



Native Title Newsletter

AIATSIS Native Title Research Unit

September/October 2003

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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

Native Title Business Forum: The power of Cultural Evidence begins at the National Museum of Australia on Thursday December 11. The launch will be at 10.30 by Professor Mick Dodson. The forum also continues on Friday the 12 December 2003.

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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Research update: Towards Comprehensive Agreements

Dr Stuart Bradfield has been conducting ongoing research into the nature of agreement-making surrounding native title. With the advent of native title, Indigenous claims have received increased legitimacy in the eyes of both governments and industry players. However, unlike Canada for instance, here, it is mining companies and other private entities that have really embraced the idea of negotiating agreements with native title claimants and Indigenous peoples generally. Via this process, Indigenous peoples are having a real say in what happens on their country. Typical benefits from this type of agreement making include opportunities for employment and training, and protection of heritage and sacred sites. An important benefit of these agreements that is sometimes overlooked is the establishment of positive relationships where previously none may have existed.

While there are undoubted economic benefits, the extent to which these agreements can afford Indigenous communities recognition of their political rights remains to be seen. In this context, State governments are increasingly looking to negotiate 'comprehensive agreements' with Indigenous peoples which recognise 'inherent rights' and 'first peoples' status. The idea of a 'comprehensive' agreement or settlement has a distinct meaning in Canada, where inherent aboriginal rights are constitutionally protected. In Australia, it is unclear how 'comprehensive' the recognition of Indigenous peoples needs to be for negotiation of a comprehensive agreement. Dr Bradfield will examine the question of 'What is a "Comprehensive" Agreement?' in a paper to be published in early 2004 as part of the NTRU's Issues Paper series.

In the absence of a coherent, coordinated federal policy to settle native title claims via agreement, developments at State and local levels continue to offer hope. These agreements may not be explicitly based on recognition of government-to-government status as seen in Canada and other settler societies, but

for many, the negotiating table still looks more attractive than the court house.

For further information see: Stuart Bradfield, 'Treaties and agreements: towards decolonisation', *The Drawing Board: An Australian Review of Public Affairs*. [Online] Available at: <http://www.econ.usyd.edu.au/drawingboard/>

Conference Report: IASA Conference 2003

In September, the Native Title Research and Access Officer, Grace Koch, attended the annual conference of the International Association of Sound and Audiovisual Archives, "Audiovisual Archives: Memory and Society" that was held in the City of Tshwane (formerly Pretoria) South Africa. The keynote address by Sean Field from the University of Capetown, entitled "Memory, knowledge and power: can archives keep peoples' stories alive?" stated clearly the importance of the living oral tradition in Africa in national and personal identity as well as in providing evidence for land claims. He talked in detail about the District Six project, where people who had been removed from a closely knit politically-active area of Capetown are asserting their right to reclaim their property. An oral history project done through the District Six Museum has served to reunite the community in this activity. Africans are interested in what is happening in Australia with land rights and, especially, native title.

Grace Koch's paper on the use of audiovisual sources for evidence in native title claims began by giving a brief overview of the history of land rights in Australia with a description of the process of native title. The next section dealt with how sound and video recordings are being used now in claims, both as background material at the start of the process and as evidence in the hearing itself.

The paper explored the use of video evidence if it is especially relevant to the case or if the claimants cannot testify in court due to health, distance or other reasons. Reference was made to the work being done by Yamatji NTRBs in gathering early evidence and to the work of

David Ritter and Frances Flanagan in recognising the importance of video evidence in court.

Dissemination and digitisation of cultural information through the Internet was discussed, such as arts projects, multimedia-enhanced geospatial maps, knowledge centres and Federal Court determinations available in audio-visual form.

In summary, new protocols and procedures have arisen for archivists and librarians as they deal with the demand for Indigenous audiovisual material in Native Title claims. Researchers are working with archivists to locate compelling background information to land claims. In turn, audiovisual materials have not merely served as evidence but have assisted in cultural revitalization in a number of areas in Australia as people hear stories, language and songs from their elders. Indigenous peoples are generating new materials as well and are using the Internet to educate its users in their traditions.

Conference Report: Indigenous Researchers Forum 2003

This year, the annual Indigenous Researchers Forum was held in Canberra between the 01-03 October. The IRF is an initiative of the six Indigenous Centres of Excellence located at various Australian universities. The inaugural IRF was hosted by the University of Newcastle in 1999. The forum was hosted by the University of South Australia in 2000, the University of Melbourne in 2001, and in 2002 it was hosted by a consortium of Indigenous units from Curtin University of Technology, Edith Cowan University and the University of Western Australia. In 2003, AIATSIS had excellent partners in the Australian National University (ANU) and the University of Canberra (UC).

Now in its fifth year, the Forum attracted 130 Indigenous researchers from across the nation and New Zealand. Mr Lionel Quartermaine, acting Chairperson of ATSIC, gave the key knowledge sharer paper. He pointed to the need to include greater numbers of Indigenous people in research positions so as to successfully deal with the many critical issues currently faced. He went on to point out thirty years ago it would have been "unthinkable" to hold such a Forum. He said, "the mere fact that Indige-

nous researchers meet here today is testimony to our successes as Indigenous peoples."

The IRF has national significance and explores and advocates Indigenous agendas and issues in research, in addition to providing opportunities and encouragement to emerging Indigenous researchers.

This year's event was well received with 76 per cent of respondents evaluating the IRF as very high to high value. Delegates thought the opportunity to meet together and connect with other Indigenous Researchers, the interchange of ideas, and networking were all excellent aspects of the Forum.

A resolution was passed by the Forum on the final day calling for ATSIS/ATSIC to redirect a greater proportion of their research funding to Indigenous researchers.

Funding, sourced from the Department of Education, Science and Training was utilised to assist an extra 27 Indigenous research students to attend the Forum.

Next year the IRF will be held at the University of Newcastle.

