



Native Title Newsletter

AIATSIS Native Title Research Unit



November/December 2002

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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.

NEWS FROM THE NATIVE TITLE RESEARCH UNIT

The Native Title Conference 2003

AIATSIS and The Central Land Council are convening the fourth annual Native Title Representative Bodies conference. *The Native Title Conference 2003*, will be held in Alice Springs from the 3-5 June 2003. Following the success of last year's conference in Geraldton, Western Australia, we look forward to further challenging and productive dialogue between native title holders, native title claimants, rep bodies, researchers and other practitioners. A preliminary notice and call for papers can be found at the end of the Newsletter.

History and Native Title

Through the Smoky Mirror: History and Native Title edited by Mandy Paul and Geoffrey Gray is the latest publication from Aboriginal Studies Press. Initially generated through the 1999 workshop 'The Use of History in Native Title Process', the papers have been updated to include current concerns still being debated and practically engaged. The issues raised in this volume are far from resolved and thus function to stimulate further discussion. Importantly the collection of essays highlight the complexity of demands made on historical records and evidence in judicial determinations of native title. For orders or inquiries contact sales@aiatsis.gov.au. For a full review see Recent Publications in this Newsletter.

New Issues Papers

The NTRU has published two new Issues Papers. The November Issues Paper volume 2 number 19, contains two papers discussing the August 2002 Nharnuwangga, Wajarri and Ngarla native title settlement in Western Australia. The first paper 'Winning' Native Title: The Experience of the Nharnuwangga, Wajarri and Ngarla People' by Michelle Riley considers the native title

settlement from Riley's perspective as a native title holder. In particular Riley discusses the changing expectations of the native title holders throughout the process, criticising the obligations under the agreement where native title holders are required to take out public liability insurance as a condition of accessing lands leased by pastoral stations. The second paper, 'Pastoral Access Protocols: The Corrosion of Native Title by Contract' by Frances Flanagan considers the pastoral access protocols of the Nharnuwangga, Wajarri and Ngarla native title settlement, and examines how they develop co-existence into a discrete set of rules.

The December Issues Paper, volume 2 number 20, is 'Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice in South Australia' by Parry Agius, Jocelyn Davies, Richie Howitt and Lesley Johns. The paper examines the statewide framework agreement process in South Australia from its inception in 2000. As the framework agreement seeks to address native title claims across South Australia by negotiating agreements rather than litigation, it holds greater opportunities for Indigenous people to rebuild their capacity to be self-determining.

Current and previous Issues Papers from the *Land, Rights, Laws: Issues of Native Title* series are posted on the NTRU webpage. You can also subscribe to the Issues Paper mailing list through the form on our website or by contacting the native title administration officer on 02 6246 1161.

New Yorta Yorta Web Resource Page

The NTRU has developed the web resource page, 'Authenticity and Tradition - The Yorta Yorta Case.' This website pulls together the relevant judgments, comments on the High Court decision and media releases. We will be adding to this page in the coming months, and any suggestions to the content

are most welcome. To access the page go to the AIATSIS web page <www.aiatsis.gov.au> click on the native title research unit link and click on 'Resources'.

Forthcoming Yorta Yorta Issues Paper

February will see the release of an Issues Paper containing an analysis of the recent Yorta Yorta High Court decision by Dr Lisa Strelein, Manager of the NTRU.

New Seminar Series

The 2003 Seminar Series will begin in March. 'Intellectual Property and Indigenous Knowledge: Access and Ownership of Indigenous Cultural Material' aims to expand and promote further dialogue about intellectual property with respect to Indigenous cultural material. The key focus will be to the complexity of demands made on access and ownership of Indigenous cultural material, held in both cultural/collecting institutions and Indigenous Knowledge Centres and Cultural Centres. The seminar provides a forum to engage legal frameworks and Indigenous concerns for access; ownership; and the dissemination of Indigenous cultural material including an appreciation of the differing ways in which knowledge becomes property. This seminar series is designed to facilitate cross-cultural dialogue regarding current legal frameworks, pressing practical difficulties and future access of culturally specific material. The Seminar Series Program will be posted on

the AIATSIS website in late February. To join the Seminar Series contact list, contact <nigel.bennet@aiatsis.gov.au>.

Publications from 2001 Native Title Conference, 2001

In response to a number of inquiries, we have compiled a list about the publication of papers from the 2001 *Past and Future of Land Rights and Native Title* Townsville Conference. The list can be found on page 12 of this Newsletter.

ANU Course on Native Title

The ANU Law Faculty is offering a week-long intensive course on the *Native Title Act 1993* (Cth) associated judicial decisions and the role of institutions like the National Native Title Tribunal, the Federal Court and Indigenous representative bodies.

