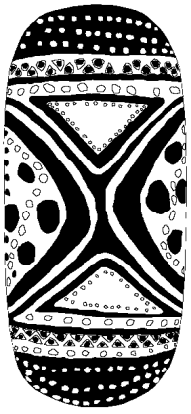

A I A T S I S

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

NATIVE TITLE NEWSLETTER

September and October 2000

No. 5/2000

The Native Title Newsletter is published on a bi-monthly basis. The newsletter includes a summary of native title as reported in the press. Although the summary canvasses newspapers 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.

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List of abbreviations

Note: Where an item also appears in other newspapers, etc, an asterisk (*) will be used. People are invited to contact the Native Title Research Unit at AIATSIS if they want the additional references. The NTRU will try to provide people with copies of recent newspaper articles upon request.

Ad = Advertiser (SA)
Age = The Age
Aus = Australian
CM = Courier Mail (QLD)
CP = Cairns Post
CT = Canberra Times
DT = Daily Telegraph
FinR = Financial Review
HS = Herald Sun (VIC)
KM = Kalgoorlie Miner
ILUA = Indigenous Land Use Agreement
IM = Illawarra Mercury
LE = Launceston Examiner
LR News = Land Rights News
LRQ = Land Rights Queensland
Mer = Hobart Mercury
NNTT = National Native Title Tribunal
NTA = *Native Title Act 1993*
NTN = Native Title News (State editions)
NTRB = Native Title Representative Body
SC = Sunshine Coast Daily
SMH = Sydney Morning Herald
TelM = Telegraph Mirror (NSW)
WA = West Australian
WAus = Weekend Australian

NEWS FROM THE NATIVE TITLE RESEARCH UNIT

The Native Title Research Unit is collaborating with Greg McIntyre to convene the second Native Title Representative Bodies Legal Conference, following the inaugural conference held in Melbourne from 16-20 April 2000. This conference, 'The Past and Future of Land Rights and Native Title' is intended to commemorate the 20th anniversary of the national conference 'Land rights and the future of Australian race relations' organised by the James Cook University Students Union and the Townsville Treaty Committee in Townsville on 28-30 August 1981, out of which the *Mabo* case evolved. We are planning to hold the conference next year in Townsville in late August.

If you would like to be sent information about this conference subsequently send your request and contact details to the Native Title Research Unit at ntru@aiatsis.gov.au or 02 6246 1161.

Communal Native Title

Principles discussed at the Cape York Land Council's Seminar on 'The Legal Concept of Native Title' Cairns, 21-23 July 2000

In February and March 2001 the High Court will be hearing the appeals in the *Miriuwung Gajerrong* and *Croker Island* cases. They will be considering the threshhold questions of the source and content of native title as well as principles for extinguishment. In response to the apparent inconsistencies and misconceptions plaguing the courts' current approaches to the common law concept of native title, Noel Pearson and Peace Decle are undertaking a research project for Cape York Land Council to develop a coherent view of the legal concept of native title.

The theory being developed was presented for discussion at a workshop held in Cairns in July this year. In this brief commentary, we hope to distribute these ideas among claimants, Native Title Representative Bodies, legal practitioners and others. A fuller discussion of the principles is currently being written and will be published in due course.

The Principles of communal native title

Subject to the benefit of all available inferences and evidentiary aids:

1. The establishment of native title claims in the common law courts requires that there was an organised society[1] in occupation[2] of the claimed land (as a matter of

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[1] The requirement of an 'organised society' is set out in Mahoney J's four elements in *Hamlet of Baker Lake v Minister for of Indian Affairs and Northern Developmen*t (1979) 107 DLR(3d) 513 at 542 ('*Baker Lake*'), referred to by Toohey J in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 186-187 (*Mabo (No 2)).* Toohey J had the following to say about the requirements involved in establishing the existence of an organised society at 187:

> '...an inquiry into the kind of society from which rights and duties emanate is irrelevant to the existence of title, because it is inconceivable that indigenous inhabitants in occupation of land did <u>not</u> have a system by which land was utilized in a way determined by that society. There must, of course, be a society sufficiently organized to create and sustain rights and duties, but there is no separate requirement to prove the kind of society, beyond *proof that presence on land was part of a functioning system*.' (original emphasis underlined, emphasis added).

[2] Toohey J stated in *Mabo (No 2)* at 188:

> 'It is the fact of presence of indigenous inhabitants on acquired land which precludes proprietary title in the Crown and which excites the need for protection of rights...It is presence amounting to occupancy which is the foundation of the title and which attracts protection, and it is that which must be proved to establish title. Thus traditional title is rooted in physical presence. *That the use of the land was meaningful must be proved but it is to be understood from the point of view of the members of the society*' (emphasis added).

