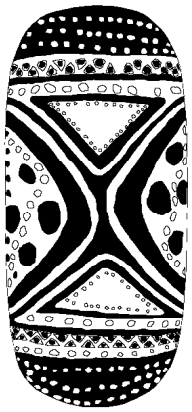

# A I A T S I S

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

## Native Title Research Unit

# NATIVE TITLE NEWSLETTER

## September and October 1999

## No. 6/99

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 papers 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
IM = Illawarra Mercury
LE = Launceston Examiner
Mer = Hobart Mercury
NNTT = National Native Title Tribunal
NTA = *Native Title Act 1993*
NTN = Northern Territory News
QNT = Queensland Native Title News
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

## Conference Report

## National Indigenous Sea Rights Conference - Hobart, Tasmania

From 28-30 September this year, Indigenous people and others interested in Indigenous sea and water rights collected in Hobart for the ATSIC National Indigenous Sea Rights Conference. Local, national and international perspectives were presented to over 200 delegates.

Speakers reviewed current legislative regimes and recent cases, including Croker Island, and guests from New Zealand and Canada provided a comparative perspective.

It was made clear from the beginning and reiterated by convenors and from the floor, that there would be substantive outcomes from the Conference. To this end, considerable time was devoted to workshops, from which a Declaration was drawn.

The Declaration notes the lack of recognition of Indigenous peoples' inherent rights and responsibilities not only to the seas but to the coasts and inland waters and called for immediate steps to be taken to provide such recognition.

State governments and other bodies, such as ATSIC and NTRBs, were called upon to host regional meetings on Indigenous marine management which could lead to state and regional marine management agreements.

The conference addressed the serious issue of criminal sanctions currently facing Indigenous people who exercise their right to fish and manage the waterways. And, while some people have avoided conviction based on native title or the honest claim of right defence, many are being successfully prosecuted.

While recent developments in the recognition of rights were welcomed, in Croker Island, for example, the non-commercial aspect was criticised. So too, the assumption that Indigenous rights to waterways are in conflict with sound environmental management. These issues were considered in detail. What was most apparent was the importance of Indigenous peoples having meaningful involvement in the management of waterways over which they have rights and responsibilities.

ATSIC intends to publish a summary of the proceedings of the Conference.

*Lisa Strelein*
*Native Title Research Unit, AIATSIS*

## Current Issues

This has been a quiet period for native title but there have been some notable developments around the country.

In Queensland NTRB's are considering the implications of a ruling requiring connection reports be provided prior to mediation. The provision of connection reports prior to engaging in mediation is unfair. Mediation is a process where all parties come to the table as equals for the purpose of reaching a compromise. The insistence by States on native title parties proving their legitimacy undermines this process. If native title parties are required to establish their credentials prior to mediation, then perhaps the process would be better served if other parties also reported on their position. It seems that the native title process is still underwritten by a power imbalance, with native title parties constantly battling to gain recognition and respect.

The republic debate struck many chords, some Indigenous people advocated voting for, some against. One reason for voting against was the question of unfinished business with the Crown. The republic debate as it enters the next phase (post referendum) should provide greater opportunity for Indigenous people to seek recognition and protection of our rights, either through a Bill of

Rights for all Australians or some specific charter dealing with Indigenous rights. Perhaps ratification and implementation of the UN Draft Declaration on the Rights of Indigenous Peoples when it is finalised.

If we are to finish some business with the Crown we need to be aware of other historical instances surrounding our constitutions at a state level as well. The colony of Western Australia, for example was granted self-government with a constitutional guarantee protecting the interests of Aboriginal people. This section of the constitution was quickly disposed of upon self-government and Aboriginal people have been marginalised in Western Australia ever since.

The Yanner decision caused relatively few ripples, given the importance of the case. Some have asked whether the decision would have been decided differently if it were considered under the amended Native Title Act, particularly s 211 (1) (ba). The implications of this section are not clear. More importantly, perhaps, the immediate question that comes to mind upon reading the decision (although I'm not a lawyer) is the implications for other similar legislation which asserts the Crown's ownership over things, like minerals and other natural resources. Further discussion on this issue is needed.