The course may be taken on a non-award basis or as part of an ANU Law coursework degree or diploma. It is open to lawyers and non-lawyers.

When: March 10 - 14, 2003, 9 am - 5pm

Where: Faculty of Law, Australian National University, Canberra 0200

Cost: \$978 Tuition Fee (plus General Services Fee - \$195)

Enrolment details: Tanya O'Keeffe (02) 6125 0510, pgadmin.law@anu.edu.au.

Course content inquiries: Jennifer Clarke on (02) 6125 4653, clarkej@law.anu.edu.au.

Who bears the costs of NTRB capacity building?

by Brian Stacey, ATSIC, Manager – Land and Development Group¹

Native title services are delivered in cross-cultural settings. This fact immediately points to the complexity of their service delivery.

Native Title Representative Bodies (NTRBs) are interface organisations at the cultural nexus between two different systems, cultures and political constituencies. They have diverse constituents to negotiate with – the Indigenous polity, as well as corporate and government agencies.

NTRBs are expected to operate competently while managing such organisational and political complexity. However, little acknowledgment of these complex tasks is made during either government allocation of resources or in the manner in which other better endowed key players in the native title system operate in partnership with NTRBs. NTRBs tend to be the ‘poor relation’ in the native title system. They have minimal control over much of their working circumstances and tend to be more reactive than they might like.

The Native Title amendments

Since the 1998 amendments to the *Native Title Act 1993* (Cth) (NTA), NTRBs have had statutory functions grafted onto what were essentially community-based organisations. Unfortunately, many NTRBs had little previous experience of bureaucratic culture or professional work place practices as community organisations. Consequently, the learning curve has been steep and rapid.

The marriage between the divergent organisational structures and objectives involved has resulted in the uneasy partnerships now evident Australia-wide. Indeed, the mismatch within the NTRB system is very evident in relation to the question of NTRB representation. Do NTRBs actually represent potential native title holders through membership and board positions as community organisations once did; or do they represent their constituents through equal access to service provision and communication across the Indigenous community? The answers are unclear to many in the Indigenous community.

Since the introduction of the amendments to the NTA, reviews of the capacity within NTRBs to manage the new legislative demands indicate that the cultural shift from community-based organisations to professional service agents is a daily challenge and yet to be fully embraced. It remains to be seen whether the fit between these different organisational objectives can be made more comfortable.

Funding allocations across the Native Title system

Funding across the native title system is provided to all key institutional players such as the NTRBs, the National Native Title Tribunal (NNTT), the Federal Court and State and Commonwealth governments, as well as respondents to claims (such as farmers). However, while accountability has been made a high priority by government for assessing the effectiveness of NTRBs, such standards are unequally spread across the institutions involved with claim determination.

We also know that the key institutions are seeking increased individual funding based on their assessment of workload predictions and workload costing. But, as the Love/Rashid report pointed out in 1999,

¹ Paper presented at *The Native Title Conference 2002: Outcomes and Possibilities*, 3-5 September 2002, Geraldton, WA.

the funding for NTRBs was inadequate even prior to the commencement of mandatory functions following amendments to the NTA.² The evidence from a number of NTRB reviews Australia-wide suggests that under-funding has been endemic and ongoing.

Additionally, the performance of new mandatory functions in NTRBs have not received specific funding, while other corporate players within the Commonwealth's native title system, arguing increasing workload and costs have received extra funds.

In addition, resource constraints for NTRBs are frequently not given priority by other agencies within the Native Title system, as they interact with one another to progress claims and future acts. The Federal Court, for example, needs to find better ways to accommodate the impact of their decision-making over time lines for litigation et cetera on NTRBs. Because of resource constraints and organisational issues many NTRBs have only a limited capacity to progress issues at the same efficiency rates as do other key stakeholders.

ATSIC is very aware of these problems and one of its responses was to successfully argue to the Government that additional funding needed to be provided to ATSIC to develop a capacity building program for the NTRB system. ATSIC funds for capacity building seek to provide support for organisational transition and transformation within NTRBs. But it is inevitable that when building new institutions in cross-cultural contexts, difficulties will arise that require time and significant energy to resolve. ATSIC does not have all the answers to the wider problem of developing new institutions capable of effectively working across the complex cultural divide, but some issues are clear – for example:

1. the need for all institutional players in the native title system to contribute to

the costs of ensuring the process is effective, efficient and accountable;