The need to take into account the viewpoint of the indigenous people in determining whether they were in occupation of the relevant land was reiterated by Lamer CJC in *Delgamuukw v British Columbia* 153 DLR(4 th) 192, 1997 (*Delgamuukw (SCC)):*

> At paragraph 128: 'Occupancy is determined by reference to the activities that have taken place on the land and the uses to which the land has been put by the particular group'.
>
> At paragraph 147: '...the source of aboriginal title appears to be grounded both in the common law and in the aboriginal perspective on land; the latter includes, but is not limited to, their systems of law. It follows that <u>both</u> should be taken into account in establishing the proof of occupancy' (emphasis added).

fact) at the time of annexation. (This is the 'ancestral' community of native titleholders).

2. At the time of annexation[3], the occupants have to be in occupation in accordance with their membership of the organised society[4] under Aboriginal law and custom (ie. they are holders of core and contingent rights[5] and interests in the land).

3. The original occupants are the ancestral community of native titleholders. The contemporary claimants must establish the descent of native title[6] from this 'ancestral' community ie. they must prove their connection with the land under Aboriginal law and custom which establishes their right to native title.

4. The community of native titleholders hold communal native title ('communal native title' as distinct from 'native title rights and interests' which may be carved out of[7] the communal native title or which are pendant upon[8] or parasitic upon[9] the communal title).

5. The communal native title is an exclusive title, held by the community of native titleholders[10] 'as against the world'.

At paragraph 148: 'I also held [in *Van der Peet*] that the aboriginal perspective on the occupation of their lands can be gleaned, in part, but not exclusively, from their traditional laws, because those laws were elements of the practices, customs and traditions of aboriginal peoples...As a result if, at the time of sovereignty, an aboriginal society had laws in relation to land, those laws would be relevant to establishing the occupation of lands which are the subject of a claim to aboriginal title. Relevant laws might include, but are not limited to, a land tenure system or laws governing land use'.

[3] The date of annexation of a territory by the British is the appropriate time of reference for native title because native title could not exist before the arrival of the common law. Lamer CJC in *Delgamuukw v British Columbia* 153 DLR(4th) 192, 1997 stated at 254, '[b]ecause it does not make sense to speak of a burden on the underlying title before that title existed, *aboriginal title crystallized at the time sovereignty was asserted*' (emphasis added). Thus, it is occupation *at the time of sovereignty* that is the relevant investigation in establishing native title.

[4] 'Presence would be insufficient to establish title if it was coincidental only or truly random, having no connection with or meaning in relation to a society's economic, cultural or religious life': Toohey J in *(Mabo No 2)* at 188.

[5] This is Peter Sutton's model of Aboriginal land tenure, which may or may not be a valid or universally applicable model (Sutton, P., (forthcoming), *Kinds of Rights in Country: The Incidents of Aboriginal Native Title*).

[6] This is of course the point of Peter Sutton's publication *Native Title and the Descent of Rights* (1998, Perth: National Native Title Tribunal).

[7] Brennan J in *Mabo (No 2)* at 62.

[8] Beaumont and von Doussa J J in *Western Australia v Ward* (2000) 170 ALR 159 at paragraph 96 and 106.

[9] Lamer CJC in *Delgamuukw (SCC)* at 241.

[10] Toohey J in *Mabo (No 2)* stated at 189-90:

'Thirdly, it was said in *United States v Santa Fe Pacific Railroad Co:*

If it were established as a fact that the land in question were, or were included in, the ancestral home of the Walapais in the sense that they constituted definable territory occupied exclusively by the Walapais (as distinguished from lands wandered over by many tribes), then the Walapais had 'Indian title'. (Toohey J's emphasis)

This principle of exclusive occupancy is justified in so far as it precludes indiscriminate ranging over land but it is difficult to see the basis of the rule if it precludes title merely on the ground that more than one group utilizes land. Either each smaller group could be said to have title, comprising the right to shared use of land in accordance with traditional use; or traditional title vests in the larger 'society' comprising all rightful

6. The content of this communal native title 'as against the world' is a *sui generis* possession arising from the fact of occupation[11]. It is *sui generis* for the following reasons:

    1. It is inalienable.
    2. It is a communal title which has an internal dimension regulated by Aboriginal law and custom.
    3. It is subject to the valid exercise of Sovereign power.

7. The communal native title also has an 'internal dimension' – which differentially allocates rights and interests according to Aboriginal law and custom[12]. This internal dimension is <u>also cognisable to and enforceable</u> under the common law as rights and interests which are carved out of the communal title. It is the content of this internal dimension to which Brennan J is actually referring in his oft-quoted passage from *Mabo No.2*[13].

8. Today, evidence of Aboriginal law and custom therefore is primarily relevant in native title law in the following ways:

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occupiers. Moreover, *since occupancy is a question of fact, the 'society' in occupation need not correspond to the most significant cultural group among the indigenous people'* (emphasis added).

This means that native title claims, at least on mainland Australia, will be made by the most significant cultural group related to a given area of land *plus* other holders of rights and interests in that land which are recognised by Aboriginal law and custom, or they will be made by a number of significant cultural 'groups' whose rights and interests in that land are recognised by Aboriginal law and custom. So the 'community of native titleholders' does not necessarily correspond to a named cultural group, and on mainland Australia probably *never* completely corresponds with one. Rather it is *a common law definition* of that community of people who were in rightful occupation of land at the time of annexation and that contemporary community of people who are now entitled to succeed to the native title of that ancestral community. Note: there is debate in relation to this point. The interpretation set out here represents Noel Pearson's views.