I welcome feedback from readers on any of these issues, please forward comments to me at kado@aiatsis.gov.au

*Kado Muir*
*Native Title Research Unit, AIATSIS*

## NATIVE TITLE IN THE NEWS - SEPTEMBER & OCTOBER 1999

### National

Ron Castan QC, senior counsel in the *Mabo* native title case in the High Court, died in Melbourne on 21 October 1999. Mr Castan played a leading role in the development of the *Native Title Act* in 1993 and was an advisor to the Labor Party throughout the *Mabo* and *Wik* debates in Federal Parliament. *(FinR, 22 Oct, p17)**

The issue of Indigenous sea rights was discussed by Indigenous people from Australia, Canada and New Zealand at the first National Indigenous Sea Rights Conference in Hobart, Tasmania. The conference, organised by ATSIC, issued the following declaration

> Delegates to the first National Indigenous Sea Rights Conference expressed great disappointment at the lack of recognition to Indigenous peoples inherent rights and responsibilities to seas, coasts and inland waters of Australia.

*(Moyne Gazette, 6 Oct, p3)** (see conference report on page 2)

The National Native Title Tribunal released a Media Statement on 30 September 1999 to mark the anniversary of the introduction of amended Commonwealth native title laws. The Tribunal argued that

- Conditions are improving for the settlement of the nation's six hundred native title applications by agreement rather than Court action.
- The combination, withdrawal and amendment of hundreds on applications had greatly improved the climate for negotiation.
- There were 80 new applications in the past year.
- Withdrawals and combinations resulted in a 21 per cent reduction in the total number of applications nationwide.
- There were now 606 applications nationwide. The number in Western Australia has dropped to 179.
- Nationally 50 per cent of applications are passing the registration test and gaining the right to negotiate.

Tribunal Registrar, Chris Doepel stated that 'there are emerging signs that the message is getting through that native title is here to stay and is best settled by negotiation'. *(NNTT Media Release, 30 Sept)**

The High Court has held that state conservation laws do not extinguish the native title rights of Aboriginal and Torres Strait Islander peoples. The court held that the Queensland *Fauna Conservation Act*, which prohibits the taking of protected fauna without a licence, did not prevent Mr Murrandoo Yanner from exercising his native title right under the *Native Title Act 1993* to hunt and fish. *(CT, 8 Oct, p1)**

The Federal Attorney-General, the Hon Daryl Williams AM MP launched a new publication from the Australian Local Government Association, *Working With Native Title: A Practical Guide for Local Government*. *(ALGA Media Release, 21 Oct)* (see article on page 16)

## Yanner v Eaton

**(unreported decision, High Court of Australia, Full Court, 7 October 1999)**

The appeal by Marandoo Yanner against a conviction for taking crocodile without a licence was handed down in the High Court on Thursday, 7 October 1999. In a joint majority judgement, Gleeson CJ, Gaudron, Kirby and Hayne J J, allowed the appeal, with Gummow J also in the majority allowing the appeal though offering separate reasons.

The majority held that Yanner was exercising a traditional right which constituted part of the native title of the Gunnamalla and that the right was not extinguished by the *Queensland Fauna Conservation Act*, which provided that all fauna is the 'property' of the Crown.

The joint judgement and that of Gummow J made some important comments on the nature of property. This aspect of the decision is likely to have wider significance. In the joint judgement their Honours said that, 'property does not refer to a thing; it is a description of a legal relationship with a thing'.

In contrast to the judges of the minority (McHugh and Callinan J J), their Honours said that to describe property as vesting in the Crown did not assume absolute ownership, rather, the terms may be indicative of 'all or any of the many different kinds of relationships between a person and a subject matter', and therefore further investigation of the purpose of the Act was necessary. Gummow J also construed the concept of property in this way, suggesting that property is an aggregate of legal relations not of things.

In the joint judgement, their Honours outlined a number of reasons why property in this instance was not absolute ownership, to conclude that the vesting of property here was 'nothing more than "a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource"'. (citing a US case)

Therefore, the 'property' referred to in the Act is 'no more than an aggregate of the various rights of control by the executive' to prohibit the taking of fauna without a licence.

If that vesting was inconsistent with the native title rights being asserted, then native title may still have been extinguished to the extent of any inconsistency, in accordance with the *Wik* decision. Examining the extent of any inconsistency, their Honours concluded:

> It is sufficient to say that regulating the way in which rights and interests may be exercised is not inconsistent with their continued existence. Indeed, regulating the way in which a right may be exercised presupposes that the right exists.

Of course the grey area between absolute prohibition and extinguishment was noted but was not considered to arise in this instance.

