



Native Title Newsletter

AIATSIS Native Title Research Unit

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The Native Title Newsletter is published every second month. The newsletter includes a summary of native title as reported in the press. Although the summary canvasses media from around Australia, it is not intended to be an exhaustive review of developments.

The Native Title Newsletter also includes contributions from people involved in native title research and processes. Views expressed in the contributions are those of the authors and do not necessarily reflect the views of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

Stop Press

Land, Rights, Laws: Issues of Native Title is a series of native title papers published occasionally by the NTRU. Papers are written at an academic level, should be about 3,500 words and receive anonymous peer review. If you would like to submit a paper or would like more information, please contact Serica on (02) 6246 1171 or serica.mackay@aiatsis.gov.au.

The Newsletter is also available in ELECTRONIC format. This will provide a FASTER service for you, and will make possible much greater distribution. If you would like to SUBSCRIBE to the Native Title Newsletter electronically, please send an email to ntru@aiatsis.gov.au, and you will be helping us provide a better service. Electronic subscription will replace the postal service, please include your postal address so we can cross check our records. The same service is also available for the Issues Papers series.
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International Indigenous Visitors

The NTRU was pleased to host two distinguished Indigenous visitors over the last few months.

In early December Assistant Grand Chief Lloyd Oronhiakhete Phillips of the Mohawk Council of Kahnawake, Canada, visited AIATSIS. The Assistant Grand Chief took part in a workshop titled 'From Land Settlements to Self-Government: The Kahnawake Experience of Comprehensive Negotiations in Canada.' While he was in Canberra, the NTRU facilitated meetings between the Assistant Grand Chief and local Indigenous representatives.

Professor John Borrows has taken up the Institute's inaugural International Indigenous Visiting Fellowship. Professor Borrows, from the Cape Croker Indian Reserve, Canada, is the Law foundation Chair in Aboriginal Justice and Governance at the University of Victoria, British Columbia. While resident at the Institute, Professor Borrows will be researching the topic: 'Aboriginal Title and the Dangers of Legislative "Solutions"'

Indigenous Mediation and Facilitation Project

Team: Toni Bauman (Visiting Research Fellow), Rhian Williams (Consultant Fellow, Mediation Specialist), Sophia Close (Research Assistant)

Project Activities

The National Native Title Tribunal (NNTT) is sponsoring the Project to hold five workshops in the first half of this year with representatives from Native Title Representative Bodies (NTRB) including, CEOs, board members, anthropologists, lawyers and field officers. The locations and content of the workshops will be discussed at an ATSIIS Leader's Forum for CEOs and Chairs of NTRBs planned for late March 2004. A workshop for native title mediation practitioners

will be held at a date to be decided hopefully in the second half of 2004, subject to funding.

Preparation of material for the proposed Project web pages to be hosted on the AIATSIS web site is progressing well. A comprehensive bibliography has been completed by Rebecca Morphy and Kitty Eggerking and will be soon available.

A survey has been prepared for mediation practitioners who work in native title. A list of practitioners is currently being prepared through a range of agencies. If you are interested in participating in this survey please contact us.

Forthcoming Events

The Wukindi Cross-cultural Mediation Training workshop will be held in the week of 21st June 2004 on Galiwinku (Elcho) Island. Check the web site on wukindi.com.

The National Mediation Conference will be held in Darwin, Northern Territory from 30 June to 2 July 2004 and will have a strong Indigenous component. It is anticipated that the Wukindi Rom 'reconciliation' ritual will be held each morning of the conference.

Papers, publications and presentations

Travel was sponsored by the Minerals Council of Australia for Toni Bauman and Rhian Williams to present a paper, "Towards a Common Practise Investigating Australian Indigenous Dispute Management Needs in Land Issues" at the Asia Pacific Mediation Forum, Singapore, 19-22 November 2003.

Toni Bauman facilitated a one day workshop in Darwin on 3rd November 2003 titled 'Introduction to Conflict management and decision-making' for Northern Territory Government Community Development Officers. This was followed by a short workshop for delegates at the Building Effective Indigenous Governance Conference at Jabiru, 4-7 November 2003.

Native Title Business Forum

The Native Title Research Unit took part in a Native Title Business Forum held at the National Museum on the 11 and 12 of December 2003. The forum was an informal session where each member gave a concise paper in relation to an aspect of native title relevant to their field of expertise.

Dr Lisa Strelein introduced all speakers before discussing the legal aspect of native title. Dr Stuart Bradfield spoke about agreement making with peoples and nations, and Toni Bauman discussed anthropology, native title and conflict. Jane Anderson discussed the importance of cultural narrative informing native title law, whilst Glen Kelly talked about Extinguishment of native title and the continuity of people. Donna Oxenham spoke about the effects of native title in relation to the Shark Bay community, including Indigenous identity and her own personal experience. Her talk was titled 'The concept of traditional v. contemporary perceptions of Aboriginal society and how this has created problems within the native title context for many Indigenous groups within Australia.' Grace Koch concluded the session by giving an overview of the services the access unit of the NTRU provide.

The Native Title Conference 2004 Adelaide, South Australia, 3-4 June 2004

The Australian Institute of Aboriginal and Torres Strait Islander Studies and The Aboriginal Legal Rights Movement- Native Title Unit invite you to join us in Adelaide for the *Native Title Conference 2004*.

This comprehensive national conference addresses the cutting edge of native title research and practice. It is an opportunity for networking and information sharing between the staff of representative bodies, academics, legal counsel and government. The conference is also a development opportunity for native title representative body staff, executive and practitioners and all who wish to remain informed of current practice, governance, and law and policy development.

The conference will be held at the Stamford Grand Hotel in Glenelg

The major theme of this year's conference is: **Building Relationships - It's the People that Matter - It's the People that make it work**. Sub themes include:

- making native title work for everyone
- finding equitable solutions
- the grounding for positive native title outcomes
- the way to move forward
- finding common ground: resolutions to native title issues

A new and refreshing program will be introduced this year, to respond to participant input from previous years.