Indigenous International Visitors

The NTRU is pleased to be hosting two distinguished Indigenous visitors in the next few months.

In early December Assistant Grand Chief Lloyd Oronhiakhete Phillips of the Mohawk Council of Kahnawake, Canada, will be at AIATSIS. The Assistant Grand Chief will take part in a workshop titled 'From Land Settlements to Self-Government: The Kahnawake Experience of Comprehensive Negotiations in Canada.'

In February 2004, Professor John Borrows will take 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.

Staff Recruitment

George Villaflor has joined the Native Title Research Unit as a Project Officer. George comes from Darwin and has spent time in Cairns and the Cape York. He has a background in law and community consultation.

Serica Mackay will commence as the Unit's Native Title Research Officer. Serica is near the completion of an Arts/Law degree at ANU. Lara Wiseman will also be joining the Unit as a Research Assistant. Lara's last ap-

UPCOMING EVENTS: Native Title: Courts to Canvas

The power of indigenous art as cultural evidence will be explored in a landmark forum being held at the National Museum of Australia next month.

The free two-day forum is a collaboration with AIATSIS and ANU and coincides with the Canberra launch of the Native Title Business exhibition, a collection of 50 contemporary indigenous works which promote understanding and reconciliation on native title.

The National Museum's Aboriginal and Torres Strait Islander Program director, Margo Neale, says the exhibition expands on the program's themes of country, identity, spirituality and community.

"The forum is about actively contributing to the debate of issues of critical contemporary importance. Events such as this further strengthens the National Museum's relationship building with key academic institutions and Indigenous community bodies," Ms Neale said.

The Power of Cultural Evidence forum is being held from 2-5pm on Thursday, 11 December and 8.45am-5.30pm on Friday, 12 December.

Participants will examine the meaning of native title; the role of indigenous histories, art and museums in the native title process; and the benefits and problems arising from Aboriginal efforts to retrieve lost histories and culture.

pointment was with Aboriginal Affairs Victoria

Glen Kelly will be conducting a 3-month contract within the unit. The focus of his work will be the relationship between native title and autonomy and the representation of non-traditional owners. Glen previously worked in Perth as the WA Aboriginal Native Title Working Group co-ordinator. Donna Oxenham is currently on a 3-month AIATSIS Indigenous scholars program. She is working on her Masters thesis on the Indigenous community in Shark Bay, Western Australia.

Dr Lisa Strelein from AIATSIS' Native Title Research unit will convene a community workshop on Thursday. Indigenous and non-indigenous speakers will explore current legal developments, the ways law and culture inform each other, the role of art in contributing to cultural identity and managing indigenous disputes and agreements.

The other opening day session looks at the Murray Darling Basin Outreach Project, presented by Yorta Yorta Woman Monica Morgan and Dr Ruth Lane.

Friday's speakers include historians Professor Ann McGrath and Dr Gordon Briscoe, artists Fiona Foley and Bronwyn Bancroft, sociologist and curator Dr Vivien Johnson, museum professional Phil Gordon, Native Title mediator Dr Gaye Sculthorpe and lawyer David Ritter.

Bookings for the free forum are being taken on 02 6208 5021.

Meanwhile, the Native Title Business exhibition is presented by Bundaberg's Gurang Land Council and toured by the Regional Galleries Association of Queensland. The exhibition is on show in the National Museum's Lower First Australians Gallery until 1 February 2004. According to Joan Winter "the main aim of Native Title Business is to promote understanding and reconciliation on native title, land and water rights in Australia".

The works range in style from traditional to contemporary and include ceramics, printmaking, painting, drawing, sculpture, mixed media, photography and fibre art. Produced between 1984 and 2002, they have been created by a

range of artists from those working in remote desert communities who did not meet a white man until they were adults, to urban artists who have never seen their traditional lands.

FEATURES

Consultation on the Definition of a Charity

By Serica Mackay

Over the past eighteen months, the Native Title Research Unit has received a number of inquiries regarding the tax status of native title bodies. Although traditionally these bodies have been regarded as charities or public benevolent institutions (PBI's) for tax purposes, recent decisions of the Australian Tax Office and the Supreme Court (Northern Territory) have produced conflicting interpretations of the legislation and the common law.

Coinciding with this, the Federal Government has recently released the Draft Charities Bill in an attempt to codify the common law on the definition of charities. The Draft Charities Bill is part of the Government's response to the Report of the Inquiry into the Definition of Charities and Related Organisations. The Board of Taxation, an independent, non-statutory body established to advise the government on the development and implementation of taxation legislation, sought submissions on the workability of the draft legislation.

AIATSIS, the Central and Northern Land Councils and the South West Aboriginal Land and Sea Council, (SWALSC), have entered a submission to the Board of Taxation's consultation on the definition of a charity. The AIATSIS submission is intended to highlight and discuss points of the draft bill that would be relevant to all native title bodies.

Although the Draft Charities Bill does not attempt to change the law (it seeks to put the existing common law definition of charity into legislative form), there are problems with the common law definition that will carry

over into the legislative definition and these require comment.

Briefly, the NTRU discussed five main issues relevant to native title bodies in relation to the Draft Charities Bill. First, the Draft Charities Bill contains a specific reference to political advocacy as a disqualifying purpose where it is more than ancillary to the dominant purpose of the charitable entity. However, any number of activities may be considered a disqualifying purpose where they are more than ancillary to the dominant purpose of the charity and it is unnecessary to specifically mention political activity in the legislation. This is particularly concerning for Indigenous land councils and native title bodies who often act as representatives of community interests and comment on government policy and legislation. The inclusion of public advocacy as a disqualifying purpose may excessively discourage entities from seeking charitable status or commenting on policy or law even where it is in the interests of the people they seek to help.

Second, the inclusion of a charitable purpose that is 'for the benefit of the community' is desirable as it is at present relatively undefined and open ended. In particular, this charitable purpose may be of benefit to native title bodies who could argue that the restoration and management of land is 'for the benefit of the community'.