2. publicly available data confirms the views of NTRBs that the burden of carrying the system does not fall equally. As early as 1995 the ATSIC Review of NTRBs recognised that appropriate financial and human resourcing was critical to effective service delivery.³ The subsequent Love/Rashid Report (1999) further highlighted the need to maintain appropriate funding levels across NTRBs and in relation to variations in workloads and other key factors;
3. while the needs of NTRBs for better resourcing have been clearly articulated, ATSIC has not been able to gain additional global funding on a consistent basis. Other institutional players have gained, it seems, at the expense of the loss in funding to the NTRB system;
4. in the case of players such as the NNTT, and respondent parties, they have not only gained additional dollars from government allocations, but by comparison are increasingly outstripping the NTRBs capacity to keep pace. Moreover, the difficulties for NTRBs when juggling the demands of financial management for simultaneously time tabled litigated claims is not appreciated. For example, the Kimberley Land Council (KLC) was unsuccessful in convincing the Federal Court to adjourn hearings for a number of litigated claims. In the face of severe budgetary shortfalls the KLC considered its only option for meeting the required funding to service these cases was by retrenching staff, cutting staff salaries and selling organisational assets. Such solutions are hardly desirable and will not contribute to a sustainable system for claim resolution;
5. the funding contrasts between key stakeholders is evident from figures on additional funding to native title corpo-

² Rashid, S.B. 1999. 'Review of Native Title Representative Bodies'.

³ ATSIC, 1995. 'Review of Native Title Representative Bodies', ATSIC, Canberra.

rate players announced by the Federal Government in its 2001-02 budget: over four years, an additional \$36m was allocated to the NNTT; \$16.9m to the Federal Court; the Attorney-General's Department \$15.8m; and, ATSIC \$17.4m (\$6m for litigation test cases over four years; and \$11.4m over four years for NTRB capacity building); and,

6. resourcing differences are not the only issues of inequity. Accountability requirements across the native title system are currently unevenly applied to key institutions. For example, the Federal Attorney-General's Department has an allocation to distribute funds to support respondents to native title claims but with far less accountability measures, in ATSIC's view, than that expected of NTRBs (the annual reporting requirements of NTRBs in comparison to the those of the Attorney-General's Department continues to be a 'sore point' for ATSIC). The inequities stem from the application of differential funding principles (for instance, assistance to respondents to claims is on a case-by-case assessment whereas NTRBs are given annual funding to be selectively allocated across identified needs; while the reporting on publicly funded expenditure spent by non-claimants is less onerous than that required of NTRBs).

Conclusions

To recap, NTRBs operate at the interface of two cultures in a highly complex arena. Their capacity to attract highly skilled staff is limited by the difficult working conditions, the lack of professional career paths, less than market remuneration for specialist expertise (especially when compared with legal practice in the private sector), remote area employment and lifestyles. In addition, many NTRBs are continuing to grapple with fraught workplace cultures as the need for

transition from community organisation to service delivery occurs.

To get native title outcomes we need broad support *across* the system and from *all* institutions involved, including greater emphasis on strategic partnerships for the realisation of common objectives. Such partnerships should be formed where identified blockages in process occur. For example, an agreement about common policy positions between State and Federal Governments would facilitate the assessment of connection report for claims.

The principles on which financial and resource allocations are made to key organisations need to reflect the functions and associated workloads involved. These workloads also need to be realistically costed and better co-ordinated with a view to achieving outcomes as quickly as possible. ATSIC is establishing a database to enable NTRBs to better argue their position in the inter-institutional funding forums.

An NTRBs' CEO leadership forum has been established by ATSIC to support NTRB organisational and managerial change. This is an initiative to offset critical structural disadvantages evident in many NTRBs during the transition from community-based organisations to professional service agents. The leadership program will focus on improved governance and change management amongst other identified outcomes.

ATSIC hopes (perhaps optimistically) to use the capacity building funds available over four years to develop organisational parity between NTRBs and their partners across the native title system. A common IT system linking all NTRBs, including the provision of a web site to operate as a cutting edge communication resource for NTRBs, is currently under way as one means for redressing the gap.

NATIVE TITLE IN THE NEWS

Native Title News now contains, where applicable, the application numbers for native title claims mentioned in the news. Following the news summary is the NNTT Application Number and the Federal Court number.

Northern Territory

Northern Territory Chief Minister Clare Martin wants to negotiate 11 land rights claims stemming from a revelation that 50 of the Territory's parks and reserves had been invalidly declared. However Denis Burke, leader of the Opposition, claims that the Government is trying to hand over the Territory's parks to Aboriginal interests. *ABC News Online*. 28 November 2002.

The Minister for Indigenous Affairs Phillip Ruddock has handed back to traditional owners land totaling 110,000 ha near Pine Creek in the Northern Territory. At a ceremony in Kybrook the land was returned to the Wagiman Aboriginal Land Trust. Mr Ruddock praised the Wagiman people for identifying the potential for economic development through pastoral enterprise, cultural and eco-tourism and making artifacts. *ABC News Online*. 8 December 2002.