[11] This is in accordance with the general common law rule that occupation gives rise to possession. Noel Pearson argues that much of the law that underpins Kent McNeil's 'possessory title' thesis actually applies to native title: see Lamer CJC's adoption of this law into the law of native title in *Delgamuukw (SCC)*:

> At paragraph 114 'That prior occupation, however, is relevant in two different ways, both of which illustrate the *sui generis* nature of aboriginal title. The first is *the physical fact of occupation, which derives from the common law principle that occupation is proof of possession in law*: see Kent McNeil, *Common Law Aboriginal Title*' (emphasis added).
>
> At paragraph 145 '*Under common law, the act of occupation or possession is sufficient to ground aboriginal title* and it is not necessary to prove that the land was a distinctive or integral part of the aboriginal society before the arrival of Europeans' (emphasis added).
>
> At paragraph 149 'However the aboriginal perspective must be taken into account alongside the perspective of the common law. *Professor McNeil has convincingly argued that at common law, the fact of physical occupation is proof of possession at law, which in turn will ground title to the land: Common Law Aboriginal Title*' (emphasis added).

[12] Depending upon its validity and whether it is a universally applicable model, Peter Sutton's core and contingent model of Aboriginal land tenure explains the differential internal allocation of rights and interests under Aboriginal law and custom (see: Sutton, P., (forthcoming), *Kinds of Rights in Country: The Incidents of Aboriginal Native Title*).

[13] 'Native title has its origins in and is given its content by the traditional laws and customs acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory': Brennan J in *Mabo (No 2)* at 58.

- Aboriginal law and custom will assist in the establishment of entitlement by showing that the current claimant group is connected to the land held by the original occupants at the time of annexation (ie. it will explain the descent of rights).
- Aboriginal law and custom will help identify the existence of the community of native title holders ie. 'the organised society'. (The primary task therefore is not to identify the optimum cultural grouping/s as much as to explain how the regional system of Aboriginal law and custom allocates to people, membership of a group which constitutes a 'community' or 'society' *for legal purposes*[14]. The task is certainly *not* to strive to prove the exclusive rights and interests of a cultural group or groupings under Aboriginal law and custom, because the common law accords exclusivity to the whole community of people who have rights and interests in the claimed land under Aboriginal law and custom.)
- Aboriginal law and custom will establish the relationship between the set or sub-set of the community of native title holders to the claimed land by contributing (along with evidence of actual use and practices) to the establishment of evidence of rightful occupation[15] of the land under claim[16]. Aboriginal law and custom defines the internal content of native title. It does not therefore define the content of communal native title held, as against the world, occupation does. Aboriginal law and custom defines the rights of the community of native titleholders *inter se*.

Noel Pearson
23 July 2000

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[14] There was disagreement in relation to this interpretation. The argument that the 'community' or 'society' of native titleholders is *a legal conclusion* is Noel Pearson's interpretation of Toohey J, a view not shared by everyone at the seminar.

[15] '...traditional title vests in the larger 'society' comprising all of the rightful occupiers': Toohey J in *Mabo (No 2)* at 190. 'That the use of land was meaningful must be proved but it is to be understood from the point of view of the members of the society': Toohey J in *Mabo (No 2)* at 188. See also passages from Lamer CJC in *Delgamuukw (SCC)* extracted at footnote 2.

[16] This is equivalent to the reference in the *Baker Lake* test that the 'organised society' establish their native title to a 'territory' (see Mahoney J in *Baker Lake* at 557-8).

NATIVE TITLE IN THE NEWS – JULY & AUGUST 2000

National

Federal Opposition Aboriginal Affairs spokesman Daryl Melham resigned from the Labor front bench in protest over the Federal ALP decision to support the Queensland alternative procedures legislation. *(Koori Mail, 6 September, p2)*

The National Native Title Tribunal's annual report, tabled in Federal Parliament, shows that during 1999-2000 almost half the number of native title claims made under the original Act have been combined with other claims or discontinued. The report also shows that 95 percent of claims now made meet the new registration test compared with only 51 percent under the original Act. *(Attorney General News Release, 26 October)*

New South Wales

The NNTT has advertised the Gundungurra native title application in an attempt to reach an out of court agreement. The application covers Crown land and inland waters in local government areas including Bathurst, Blayney, Blue Mountains, Boorowa, Camden, Campbelltown, Cowra, Crookwell, Evans, Goulburn, Greater Lithgow, Gunning, Liverpool, Mulwaree, Oberon, Penrith, Tallaganda, Wingecarribee and Wollondilly. People with interests in the land, including those who hold licences and permits to use it, are able to apply to the Federal Court to become parties to mediation proceedings. *(DT, 8 Sept, p20)**