Third, the requirement that the dominant purpose of a charity be altruistic in order to satisfy the public benefit test may require an emotional and obligational distance between the donor and the beneficiary. This may be a problem for Indigenous charitable entities where an emotional or functional relationship often exists between the entity and its beneficiaries.

Fourth, the 'dominant purpose test' that is the basis of the common law definition of a char-

ity has been particularly problematic for native title bodies whose statutory functions have prevented it from being considered 'charitable'. Statutory functions should not necessarily preclude an entity from being considered charitable and our submission suggested a specific provision in the Draft Charities Bill to this effect.

Finally, Indigenous charitable organisations should satisfy the 'public benefit test' in the Draft Charities Bill because they provide a charitable service to Indigenous people, who have been recognised as a disadvantaged section of the community.

The Central and Northern Land Council's submission discusses two main areas of concern. The first regards the characterisation of the Land Councils as a Public Benevolent Institution (PBI). The Land Council's consider it desirable that the Draft Bill does not seek to codify the definition of a PBI as this has already been clarified by the recent decision of the Northern Territory Court of Appeal. Secondly, the Land Council's share AIATSIS's concern that the specific reference to political advocacy as a disqualifying

KLC Celebrations

By Wayne Bergmann, Executive Director, Kimberley Land Council

More than 600 Kimberley traditional owners gathered at Wuggubun community in the East Kimberley in September to celebrate the 25th anniversary of the Kimberley Land Council. Many of the people who were involved in the first meeting at Noonkanbah in 1978 were there, and former chairmen spoke of their involvement in the organisation. The AGMs for the KLC and the Kimberley Law and Culture Centre were held, and there was dancing and celebrations throughout the three-day bush meeting.

The centrepiece was a full-day workshop to discuss the future of the KLC and of the land rights movement in WA. The meeting endorsed the Wuggubun Statement, which was presented to Carol Martin MLA, as the representative of the Western Australian Government. The statement called on the

purpose is unnecessary and may unintentionally restrict the common law position or lead to litigation.

The South West Aboriginal Land and Sea Council (SWALSC's) submission identifies a number of problems that could arise from inconsistent interpretations of the Draft Bill. SWALSC submit that the absence of any specific reference to Aboriginal people as a class of disadvantaged Australians places organisations that help to relieve their plight in a vulnerable position. SWALSC's submission recommends that the Draft Bill ought to be amended to include the Advancement of Aboriginal people as a charitable purpose; to include a provision that Aboriginal people (by any grouping of family or regional membership) comprise a sufficient section of the general community for recognition as a public benefit; and finally, that any attempt by Aboriginal entities to change the law or government policy is not a disqualifying purpose.

Information about the Tax Board Consultation and a copy of The Draft Charities Bill can be found at www.taxboard.gov.au

government to work with the KLC and other Kimberley organisations on a regional framework to address social, economic and land issues in the Kimberley in an holistic manner.

The call for an integrated approach to land and justice issue highlighted one of the recurring themes of the Wuggubun meeting: the tension between the KLC's current status as an NTRB, and its role as a community organisation with a history of representing Aboriginal people in the Kimberley. These functions are not always easy to reconcile, particularly given the current funding pressures on NTRBs.

The KLC was established by Kimberley traditional owners to represent them in their struggle for land against mining companies, which were supported by the state government. The organisation played a central role in the protests against mining at Noonkanbah in the late 1970s and early 1980s. It continues to represent traditional owners in relation to heritage

protection and other non-native title issues, and operates a land and sea management unit which works with traditional owners to look after country. However the bulk of the KLCs funding, and consequently the bulk of its work, is now in relation to native title, which has so far failed to deliver much to Kimberley people, despite the strength of their law and culture.

There was a general frustration at the Wuggubun meeting with the lack of progress in relation to the KLC's 25 native title claims. Despite coming to office in December 2001 with a commitment to settling native title claims, the Gallop government has signed off on only two consent determinations in the Kimberley since then, and only four state-wide. It is currently in court opposing the claims of the Rubibi claimants in Broome, and there are four other claims in litigation across the Kimberley. These include the Miriuwung Gajerrong (Ward) claim, which has run for almost ten years, been to the High Court and back to the Full Federal Court, cost more than \$10 million, and is yet to be fully resolved.

Other claims still in court include the Bardi Jawi claim over the Dampier peninsula north of Broome, which includes a significant claim to sea country, and the Wanjina Wunggurr Willinggin claim which covers a large portion of the Kimberley. A decision is due to be handed down on 8 December this year.

Aboriginal people make up half the population of the Kimberley. They have a proud history of asserting their rights to country, and of developing partnerships with industry. In calling for a regional framework to settle land, social and economic issues, Kimberley traditional owners are seeking an end to the divisive process of litigating native title claims, which puts enormous strain on communities and prevents them from focusing on issues such as economic development and the health of their communities. While the KLC will continue to pursue native title outcomes on behalf of Kimberley traditional owners, the meeting at Wuggubun confirmed the need for an integrated approach to resolving the issues that concern Aboriginal people in the Kimberley.

Mentoring Pilot Program for Junior Anthropologists in NTRBs

Background

The mentoring scheme grew from discussion amongst concerned anthropologists in the Australian Anthropological Society about the difficulties facing graduate anthropologists working in native title. The problems of recruiting suitably qualified anthropological staff for NTRBs was already known.

The National Native Title Tribunal and ATSI's Native Title and Land Rights Branch [capacity building initiative] are sponsoring the pilot mentoring program offering focused professional development and support to junior anthropologists.

Five mentee places were available in 2003-04 for the pilot program. The mentees have been matched with five senior anthropologists and because of their Australia-wide location contact between mentor/mentee is confined to telephone and e-mail. The pilot

runs for twelve months and will conclude in April 2004.