Western Australia

The Goldfields' biggest native title claim, the Wongatha claim, is being reduced. The claim covering almost 184,000 sq km is being reduced to 159,400 sq km to accommodate a recent application for native title by the Pilki people. The Pilki claim is located 320 km east of Laverton, overlapping the eastern portion of the Wongatha claim and covers about 24,400 sq km. Bertus de Villiers, native title manager of the Goldfields Land and Sea Council said that those Wongatha people who have a connection to the Pilki area will form part of the Pilki claim

and both claims will be determined separately. *Kalgoorlie Miner*, 12 November 2002. Wongatha claim: WC99/1, WG6005/98 Pilki claim: WC02/3, W6002/02.

The hearing for the Wongatha claim is expected to conclude in the last week of November, with the third round of evidence to be heard in the Federal Court. More than 2,000 Aboriginal people from 50 families are involved in the claim which stretches 159,400 sq km. Mr Brian Wyatt, Director of the Goldfields Land and Sea Council, said that the next round of evidence would be given next year by expert witnesses, and would probably be held in Perth. *Kalgoorlie Miner*, 22 November 2002. Wongatha claim: WC99/1, WG6002/02.

Two of the registered claimants for the area over the Burrup Peninsula industrial estate have reached an agreement. The Ngarluma Indjibarndi and Yaburara Mardudhunera groups signed the agreement to give native title clearance in the Maitland and Burrup industrial estates and land in Karratha for residential estates. However the deal hinges on the outcome of continuing arbitration with the third claimant group, the Wong-Goo-Tt-Oo and whether the NNTT allows the State's request for a compulsory acquisition if the arbitration is unsuccessful. If the agreement is successful the claimant groups will receive heritage protection and compensation worth \$15.6 million, including economic and community benefits such as employment and education services. Despite the problems with the agreement the Deputy Premier Eric Ripper says the deal will be a win-win result for Indigenous people, industry and Western Australians. Mr. Ripper is hopeful that the decision to be made by the Tribunal will be handed down within three months. *West Australian*, 13 November 2002. Yaburara Mardudhunera claim

WC96/89, WG127/97; Ngarluma/Injibandi claim: WC99/14, WG6017/96; Wong-Goo-Tt-Oo claim: WC98/40, WG6256/98.

A landmark agreement has been signed between Yamatji Land and Sea Council and five Murchison Shires in mid-west Western Australia. The shires of Cue, Yalgoo, Sandstone, Meekatharra and Mount Magnet have agreed to work together with Yamatji to resolve native title issues, heritage, cultural and economic issues. Roger Cook, executive director of Yamatji Land Council, hopes that the memorandum can become a model for other local government authorities. *ABC News Online*, 27 November 2002.

An historical agreement has made way for mining and exploration in a vast area of the Pilbara. The agreement covers 7,276 sq km around Tom Price and is the first ILUA of its type. The agreement between the Eastern Guruma people, Hamersley Iron, Rio Tinto Exploration and the State Government, was finalised in early December and submitted to the NNTT for registration. The Tribunal will advertise the agreement for a three-month notification period, and once it is formally registered it is legally binding on all native title holders to the area. *North West Telegraph*, 11 December 2002. Guruma claim: WC97/89, WG6208/98.

Queensland

The Wulli Wulli people will meet with the Newcrest mining company and Sedimentary Holdings to negotiate an ILUA in Cracow. Newcrest plans to develop an underground gold mine, 4 km west of Cracow with the potential to produce 675,000 ounces of gold over a seven year period. Newcrest also plans to refurbish the existing treatment plant, which has been closed since 1993. Banana Shire mayor Glenn Churchill said that he was quite confident that a positive outcome could be reached for the Wulli Wulli people, Newcrest and Cracow. *Central Telegraph*, 1 November 2002.

The Kalkadoon People and Matrix Metals Limited have signed a landmark ILUA. They have been negotiating the agreement for three years. This outcome will allow Matrix to have new mining leases granted within the ILUA area and it will also provide the Kalkadoon people with opportunities and benefits related to the grant of each lease and to the mining activities of the company. *Mining Chronicle*, 1 November 2002.

An eight day protest between Pasminco and the Waanyi People in north-west Queensland has ended after an agreement to improve consultation with the traditional owners was reached. Around 100 protesters occupied the Pasminco kitchen and cafeteria at the Century mine last Sunday week, sparking a series of negotiations. Other funding and compensation concerns were addressed including the return of cultural relics and intellectual property issues. *Australian Associated Press*, 25 November 2002.