A native title application involving land from Jervis Bay to Narooma and adjoining ocean to the 200 nautical mile limit has been lodged with the National Native Title Tribunal. The claim covers more than 51,000 square kilometres of land in the Eurobodalla, Shoalhaven and Tallaganda Shires. The Walbunja Elders Committee stated that land from Jervis Bay to Narooma had been a meeting place for South Coast Aboriginal people for centuries and that they wanted to exercise traditional fishing, hunting and gathering activities on their ancestral land. *(CT, 5 October, p3)*

Victoria

Victoria's Attorney General Rob Hulls announced the Government's intention to prefer negotiation and mediation when dealing with native title claims under the land rights policy approved by state cabinet. There are 49 outstanding native title claims in Victoria. Under the policy the Government

will provide information to claimants on land tenure issues when action is proposed that may impact on Crown land and native title. *(Age, 29 Sept, p4)*

A native title claim over Wilson's Promontory has received State Government support. Victorian Aboriginal Affairs Minister Keith Hamilton stated that the National Park would be jointly managed by local Aboriginal communities and the State Government and that public access would not be affected. *(HS, 18 October, p15)**

Queensland

The Gurang Land Council (Aboriginal Corporation) has certified an agreement between native title groups, the Queensland Government, the Mining Registrar, 21 miners and the Queensland Boulder Opal Association covering an area of approximately 97 hectares near Opalton in the Shire of Winton. The agreement has been advertised by the NNTT giving potential native title holders in the area, who have not authorised the agreement, 3 months to object to its registration. The agreement allows for the grant of new mining leases without going through the right to negotiate process. *(NNTT Media Release, 6 Sept)*

The National Native Title Tribunal has advertised nine applications for native title in Queensland. Interested parties have 3 months to apply to register as parties to the mediation.
The advertised applications are:

- Olkol & Bakanh Peoples' application over Strathgordon Station in the Cook Shire;
- Kaanju People's application over the former Batavia Downs Pastoral Holding in the Cook Shire;
- Kalpowar Holdings application over specific lots of land in the Cook Shire, including land formerly known as Birthday Plains Pastoral Holding, Kalpowar Pastoral Holdings, Jack Lakes Pastoral Holding and Lythe Pastoral Holdings.
- Indjilandji/Dithannoi People's application near Gunpowder in the local government area of Mt Isa;
- Tagalaka People's application over specific parcels of land in the Croydon Shire;
- Tableland Yidinji #1 & #2 application over specific parcels of land in the Atherton Tablelands, within the local government areas of Atherton, Cairns, Eacham and Mareeba;
- Darumbal People #2 application over parcels of state land, forestry national parks, reserves and pastoral lease land in the

Marlborough area, within the local government areas of Fitzroy and Livingstone;

- Kangoulo People's #2 application near Emerald over part of the Comet River and 36 parcels of land in the local government areas of Bauhinia, Broadsound and Emerald;
- Wanggumara People #3 application over Cooma Holdings in the local government area of Quilpie.

The applications do not cover any private freehold land. *(NNTT Media Release, 20 Sept)*

Nine islands off Cape York's north east coast have been returned to the traditional owners. Natural Resources Minister Rod Welford granted the Wuthathi People freehold title to the islands which were previously classed as unallocated state land and had been home to the Wuthathi People until the formation of the Lockhart River Mission in 1924. *(CM, 22 Sept, p8)**

The Wik People of far north Queensland have officially gained native title over 6,000 square kilometres of their traditional lands following a Federal Court ruling. The ruling ratified an agreement between the Wik and Wik-Way Peoples, the Queensland Government and other parties through mediation in the National Native Title Tribunal. In his orders Justice Drummond specified that the determination would 'confer possession, occupation, use and enjoyment' of the land on the native title holders. Their rights and responsibilities 'included to uphold, regulate, monitor and enforce' their customary laws. The second part of the Wik claim covering over 20,000 square kilometres and including many different land tenures, including Aboriginal Lease Land, DOGIT land, mining and pastoral leases and seas, is still under negotiation. *(SMH, 4 October, p5)**

South Australia

Aboriginal groups representing 23 of the 25 native title claimants in South Australia have agreed to be represented by the Aboriginal Legal Rights Movement Native Title Unit. Parry Agius, executive officer of the Native Title Unit, said that the Government and Aboriginal people had agreed to work out a 'mini-treaty' rather than face years of uncertain litigation. *(Koori Mail, 18 October, p29)**

A native title application by the Kaurna People covering 10,500 square kilometres from Yankalilla to the Clare Valley and including pockets of the Adelaide metropolitan area has been filed in the Federal Court. National

Native Title Tribunal State Manager Chris Uren stated that similar applications over metropolitan areas of Perth, Brisbane and Darwin did not effect the rights and interests of other citizens and that the law did not recognise native title on private freehold property. *(WA, 30 October, p30)**