Find Out More about the program in 2004
It is anticipated that the 2004 National Native Title Conference in South Australia will have a workshop on mentoring at which those involved in the pilot project will reflect on their experiences.

The Project's objectives are:

- To explore the potential to mentor inexperienced junior staff anthropologists in identified NTRBs Australia-wide
- To boost the immediate performance of representative body employees and to assist ATSI to direct funds to obtain sustainable future benefit in this area.
- To test the relevance and suitability of a generic mentoring practice across all native title practitioners, and ideally to promote the efficacy of this approach to the

professional associations that service the disciplines providing expertise in native title.

- It is also anticipated that improved professional performance will assist the NNTT strategic objectives of outcomes through mediated native title determinations.

- Mentoring benefits to all those involved. Some advantages of being a mentee are:

1. support for setting and achieving goals,
2. increased confidence and self-esteem
3. personal growth and extended networks and support systems.

NATIVE TITLE IN THE NEWS

National

Aboriginal activist Noel Pearson gave a stinging critique of the High Court bench in an address during the Centenary Conference. He said that the majority of judges had severely prejudiced Aboriginal people by misinterpreting the definition of native title. Mr Pearson said that in recent native title decisions, the court had placed an horrendous onus of proof on native title claimants because of misinterpretation and misapplication of the common law. Mr Pearson received a prolonged ovation from the highly distinguished audience including chief justices of every Australian court. He further said the court's interpretation of native title had been completely contrary to the intention Parliament had when it passed native title legislation in 1993 and 1998. *Canberra Times*, pg 7. 11 October 2003.

New South Wales

Members of the Bogan River Wiradjuri group recently visited the Byron Bay Arakwal people to discuss issues such as caring for country and involvement in national park management. Wiradjuri spokesperson Ray Keed Jnr said the visit was seen as an exciting opportunity to meet with other Aboriginal people who are actively involved in working with the community and the National Parks and Wildlife Service. Funded by the NPWS Celebrating Aboriginal Communities program, the visit included a meeting

Mentors benefit too, through increased self-awareness, different perspective on issues and by making a contribution. Organisations gain from improved employee commitment, attracting and retaining staff, and building organisational capacity.

Enquiries about the program can be directed to:

The Program Facilitator

Dr Julie Finlayson

0419 994 708

email Julie.Finlayson@anthropos.com.au

and a tour of Arakwal National Park, involving non-Aboriginal community representatives and NPWS staff. *Byron Shire Echo*, pg 14. 02 September 2003. Wiradjuri claim: NC02/3, N6020/01 & Arakwal claim: NC01/8, N6002/02.

The signing of an agreement that allows the Kamilaroi People to access land was recently celebrated in Coonabarabran. The Kamilaroi people now have access to land next to the town's showground while assuring the local pony club access to continue to hold cross-country horseriding events. The agreement arose through the negotiations over the Kamilaroi People's native title claim lodged nine years ago. Kamilaroi native title claimant Margaret Robinson said the agreement was an important step towards reconciliation in the community. *Northern Daily Leader*, pg 4. 10 September 2003. Kamilaroi claim: NC96/18, NG6036/98.

At The 2003 National Awards for Local Government, Bega Valley Shire Council received a commendation for its Memorandum of Understanding with local Aboriginal people. The area of commendation was 'Strengthening Indigenous Communities'. The Council submitted a nomination as a means of showcasing the positive outcomes achievable when local government seeks to work in partnership with Aboriginal people. The successful MOU was signed by the Council, the Shire's three Local Aboriginal

Land Councils and Native Title holders in June 2001. *Eden-Imlay Magnet*, pg 2. 18 September 2003.

Two Aboriginal groups on the Shell Cove marina site have had their million dollar compensation claim rejected. The claim was lodged about a month ago after Shellharbour City Council publicly announced its intentions to compulsorily acquire an area of ocean and beach which will form the breakwaters and entrance to the marina. Each claimant sought \$500,000 in compensation to be held in a trust administered jointly by NIAC and the council. Wadi Wadi Coomaditchie Aboriginal Corporation chairman Allan Carriage accused the council of treating Illawarra Aboriginal people with contempt and said there was ample evidence to prove his people were traditional owners of the land. Council general manager Brian Weir said he rejected the claim on legal advice and advice from Lands NSW. *Illawarra Mercury*, pg 4 23 September 2003. Gundungara claim: NC96/21.

Two Arakwal representatives were recently awarded the Distinguished Achievement in Wildlife Conservation Packard Award at the World Parks Congress in Durban, South Africa. Byron's 183-hectare Arakwal National Park is the first area to be jointly managed by Indigenous peoples and the NSW Government, and was recognised as an effective model for native title claims. It is also the first Indigenous Land Use Agreement (ILUA) in Australia that has been responsible for the creation of a national park. As well as returning the land back to the rightful traditional owners, the park has also assisted in employment for the Arakwal people. *Northern Star (Lismore)*, pg 3. 25 September 2003. Arakwal claim: NC01/8, N6020/01.

A native title claim will be lodged today over Central Coast stadium by the Darkinjung local Aboriginal Land Council. The lodgement is just five days before the stadium is due to host the first of its three Rugby World Cup matches. The claim follows World Cup officials refusal to allow the Indigenous group permission to perform a welcoming ceremony at the stadium. Land

Council chairman David Pross said Darkinjung would lodge the land claim under native title and NSW Aboriginal Land Rights Acts. *Central Coast Herald*, pg 1. 07 October 2003.

There have been concerns about the drawn-out nature of the Gumbaynggir peoples native title claim. Bellingen Shire Council have decided to remain a party despite this and the possibility of large legal expenses. To date, the councils legal expenses are more than \$14 000. Bellingen mayor Cr Gordon Braithwaite said the council was fighting for a portion of land worth well in excess of \$100,000. A representative of the solicitor firm Abbott Tout who is handling the case, said it was difficult to estimate when the case may conclude. *Advocate (Coffs Harbour)*, pg 2. 11 October 2003. Gumbaynggir NC98/15, NG6104/98.