An ILUA has been signed in North Queensland between the State Government and the Ewamian people. The ILUA will be registered with NNTT this year. A backlog of twenty exploration permits lodged with the Department of Natural Resources and Mines on or before 15 September 2000 may be granted under the Ewamian ILUA. *Australian Mining Times*, 30 December 2002. Ewamian claim: QC01/16, Q6018/01.

New South Wales

The Tubba-Gah people, descendants of the original inhabitants of the Dubbo Region have successfully registered a native title claim with the NNTT. The claim covers 628 sq km of the Goonoo State Forest. The notification period begins on the 13 November 2002 and closes on the 12 February 2003. Simon Blackshield, legal adviser for the Tubba-Gah, said that the main objective of the applicants was to ensure that they are involved in the future management process

to ensure protection of their ancestral heritage. *Daily Liberal*, 31 October 2002. Tubba-Gah claim: NC02/9, N6010/2002.

An agreement has been reached over 628.8 sq km of land at Terramungamine Reserve near Dubbo in central western NSW. The Tubba-Gah lodged the native title claim seven years ago. While the agreement does not recognise native title, it does acknowledge the area as part of the Tubba-Gah people's traditional land. The land is to be divided into three areas; a reserve for public recreation, a dedicated Aboriginal burial ground, and a reserve for travelling stock. *ABC News Online*. 5 December 2002. Tubba-Gah claim: NC95/7, NG6016/98.

Victoria

The Minister for Indigenous Affairs Phillip Ruddock has written to Mirimbiak Nations Aboriginal Corporation in regards to concerns over its performance. Mirimbiak, which represents Victorian Aboriginal groups, may lose its recognition as an NTRB because of negative claims made in relation to administration and management practices. The *Native Title Act* states that the Minister may withdraw recognition of a native title body if it is not performing at a satisfactory level on the claimants behalf. *The Age*, 9 November 2002.

Talks are continuing in the Gunditjmarra native title claim. In early August, 80 representatives of the 174 parties concerned with the Gunditjmarra claim attended talks with 20 representatives of the group. Senior case manager with the NNTT, Ian Campbell-Fraser, said as long as the talks were progressing then it was likely that mediation would continue. But he said that mediation is always subject to an overview by the Federal Court. The Gunditjmarra claim covers 20,360 sq km. *Hamilton Spectator*, 9 November 2002. Gournditch-mara claim: VC99/7, VG6004/98.

The Hosham Rural City Council has delayed in-principal support for the Wotjobaluk native title claim until 18 November. The decision comes after the council received a report from chief executive officer Kerryn Shade, who represents Wimmera municipalities, advising that the settlement could cost \$1 million. The council said it would hold off on the issue until they received more information. The agreement would give the Wotjobaluk people significant recognition as descendants of the people who occupied the land before European settlement, while also maintaining the rights of current landholders. All parties involved must make a progress report to the Federal Court by 25 November 2002. *Wimmera Mail Times*, 11 November 2002. Wotjobaluk claim: VC99/3, VG6005/99; VC99/5, V6005/99.

In a five to two ruling the High Court dismissed the appeal of the Yorta Yorta people on 12 December 2002. The longest running native title claim, it was first lodged in 1994 and covers approximately 2,000 sq km of land and waters along the New South Wales and Victorian border. Chief Justice Gleeson, Justices Gummow, Hayne, McHugh and Callinan dismissed the appeal with costs. They believed there was insufficient evidence that the Yorta Yorta people continued to acknowledge and observe traditional laws and customs. Justices Gaudron and Kirby dissented. *Geelong Advertiser*, *The Age*, *The Central Coast Herald*, *Herald Sun*, 13 December 2002. Yorta Yorta claim: VC94/1, VG6001/95.

The Gunai/Kurnai people will attempt to settle their native title claim through mediation. Lodged in 1997, the Gunai/Kurnai native title claim is the largest in Victoria. Albert Mullett a Gunai council of elders member said that the Yorta Yorta case has had an impact on their claim and showed them that they would have to be a bit smarter and try a different approach. He said, "If we go through the courts there will be no win at the end for either party, just

the lawyers. We would prefer to sit down and talk about it." *Gippsland Times and Maffra Spectator*, 31 December 2002. Gurnai/Kurnai claim: VC97/4, VG6007/98.

South Australia

The Yunkuntjatjara people have had their native title land claim rejected by the Federal Court. The native title claim was lodged in 1994 and covered 1,800 sq km over the De Rose Hill Station, more than 1,000 km north-west of Adelaide. The Yankuntjatjara people's application was for rights to possess, occupy, use and enjoy the land and its waters and to maintain and protect places of significance. Justice Maurice O'Loughlin said that the Aboriginal people who had lived on the property had scattered to the four winds and no longer visited for traditional ceremonies. Justice O'Loughlin said that the group lacked a continuing relation-

ship with the land. Executive officer for the ALRM Parry Aguis said that the connection was felt in the hearts, minds and spirits of the Aboriginal people who would continue to practice their beliefs. *The Age* and *The Advertiser (Adelaide)*, 2 November 2002. Yankuntjatjara claim: SC94/2, SG6001/96.