Western Australia

The Federal Court began hearing the native title claim by the Rubibi community in Broome. The Rubibi community includes the Yawuru, Djugan and Goolarabooloo People. The claim covers 121 hectares of land near Broome and includes an important Aboriginal law ground where special ceremonies are carried out according to the Kimberley Land Council. A second claim for the same land has been lodged by the Leregon People and is being heard at the same time. *(WA, 5 October, p35)*

The Western Australian government has agreed to settle Australia's biggest native title claim through consent rather than litigation. The consent determination allows the Spinifex People exclusive possession over 85 percent of an area of almost 50,000 square kilometres. Non-exclusive possession of a further 15 per cent was also granted. The consent determination means that the Spinifex People are acknowledged as traditional Aboriginal owners of the land, the state maintains ownership of the minerals, water and petroleum, Aboriginal people are able to maintain their traditional activities and the full right to negotiate will apply to all. The agreement has still to be ratified by the Federal Court. *(CT, 17 October, p3)**

Western Australia's native title legislation has been approved by the Federal Attorney General. The legislation now must be approved by the Senate. The proposed regime means that certain mining tenements and compulsory acquisitions on pastoral lease land and reserved land will not be subject to the Federal right to negotiate but will be subject to special procedural requirements set down by legislation. *(Attorney General News Release, 27 October)**

Native title claimants in the Goldfields have objected to the flooding of an important Aboriginal heritage site with mine wastes from Sir Samuel Mines NL's Cosmos Nickel Project near Leonora. Western Australia's Minister for Mines stated in State Parliament that no environmental impact assessment of the proposal had been carried out or scrutinised by the Department of Minerals and Energy prior to granting approval to discharge. *(Koori Mail, 18 October, p29)*

COMMENT

Native Title in Western Australia: A Case to Answer

Consent determinations are what native title parties aspire to, perhaps at some level most claimants and Native Title Representative Bodies in Western Australia expected the State to see the light and get down to negotiating consent determinations. It is no secret that prior to the amendments government representatives were meeting with a number of claimant groups to tell them what preconditions the Government expected to be met prior to entering formal mediation toward consent determinations. This gave the impression that the State was indeed interested in negotiating claims.

Now, in the post amendment period native title claimants and their representatives could be forgiven for thinking that they were led down the garden path. A number of claims have been listed by the Federal Court and NTRB's are now trying desperately to prepare those cases. There have been two consent determinations in Western Australia, one is modelled on the State's preferred model of right to consult and the other was too dangerous for the state to pursue through the courts.

The Spinifex claim had the potential of creating the highest threshold or precedent of native title in Australia. A number of the claimants were only recently in from the desert (mid 1980s) the land was predominantly Vacant Crown Land and they have never left their country. This all adds up to a claim that would make the first *Miriuwung Gajerrong* decision, and perhaps even *Mabo* look ordinary in terms of expanding the conceptual basis of case law on native title. The settlement of that particular claim, while a tremendous outcome for the people, can also be viewed as a case where the State sought to minimise or restrict the expansion of case law on native title.

Fortunately there are still some desert claims in Western Australia which as far as I understand are not in the process of negotiation. If ATSIC want to expand the threshold of native title on land to something beyond the limitations enunciated by the full bench of the Federal Court in the last *Miriuwung Gajerrong* decision, then they must talk strategy with the NTRB's representing those substantial desert claims.

In Western Australia we are fast approaching a state election and to date have heard little if no policy on the settlement of native title claims by either party. The current Government seems content with its policy of pursuing expensive, lengthy and unnecessary court battles while the ALP opposition appears to have their heads in the sand. Negotiated determinations have been successfully pursued in Queensland. It is time that the Government of Western Australia stopped abrogating its responsibilities to the courts or trying to legislate Aboriginal rights out of existence and entered into dialogue with Aboriginal people to find common ground and a native title solution.

Kado Muir
Consultant Researcher

Northern Territory

An Indigenous Land Use Agreement between native title holders and Giants Reef Exploration Pty Limited covering exploration areas near Tennant Creek has been signed. The agreement covers 8,000 square kilometres of pastoral lease land. Applications for 52 exploration licences and five mineral leases are covered by the agreement. *(Aus, 18 Sept, p39)**

Following the Senate's disallowance of the Northern Territory's alternative native title regime a backlog of exploration tenement applications are being filed. The Northern Land Council's chief executive officer, Mr Norman Fry, stated that the organisation did not have sufficient resources to assist native title holders with their native title applications if the Territory Government rushed a backlog of 1,000 exploration licences through the native title system in a 12 month period. Traditional owners have 3 months from when an exploration licence is advertised to make an application for native title. *(SMH, 21 Sept, p5)*

National Native Title Tribunal President, Graeme Neate, stated that in anticipation of the increase in mining and exploration applications extra staff had been employed at the Darwin office of the Tribunal. *(NNTT Media Release, 6 Sept)*

The Miriuwung and Gajerrong People have expressed concerned about the impact on their country from plans to plant 35,000 hectares of sugar cane and create a 40,000 hectare buffer zone in the proposed Ord River Stage II project. The Northern Land Council and Kimberley Land Council have made submissions on the environmental impact of the proposal. *(LR News, 3 October, p20)*

APPLICATIONS

National

The National Native Title Tribunal posts summaries of registration test decisions on their website at: http://www.nntt.gov.au

The following decisions are listed for September and October 2000.