The popular diving spot Julian Rocks, off Cape Byron, has become the centre of a native title conflict. The Arakwal people, are disputing a counter-claim from the Ngarkbul people. The Ngarkbul people from Tweed Heads claim that 'Julian Rocks' is the birthplace of their dreaming and have enlisted the Tweed Heads Historical Society to help prove it. Adam McLean, barrister for the Arakwal people stated that the Arakwal people had established in the Federal Court that they were traditional owners of the country in question. *Northern Miner (Charters Towers)*, pg 3. 16 October 03.

Northern Territory

Rio Tinto subsidiary ERA will move its headquarters from Sydney to Darwin in a move to strengthen current relationships with Aboriginal communities. ERA chief executive Bob Cleary said his company wished to forge even closer links particularly with the Aboriginal people who live close to their operations. Rio executive Harry Kenyon will head the operation. ERA is now set to become the first major company listed on the Australian Stock Exchange to be headquartered in the Territory capital. ERA staff in the Northern Territory were previously located in Berrimah. *The Australian*, pg 35. 08 October 2003.

A comprehensive package has been put together by the Northern Territory Government to settle all present and future land claims over the territory's wilderness parks and reserves. Traditional owners through the Territory's land councils, have until 30 June 2004 to take up the offer which is detailed in new legislation to be introduced to the Northern Territory Parliament next month. Chief Minister Clare Martin said she wanted the issues to be resolved through negotiations with land owners, rather than through the courts where litigation could cost up to \$150 million over the next 20 years. The move was welcomed by Aboriginal and environmental groups, but criticised by the Northern Territory Opposition. *Illawarra Mercury*, pg 18. 20 September 2003.

Queensland

An application allowing five representatives of the Daintree Coast community to participate in Native Title negotiations went through the Federal Court unopposed. The successful application means information regarding the native title claim in Cow Bay will be released to the five Daintree residents on behalf of the Daintree Coast Community. The case was taken to the Federal Attorney-General's Department in October last year. As a party to the claim, the representatives will now be kept informed on the process of the claim. *Port Douglas & Mossman Gazette*, pg 3. 11 September 2003.

A Native Title studies centre at James Cook University in Cairns was launched recently. As the only institute of its kind in an Australian University, Premier Peter Beattie expects a busy time ahead for the centre. Foundation director Craig Jones said the centre would focus on how reconciliation works in the real world. It is hoped that the centre will be a valuable resource for government agencies, traditional owners, land councils, local authorities and industry. *Cairns Post*, pg 7. 29 September 2003.

The National Native Title Tribunal recently announced the registration of the Flinders Shire Council and Yirandali Indigenous group Indigenous Land Use Agreement

(ILUA). Following this, the transfer of 35 hectares of land and two hectare parcels of land for use by the Yirandali people into freehold will take place. A framework agreement signed alongside the ILUA in April has also been progressing well. *Northern Miner (Charters Towers)*, pg 9. 25 September 2003. Yirandali claim: QC00/9, Q6008/00.

A two day Land Summit meeting was held on Thursday Island in September. The meeting brought together traditional land owners representing 18 Torres Strait Islands and State and Commonwealth bodies to discuss full recognition of native title. The meeting was a result of the State government's position that public works extinguishes native title and ownership of land. The landmark meeting concluded with a promise from all traditional land owners that they would push even harder to gain full recognition of their native title rights and land ownership, and lobby the State government if necessary. *National Indigenous Times*, pg 14. 15 October 2003.

In order to avoid further native title confrontation, Aboriginal groups together with Queensland miners will sign an historic agreement. Two years of negotiation between the QLD Mining Council, QLD Indigenous Working Group and the State government has produced a memorandum of understanding which outlines ways to improve native title legislation. Mining Council chief executive Susan Johnston said the dialogue with QIWG had not only helped to improve the native title regulatory framework in Qld, but had led to closer ties between the resource sector and Indigenous groups. *The Australian*, pg 21. 30 October 2003.

Judge Brian Boulton has issued a warning while sentencing four Brisbane residents formerly of the Torres Strait Islands. He warned all Indigenous people not to assume native title rights in relation to protected species. All four pleaded guilty to 'taking a protected animal' on May 14 last year, after they killed a dugong, as part of a manhood ceremony. The judge stated the people involved should have known they did not have

rights over dugong in Moreton Bay off Brisbane. *Herald Sun*, pg 15. 16 October 2003.

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South Australia

Indigenous elders recently congregated at a bush camp in South Australia's far north to discuss tactics to prevent a nuclear waste dump being built on their traditional land. Indigenous elders from across Australia attended the three day camp at 10 Mile creek near Coober Pedy. The Kupa Piti Kungka Tjuta group called the meeting to once again express their profound opposition to locating a nuclear waste dump in the region. *National Indigenous Times*, pg 8. 01 October 2003.

Tasmania

Tasmania's Premier Jim Bacon has announced that returning land to Aboriginal communities is high on the Government's agenda. Tasmania's ATSIC Commissioner, Rodney Dillon welcomed the news saying it demonstrated understanding. Mr Bacon said land would be transferred back to Aboriginal ownership after extensive consultation takes place with both Aboriginal and wider communities. Mr Dillon believes there will be considerable non-aboriginal opposition to the land transfers and the Government would need to educate the public on how it would affect them. *Burnie Advocate* pg 12. 24 September 2003.

ATSIC commissioner Rodney Dillon will address a national Indigenous fishing rights

conference in Fremantle, in relation to handing back fishing rights to Aborigines. Mr Dillon will also state that Tasmanian aborigines should be granted a share of the state's commercial fishing quotas. Mr Dillon said while Western Australia and South Australia were moving towards recognising Indigenous fishing rights in law, Tasmania was not. State Primary Industries, Water and Environment Minister Bryan Green said the government would continue to work with the Indigenous community through the review of the Living Marine Resources Act to achieve the best outcomes. *Mercury (Hobart)*, pg 7. 27 October 2003.