Their Honours also noted than in considering the question of inconsistency the nature of native title must always be kept in mind. They said that native title rights and interests 'not only find their origin in Aboriginal law and custom, they reflect connection with the land'. This may be understood as spiritual, cultural and social connection. The importance of this, especially in this case, was said to be that regulating a particular incidence of native title will not sever the connection with the land that sustains native title.

Gummow J also picked up on this point, when emphasising that native title is not a 'unitary concept', that is, it varies from one case to another depending on the community's traditional laws and customs. Gummow J also noted the distinction between native title rights and interests, which reside with the community, and the privileges or rights which flow from that to individuals within the community. Gummow J concluded:

> The exercise of the native title right to hunt was a matter within the control of the appellants indigenous community. The legislative regulation of that control, by requiring an indigenous person to obtain a permit under the Fauna Act in order to exercise the privilege to hunt, did not abrogate the native title right. Rather, the regulation was consistent with the continued existence of that right.

The majority identified that the right is further protected by section 211 of the *Native Title Act* which preserves certain native title rights and interests on lands occupied by Indigenous peoples. In turn, the *Racial Discrimination Act* and section 109 of the *Australian Constitution* further protect those rights against extinguishment by state legislation.

The minority judgements differed in the construction of the concept of property, preferring the submissions of the respondents that 'property' in the Act meant absolute ownership and therefore extinguished native title.

This case is of immense importance to Indigenous peoples in the assertion of rights to use and control resources. It should be noted that similar language, vesting property in the Crown, is the basis of the assumption of Crown ownership of minerals in many state legislative regimes. This decision also gives support to the decision of Justice Lee in the Miriuwung Gajerrong determination on the issues of resources.

The decision is consistent with overseas precedents although it does not deal with many of the issues raised, for example, in the *Sparrow case* Canada, which would arise when new legislation is sought to be introduced which may impinge on native title.

The decision also moves the direction away from previous discussions of 'a vulnerable title' and 'a bundle of rights' which seemed to suggest a constraining of the concept of native title (although Callinan J maintained this restrictive conception). The earlier focus on property no longer holds the same connotations or implications, because the concept of property has been construed in a way that is more akin to Indigenous understandings of their relationship with land and there is, hopefully, therefore a little less scope for missed meanings.

The decision will be a relief to many Indigenous peoples and their representatives, as well as fans of the High Court as protector of rights (not just an arm of the colonising state). Perhaps this a reflection of the High Court again feeling that there is room for them to progress native title and provide thoughtful decisions, now that the dust has settled on the 1998 Amendment process. Let's not get our hopes up too high though.

The decision can be found at
http://www.austlii.edu.au/au/cases/cth/high_ct/1999/53.html

*Lisa Strelein*
*Native Title Research Unit, AIATSIS*

Senator John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, announced an extension of time for the transition period for the selection of Native Title Representative Bodies from 30 October 1999 to 30 June 2000. The transition period was to allow for the selection of eligible bodies for recognition as representative bodies under amended *Native Title Act* provisions. Existing organisations not selected for recognition lose their representative body status at the end of the transition period. *(QNT, Nov 1999, p1)*

## Victoria

The Victorian government has rejected a state-based system to resolve native title claims. Premier Jeff Kennett stated that the government would explore an agreements-based approach for Victoria. *(HS, 15 Sept, p13)**

## Queensland

Chairperson of the Torres Strait Regional Authority (TSRA), Mr John Abednego, stated that the TSRA was considering its approach to sea claims now that the majority of land claims had progressed. Consultations with communities were complete and strong support was indicated for one regional sea claim. *(Torres News, 3 Sept, p3)*

The Queensland Indigenous Working Group (QIWG) and Queensland Premier Peter Beattie have signed Australia's first formal protocol for future consultation on land and resource management. The QIWG is made up of representatives from the eight Native Title Representative Bodies in Queensland, the Aboriginal Coordinating Council and the Islander Coordinating Council. The protocol recognises the QIWG as the main Aboriginal and Torres Strait Islander body to be consulted in Queensland in relation to native title, land and resource management and cultural heritage. *(QNT, Sept 1999, p3)*

The annual conference of the Local Government Association of Queensland passed a motion to 'terminate native title issues and claims at the end of 1999 so that all people can live in this country and enter the new millennium as equal Australians'. Many small rural and regional councils supported the motion but there was strong opposition from larger councils including Brisbane and Redland. *(QNT, October 1999)*