Pre-conference workshops: NTRB only

(Wednesday June 2) will be dedicated to NTRB's only. This day will consist of workshops conducted by NTRB staff for NTRB staff and or executive. These workshops are knowledge based, and will cater for the various levels/skills/and areas of interest of and for practitioners. Key to the success of these workshops is opening a dialogue and sharing knowledge between NTRB staff and executive.

A Welcome to Country Ceremony will be held in the evening of 02 June 2004.

(Thursday 3rd June) which falls on Mabo Day, will be open to the general public. On this day, keynote lectures and papers will be presented by Native title holders and claimants, practitioners, NTRB staff, researchers, academics, political leaders and others.

Running concurrent with these sessions will be a Youth Forum. The Youth Forum at last year's conference in Alice Springs was seen as a huge success, and we are delighted to be holding this important forum again in Adelaide. The Youth Forum is open to 16-25 year old Indigenous people.

(Friday 4th June) the day will be composed of two parallel strands: the general program will continue with papers and workshops, and a distinct Indigenous stream of sessions and workshops will also be held. The Indigenous Forum is of course open only to Indigenous people.

Call for Papers/Workshops

The Native Title Research Unit of AIATSIS is calling for papers or workshop presentations for this year's Native Title Conference. An abstract of the paper or workshop, plus a one paragraph biography should be sent as an email attachment to siv.parker@aiatsis.gov.au. The number of available spots for papers/workshops is strictly limited. Papers will be chosen on merit, and applicability to overall themes and streams of the conference. Paper presenters are expected to register and pay for their attendance at the conference.

The abstract and biography must be in a standard word processing package such as Microsoft Word. Papers will only be accepted in electronic format.

Presenters must list all Audio Visual requirements for their workshop/paper. We will endeavour to satisfy your requirements as best we can.

Formatting

We would appreciate abstracts and biographies being presented to AIATSIS in the following format

1. Times New Roman
2. 12 point font
3. Justified left
4. 2.5cm left/right margin
5. 3cm top/bottom margin

NTRB pre-conference Workshops

The first day of the conference will be open to staff and executive of NTRB's only. This is a wonderful opportunity for NTRB staff to link up and discuss issues that directly concern the workings of NTRB's. We call on NTRB staff and executive to develop knowledge based

workshops for their peers. We will be accepting workshop abstracts under the same conditions as that stated above.

Workshop presentations

Abstracts for workshop presentations should:

- Describe the topic
- Clearly express the thesis, or question under discussion (if appropriate)
- Make clear the purpose of the workshop

The workshops themselves should:

- Attempt to engage participants as much as possible
- Encourage active participation in the workshop
- Be flexible and open to change as the workshop unfolds
- Be directed at sharing and/or exchanging of information between facilitator and participants

Staff Recruitment

Sophia Close has started with the NTRU as a Project Research Assistant for 12 months. Her main role will be to assist with the Indigenous mediation and facilitation project. Sophia has a research background in Indigenous political theory and governance, peace and conflict, and economics and is on temporary transfer from the Department of Industry, Tourism and Resources.

Siv Parker has recently joined the NTRU as the Native Title Conference Co-ordinator. Siv holds a Bachelor of Arts, Politics and Philosophy and has joined the team from 2CUZ fm radio, Bourke.

Wayne Deans is leaving the unit. Wayne was the Conference co-ordinator. We wish Wayne all the best with his future endeavours.

Daniel v State of Western Australia [2003] FCA 1425 (05 December 2003)

By Serica Mackay

The Federal Court handed down reasons in the initial *Daniel* decision in July 2003. At that time, a draft determination was released outlining the non-exclusive native title rights and interests held by the Ngarluma and Yindjibarndi peoples. Parties were given an opportunity to respond to the draft determination in order to determine whether there was inconsistency in the exercise of the native title right and the tenure holder's right that would result in extinguishment. The judgment of Nicholson J on 5 December 2003 provides his findings on these submissions. This is a brief summary of his findings.

The draft determination included a range of non-exclusive native title rights and interest held by the Ngarluma and Yindjibarndi peoples such as a right to access (including to enter, to travel over and remain), a right to camp, build shelters or to live on the area, and a rights to engage in ritual and ceremony.

Submissions were made by a range of respondents (including the State of Western Australia, the Commonwealth, Telstra and a number of mining and farming interests) challenging the consistency of nearly all of the rights and interests. In general, the respondents claimed that the exercise of the native title right would prevent the tenure holder from being able to exercise their right.

In his findings, Nicholson J maintains the distinction between the grant of rights that are inconsistent with and therefore extinguish native title and rights which will merely prevail over native title rights. In the process, his Honour demonstrates a preference for finding that the native title and tenure holder's rights could coexist – the native title rights yielding to the extent there is overlap or clash. Nicholson J applies the 'reasonable user' test propounded in *Ward* and uses it as the basis to find that there is no inconsis-

tency in a number of instances. Nicholson J held that the relevant test for inconsistency where prevailing rights are at issue is whether at that location, at that time, the exercise of the native title rights would prevent the rights of the tenure holding prevailing.

For example, Nicholson J agreed with the submission of the native title holders that none of the native title rights listed in the draft Determination are necessarily inconsistent with the rights under jetty licences. If the jetty licence area is not being used, there is nothing inconsistent with native title holders exercising their rights, including the right to camp or remain on the area. However, if the area is being used the rights under the jetty licence will prevail while those activities are being carried out.

This decision is an important development in clarifying what it means to hold native title. The application of the 'reasonable user' test reinforces the status of native title owners as co-holders of country. Although their title may be less robust in the face of extinguishing acts by the Crown, it is not an empty right where it survives.

De Rose v South Australia [2003] FCAFC 286 (16 December 2003). Yankunytjatjara People SC94/2, SG6001/96.