Victoria

Recognition of the Wotjobaluk native title claim is only days away, as parties to the claim prepare their response to the claim. The claim would be the first in Victoria to be settled by agreement. The legal process now requires the other parties to the Wotjobaluk claim to state their support, or otherwise, before the Federal Court can ratify the agreement. There are 435 respondents, including 300 local farmers and the Commonwealth Government. The Victorian Government and local councils have already announced they support the claim. *Herald Sun (Melbourne)*, pg 22. 04 September 2003. Wotjobaluk People claim: VC95/2, VG6002/98.

A challenge to a native title agreement that allowed the building of a \$7 million marina in Blairgowrie has been dismissed in the Federal court. In dismissing the appeal, the full bench ruled that it was not necessary to have the consent of everyone claiming native title, for an ILUA to be valid. Justice Marshall found the National Native Title Tribunal staff had not favoured Victorian Boonwerung land council elders Carolyn Briggs by allowing registration of the ILUA. *Frankston Hastings Independent*, pg 5 30 September 2003.

Western Australia

The Heritage Protection Working Group travelled to Broome last week to negotiate a regional heritage protection agreement with

the Kimberley Land Council. KLC executive director Wayne Bergmann said that settling the outstanding issue of the heritage protection agreement in a manner that respects the long-standing concerns of Kimberley traditional owners was a priority. The group comprised representatives from the State Government, the National Native Title Tribunal, the mining industry and Native Title Representative bodies. *Broome Advertiser*, pg 7. 04 September 2003.

The Mulga Mallee regional council has identified a national forum in the Goldfields to address the issue of fringe dwellers. Chairman Brian Champion said that itinerant and fringe dweller problems were right across Australia, and that a national forum would identify what strategies are working and how others can be improved. The Department for Community Development director east division Leah Bonson said that the department welcomed the proposal for a national forum. Eyre MLA John Bowler, who raised the idea to conduct a national forum about a year ago, said he was delighted that the Mulga Mallee regional council had made it a priority. *Kalgoorlie Miner*, pg 4 06 September 2003.

South-west Aboriginal groups are standing together on a single land claim covering the entire region, shaking off a reputation for division and dispute. After eight months of consultation, the claim will shortly be lodged with the Federal Court. Just two families have elected to stay outside the process and will continue to push their own claims. Claimant Richard Walley said Noongars had been unfairly tagged as a divided group, when they always agreed on fundamental principles. DIA director-general Richard Curry supported the move and applauded SWALSC for bringing the community together for a single purpose. *West Australian*, pg 8. 08 September 2003. Single Noongar claim: WC03/5, W6006/03.

A Goldfields Aboriginal group has sought the involvement of the Queen after the Government approved expansion of a mine. Lenora-based Ngalia Heritage Research

Council sent a letter to Her Majesty asking for her assistance to halt Portman Iron Ore's expansion at Koolyanobbing, which Ngalia claims is destroying religious and spiritual sites. The letter signed by council president and Ngalia elder Dolly Walker, was also sent to the United Nations and leading human rights and religious figures in a last-ditch effort to stop activity. *Kalgoorlie Miner*, pg 1. 10 September 2003.

A plan being pushed by the Gallop Government could see ownership of WA's world-famous national parks, state forests and marine parks transferred into Aboriginal hands. The State Government wishes to hand over to traditional owners, then lease back, title to 25 million hectares throughout WA. The Government also wants to legislate to allow Indigenous groups to live within the parks and exercise their traditional laws and customs. It is already negotiating ownership of WA's biggest national park, the 1.2 million-hectare Rudall River National Park in the Pilbara, with the Martu traditional owners. *West Australian*, pg 1. 11 September 2003.

The Wongatha Goldfields native title claim will take longer than expected to finish due mainly to lengthy cross-examination of expert witnesses. Evidence was set down to be heard within a six week period, which now seems unlikely to be completed by the stipulated end date. The Federal Court has already listed extra sitting days to finish hearing expert evidence from anthropologists. The current six-week session has covered land tenure issues and included evidence from Goldfields Aboriginal people and local pastoralists. *Kalgoorlie Miner*, pg 4. 12 September 2003. Wongatha claim: WC99/1, WAG 6005/98.

Plans to share conservation management between the Department of Conservation and Land Management, and Aboriginal groups, has been welcomed by the Goldfields Land and Sea Council. GLSC executive director Brian Wyatt said that the joint management plans currently in place were being copied in other parts of Western Australia. The Government proposal would also grant some Aboriginal groups inalienable

freehold title. One Nation Mining and Pastoral region MLC John Fischer believes titles for the parks including Kings Park in Perth should not be handed over to Aboriginal people, but did support the concept of Aboriginal people having a role in land management. *Kalgoorlie Miner*, pg 7. 17 September 2003.

Federal Indigenous Affairs Minister Phillip Ruddock plans to visit Kalgoorlie-Boulder next month. Issues including native title, reconciliation and land council accountability are expected to be high on the agenda. Kalgoorlie MHR Barry Hase had invited Mr Ruddock to visit the region. Aboriginal and Torres Strait Islander Services regional manager Adrian Brahim said he would brainstorm with Aboriginal and Torres Strait Islander commissioners to discuss what issues they would raise. *Kalgoorlie Miner*, pg 4. 20 September 2003.

The Native Title Registrar has decided against registering the Koara claim in the northern Goldfields. The Goldfields Land and Sea Council will appeal this decision as the claim was not registered due to a technicality. The Koara people have had negotiating rights over the area for the past six years and have already given evidence for the overlapping Wongatha claim. The claim's rejection has resulted in widespread disillusion within the claimant group. *Kalgoorlie Miner*, pg 7. 13 October 2003.