Maaiangal Clan	accepted
Wakka Wakka Jinda People	abbreviated
Wakka Wakka People	abbreviated
Ngurrara	accepted
Muthi Muthi People (Combined Application)	accepted
Ngadju (Combined Application)	accepted
Paakantji People	accepted

The decision indicates whether an application has met or not met each of the conditions of the registration test against which it was considered.
'Abbreviated' decision indicates that the application has been tested against a limited number of conditions.
The applicant may still pursue the application for 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.

NOTIFICATIONS

Applications currently in Notification

Notification period is 3 months from the Notification start date.

Start date	Application no.	Application name	Location
6 Sept 2000	NC97/38	Whaddy Bryant Clan of the Gumbayngirr People #1 (Nambucca)	Nambucca
	NC98/14	Whaddy Bryant Clan of the Gumbayngirr People #2 (Nambucca)	Nambucca Heads
	NC98/20	Cubbitch Barta Clan of the Dharawal People #1	Wilton
20 Sept 2000	QC97/17	Olkol & Bakanh People	Pastoral Lease, Cape York Peninsula
	QC97/45	Northern Kaanju People & Yianh People	Eastern side of Cape York, Peninsula
	QC97/48	Kalpowar Holdings	Pastoral Holdings, north of Laura, FNQ
	QC97/63	Indjilandji/Dithannoi People	Mt Isa region
	QC98/43	Tagalaka People	Croydon region, Far North Queensland
	QC99/1	Darumbal People #2	Central Queensland
	QC99/36	Tableland Yidinji #1 & #2	Vicinity of Atherton Tableland area
20 Sept 2000	QC99/6	Kangoulu People #2	Area near Emerald in Central Queensland

Notifications cont'd

	QC99/8	Wanggumara People #3	South West Queensland
	DC98/10	Rail Corridor 9	Darwin / Hundred of Ayers
	DC98/3	Rail Corridor 3	Yambah PL to Alice Springs
	DC98/4	Rail Corridor 4	Stirling PL to Yambah PL
	DC98/5	Rail Corridor 5	Neutral Junction PL/Barrow Creek
	DC98/6	Rail Corridor 6	Singleton PL/Devils Marbles
	DC98/7	Rail Corridor 7	Phillip Crk PL/Tennant Crk PL
	DC98/8	Rail Corridor 8	Muckaty PL to Darwin
18 Oct 2000	NC96/29	Walbunja People	South of Jervis Bay to Narooma
	NC98/15	Gumbaynggirr People	Bellinger River south to Oyster Creek

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

Recent publications

The publications reviewed here are not available from AIATSIS. Please refer to individual reviews for information on obtaining copies of these publications.

Native Title and the Transformation of Archaeology in the Postcolonial World, Lilley I (ed), *Oceania Monograph, No 50, University of Sydney, 2000. $47.30.*

This edition of the *Oceania Monograph* focuses on land rights and archaeology issues, principally in Australia but also North America, the Pacific and South Africa. The editor Ian Lilley writes that the major changes surrounding long-standing claims for Indigenous rights to land and cultural heritage have dramatically affected the ways in which archaeology is conducted. Archaeologists and bureaucracies which govern their work have been forced to acknowledge Indigenous peoples sensitivities about archaeological activities. A major concern of all the Australian papers in this publication is the significant difference in the

way archaeology featured in the native title determinations Miriuwung Gajerrong and Yorta Yorta. Two papers from the journal are noted here.

'Challenging the 'authenticity' of antiquity: contact archaeology and Native Title in Australia', Harrison R. pp 35-53.
Harrison finds that interpreting the possession of 'traditional laws and customs', which is a necessary part of demonstrating native title rights and interests, is problematic in Australia because of a perception held that authentic and traditional Aboriginality lies only in the distant pre-colonial past. This was evident in Justice Olney's Federal Court decision regarding the Yorta Yorta native title determination. Harrison explores the role of archaeology in developing and continuing this perception. His paper suggests some ways in which 'contact' archaeology, as the archaeology of encounter or the archaeology of the recent Indigenous past, can provide alternative views by tracing continuities and changes from the past through to contemporary times, thus providing a framework to support evidence for native title claims. To demonstrate this he uses a case study from the Kimberley, an archaeological survey and an oral history recording program focused on the site of Old Lamboo station near Halls Creek. Photos, panels and a map illustrate the discussion.

'Archaeology and Native Title in Australia: national and local perspectives', Fullagar R. and L. Head, pp 25-34.
This paper discusses how archaeology is used in two arenas: the Australian national consciousness; and, the political and legal construction surrounding Aboriginal ownership, including claims under native title. Comments are made about the effect on the national consciousness of 'the archaeological provision of a chronology prior to 1788', and this is then discussed with the different Aboriginal understandings and opinions of such work. As native title legislation demands Aboriginal claimants provide proof of cultural specificity at the scale of linguistic or tribal groups, the authors raise issues surrounding the potential of archaeology as a provider of evidence which identifies ethnicity. The role of archaeology in the Miriuwung Gajerrong and Yorta Yorta native title determinations is compared. The authors conclude that archaeology can document details of connection between people and place, particularly in conjunction with rock art studies.