By Dr Lisa Strelein

The applicants in the South Australian *De Rose Hill* case have successfully appealed the decision of the trial judge, who had determined that native title did not exist in relation to the claim area because of a loss of the requisite connection under s223(1)(b) of the *Native Title Act 1993* (Cth). The decision of Justice O'Loughlin was strongly criticised. His Honour made judgements about the extent to which individual applicants had maintained their responsibilities under traditional law and custom and the extent to which 'non-aboriginal factors' such as employment and educational priorities had influenced decisions about residence away from the claim area. The trial judge held that in very recent history the physical or spiritual connection to the land had

been abandoned and the observance of traditional law and custom had broken down.

In December 2003, a full Federal Court rejected the conclusions of the trial judge noting the broader observance of the laws and customs of the Western Desert and the specific knowledge of law in relation to the claim area; the relatively recent and short absence from the area and active protection of sites under heritage laws, as well as the bringing of the native title claim itself [145]; as well as the intimidatory exclusion from the area by the coexisting pastoral lease holders [322].

The full Court was critical of the trial judge for presuming to make his own judgment about the individual entitlements of the claimants under traditional law and custom, a matter which is properly internal to the Western Desert law system [312-313]. The full Court recognised that the applicants formed a small group within the much larger Western Desert cultural bloc who share the same laws and customs. The applicants did not assert and were not required to show that they constituted a discrete society [282]. *NNTT Media release*. 17 December 2003. Yankunytjatjara claim: SC97/9, SG6022/98.

The Western Desert Bloc was the normative system upon which the claim could successfully be founded [275]. It existed at the time of sovereignty and the traditional laws and customs had continued substantially uninterrupted throughout the period [279]. This reliance on a broader normative system distinguished the circumstances of the applicants in this case from those in the *Yorta Yorta* case who faced the obstacle of 'substantial interruption' to the acknowledgement and observance of traditional law and custom which was held to have applied to the whole normative society [281].

The Court noted that in the *Yorta Yorta* appeal, the High Court rejected the language of 'abandonment' in favour of this concept of interruption [312]. The High Court stated that if continuity of acknowledgement and observance is interrupted, the reasons are irrelevant. However, the full Court in this decision notes that the reasons why obser-

vance or acknowledgement have been affected should be taken into consideration when assessing whether there was in fact an absence of continuity amounting to an interruption [326].

The High Court in *Ward* has held that physical contact is not required to maintain the connection to the claim area. The full Court in *De Rose* acknowledged that even long absence and movement due to access to food or other changes in conditions is not a new or unknown phenomenon under the traditional laws and customs of the Western Desert. In particular the Court concluded that it may well be possible to maintain a connection with land despite moving away from the area for what the trial judge dismissed as 'European social and work practices'[328].

The full Court found that the trial judge was wrong in law but they were unable to make a conclusion as to whether the claim had been proved [330]. The applicants still needed to demonstrate that they continue to acknowledge and observe the traditional laws and customs of the Western Desert Bloc and that they possess rights and interests under those laws and customs [281]. This may require further evidence about what the Western Desert law says about the applicants' entitlements [331].

As the trial judge has now retired, the matter cannot be sent back for further consideration. The Full Court has therefore directed the parties to a mediation conference, convened by the Registrar of the Federal Court to identify what if any issues remain in dispute that will need to come back to the Federal Court [412-3].

Public Works on Aboriginal and Torres Strait Islander Owned Lands

Erubam Le (Darnley Islanders) #1 v State of Queensland [2003] FCAFC 227 (14 October 2003)

By Dr Lisa Strelein

The *Native Title Newsletter* 5/2002 noted the withdrawal by the Queensland government from six consent determinations in the Torres Strait. The Erubam Le (the applicants) took

matters to the full Federal Court for separate determination as to the legal effect of the establishment of certain public works by or on behalf of, and on land owned by, the Erub Island Council under a Deed of Grant in Trust (DOGIT).

The Court held that the Island Council is a statutory authority under the NTA because it was established by a specific Act of incorporation, rather than a more general Act such as the *Aboriginal Councils and Associations Act 1976* (Cth). The parties had agreed that the works in question were valid public works, although their validity may have been arguable.

The Court found that works constructed prior to 1996 were previous exclusive possession acts (PEPAs), under s23B(7), which specifically includes public works. PEPAs are deemed to extinguish native title. The Court held that the exception in favour of grants or vesting for the benefit of Aboriginal and Torres Strait Islander peoples (s23D) did not apply because the creation of a public work is not a grant or vesting.

Works constructed after December 1996 did not extinguish native title. Although the Court found that the DOGIT itself was a valid past act, it contained no specific reservation to authorise the later works (s15(1)(b)).

The Court considered whether s47A applied to enable the courts to disregard certain extinguishing acts for the purpose of native title. The Court determined that the grant of the DOGIT fell squarely within the provision. However, like their conclusion with respect to s23D, the Court found that public works are not a grant or a vesting, and nor are they the creation of an interest. The pre 1996 works did not fall within s47A and their extinguishing effect remains.

The Court alluded to the fact that the extinguishing effect in this case may come from the NTA and not from the common law. The NTA provides for compensation to be payable in such circumstances (s23J). The compensation question was not addressed.

The applicants have sought leave to appeal.

The Combined 13th and 14th Periodic Report of the Government of Australia under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination.

A Summary of Australia's Report

By Serica Mackay

Australia ratified the Convention on the Elimination of All Forms of Racial Discrimination (hereafter 'CERD' or 'the Convention') on 30 Sept 1975 and implements it primarily through the *Racial Discrimination Act 1975* (Cth).

Countries that have ratified the Convention are obliged to submit comprehensive reports to CERD every four years and brief updating reports every two years regarding their implementation of and compliance with the Convention. These reports are considered by the CERD Committee and 'concluding observations' – which include positive comments as well as concerns and recommendations – are provided to the country.