The decision to reject the claim for native title by the Federal Court over the De Rose Hill cattle station in South Australia is to be appealed by the Yankuntjatjara People. Aboriginal Legal Rights Movement (ALRM) executive officer Parry Aguis says that the Yankuntjatjara people believe that the Court did not recognise Aboriginal cultures. *ABC News Online*, 25 November 2002. Yankuntjatjara claim: SC94/2, SG6001/96.

APPLICATIONS

The National Native Title Tribunal posts summaries of registration test decisions at www.nntt.gov.au. The following decisions are listed for November/December. The first number following the name is the NNTT Application Number, the second is that of the Federal Court. If an application has not been accepted, this does not mean that native title does not exist. The applicants may still pursue the application for the determination of native title. If an application does not pass the registration test, the applicant may seek a review of the decision in the Federal Court.

NTP 4440 Tennant Creek	DC02/29		Accepted
	D6030/02	Kalkadoon People #2	QC02/34
	Accepted		Q6032/02
The Wiradjuri People #2	NC02/10		Accepted
	N6015/2002	Cubbitch Barta People	NC02/12
	Accepted		N6017/2002
Newcastle Waters #2	DC02/32		Not Accepted
	D6033/02	Mithaka People	QC02/35
	Accepted		Q6033/02
Dulcie Ranges	DC02/33		Accepted
	D6034/02		

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
12 February 2003	NC02/9	Tubba-Gah People
26 February 2003	NC02/7	Wonnarua People
10 March 2003	DC02/1	Mallapunyah/Cresswell
	DC02/9	Karlu Karlu
	DC02/8	Dry River
	DC02/7	New Lakefield
	DC02/6	Koolpinyah Central
	DC02/5	Rosewood
	DC02/4	Town of Adelaide River
	DC02/3	Well Tree
	DC02/2	Dalmore Downs South
	DC02/12	Murrarji No.2
	DC02/11	Wollogorang
	DC02/10	Willeroo Delamere
21 April 2002	TC00/1	Sundown Point

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

RECENT PUBLICATIONS

Through the Smoky Mirror: History and Native Title

Edited by Mandy Paul and Geoffrey Gray, Aboriginal Studies Press, 2002.

The interpretation of history underpins many judicial determinations of native title. Recently the High Court decision in the *Yorta Yorta* case reminded us of how difficult it is for the law to recognise and respect Indigenous histories.

Focusing on the role of history in native title claims and proceedings provides a valuable inter-disciplinary perspective on the complex demands made both on Indigenous claimants and historians working in this

field. The volume compliments the previous publication in this series, *Language in Native Title* edited by John Henderson and David Nash.

In the chapter 'History, Anthropology and Native Title', Tom Gara recounts how in 1968 Stanner referred to "the great Australian silence" that was the exclusion of Indigenous histories within the larger Australian narrative of the 19th and 20th centuries. His point is significant as it reveals hidden contingencies inherent in relying upon historical records for native title claims. In addition, recent native title determinations, notably *Yorta Yorta* and *De Rose*, serve as important reminders that despite obvious contests in historical evidence, history no longer resides as 'background' in-

formation - it is very clearly at the forefront of current native title claims and discussions.

The papers collected within this volume include: 'Yorta Yorta: The Community's Perspective on the Treatment of Oral History' by Jan Muir and Monica Morgan; 'Historical Narrative and Proof of Native Title' by Christine Choo and Margaret O'Connell; 'History in the Courtroom: A Brief Consideration of Some Issues' by Geoffrey Gray; 'Reflections on the Use of Historical Evidence in the Yorta Yorta Case' by Deborah Bird Rose; 'Taming the Colonial Archive:

History, Native Title and Colonialism' by Steve Hemming; 'History, Anthropology and Native Title' by Tom Gara; 'No Title Without History' by David Ritter; and, 'History and the Native Title Act' by John Litchfield and Lance Jackson.

These papers will be of interest to many parties, including those who work with historians in the native title process, as they canvass points of friction and fruitful cooperation between disciplines.