The Attorney-General, the Hon Daryl Williams AM QC MP, stated in a media release that the proposed Queensland alternative right to negotiate native title provisions comply with the *Native Title Act*. In accordance with the Act the

Attorney-General has written to all Aboriginal and Torres Strait Islander representative bodies in Queensland notifying them of nine of the proposed determinations which are subject to consultation with other interested parties. Comments are being sought by 14 January 2000. *(Attorney-General, News Release, 28 Oct 1999)*

## South Australia

The South Australian Parliament will soon debate amendments to the State's native title legislation. Mr Parry Agius, chairman of the South Australian Native Title Steering Committee said the amendment bill unfairly upheld the status of property leases at the expense of native title. *(Ad, 28 Sept, p10)**

## Western Australia

The Commonwealth Parliamentary Joint Committee on Native Title and the Land Fund heard evidence in Kalgoorlie-Boulder and Leonora and found that issues raised, including those relating to land access and overlapping claims, corresponded with matters raised in other regional areas of Australia including Kununurra, Broome and Mt Isa. *(KM, 17 Sept, p5)*

The Western Australian Government has introduced legislation to extinguish native title on 1300 WA leases to protect the leaseholders from legal action. The non-Government parties in the WA Upper House excluded the leases from the Title Validation Amendment Bill in 1998. *(WA, 17 Sept, p28)* The Aboriginal Legal Service (WA) will try to stop the plan to validate WA leases which it says will adversely affect native title holders. *(WA, 19 Oct, p10)*

## Northern Territory

The Senate voted to disallow the Northern Territory's native title scheme because future changes could be made to the scheme without further review by the Federal parliament. The Democrats, Independent Senator Brian Harradine and Greens Senator Bob Brown voted with Labor to pass the disallowance motion. The Northern Territory legislation would have created a lands and mining tribunal to take over native title negotiations from the National Native Title Tribunal. It was the first state-based regime to go to Parliament for Senate approval as a result of the 1998 amendments. *(FinR, 1 Sept, p2)**

# APPLICATIONS

## National

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

The following decisions are listed for September and October:

| | | | |
|---|---|---|---|
| People of Naghir #1 | pass | Tjupan | sff |
| Rubibi #10 | sff | Rubibi (combined application) | pass |
| Warrwa People | sff | Gunggandji | pass |
| North West Nations | sff | Wadja People | sff |
| M.Dawson, F.Wally & L.Whibby | sff | Pine Hill Station | pass |
| Rosie Mulligan & Ors | sff | Wirri Clan | pass |
| Rubibi Claim #12 | sff | Nyigina and Mangala (combined application) | pass |
| Rubibi #9 | sff | Spinifex People | pass |
| Bidjara People #4 | pass | Gooniyandi (combined application) | pass |
| Wulgurukaba People #1 | pass | Bunjalung People | sff |
| Wulgurukaba People #2 | pass | Dharawal People | pass |
| Bardi/Jawi | pass | Djabera-Djabera People | pass |
| Kudjala & Jirandali People | pass | Ngarrawanji | pass |
| Butchulla People | pass | Darug # 3 | dnp |
| Gurang People (amended 13/9/99) | dnp | Ngunawal (ACT) | sff |
| Harris Family | pass | Ngunnawal (ACT) | sff |
| Undumbi People | dnp | Indjilandji/Dithannoi People | pass |
| Warburton - Mantamaru | pass | Central East Goldfields (combined application) | pass |
| Gooreng Gooreng People | dnp | Central West Goldfields (combined application) | pass |
| Indjilandji | pass | Ngarrindjeri #1 | dnp |
| Waanyi Peoples | pass | Yankunytjatjara/Antakirinja | pass |
| Lamboo (combined application) | pass | Eringa | pass |
| Moorawarri Aboriginal People (amended 17/9/99) | pass | Karajarri #2 | pass |
| Ngawarr | pass | Purnululu | pass |
| Swan Valley Nyungah Community | sff | Gumilaroi | sff |
| Dja Dja Wurrung People (combined application) | pass | Willi Willi (Dodd) | sff |
| Gomilaroi #3 | sff | Wulli Wulli People | sff |
| Widi Marra | sff | Dieri Mitha | dnp |
| Widi Marra | sff | Wangkangurru/Yarluyandi People | pass |
| Bodney | dnp | Gobawarrah Minduarra Yinhawanga (amended 29/10/99) | pass |
| Leregon #2 | sff | Walbunja | pass |
| Mr Corrie Bodney (Snr) | dnp | | |
| Sir Samuel Number 2 | sff | | |

Sff - Short form failure - means that the application was tested against a limited number of conditions.
Dnp - did not pass - does not necessarily mean that native title does not exist. 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.