The Report, submitted to both the United Nations and Federal Parliament in late November 2003 covers the period since the last reporting period, which ended in June 1998 and addresses issues raised by the CERD Committee during its consideration of Australia's 10th, 11th and 12th Reports.

The Report begins by noting the increasing number of consensual agreements and the simultaneous move away from litigation as a means of recognising native title. In documenting the outcomes that the move towards agreement making has delivered for Indigenous people, the Report contrasts the number of determinations of native title following the 1998 amendments to the *Native Title Act* (43 as at 30 June 2002) with the number of determinations prior to its enactment (five, including *Mabo*). However, it is interesting to note the statement implies that the increase in determinations is a result of the 1998 Amendments and underestimates the time involved in suc-

cessfully resolving native title claims through litigation, mediation or settlement.

After emphasising these seemingly positive developments in native title, the Report goes on to address the CERD criticisms regarding the 1998 amendments to the *NTA* and the effective participation of Indigenous people in decisions that affect their land rights. The Report focuses on the Parliamentary Joint Committee – asked in 1999 to report on Australia’s obligations under CERD and the amended *NTA* – and their findings that “the amended *Native Title Act* is consistent with Australia’s obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*”. The Federal Government, both at the time of the initial concerns and in the present Report, argue that the amendments maintain “an appropriate balance between the rights of native title holders and the rights of others” (Report, p27). Further highlighting the tension between international and domestic law, the Report quotes from the PJC Report finding that “national institutions are best placed ... to find a balance between a range of competing interests” (PJC Report, p9).

In response to the CERD Committee’s concern that Indigenous people are not effectively participating in decisions that affect their rights, the Report quotes from the Parliamentary Joint Committee on Native Title’s findings that political rights in international instruments do not give rise to a right to participate in political processes in a *specific* fashion, it is only a general right. The Report also points to ILUA provisions as the means through which Indigenous people have a

‘seat at the table’ in relation to future developments and negotiations.

Briefly, the role of the Federal Government is described as ‘significant’, noting the \$86 million increase in funding for the native title system to “enhance its efficient operation”. Details of the Federal and State Government’s role in opposing native title claims are not mentioned nor are any details as to where the \$86 million went. In fact, the 2001 Native Title Report by the Aboriginal and Torres Strait Islander Commissioner found that most of the \$86 million went to the Attorney General, the NNTT, the Federal Court and away from the NTRB’s – whose primary role it is to protect native title.

In summary, the Report defends the state of native title in a fairly partial manner. The criticisms and concerns of the CERD Committee are either not explored in any detail or are justified on the basis that they provide ‘certainty’ (the fact that this comes at the cost of Indigenous rights seems to be the whole point of CERD concerns but this is not addressed). There are no formal structures in international law that can force Australia to comply with the recommendations of the CERD Committee. However, given the right political climate, the findings of the Committee have the potential to influence government policy and legislation in an informal way. Unfortunately, the Report indicates the reluctance of the current Federal Government to be swayed by international concerns, even where those concerns are legitimate, and its determination to continue with its policies regardless of international disapproval.

NATIVE TITLE IN THE NEWS

New South Wales

A Wiradjuri traditional owner and Police came into conflict when Police extinguished a fire at a protest camp near Lake Cowal. According to Mr 'Chappie' Williams, it was a sacred fire and he was asserting his native title rights to practice his religion on the land. A representative of the Rural Fire Ser-

vice stated that the fire was in breach of regulations and had to be extinguished. *West Wyalong*, pg 3. 07 November 2003. Wiradjuri claim: NC02/3, N6002/02.

Bega Valley Shire Council was recently awarded 'Council of the Year' as a result of their Memorandum of Understanding with

the local Indigenous people. The award was accepted by Mayor David Hede, councils corporate and community services director Leanne Barnes and council's Aboriginal community development officer, Kerry Avery. Ms Avery said the council had been commended on the fact that the Memorandum was a 'living document' which was to be reviewed and changed regularly. The council, the shire's three local Aboriginal land councils and native title holders signed the memorandum in June 2001. *News Weekly (Merimbula)*, pg 2. 12 November 2003.

In a historic vote, Newcastle City Council in NSW became the first local government authority in Australia to formally recognise the dispossession of Aboriginal peoples. The council voted to adopt an official statement acknowledging the continuing occupation of the Newcastle area by Awabakal and Worimi peoples to be read at council meetings and all major civic events. The council stated its decision to acknowledge the continuing relationship of Indigenous peoples to their land despite dispossession reflects an ongoing commitment to reconciliation. *Koori Mail* pg 25. 19 November 2003.

The Twofold Bay Indigenous group has recently lodged a native title claim at Eden over New South Wales coastal waters. The National Native Title Tribunal has written to over 1,500 people and organisations, including commercial fishermen and women, charter boat licence holders and others with commercial interests, informing them of the claim. Any person or group who has an interest that will be affected, has until 02 March 04 to apply to the Federal Court. *Bega District News*, pg 11. 05 December 2003. Twofold Bay claim: NC03/1, N6001/03.

Northern Territory

Aboriginal traditional owners have signed a landmark agreement handing them a stake in a Northern Territory pearl farming operation. The four-year agreement, the first seas

only native title pearling agreement in the territory, was signed with the company Broome Pearls during a ceremony on Croker Island. The agreement follows the 2001 High Court decision which upheld the existence of native title rights over the sea and seabed in the Croker Island claim area. It clears the way for the pearling company to establish pearl farming operations free of native title concerns, and recognises traditional owners' rights to ensure the environment and sacred sites are protected. *Barrier Daily Truth (Broken Hill)*, pg 9. 19 November 2003. Croker Island claim: DC94/6, DG6001/96.

A central Australian Aboriginal group has recently signed an Indigenous land use agreement (ILUA) with Gold explorers in the region. This agreement is the 100th ILUA registered with the National Native Title Tribunal (NNTT). The agreement between Newmont Gold Exploration, Normandy NFM and the Central Land Council allows for exploration and mining in the Northern Territory, in the north-west of Barrow Creek. This agreement will enable native title claimants to settle land use issues with developers and governments without court action. *National Indigenous Times*, pg 13. 26 November 2003. Barrow Creek ILUA: DI2003/09.