PUBLICATIONS FROM THE NATIVE TITLE CONFERENCE, TOWNSVILLE, 2001

In response to inquiries about the publication of papers from the *2001 Past and Future of Land Rights and Native Title* Townsville native title conference, we have compiled this bibliography:

Four papers were published in the NTRU series *Land Rights Laws: Issues of Native Title* Volume 2:

- Parry Agius, Jocelyn Davies, Richie Howitt and Lesley Johns, *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice*, No. 20.
- Sir Anthony Mason, *The International Concept of Equality of Interest in the Sea as it Affects the Conservation of the Environment and Indigenous Interests*, No. 16.
- Greg McIntyre and Geoffrey Bagshaw, *Preserving Culture in Federal Court Proceedings: Gender Restrictions and Anthropological Experts*, No. 15.
- Susan Phillips, "Like Something Out of Kafka": *The Relationship between the roles of the National Native Title Tribunal and the Federal Court in the development of Native Title Practice*, No. 14.

Five papers were published in the NTRU *Native Title Newsletter*:

- Tony McAvoy, *Indigenous Fisheries: Cultural, Social and Commercial*, Issue 1/2002.
- Commissioner Rodney Dillon, *Exercising Your Culture: Indigenous Cultural Heritage and the Environment*, Issue 6/2001.
- Margaret Donaldson, *A Human Rights Approach to Native Title Agreements*, Issue 6/2001.
- Philippa Horner, *Development in Commonwealth agency co-ordination*, Issue 5/2001.
- Richard Bartlett, *A resolution of some outstanding native title issues: Ward on behalf of Miriuwung Gajerrong v Western Australia: High Court Australia March 2001, judgment reserved*, Issue 5/2001.

The *Environmental Planning and Law Journal* vol.19(4) August 2002 published four papers presented on the third day of the conference, which was a joint day with the National Environmental Law Association:

- Gary Meyers, *Native Title Rights in Natural Resources: A Comparative Perspective of Common Law Jurisprudence*, pp.245-257.
- Lee Godden, *Indigenous Heritage and the Environment: 'Legal categories are only one way of imagining the real'*, pp.258-266.

- Tony Foley, *Negotiating Resource Agreements: Lessons from ILUAs*, pp. 267-276.
- Warwick Baird and Rachel Lenehan, *The Process in NSW Leading to Joint Management of Aboriginal Owned Land and the Register of Aboriginal Owners*, pp.277-283.

Balayi: Culture, Law and Colonialism published three papers in their 'Treaty' edition (Vol 4, 2002):

- Jackie Huggins *Reconciliation and Native Title*.
- Mick Dodson *Sovereignty*.
- Jenny Pryor *The Past and Future of Land Rights and Native Title*.

Other publications:

- Diane Smith, *Valuing native title: Aboriginal, statutory and policy discourses about compensation*, CAEPR discussion paper 2001/222.
- Bryan Keon-Cohen - 'Compensation and Compulsory Acquisition under the Native Title Act 1993' (2002) 28 *Monash University Law Review*, pp.17-58.
- Benjamin R Smith (2003) 'Whither 'certainty'? Coexistence, change and land rights in northern Queensland'. *Anthropological Forum* 13(1), May 2003.

Internet publications:

- Published on the AIATSIS website as part of the Treaty Seminar Series – Fred Chaney, *Limits and Possibilities of a Treaty Process in Australia*. www.aiatsis.gov.au
- Anthony Esposito *Issues of cultural and environmental integrity* published on the Native Title and Protected Areas Project website www.indig-enviro.asn.au

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. 20 *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice*
Parry Agius, Jocelyn Davies, Richie Howitt and Lesley Johns
- No. 19 *'Winning' Native Title: The Experience of the Nharnuwungga, Wajarri and Ngarla People*
Michelle Riley
Pastoral Access Protocols: The Corrosion of Native Title by Contract
Frances Flanagan
- No. 18 *Diaspora, Materialism, Tradition: Anthropological Issues in the Recent High Court Appeal of the Yorta Yorta*
James F Weiner
- No. 17 *Western Australia v Ward on behalf of Miriuwung Gajerrong, High Court of Australia, 8 August 2002: Summary of Judgment*
Lisa Strelein
- No. 16 *The International Concept of Equality of Interest in the Sea as it Affects the Conservation of the*