Copies and information concerning back numbers of *Oceania Monograph* can be obtained from The Secretary, Oceanic Publications, 116 Darlington Road, University of Sydney, NSW 2006. Tel 02 9351 2666, fax. 02 9351 7488, or <d.koller@oceania.usyd.edu.au>

Native Title Facts National Native Title Tribunal, 2000.
This is a series of 27 fact sheets about native title in Australia launched by the National Native Title Tribunal to help people understand complex native title issues.
The fact sheets are arranged under separate categories and answer questions such as where native title might exist, how to make agreements, what rights apply, getting on with business, getting help and other similar queries.
The fact sheets are available in html and pdf format on the Tribunal's website at www.nntt.gov.au

Guide to future act decisions made under the Commonwealth right to negotiate scheme, Compiled by the Hon CJ Sumner, Deputy President, National Native Title Tribunal, 2000.
This Guide provides a summary of cases decided by the NNTT and the Federal Court under the right to negotiate provisions of the *Native Title Act 1993*. It outlines decisions made under the Act prior to the amendments as well as decisions made after the amendments.
The document is available for downloading on the Tribunal's website at www.nntt.gov.au

Native Title Research Unit publications

The following NTRU publications are available for sale from AIATSIS. Please phone (02) 6246 1186, fax (02) 6246 1143 or email: sales@aiatsis.gov.au.

A Guide to Australian Legislation Relevant to Native Title 2 volume set**,** Native Title Research Unit, AIATSIS, 2000.

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

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 Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden, 1998.

Working with the Native Title Act: Alternatives to the Adversarial Method Edited by Lisa Strelein, 1998.

Regional Agreements: Key Issues in Australia – Volume 1, Summaries. Edited by Mary Edmunds, 1998.

A Sea Change in Land Rights Law: The Extension of Native Title to Australia's Offshore Areas by Gary D. Meyers, Malcolm O'Dell, Guy Wright and Simone C. Muller, 1996.

Heritage and Native Title: Anthropological and Legal Perspectives Proceedings of a workshop conducted by the Australian Anthropological Society and AIATSIS at the ANU, Canberra, 14-15 February 1996.

The Skills of Native Title Practice Proceedings of a workshop conducted by the NTRU, the Native Title Section of ATSIC and the Representative Bodies, 13-15 September 1995.

Anthropology in the Native Title Era Proceedings of a workshop conducted by the Australian Anthropological Society and the Native Title Research Unit, AIATSIS, 14-15 February 1995.

Proof and Management of Native Title Summary of proceedings of a workshop conducted by the Native Title Research Unit, AIATSIS, on 31 January-1 February 1994.

The following publications are available free of charge from the Native Title Research Unit, AIATSIS, Phone (02) 6246 1161, Fax (02) 6249 1046:

Issues Papers published in 1998, 1999 and 2000:

Volume 2

No 6 ***'Local' and 'Diaspora' Connections to Country and Kin in Central Cape York Peninsula*** by Benjamin R Smith

No 5 ***Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'*** by Katie Glaskin

No 4 ***Bargaining on More than Good Will: Recognising a Fiduciary Obligation in Native Title*** by Larissa Behrendt

No 3 ***Historical Narrative and Proof of Native Title*** by Christine Choo and Margaret O'Connell

No 2 ***Claimant Group Descriptions: Beyond the Strictures of the Registration Test*** by Jocelyn Grace

No 1 ***The Contractual Status of Indigenous Land Use Agreements*** by Lee Godden and Shaunnagh Dorsett

Volume 1

No. 30 ***Building the Perfect Beast: Native Title Lawyers and the Practise of Native Title Lawyering*** by David Ritter and Merrilee Garnett

No. 29 ***The compatibility of the amended Native Title Act 1993 (Cth) with the United Nations Convention on the Elimination of All Forms of Racial Discrimination*** by Darren Dick and Margaret Donaldson

No. 28 ***Cultural Continuity and Native Title Claims*** by Ian Keen

No. 27 ***Extinguishment and the Nature of Native Title, Fejo v Northern Territory*** by Lisa Strelein

No. 26 ***Engineering Unworkability: The Western Australian State Government and the Right to Negotiate*** by Anne De Soyza

No. 25 ***Compulsory Acquisition and the Right to Negotiate*** by Neil Löfgren

No. 24 ***The Origin of the Protection of Aboriginal Rights in South Australian Pastoral Leases*** by Robert Foster

No. 23 '***This Earth has an Aboriginal Culture Inside*' *Recognising the Cultural Value of Country*** by Kado Muir

No. 22 '***Beliefs, Feelings and Justice*' *Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples*' *Rights in Canada*** by Lisa Strelein