Queensland

An Indigenous Land Use Agreement (ILUA) has been signed by the Ewamian people and the QLD State government over the township reserves of Georgetown, Einasleigh, Forsyth and Mt Surprise. The agreement signed is the first of its kind in Australia for addressing native title over a number of towns with a shire. Etheridge Shire Council assisted in the process, which Mayor John Smith described as very positive. Cr Smith said the ILUA provides ownership certainty for council infrastructure and removes obstacles to land purchases within town reserves. The Ewamian People initiated discussions to support local development opportunities and to foster working

relationships with Etheridge Shire Council while improving access to traditional lands. Part of the State Government's commitments under the agreement is the creation of reserves for Aboriginal and cultural purposes in Mt Surprise, Einasleigh and Forsayth. *North Queensland Register*, pg 3. 06 November 2003. Ewamian claim: QI2003/048

The Gangulu people and Anglo Coal signed an agreement recently over the management of Aboriginal cultural heritage areas at Anglo Coals proposed mining sites. The agreement followed months of negotiations between the Gangulu people, the traditional owners of the lower Dawson and Callide Valleys and the mining company. The agreement will ensure the Gangulu people's cultural heritage will be managed in culturally appropriate ways in areas including exploration, mine development, mitigation and post-construction. *Central Telegraph (Biloela)*, pg 5. 07 November 2003.

A dispute has emerged between the Queensland Parks and Wildlife Service (QPWS) and Fraser Island Indigenous groups over new access permits to Fraser Island. The Dulungbara, Ngulungbara and the majority of the Batchala people have authorised the sale of Fraser Island access passes at half the price of the QPWS. Elder John Jones sees the move as part of his groups long-term plan to put the island under the full management. *Gympie Times* pg 3. 18 November 2003.

The Indigenous Land Corporation last week handed back Hillgrove station on the Bruce Highway to its traditional Gooreng Gooreng and Gurang owners. The handover occurred with a title ceremony and the formal signing of the grant certificate by Gilarjil land development corporation chairperson Colin Johnson, elders and directors on behalf of the traditional owners. *Gladstone Observer*, pg 2. 26 November 2003.

The Queensland Government claims to have cleared the backlog of mining exploration permits in the state, although hundreds are still to be processed. Permits for mining exploration were frozen after the High Court's Wik decision in 1996, which found native title was not extinguished by leasehold land. Mines Minister Stephen Robertson said the Government, Indigenous groups and the mining industry needed to co-operate to get exploration moving. More than 200 applications were approved in the past six months and 106 in the six months prior to that, with more than 300 exploration permits to still be processed. *Courier Mail*, pg 31. 26 November 2003.

The Kauareg people are the traditional owners of the southern Torres Strait Islands, and hold native title over seven. The region is slowly moving towards self-government. Some Kaurareg people are unhappy with what they say are moves to declare Torres Strait autonomy over their land. A newly formed group called the Cape York Boundary Interim Committee (CYBIC) also want a boundary change to make the islands part of Cape York. Kaurareg people spokesperson Isaac Savage said Aboriginal traditional owners should not be represented by Islander people. *Townsville Bulletin*, pg 36. 20 December 2003.

Six Indigenous land use agreements have recently been signed, giving the go-ahead for dozens of mineral exploration permits to commence in areas west of Townsville. Four of the agreements, the Gugu Badhun, Waanyi, Kangoulu and Kangoulu no. 2, were developed under the government's statewide Indigenous land use agreements model. *Townsville Bulletin*, pg 10. 24 December 2003. Gugu Badhun People QI2002/56, Waanyi People QI2003/62, Kangoulu People QI2004/03 and Kangoulu People claim no. 2 QI2004/04.

South Australia

Elders from the Mirning people Indigenous group are lodging a native title claim over the coast of the Great Australian Bight and the Nullarbor Plain. A meeting was held by the Aboriginal Legal Rights Movement to update the group on the progress of the claim. The Mirning claim is one of 23 claims across the state. *West Coast Sentinel (Ceduna)*, pg 2. 04 December 2003. Mirning claim: WC01/1 W6001/01.

26 Aboriginal communities in South Australia have come together to negotiate, rather than litigate native title agreements with the state's mining, farming and fishing industries. Aboriginal Legal Rights Movement executive officer Parry Agius said yesterday, the co-operation between communities had led to the first negotiated agreements in Australia for exploitative access to Aboriginal lands. *Weekend Australian*, pg 10. 06 December 2003.

The Antakarinja and Arabunna people have signed history-making agreements with the minerals exploration industry, becoming the first groups in South Australia to strike deals under the statewide Indigenous Land Use Agreement (ILUA) program. The other parties to the agreement were the South Australian Chamber of Mines and Energy, the South Australian Government and Aboriginal Legal Rights Movement (ALRM). ALRM executive officer Parry Agius, said the agreements were historic and would pave the way for similar agreements with other native title claimants. *Koori Mail*, pg 6. 17 December 2003. Antakarinja claim: SI2003/007 & Arabunna claim: SI2003/008.

The Kurna Aboriginal community has signed a Unity Memorandum of Agreement with the cities of Holdfast Bay, Marion, Ondaporina and the District Council of Yankalilla. Minister for Aboriginal Affairs and Reconciliation, Terry Roberts announced the signing and said it was a landmark occasion for all involved. The Department of Ab-

original Affairs and Reconciliation will continue to provide support to establish the structures and processes. *Times (Victor Harbour)*, pg 10. 13 November 2003.