- Environment and Indigenous Interests*
 Sir Anthony Mason
- No. 15 *Preserving Culture in Federal Court Proceedings: Gender Restrictions and Anthropological Experts*
 Greg McIntyre and Geoffrey Bagshaw
- No. 14 *"Like Something Out of Kafka": The Relationship between the roles of the National Native Title Tribunal and the Federal Court in the development of Native Title Practice*
 Susan Phillips
- No. 13 *Recent Developments in Native Title Law and Practice: Issues for the High Court*
 John Basten
- No. 12 *The Beginning of Certainty: Consent Determinations of Native Title*
 Paul Sheiner
- No. 11 *Expert Witness or Advocate? The Principle of Ignorance in Expert Witnessing*
 Bruce Shaw
- No. 10 *Review of Conference: Emerging Issues and Future Directions*
 Graeme Neate
- No. 9 *Anthropology and Connection Reports in Native Title Claim Applications*
 Julie Finlayson
- No. 8 *Economic Issues in Valuation of and Compensation for Loss of Native Title Rights*
 David Campbell
- No. 7 *The Content of Native Title: Questions for the Miriuwung Gajerrong Appeal*
 Gary D Meyers
- No. 6 *'Local' and 'Diaspora' Connections to Country and Kin in Central Cape York Peninsula*
 Benjamin Smith
- No. 5 *Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'*
 Katie Glaskin
- No. 4 *Bargaining on More than Good Will: Recognising a Fiduciary Obligation in Native Title*
 Larissa Behrendt
- No. 3 *Historical Narrative and Proof of Native Title*
 Christine Choo and Margaret O'Connell
- No. 2 *Claimant Group Descriptions: Beyond the Strictures of the Registration Test*
 Jocelyn Grace
- No. 1 *The Contractual Status of Indigenous Land Use Agreements*
 Lee Godden and Shaunnagh Dorsett

Discussion papers

Discussion papers are published in concert with the AIATSIS Research Program and are available from the Research Program on telephone 02 6246 1144.

- No. 11 *Negotiating Major Project Agreements: The 'Cape York Model'*
 Ciaran O'Faircheallaigh
- No. 10 *The Community Game: Aboriginal Self-Definition at the Local Level*
 Frances Peters-Little

Monographs

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

****NEW PUBLICATION****

Through the Smoky Mirror: History and Native Title

edited by Mandy Paul and Geoffrey Gray,

Aboriginal Studies Press, Canberra, 2002. 113 pages, 25x17.5cms,

ISBN 0 85575 393 5, RRP \$14.95

For inquiries and sales contact sales@aiatsis.gov.au or phone 02 6246 1186

Language in Native Title, edited by John Henderson and David Nash, Aboriginal Studies Press, Canberra, 2002.

Native Title in the New Millennium, edited by Bryan Keon-Cohen, proceedings of the Native Title Representative Bodies Legal Conference 16-20 April 2000: Melbourne, Victoria, 2001, includes CD.

A Guide to Australian Legislation Relevant to Native Title, two vols, lists of Acts summarised, 2000.

Native Title in Perspective: Selected Papers from the Native Title Research Unit 1998–2000, edited by Lisa Strelein and Kado Muir.

Land, Rights, Laws: Issues of Native Title, Volume 1, Issues Papers Numbers 1 through 30, Regional Agreements Papers Numbers 1 through 7, 1994-1999 with contents and index.

Regional Agreements: Key Issues in Australia – Volume 2, Case Studies, edited by Mary Edmunds, 1999.

A Guide to Overseas Precedents of Relevance to Native Title, by Shaunnagh Dorsett and Lee Godden. AIATSIS, Canberra, 1998.

Earlier publications dating back to 1994 are listed on the Native Title Research Unit's website at www.aiatsis.gov.au, go to the Native Title Research Unit and then click on the 'Previous Publications' link. Orders are subject to availability.

Web Resources

The NTRU has developed a number of on-line resource pages which provide relevant and up to date information regarding specific native title cases and concerns. These pages can be accessed from http://www.aiatsis.gov.au/rsrch/ntru/news_and_notes/

At present there are five resource pages:

- Authenticity and Tradition – The *Yorta Yorta* Case
- The concept of native title – *Miriwung-Gajerrong* Determination High Court 8 August 2002
- Compensation and native title
- Sea Rights – The *Croker Island* Decision and Native Title Offshore
- General native title resources

Papers from the AIATSIS seminar series *Limits and Possibilities of a Treaty Process in Australia* are also available on-line. This series explores issues surrounding the proposal for a national treaty, such as current proposals, past obstacles, Indigenous representation, political and philosophical

questions, national identity, reconciliation, belonging, public law implications, and comparisons with other countries. The papers are at, <http://www.aiatsis.gov.au/rsrch/seminars.htm>

ABOUT THE NATIVE TITLE RESEARCH UNIT

The Native Title Research Unit identifies pressing research needs arising from the recognition of native title, conducts relevant research projects to address these needs, and disseminates the results of this research. In particular, we publish this newsletter, the Issues Papers series and publications arising from research projects. The NTRU organises and participates in conferences, seminars and workshops on native title and social justice matters. We aim to maintain research links with others working in the field.

The NTRU also fields requests for library searches and materials from the AIATSIS collections for clients involved in native title claims and assists the Institute Library in maintaining collections on native title.

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For previous editions of this Newsletter click on the native title research unit link at www.aiatsis.gov.au

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