposite: Surf Beach, Narooma.
Bottom: Barlings Beach, Tomakin.
Credit: Luke Smyth, AIATSIS.



The Native Title Research Unit (NTRU) was established through collaboration between the Aboriginal and Torres Strait Islander Commission and AIATSIS in 1993 in response to the High Court decision in *Mabo v Queensland [No 2]*, which recognises Indigenous peoples' rights to land under the legal concept of native title. The NTRU's activities are currently supported through a funding agreement with the the Department of the Prime Minister and Cabinet.

The NTRU provides high quality independent research and policy advice in order to promote the recognition and protection of the native title of Aboriginal and Torres Strait Islander peoples. We facilitate access to the Institute's records, materials and collections and publish the results of our research both as a source of public information and in academic publications.

Located within the wider AIATSIS research program, the NTRU aims to provide ongoing monitoring of outcomes and developments in native title; independent assessment of the impact of policy and legal developments; longitudinal and case study research designed to feed into policy development; ethical, community based and responsible research practice; theoretical background for policy development; recommendations for policy development; and policy advocacy designed to influence thinking and practice.

Subscribe to NTRU publications and resources

All NTRU publications are available in electronic format. This will provide a faster service for you, is better for the environment and allows you to use hyperlinks. If you would like to SUBSCRIBE to the *Native Title Newsletter* electronically, please go to www.aiatsis.gov.au/form/subscribe. You will be helping us provide a better service.

For previous editions of the Newsletter, go to www.aiatsis.gov.au/ntru/newsletter.html

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AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL
AND TORRES STRAIT ISLANDER STUDIES

Understanding Native Title Economies Project

WANTED: PBC RESEARCH PARTNER

Are you a medium to large PBC? Would you like to be involved in AIATSIS research?

There are currently 156 registered PBCs around Australia. Despite the increasing numbers of PBCs there is little quantifiable information available about the capacity of PBCs and the value of enacting native title rights and interests.

This project will address the gap in research by looking at:

- the areas of PBC operations that require funding
- how much time and labour PBC members and directors are spending on native title and other activities
- who is doing the work
- what kinds of relationships PBCs have with stakeholders and service providers.

FOR MORE INFORMATION PLEASE CONTACT:

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Your involvement

We are seeking interested NTRBs/NTSPs and PBC partners for the projects for a case study. The partners will need to provide:

- an introduction to the PBC partner
- historical data relating to claim and post-determination work on meetings, future act negotiations, heritage surveys and/or field research trips
- fieldwork assistance (where possible)

Project benefits for your PBC

- Paid fieldworker opportunity
- Potential involvement in the 2017 National Native Title Conference.
- Collaboratively produced reports and publication
- Production of the 'Work Tracker' database free for your PBC/NTRB.
- The project will run until June 2017.