Victoria

Native title claims lodged in the Bendigo region are now in mediation. There are about five claims which cover an area from Charlton in the north, Daylesford in the south, Bendigo to the east and St Arnaud to the west. However, it is expected that all the claims concerning the area would eventually be brought under the one administration. At present, other groups party to the claim include grazing leaseholders, apiarists and local and State government. *Hamilton Spectator*, pg 17. 25 December 2003. Gourditch-mara VC99/7, VG6004/98. *Bendigo Advertiser*, pg 6. 15 November 2003. Dja Dja Wurung claim: VC00/1, V6001/00.

ATSIC Victoria has appointed seven traditional owners as new directors of the Native Title Services Victoria (NTSV). NTSV was established in August this year to replace the former native title representative body for Victoria, the Mirimbiak Nations Aboriginal Corporation. *Latrobe Valley Express*, pg 5.

The Federal government is supporting Victoria's Wotjobaluk people's in-principle native title agreement. Federal Attorney-General Philip Ruddock signalled the government's wish to see a negotiated recognition of native title rights for the Wotjobaluk people. The Wotjobaluk people's barrister, Campbell Thomson, said he was very pleased by the announcement which reflected popular support for the agreement over land in the Wimmera. The agreement has still to be approved by key respondents, including farmers, sporting shooters and beekeepers. These respondents however, have indicated they will follow the Commonwealth's lead. *The Age*, pg 7. 21 November 2003. Wotjobaluk claim: VC99/5, V6005/99.

Mediation between the State government and Gournditch-mara native title claimant group will continue until the matter returns to the Federal Court next year. Justice Tony North said at a court directions hearing in Melbourne recently, that he was satisfied with the progress being made on the claim and adjourned the matter until 17 March 04. *Hamilton Spectator*, pg 17. 25 December 2003. Gournditch-mara claim: VC99/7, VG6004/98.

Western Australia

The Office of Native Title has been questioned by the Goldfields Land and Sea Council (GLSC) in south-east Western Australia, claiming it is hindering the settlement of claims in the region. The Kimberley Land Council is also concerned about the State's approach. Brian Wyatt, executive director of GLSC, said the Office of Native Title has for two years failed to attend meetings and respond to correspondence in regards to the Wongatha claim: WC99/1, WAG6005/98. *ABC Online*. 17 December 2003.

The Australian Seafood Industry Council and Aboriginal and Torres Strait Islander Commission have recently agreed to establish a working group for native title sea rights. The working group is a result of a conference in Fremantle, convened by the NNTT. The group aims to define national Indigenous fishing rights from which local agreements between commercial fisherman and traditional owners could be negotiated. *Burnie Advocate*, pg 30. 05 November 2003.

WA's mining industry, native title claimants and the State Government have successfully reached agreement on an Aboriginal heritage protection template that will speed up access to land by explorers in the Goldfields region. Deputy Premier Eric Ripper, who is responsible for native title, said the agreement struck a balance between the interests of Indigenous people in protecting their heritage and the economic development of the State.

Industry and Indigenous groups were briefed on the details of the agreement in Kalgoorlie-Boulder last week. The agreement between the GLSC, the State government, the Chamber of Minerals and Energy and AMEC was expected to be followed by similar agreements in the Pilbara, mid-west and south-west with negotiations continuing in the central desert and Kimberley regions. *Golden Mail*, pg 11. 07 November 03.

The Goldfields Land and Sea Council believes the findings of the Productivity Commission Report underlines why funding for native title representative bodies must be increased. GLSC director Brian Wyatt, said in a press release last week that the report documented the "marked and widespread disadvantage suffered by Aboriginal people". Mr Wyatt also stated that Indigenous people's quest for native title is at the frontline of overcoming disadvantage. *Golden Mail (Kalgoorlie)*, pg 9. 21 November 2003.

After the signing of an agreement by the WA government, traditional lands will be returned to an Aboriginal community in Western Australia's Kimberley region. The Nyangumarta people will control an eight hectare reserve at Wallal, about 350 km south of Broome on a 99 year lease. The 100 strong group hope to build homes and live on the land, in areas spread throughout Broome, Port Hedland and two other Indigenous communities. Chris Cottier from the Department of Indigenous Affairs said the Indigenous claimants also wish to establish a tourism venture. *ABC News Online*. 02 December 2003.

The KLC is facing a \$2.6 million shortfall in funding for the financial year, according to KLC executive director Wayne Bergmann. The KLC presented a proposed budget to its funding body, the Aboriginal and Torres Strait Islander Services, to the amount of \$6.6 million for the 2003-2004 financial year. ATSIIS offered the KLC \$4 million. Five of the seventeen native title claims currently in litigation across the country are run by the

Kimberley Land Council. *Kimberley Echo*, pg 5. 04 December 2003.

Final evidence in the first Goldfields native title claim began in the Federal Court in Perth recently. The evidence for the Wongatha claim which covers about 160,000sq km in the northern Goldfields, was expected to be finished in September, however the cross-examination of some anthropologists took longer than expected. Justice Kevin Lindren set down time to hear the final evidence from expert witnesses. Final submissions will be made to the court early this year. *Kalgoorlie Miner*, pg 3. 08 December 2003. Wongatha claim: WC99/1, WAG6005/98.

The Yulga Jinna Aboriginal Corporation recently celebrated the official return of some of their land at Mulgul Station. Located north-west of Meekatharra, Mulgul Station is in the heartland of the group's traditional country. Chairperson of the ILC, Ms Shirley McPherson said it was always a privilege as

ILC chairperson to be able to take part in handing back people some of their country. Spokesperson for the Yulga Jinna Corporation, Tim Riley, said the ceremony was a great day for everyone to come together and celebrate the return of their land. *Yamatji News (Geraldton)*, pg 4. 17 December 2003. Nharnuwangga Wajarri & Ngarlawangga claim: WC99/13, WAG72-75/98.