Members of the Nyungah Circle of elders have applied to Federal Environment and Heritage Minister David Kemp for work to cease on the Wright Lake rowing course and Tonkin Highway extension. The elders say Wright Lake is under "serious threat of injury and desecration". Mr Hayward-Jackson said the elders were particularly concerned a previous application to the Federal government to preserve sacred sites affected by the Tonkin Highway extension had not succeeded. *General News*, pg 1. 14 October 2003.

The State government through the Office of Native Title is providing additional funding towards the appointment of two new offi-

cers for the Goldfields Land and Sea Council. The \$20,000 will augment the original grant of \$130,000 over two years, for two future act officers. The officer's role will be to liaise with claimants, ensuring statutory requirements for heritage consultation and protection are fulfilled. GLSC executive director, Brian Wyatt said the extra officers would help enormously with processing the approximately 1100 mostly mining-related future act applications the GLSC receives each year. *Golden Mail (Kalgoorlie)*, pg 10. 17 October 2003.

South West Aboriginal elders have called on the State government to protect culturally significant sites. Mining giant Cable Sands was given permission last month to begin mining the Ludlow State Forest after Environment Minister Judy Edwards imposed strict environmental conditions. However, members of the Nyungah Circle of Elders wrote to Premier Geoff Gallop and Indigenous Affairs Minister John Kolbelke stating there were still concerns regarding damage to 'spiritual dreaming' in the Ludlow forest. The letter also stated the Indigenous group had a long association with the forest before and during white settlement and was also believed to be the burial site of ancestors. *Bunbury Herald*, pg 8. 21 October 2003.

The Goldfields Land and Sea Council want a fairer and more flexible system for the registration of native title claims. The council believes reform is essential to restore the confidence of Indigenous people in regards to the native title process. GLSC executive director Bryan Wyatt, said the system was far too technical with not enough emphasis on recognising the obvious, such as Indigenous people being the historical custodians of the land. Mr Wyatt added Australia should follow South Africa's example of changing the native title system to be fairer and more sincere in its approach to delivering land justice to Indigenous people. *Golden Mail (Kalgoorlie)*, pg 8. 24 October 2003.

The office of the new Federal Attorney-General Phillip Ruddock, has stated that the native title process is adequately funded. The

Goldfields land and Sea Council has refuted this suggestion. GLSC executive director Bryan Wyatt said the mining community of the Goldfields would suffer the most, along with native title claimants, if unrealistic levels of funding continued. The GLSC has a

need for extra resources as it represents 13 claim groups and has the highest future act burden in Australia. Approximately 55 per cent of the 11,000 applications in the backlog in WA are in the Goldfields. *Golden Mail (Kalgoorlie)* pg 7. 24 October 2003.

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 September/October.

Claimant Applications

Date Filed	Application Name	State/ Territory	Tribunal File No.	Federal Court File No.
04/09/03	Partta	NT	DC03/4	D6004/03
10/09/03	Single Noongar Claim	WA	WC03/5	W6006/03
15/09/03	Kudjala People #6	QLD	QC03/11	Q6011/03
06/10/03	Molly Hill	NT	DC03/5	D6005/03
06/10/03	Combined Single Noongar Claim	WA	WC03/6	W6006/03
08/10/03	Ayapathu and Olkola Peoples	QLD	QC03/12	Q6012/03
14/10/03	Olkola/Strathleven, King Junction	QLD	QC03/14	Q6013/03
29/10/03	Deepwater	NT	DC03/6	D6006/03

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 September to October. 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
03/09/03	Blue Mud Bay	NT	DC98/13	DG6043/98	Not accepted
08/09/03	Olkola People	QLD	QC03/8	Q6008/08	Accepted
08/09/03	Olkola and Thaypan People	QLD	QC03/9	Q6009/03	Accepted
12/09/03	Olkola/Fairlight	QLD	QC03/10	Q6010/03	Accepted
12/09/03	Waluwarra/Georgina River People	QLD	QC97/5	QG6115/98	Accepted
18/09/03	Wik and Wik Way People	QLD	QC01/31	Q6029/01	Accepted
03/10/03	Partta	NT	DC03/4	D6004/03	Accepted

APPLICATIONS CURRENTLY IN NOTIFICATION

Closing Date	Application Number	Application Name
26/11/03	QC02/26	Wuthathi, Kuuku Y'au & Northern Kaanju People
26/11/03	QC00/8	Mandingalbay Yidinji People
26/11/03	WC03/2	Gingirana
09/12/03	QC99/38	Kuuku Ya'u
23/12/03	DC02/34	Blue Mud Bay No. 2
23/12/03	NN03/3	Anthony Bernard Kelly, Minister Assisting the Minister for Natural Resources for NSW

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 are newly catalogued items that have just become available on Mura, the AIATSIS on-line catalogue. Please check Mura for more information on each entry, including annotations.

In addition to the library items, the AIATSIS Audiovisual Archives staff has recently catalogued a collection of videos lodged by the Council for Aboriginal Reconciliation in 2000 that contain significant material on native title. These consist of off-air videos as well as productions by the Council and regional Indigenous associations. A sample of topics from the videos include discussions about native title by Robert Tickner and Chris Gallus, Paul Keating delivering a speech about the Mabo decision and responses by Aboriginal leaders, Noel Pearson on mining leases and how native title affects them, panel discussions on the effectiveness of native title in WA, and commentaries on Wik and the Ten Point Plan.

History and Native Title practice

Choo, Christine and Shawn Hollbach, eds. History and Native Title. Studies in Western Australian history Vol. 23. The University of Western Australia: Centre for Western Australian History, 2003.

Land acquisition and land management

Baker, Richard, Jocelyn Davies, and Elspeth Young, eds. Working on country : contemporary Indigenous management of Australia's lands and coastal regions. Melbourne : Oxford University Press, 2001.

Land rights: case studies

National Native Title Tribunal (Australia). 'The Miriwung and Gajerrong High Court appeal.' Native Title Hot Spots. No.1 (16 August 2002), p.2-9.