## Victoria

### Wotjobaluk People [NNTT Ref#VC95/2]

The Federal Court has referred the Wotjobaluk People's native title application to the National Native Title Tribunal for mediation. The Federal Court has accepted over 400 people as registered parties in the claim that covers crown lands and waterways in the Wimmera area of western Victoria. *(NNTT Media Release, Sept 1999)**

## Queensland

### Waanyi People [NNTT Ref#QC99/23]

The Waanyi People's application was lodged in the Federal Court on 30 August 1999. The new claimant application covers an area around Lawn Hill National Park in Far North Queensland extending to the Northern Territory border at Dariel Gate and covers Nicholson River Station in the Northern Territory. The claim combines all previous Waanyi claims.*(QNT, Sept 1999, p2)**

### Gia People [NNTT Ref #QC99/24]

The Gia People's application was lodged in the Federal Court on 31 August 1999. The claimant application covers an area around Proserpine in Central Queensland including Gloucester Island National Park and Eungella National Park. *(QNT, Sept 1999, p2)*

### Quandamooka People [NNTT Ref#QC99/25]

The Quandamooka People's second application was lodged in the Federal Court on 14 September 1999. The new claimant application covers specific parcels of land on and around Stradbroke Island in south-east Queensland. *(QNT, Oct 1999, p2)*

### Bitta Bitta People [NNTT Ref#QC99/27]

The Bitta Bitta People's application was lodged in the Federal Court on 27 Sept 1999. The new claimant application covers an area around Boulia in north-west Queensland and replaces application number QC97/14. *(QNT, Oct 1999, p2)*

### Wangkumarra People [NNTT Ref # QC99/29]

The second Wangkumarra People's application was lodged in the Federal Court on 1 October 1999. The new claimant application covers land in the south-west corner of Queensland running along the South Australian border and also land in New South Wales. *(QNT, Oct 1999, p2)*

### Ngadon-Ji People [NNTT Ref # QC99/30]

The Ngadon-Ji People's application was lodged in the Federal Court on 14 October 1999. The new claimant application covers specific lots near Bartle Frere in Far North Queensland. *(QNT, Nov 1999, p2)*

### Badjubara People [NNTT Ref # QC99/31]

The Badjubara People's application was lodged in the Federal Court on 21 October 1999. The new claimant application covers specific lots in an area west of Cardwell in Central Queensland. *(QNT, Nov 1999, p2)*

## Western Australia

### Ngarluma and Yindjibarndi People [NNTT Ref # WC94/4, WC95/3, WC99/14]

The Federal Court convened in Millstream National Park, near Karratha, to hear a native title claim covering the Burrup Peninsula and Millstream National Park. This claim is only the second WA claim to reach the courts. The claim by the Ngarluma and Yindjibarndi People covers 17,000 sq km around Karratha, Roebourne, Wickham and Dampier and includes an 8,000 sq km area of sea. *(WA, 22 Sept, p11)**

## Northern Territory

### Hayes v Northern Territory [NNTT Ref # DC94/2]

The Arrernte people have been granted native title rights over 113 areas of land in and around Alice Springs. The decision by Justice Olney grants the traditional owners broad rights to occupy and use the land, be acknowledged as the traditional owners, use and enjoy the natural resources, make decisions about land and water use, protect areas of importance, and 'manage the spiritual forces and to safeguard the cultural knowledge associated with the land and waters'. *(CT, 13 Sept, p3)**

The decision (*Hayes v Northern Territory* [1999] FCA 1248 unreported decision. Justice Olney 9 Sept 99) can be found at
http://www.austlii.edu.au/au/cases/cth/federal_ct/1999/1248.html

# MINING AND NATURAL RESOURCES

## National

Expenditure on defending native title claims will be able to be written off as a tax deduction by mining companies. *(DT, 22 Sept, p7)**

Mr Dick Wells, chief executive, Minerals Council of Australia, cited confusion on native title issues, low commodity prices and uncertainty over taxation changes as reasons for a fall in expenditure on minerals exploration *(FinR, 21 Sept, p6)**