Western Australia's longest-running native title claim was settled last week. The Miriuwung-Gajerrong people were granted exclusive rights to some tracts of the east Kimberley region and shared rights to others. The full Federal Court convened in Kununurra to ratify the determination. All parties including the WA and Federal governments agreed over all lands and waters within the 8000 sq km claim. The Miriuwung Gajerrong people were granted full native title rights over Lacrosse and Kanggurru islands, Glen Hill Station and Hagan Island in Lake Argyle. *Koori Mail*, pg 3. 17 December 2003. Miriuwung-Gajerrong claim: WC94/6, WG6003/98

APPLICATIONS LODGED

The National Native Title Tribunal posts summaries of applications that are lodged with them, on their website, <www.nntt.gov.au>. The following lodgements are listed for November/December.

Claimant Applications

Date Filed	Application Name	State/Territory	Tribunal File No.	Federal Court File No.
12/11/03	Jagera People #2	QLD	QC03/15	Q6014/03
28/11/03	Single Noongar Claim (Area 2)	WA	WC03/7	W6012/03
11/12/03	Sassie	QLD	QC03/16	Q6015/03
17/12/03	Glen Helen	NT	DC03/7	D6007/03
18/12/03	Glenda & Rebecca Chalker	NSW	NC03/2	N6007/03

Non-claimant Applications

11/11/03	Kriann Investments Pty Limited	NSW	NN03/5	N6006/03
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REGISTRATION TEST DECISIONS

The National Native Title Tribunal posts summaries of registration test decisions at <www.nntt.gov.au>. The following decisions are listed for November to December. If an application has not been accepted, this does not mean that native title does not exist. The applicants may still pursue the application for the determination of native title. If an application does not pass the registration test, the applicant may seek a review of the decision in the Federal Court or re-submit the application.

Decision Date	Application Name	State/Territory	Tribunal File No.	Federal Court File No.	Decision
04/11/03	Ayapathu and Olkola Peoples	QLD	QC03/12	Q6012/03	Accepted
05/11/03	Kudjala People #6	QLD	QC03/11	Q6011/03	Accepted
14/11/03	Molly Hill	NT	DC03/5	D6005/03	Not accepted
28/11/03	Deepwater	NT	DC03/6-1	D6006/03	Accepted
01/12/03	Olkola/Strathleven, King Junction	QLD	QC03/14	Q6013/03	Accepted
02/12/03	Jagera People #2	QLD	QC03/15	Q6014/03	Accepted

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
07/01/04	QC99/5	Barunggam People
07/01/04	QC99/4	Western Wakka Wakka People
07/01/04	NN03/4	Minister for Natural Resources for NSW
04/02/04	QC98/4	Badjiri People
04/02/04	QC97/56	Budjiti People
04/02/04	QC03/5	Strathgordon Claim
04/02/04	QC03/4	Mitakoodi People #3
04/02/04	WC03/3	Yindjibarndi #1
04/02/04	QC03/7	Kalkadoon People #3

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

RECENT ADDITIONS TO THE AIATSIS COLLECTION CATALOGUES

The following selected items relating to Native Title have just become available on Mura, the AIATSIS on-line catalogue. Please

check Mura for more information on each entry, including annotations.

Languages and land

Personal Author: Henderson, John

Added Author: Nash, David G.

Title: *Language and Native Title*

Publication information: Canberra. Aboriginal Studies Press. 2002.

Personal Author: Hoogeraad, Robert

Added Author: Thornley, Brenda.

Title: *Aboriginal languages of Central Australia and the places where they are spoken.*

Publication information: Alice Springs, N.T. : Jukurrpa Books, 2003.

Archaeology

Principal Author: Tibbett, Kevin Edward

Title: Archaeological analysis of stone axe exchange networks in the Lake Eyre Basin during the mid- to late Holocene.

In *Australian Archaeology* no.55 (Dec. 2002), p.22-29

Principal Author: O'Connor, Sue

Title: Carpenter's Gap Rockshelter 1: 40,000 years of Aboriginal occupation in the Napier Ranges, Kimberley, WA..

In *Australian Archaeology* no.40 (June 1995), p.58-59

Principal Author: Morwood, Michael John, 1950-

Added Author: L'Oste-Brown, Scott

Title: Excavations at Hann River 1, Central Cape York Peninsula.

In *Australian Archaeology* no.40 (June 1995), p.21-28

Principal Author: Bednarik, Robert G.

Title: Pilbara petroglyphs dated.

In *Rock Art Research* Vol.18, no.1 (May 2001), p.55-57

History – exploration and accounts

Personal Author: Kisch, Egon Erwin, 1885-1948

Title: *Australian landfall.* / translated from the German by John Fisher & Irene and Kevin Fitzgerald.

John Fisher & Irene and Kevin Fitzgerald.

Publication information: London: Martin Secker & Warburg 1937

Added Author: Webby, Elizabeth.

Title: *Colonial voices : letters, diaries, journalism and other accounts of nineteenth century Australia.*

Publication information: St. Lucia, Qld. :

University of Queensland Press, 1989.

Personal Author: Crawford, Patricia, 1941-

Added Author: Crawford, I. M. (Ian M.), 1935-

Title: *Contested country : a history of the North-cliffe area, Western Australia.*

Publication information: Nedlands, W.A. : University of Western Australia Press, 2003.

Personal Author: Walker, James Backhouse, 1841-1899.

Added Author: Royal Society of Tasmania.

Title: *Early Tasmania : papers read before the Royal Society of Tasmania during the years 1888 to 1899.*

Publication information: [Hobart] Tas. : John Vail, Govt. Pr., 1902.

Title: *Grong Grong Cemetery and Family Recollections.*

In [Grong Grong, N.S.W.?] Glenn, Margaret , 2003

Publication information: Glenn, Margaret , 2003.

Personal Author: McLaren, Jack

Title: *My crowded solitude : the author's life among the Aborigines of farthest north Australia.*

Publication information: London.:T. Fisher Unwin 1926

Principal Author: Plomley, N. J. B. (Norman James Brian)

Title: Thomas Bock's portraits of the Tasmanian Aborigines.