Native Title - Conferences

ELECTRONIC ACCESS
The Native Title Conference [electronic resource]: 'Native Title on the ground' : 3-5 June 2003 Alice Springs.

Government reports and Native Title cases: Australia and States

Australia. Federal Court
Hayes v Northern Territory [1999] FCA 1248 (9 September 1999)
111 leaves

Self government

Bern, John Edward and Susan Dodds
'On the plurality of interests : Aboriginal self-government and land rights.'
p.163-179. In Duncan Ivison, Paul Patton,

Will Sanders, eds. Political theory and the rights of indigenous peoples. Cambridge Melbourne : Cambridge University Press, 2000.

Indexes, directories and guides:

Central Land Council Native Title Unit
'Speaking up for Native Title' CLC Native Title Unit
Alice Springs, N. T. [200-] 1 folder (12 items)

Hays, Leigh.
'Worth telling, worth keeping': a guide to the collections of the J. S.
Battye Library of West Australian History.
Perth, W.A. : Library Board of Western Australia, 2002.

Native Title – Legal and anthropological issues

Iorns, Catherine J.
'Indigenous oral evidence.' In Indigenous law bulletin Vol.5, no.25 (June 2003), p.22-23

Maddock, Kenneth
'Bearing witness.' In Australian Anthropology Society Newsletter, no.75 (March 1999), p.23-25.

McRae, Heather et al. 'Indigenous legal issues : commentary and materials'. Pyrmont, N.S.W. : Lawbook Co., 2003.

Morton, John

'I-witnessing I the witness: a response to Ken Maddock on courtly truth and native title anthropology.' In Asia Pacific Journal of Anthropology Vol.3, no.2 (Oct. 2002), pp. [89]-97.

Stead, Jeffery
'Reflections on anthropology in land councils and native title representative bodies.' In Asia Pacific Journal of Anthropology Vol.3, no.2 (Oct 2002), pp.[98]-113

Strelein, Lisa
'Conceptualising Native Title.' In The Sydney Law Review ; Vol.23, no.1 (2001): p. [95]-124.

Native Title – Self-determination

Strelein, Lisa
'Aboriginal self-determination and the Australian courts.' In Eureka Street Vol.6, No.9 (Nov. 1996), p. 35-37.

Native Title – Recent news items

Waia, Terry and Georgina Reid
'Public works threaten native title in Torres Strait'. In Indigenous law bulletin Vol.5, no.26 (July-August 2003), p. 24-26.

Wright, Lisa
'Part 2 of an analysis of the Ward decision Western Australia V Ward'. In Indigenous law bulletin Vol.5, no.26 (July-August 2003), p.18-23

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. 24 *Beyond Yorta Yorta*
John Basten QC
- No. 23 *'Indigenous Pueblo Culture and Tradition in the Justice System: Maintaining Indigenous Language, Thought and Law in Judicial review'*
Christine Zuni Cruz
- No. 22 *'Abandonment' or Maintenance of Country? A Critical Examination of Mobility Patterns and Implications for Native Title*
Peter Veth
- No. 21 *Members of the Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 (12 December) – Comment*
Lisa Strelein

- No. 20 *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice*
Parry Agius, Jocelyn Davies, Richie Howitt and Lesley Johns
- No. 19 *'Winning' Native Title: The Experience of the Nharnuwungga, Wajarri and Ngarla People*
Michelle Riley
Pastoral Access Protocols: The Corrosion of Native Title by Contract
Frances Flanagan
- No. 18 *Diaspora, Materialism, Tradition: Anthropological Issues in the Recent High Court Appeal of the Yorta Yorta*
James F Weiner
- No. 17 *Western Australia v Ward on behalf of Miriuwung Gajerrong, High Court of Australia, 8 August 2002: Summary of Judgment*
Lisa Strelein
- No. 16 *The International Concept of Equality of Interest in the Sea as it Affects the Conservation of the Environment and Indigenous Interests*
Sir Anthony Mason
- No. 15 *Preserving Culture in Federal Court Proceedings: Gender Restrictions and Anthropological Experts*
Greg McIntyre and Geoffrey Bagshaw
- No. 14 *"Like Something Out of Kafka": The Relationship between the roles of the National Native Title Tribunal and the Federal Court in the development of Native Title Practice*
Susan Phillips
- No. 13 *Recent Developments in Native Title Law and Practice: Issues for the High Court*
John Basten
- No. 12 *The Beginning of Certainty: Consent Determinations of Native Title*
Paul Sheiner
- No. 11 *Expert Witness or Advocate? The Principle of Ignorance in Expert Witnessing*
Bruce Shaw
- No. 10 *Review of Conference: Emerging Issues and Future Directions*
Graeme Neate
- No. 9 *Anthropology and Connection Reports in Native Title Claim Applications*
Julie Finlayson
- No. 8 *Economic Issues in Valuation of and Compensation for Loss of Native Title Rights*
David Campbell
- No. 7 *The Content of Native Title: Questions for the Miriuwung Gajerrong Appeal*
Gary D Meyers
- No. 6 *'Local' and 'Diaspora' Connections to Country and Kin in Central Cape York Peninsula*
Benjamin Smith
- No. 5 *Limitations to the Recognition and Protection of Native Title Offshore: The Current 'Accident of History'*
Katie Glaskin
- No. 4 *Bargaining on More than Good Will: Recognising a Fiduciary Obligation in Native Title*
Larissa Behrendt
- No. 3 *Historical Narrative and Proof of Native Title*
Christine Choo and Margaret O'Connell
- No. 2 *Claimant Group Descriptions: Beyond the Strictures of the Registration Test*
Jocelyn Grace
- No. 1 *The Contractual Status of Indigenous Land Use Agreements*
Lee Godden and Shaunnagh Dorsett

Monographs

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

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

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

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

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

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

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

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

ABOUT THE NATIVE TITLE RESEARCH UNIT

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