## Queensland

The Queensland Mining Council has criticised delays by Federal Attorney-General, Mr Darryl Williams, in the handling of Queensland's native title legislation. The legislation must be considered by an Indigenous working group for 3 months before going to the Senate. The mining industry had hoped the Act would be in operation by January 2000 to enable 1,700 mining leases and exploration applications to be cleared. *(FinR, 15 Oct, p19)*

## Northern Territory

Traditional owners have given approval for the next stage of negotiations with the French Government owned Cogema Australia Pty Ltd in relation to the Koongarra uranium deposit in the Alligator Rivers area, 30 kilometres south of the Ranger uranium mine in Kakadu National Park. *(Age, 23 Oct, p14)*

# AGREEMENTS

## Victoria

An agreement has been reached with the Dja Dja Wurrung people covering two mining leases on crown land east of Kingower and near Moliagul. The agreement also provides for commitments to protect the environment and possible employment opportunities for the Aboriginal community. *(Bendigo Advertiser, 16 Sept, p3)*

## Queensland

The NNTT has registered Queensland's first two Indigenous Land Use Agreements under the amended *Native Title Act*. The agreements are between four local Aboriginal groups, the Queensland Government, Mackay Surf Life Saving Club and Mackay City Council. They relate to the construction of a new

surf lifesaving club and the gazettal of land for a park in the Mackay Harbour Beach area of North Mackay. *(Qld Country Life, 9 Sept, p14)*

The Queensland Government signed a right to negotiate agreement with opal miners and native title claimants that will allow the granting of a number of mining leases and mining claims in the Winton opal mining district. Negotiations for a number of Indigenous Land Use Agreements covering future grants of similar mining tenures in the Winton district are proceeding. *(QNT, Oct 1999, p3)*

## Recent publications

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

***Our Culture: Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights.*** Janke, Terri. 1999. Michael Frankel & Co., solicitors, AIATSIS, ATSIC. Mick Dodson described this benchmark publication saying, 'It will continue to shape our thinking for many years to come.' The text follows under three parts. Part 1, The Nature of Indigenous Cultural and Intellectual Property, defines the terms of the discussion and Indigenous concerns and rights. Part 2, Protection Under Australian Legal Framework, summarises pertaining property and cultural heritage laws and other related documents, notably the communal basis of land ownership under the *Native Title Act 1993* and international conventions. Part 3, Developing Strategies for Protection, recommends changes to particular instances of law and practice. It includes a chapter on research ethics. Native title receives specific mention in the recommendation 15.1, 'Support should be given for native title actions which test and expand the meaning of native title and interests to other areas of Indigenous cultural heritage, including stories, biodiversity knowledge and cultural objects.' Of the five appendixes those listing commonwealth and state Indigenous cultural heritage laws and proposing model laws for protection are particularly valuable. The report is available at http://www.icip.lawnet.com.au

***Compensation for native title, Issues and challenges*** The National Native Title Tribunal has produced a collection of papers presented at 2 workshops held by the National Native Title Tribunal and the Australian Property Institute in 1997. Contributors include John Sheehan (Australian Property Institute), Graham Neate (President NNTT) and Daryl Kickett (WA Indigenous Working Group). The book looks at the question of compensation from Indigenous,

commercial and legal perspectives and examines some of the methods that might be used to calculate financial compensation. *(QNT, October 1999)*

## *Working with Native Title:*
### *A Practical Guide for Local Government*

Australian Local Government Association

Over the last two years, the Australian Local Government Association (ALGA) has been involved in various initiatives around the development of information about native title and agreement making for Local Government. Dealing with native title considerations is another part of Local Government's responsibilities as land managers and developers. In recognition of this, ALGA initiated its Native Title Information Project in 1997 to promote an understanding of native title matters and processes throughout local Councils across Australia.

In 1998, ALGA, with the support of Aboriginal and Torres Strait Islander Commission (ATSIC), produced *Working out Agreements: A Practical Guide to Agreements between Local Government and Indigenous Australians*. The Guide to *Working out Agreements* was specifically designed to assist local Councils in working out agreements with Indigenous Australians, including in relation to native title and related matters.

Since the amendments to the *Native Title Act 1993* (Cth) in 1998, the main focus of ALGA's Native Title Information Project has been the production of *Working with Native Title: A Practical Guide for Local Government*. This Guide has been produced by ALGA with the support of ATSIC and the National Native Title Tribunal (NNTT). *Working with Native Title: A Practical Guide for Local Government* provides an introduction to the concepts and processes that Local Government should be familiar with when working with native title.