In *Queen Victoria Museum -- Records*, n.s. no.18, 1965; 24p. - pls.

Personal Author: Cunningham, P. (Peter), 1789-1864.

Added Author: Macmillan, David S. (David Stirling)

Title: *Two years in New South Wales.* / ed. by David S. Macmillan.

Publication information: Sydney : Angus & Robertson in association with the Royal Australian Historical Society, 1966.

Land rights: case studies

Principal Author: Wilson, Margaret

Title: Constitutional recognition of the Treaty of Waitangi : myth or reality.
In *Justice and identity : antipodean practices* / edited by Margaret Wilson and Anna Yeatman
Publication information: St Leonards, N.S.W.:Allen & Unwin , 1995 p.1-17

Title: A history of Aborigines of Fraser Island: impact following the settlement of the Wide Bay district
In *Moonbi 105* (20 July 2003), p. [4],
NOTE: insert A Fraser Island Defenders Organization Educational Background, No. 13, July 2003

Principal Author: Attwood, Bain
Title: Mabo, Australia and the end of history.
In *The age of Mabo : history, Aborigines and Australia* / edited by Bain Attwood
Publication information: St. Leonards, N.S.W.:Allen & Unwin , 1996

National Native Title Tribunal

Corporate Author: Australia. Parliament.
Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund
Title: Effectiveness of the National Native Title Tribunal in fulfilment of the Committee's duties pursuant to subparagraph 206 (d) (i) of the *Native Title Act 1993*.
Publication information: Canberra : Commonwealth of Australia, c2003

Native Title – Anthropology and other disciplines

Personal Author: Sutton, Peter, 1946-
Title: *Native title in Australia : an ethnographic perspective*
Publication information: Cambridge Port Melbourne : Cambridge University Press, 2003.

Principal Author: Reynolds, Henry, 1938-
Title: The Mabo judgement in the light of Imperial land Policy.
In *Indigenous peoples, issues for the nineties* / thematic issue editor, Vanessa Lesnie.
Publication information: Kensington, NSW : Faculty of Law, University of New South Wales, 1993, p. 27-44

Legal issues

Corporate Author: Northern Territory.
Committee of Inquiry into Aboriginal Customary Law
Title: Report on Aboriginal customary law / report of the
Committee of Inquiry into Aboriginal Customary Law.
Publication information: Darwin : Northern Territory Law Reform Committee, [2003]

Principal Author: Boge, Christopher J. F.
Title: *Justice for all? : native title in the legal system* / edited by Christopher J F Boge.
Publication information: Brisbane :Lawyer Books Publications, 2001.

Principal Author: McIntyre, Greg
Title: Aboriginal title : equal rights and racial Discrimination.
In *Indigenous peoples, issues for the nineties* / thematic issue editor, Vanessa Lesnie
Publication information: Kensington, NSW : Faculty of Law, University of New South Wales, 1993, p. 57-69.

Indexes, directories and guides:

Personal Author: Brooks, David, 1950-
Added Author: Dobson, Shawn.
Title: *A town like Mparntwe : a guide to the Dreaming tracks and sites of Alice Springs* / by David Brooks for
Mparntwe people ; illustrations by Shawn Dobson.
Publication information: Alice Springs, N.T. : Jukurrpa Books, 2003, c1991.

In addition to the items listed above, the National Native Title Tribunal has lodged the following three research reports of SA material with the AIATSIS Library: *Arabunna, North Lake Torrens, and Central West South Australia*.

A selection of indices of births, deaths and marriages has recently been catalogued. Death records are held both from 1930-1949 in the A.C.T. and from 1945-1959 in Queensland as well as marriage records from 1917-1937 from South Australia. Also, electronic links to Marine births, deaths and marriages from 1853-1942 from Victoria, the Victorian Pioneers Index from 1837-1888, and the Tasmanian Pioneers Index from 1803-1899

are now available through the AIATSIS Mura catalogue.
In addition to the library items, audiovisual collections of interest to Native Title include the following oral history collections of audio tapes:

GILL_N01 Interviews with Murphy Jap-panangka from McLaren Creek Station, Kurundi Station, Hatches Creek, and Tennant Creek area, NT. 2000-2001. ca. 12 hours;

TAYLOR-DAVENPORT_D01 Oral histories of the Great Sandy Desert and East Pilbara, ca. 2000. ca 15 hours.

STRACHAN-CAVADINI_03 Production material from the film, Two Laws, from Borrooloola, NT and Yarrabah area, Qld. 1979-1980. ca 23 hours.

Also, the tapes to the conference, "Native Title in the New Millennium" (April 2000) are available in the archive.

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. 25 *Native Title and Agreement Making in the Mining Industry: Focusing on Outcomes for Indigenous Peoples*
Ciaran O'Faircheallaigh
- No. 24 *Beyond Yorta Yorta*
John Basten QC
- No. 23 *'Indigenous Pueblo Culture and Tradition in the Justice System: Maintaining Indigenous Language, Thought and Law in Judicial review'*
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Peter Veth
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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
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David Campbell
- No. 7 *The Content of Native Title: Questions for the Miriuwung Gajerrong Appeal*
Gary D Meyers
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Benjamin Smith
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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 Structures of the Registration Test*
Jocelyn Grace
- No. 1 *The Contractual Status of Indigenous Land Use Agreements*
Lee Godden and Shaunnagh Dorsett

MONOGRAPHS

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

Treaty: Let's get it right! Aboriginal Studies Press, Canberra, ACT, 2003.

Through the Smoky Mirror: History and Native Title edited by Mandy Paul and Geoffrey Gray, Aboriginal Studies Press, Canberra, ACT, 2003.

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

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

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

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

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

ABOUT THE NATIVE TITLE RESEARCH UNIT

AIATSIS acknowledges the funding support of the ATSIC Native Title and Land Rights Centre. For previous editions of this Newsletter click on the native title research unit link at <www.aiatsis.gov.au>

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