No. 21 ***A New Way of Compensating: Maintenance of Culture through Agreement*** by Michael Levarch and Allison Riding

No. 20 ***Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime*** by J. C. Altman

Regional Agreements Papers published in 1998 and 1999

No. 7 ***Indigenous Land Use Agreements: New Opportunities and Challenges under the Amended Native Title Act*** by Dianne Smith

No. 6 ***The Yandicoogina Process: a model for negotiating land use agreements*** by Clive Senior

No. 5 ***Process, Politics and Regional Agreements*** by Ciaran O'Faircheallaigh

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Our fax number is:	02 6249 1046
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This newsletter was prepared by Ros Percival

Upcoming events

Summer School in Native Title Practice

Adelaide University is offering an intensive graduate subject in Anthropology for Native Title Practice during February 2001. The subject is an elective in a new, comprehensive coursework program in Applied Anthropology. Taken alone, the subject will attract a Professional Certificate for successful completion. Combined with other subjects offered at Adelaide University it may form part of a Graduate Certificate, Graduate Diploma or Masters in Applied Anthropology.

The subject focuses on anthropological issues and methodologies relevant to contemporary Native Title practice. It will be conducted largely in a workshop format, addressing those research skills required for conducting or interpreting anthropological research in a Native Title setting. It aims to provide participants with a clear grasp of the main topics, concepts, arguments, technical language and literature sources required for preparing or assessing anthropological evidence. It is directed to professionals and para-professionals engaged on Native Title applications, mediations, negotiations, compensation and litigation. The subject will be taught by practitioners with extensive Native Title and other relevant experience. Assessment will be by way of short writing exercises, seminar/workshop presentations and a major essay or project.

The course will run for 2 weeks, Monday - Friday 9.00am - 2.00pm, 12 - 23 February 2001. It costs $1950. Applications close 29/1/2001. For more information contact

Department of Anthropology
Adelaide University
SA 5005
Telephone (08) 8303 5730,
Fax (08) 8303 5733,
or visit the website at http://arts.adelaide.edu.au/anthropology/.

Mapping Conference

Mapping Sciences Institute Australia will be hosting a conference addressing the theme -**'Spatial Business Beyond 2000 - Daring to Change'**. It will be held in Sydney at the Mercure Hotel, Railway Square, from Sunday 3rd to Wednesday 6th December 2000. Three sessions on the afternoon of 5 December are of particular interest to people working with native title or Indigenous issues. Bryan Keon-Cohen will present a session keynote address entitled 'Problems with Mapping Native Title Boundaries: Sit-Down Country and Culture Clashes'. John Beattie will present a paper entitled 'Aboriginal Site Spatial Association Rules and Aspacial Fundamental Attributes for the Mapping of Aboriginal Cultural Landscapes'. Frank Young will present a paper entitled 'Heritage Mapping of Rock Engravings to Facilitate Management Commitments'. Details of the conference can be found at the web-site: http://www.promaco.com.au/conference/2000/msia/index.htm

Native Title and Archaeology Workshop

Sponsored by

Australian Institute of Aboriginal and Torres Strait Islander Studies

Native Title Research Unit

and

Department of Archaeology, Flinders University

Date: 27 November 2000 9.00-5.30

Venue: St Mark's College, 46 Pennington Tce, North Adelaide, South Australia, 5006

Cost: $25 (includes lunch, morning and afternoon tea)

The workshop will be informal with each session chaired and introduced by a member of the invited panel

9.00 ***Welcome by a representative of the Traditional Owners***

9.15 ***Archaeology in Native Title processes implications of recent cases***
Chair: Dr Lisa Strelein, Visiting Research Fellow (law), Native Title Research Unit, AIATSIS

10.30 Morning tea

11.00 ***The consultant archaeologist working with Native Title current issues and future directions***
Chair: Assoc. Professor Peter Veth, School of Anthropology, Archaeology and Sociology, James Cook University and National President of Australian Association of Consulting Archaeologists Inc.

12.15 Lunch

1.15 ***Negotiated Agreements a new direction?***
Co-Chair: Sue Smalldon, Archaeologist, South Australian Government Indigenous Land Use Agreements Negotiation Team and Monica Khouri, National Native Title Tribunal (SA-ILUAs)

2.30 ***Have the legal processes marginalised the traditional owners?***
Co-Chair: Parry Agius,Manager, Aboriginal Legal Rights Movement and Chris Uren, National Native Title Tribunal (SA)

3.45 Afternoon tea

4.15 ***Review of major issues and recommendations***
Chair: Dr Keryn Walshe, Lecturer, Department of Archaeology, Flinders University

5.30 Close

Accommodation is available at St. Mark's College

Registration (and accommodation): tarnott@deh.sa.gov.au
Phone: 08 8204 9245, Fax: 08 8204 9455

Further information: www.heritage.sa.gov.au\maritime or Pamela.Smith@flinders.edu.au

Held in conjunction with the AIMA/ASHA 2000Conference, 28 November – 2 December 2000