One of the misconceptions surrounding native title in Local Government is that native title does not exist in an area until there is a native title claim or determination in the area. To clarify any confusion, *Working with Native Title* has been designed to assist Councils in understanding the concept of native title as an existing right. The Guide informs Councils that native title is an existing right stemming from Indigenous laws and customs, which does not rely on the common law for its existence, and which in certain areas will need to be taken into account whether or not there is a claim or a determination.

As a prudent management strategy, Councils are urged to include native title as a consideration in all dealings involving land or waters where it cannot be

established beyond doubt that native title has been extinguished. Adoption of a precautionary approach in relation to native title matters will ensure Councils are able to meet their obligations under the *Native Title Act 1993* (Cth) and complementary State or Territory legislation.

*Working with Native Title* explains Councils' obligations under the *Native Title Act 1993* (Cth) and complementary State/Territory legislation, and suggests ways of incorporating native title into Council processes. It is divided into two parts, Part A and Part B. Part A contains a practical step-by-step Action Plan that Councils may use to navigate their way through the processes established under the *Native Title Act 1993* (Cth) and complementary State or Territory legislation. The Action Plan is designed for Councils (or indeed any other interest holder) to use as a basis for developing a precautionary approach to native title, even where there are no native title applications or determinations in the area. Council may also use it as a guide to identify where native title exists or may continue to exist and what Council should do when carrying out its functions in those areas.

Part B of the Guide contains additional information that Councils need to know to be able to work more effectively with native title matters, including:

- native title and its recognition at common law;
- the relationship of the *Native Title Act 1993* (Cth) with other concepts and legislation, such as land rights and heritage protection;
- the roles of the various agencies that local Councils will need to deal with on native title matters, including the Federal Court and the National Native Title Tribunal;
- an overview of the States' and Territories' native title regimes;
- the rateability of land subject to native title;
- learning from other jurisdictions such as New Zealand and Canada; and
- a list of resources and other reference material that may be of assistance to Councils involved with native title matters. Contact details of relevant organisations, from which Local Government may seek information or assistance at national, State and Territory levels with respect to native title matters, are included.

This Guide, like the *Native Title Act 1993* (Cth), is based on the premise that agreements are the most effective way of resolving native title matters. *Working with Native Title* is a companion to *Working out Agreements*, and it is intended for these Guides to be read and used together.

To build on these resources, ALGA, with the support of the Legal Aid Branch of the Federal Attorney-General's Department, the NNTT and ATSIC, has developed training workshops in the use and application of *Working with Native Title* and *Working out Agreements*. Commencing in November 1999, training workshops will be delivered in regional centres across Australia through State/Territory Local Government Associations. Enquiries can be directed to the Australian Local Government Association in the first instance.

Copies of *Working with Native Title* and *Working out Agreements* can be purchased from the Australian Local Government Association in Canberra, on phone 02 6281 1211, fax 02 6282 2110 or by email alga@alga.com.au.

*Ed Wensing, Consultant, Native Title*
*Lucy Macmillan, Native Title Project Officer*
*Australian Local Government Association*

## Native Title Research Unit publications

*The following NTRU publications are available from AIATSIS. Please phone (02) 6246 1161, fax (02) 6249 1046 or email:* ntru@aiatsis.gov.au. Prices listed include postage.

***Regional Agreements: Key Issues in Australia – Volume 2, Case Studies*** Edited by Mary Edmunds, 1999. ($19.95)

***A Guide to Overseas Precedents of Relevance to Native Title*** Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden, 1998. ($18.95)

***Working with the Native Title Act: Alternatives to the Adversarial Method*** Edited by Lisa Strelein, 1998. ($9.95)

***Regional Agreements: Key Issues in Australia – Volume 1, Summaries.*** Edited by Mary Edmunds, 1998. ($16.95)

***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. ($12.95)

***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 ($20)

***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 ($15)

***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 ($11.95)

***Claims to Knowledge, Claims to Country: Native Title, Native Title Claims and the Role of the Anthropologist*** Summary of proceedings of a conference session on native title at the annual conference of the Australian Anthropological Society, 28-30 September 1994 (out of print)

***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 ($9.95).

*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 and 1999:**

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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*This newsletter was prepared by Ros Percival*