

Native title – achievement, despite the odds,
 Mr Brian Wyatt, CEO, Goldfields Land and Sea Council;
Regionalism and Indigenous governance: challenges for policy makers,
 Senator Kerry O'Brien, Shadow Minister for Reconciliation and Indigenous Affairs;
Mid-passage towards self-determination: a regional and community perspective,
 Mr Sam Jeffries, Chairman, Murdi Paaki Regional Council;
Prospects for regionalism in Indigenous community governance,
 Dr Will Sanders, Fellow, CAEPR;
Societies, communities, groups and individuals in native title claims and determinations,
 Mr Robert Blowes, Barrister at Law;

Traditional owners and 'community-country' Anangu: distinctions and dilemmas,
 Dr Sarah Holcombe, Post-Doctoral Fellow, CAEPR;
Native Title in the deserts of WA - Progress, proof, policy, PBCs, and the Future,
 Mr Bill Lawrie, Manager, Native Title Unit, Ngaanyatjarra Land Council;
Leadership and authority in the Harvard studies and Australian Aboriginal communities,
 Dr Patrick Sullivan, A/g Deputy Director of Research, AIATSIS.

If you or your organisation may also be interested in contributing to a collection on Regionalism and Indigenous Governance please contact Stuart Bradfield on (02) 6261 4223, or stuart.bradfield@aiatsis.gov.au

FEATURES

Indigenous Facilitation and Mediation Project (IFaMP)

IFaMP web site

The web site for the Indigenous Facilitation and Mediation Project (IFaMP) was launched at the Native Title Conference 2004 by the AIATSIS Principle, Mr. Steve Larkin. It is available at: www.aiatsis.gov.au/ifamp and provides comprehensive research materials on Indigenous facilitation and mediation. Please contact us with comments or additional materials to add to the site.

Native Title Representative Body Workshops for 2004

Four workshops sponsored by the National Native Title Tribunal (NNTT) with representatives from Native Title Representative Bodies (NTRBs) were held in May and June 2004.

The workshops were aimed at assisting NTRBs to reflect upon decision-making and conflict management processes and at identifying training needs.

Workshops were held at:

- Bundaberg (Gurang Land Council Aboriginal Corporation/Central Queensland Land Council Aboriginal Corporation) 10-11 May 2004;
- Cairns (North Queensland Land Council/Torres Strait Regional Authority) 13-14 May 2004;
- Perth (Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation) 24-25 May 2004; and
- Adelaide (NTRB CEOs Workshop) 1 June 2004, prior to the Native Title Conference in Adelaide. Findings and issues from the previous four workshops were presented to the CEOs who provided advice about future directions for the Project.

Individual workshop reports have been forwarded to each NTRB for comment. A final summary report with analysis of the issues and future directions is in preparation.

Recommendations from the CEO Workshop included the following:

1. As a result of Native Title Representative Body (NTRB) workshops a number of training areas and priorities were identified.

Those training areas and priorities including native title information provision and others dealing with conflict and facilitation should be reviewed and further analysed with a view to developing recommendations that should be referred to the AIATSIS Indigenous Facilitation and Mediation (IFaMP) Project Reference Group.

The issue of training for managing meetings should be looked at separately and recommendations developed. The Project Reference Group should act in consultation with the CEOs of NTRBs after the final review by CEOs.

2. IFaMP should formalise a request to the National Native Title Tribunal (NNTT) to pilot their mediation training with NTRBs and to have it formally evaluated for use by NTRBs by IFaMP. NTRBs to be involved include the Aboriginal Legal Rights Movement (ALRM), Cape York Land Council (CYLC), and Native Title Services Victoria (NTSV).

3. IFaMP should investigate community justice mediation programs and other training opportunities for evaluation and possible implementation in the NTRB context.

4. That the CEOs endorse in principle the concept of a pilot facilitation training of Indigenous people based on the core elements identified in Indigenous Facilitation and Mediation Project (IFaMP) Recommendations. The endorsement is to be referred to the IFaMP Project Reference Group for implementation and supervision.

5. The CEOs present at the IFaMP forum on 1 June 2004 recommend that the NTRB workshop process as outlined in the flyer is concluded. Based on the IFaMP recommendation, the project will move into a new phase. Any further NTRB workshops will be based on the ongoing identification of new issues by IFaMP and ratified by the Project Reference Group.

New South Wales Attorney General's Department, Community Justice Centres Workshop at the Native Title Conference 2004

The IFaMP team coordinated a workshop with the New South Wales Attorney-General's Department Community Justice Centres (CJC) at the pre-conference NTRB workshop at the Native Title Conference, held on 2 June 2004 in Adelaide. The "Community Justice Mediation Models and Native Title" workshop was facilitated by Sarah Mills and Bill Prichard.

Staff and representatives of NTRBs at the workshop recognized the need for fair, inclusive and transparent decision-making processes on which Indigenous people can confidently rely and which build on local skills in decision and conflict management processes.

They also recognized that many of the disputes between native title groups were 'community' disputes often between individuals, and that they could benefit from the kinds of mediation practices employed in the community justice sector.

The Workshop recommended that the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) looks at:

- Establishing regional panels of nationally accredited Aboriginal and Torres Strait Islander facilitators and mediators under a national network, with the aim of dealing with community issues, which would have an immediate impact on native title outcomes.
- Examining funding options for independent mediation and facilitation services for Aboriginal and Torres Strait Islander communities, for example pilot projects and 'whole of government' approaches.
- Assisting in setting up and convening a working group of NTRB representatives to follow up, promote and develop facilitation and mediation services.

The Workshop also recommended that:

- The National Native Title Tribunal (NNTT) and the Federal Court need to employ Aboriginal and Torres Strait Islander

mediators and facilitators. This will make a significant difference in addressing what is seen to be a power imbalance created by Indigenous people having to deal with imposed 'whitefella' processes, which are highly complex and place Indigenous people at a significant disadvantage.

Survey of Native Title Mediation Practitioners

Rhiân Williams reported on the recent survey of native title mediation practitioners in the mediation session at the Native Title Conference Adelaide on 3 June 2004 (see last newsletter for further details about the survey).

Major findings include that:

- There is wide diversity in the practice and approach of mediators surveyed, for example, those surveyed saw lawyers taking highly adversarial stances as having the most negative impact on the mediation process; and
- The majority of mediators surveyed were supportive of national standards for mediation and some form of national regulation of mediators.

The rich and comprehensive data obtained from the survey is being further analysed and revisions will also take into account comments from the recent NTRB workshops. A final report is being prepared and will be publicly available when completed.

The Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory of Australia [2004] FCA 472

Summary by Grace Koch

The Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory of Australia [2004] FCA 472 was handed down by Mansfield J. in Alice Springs on 23 April. The claim was first lodged on 20 November 1995 with the National Native Title Tribunal and was accepted by the Tribunal on 31 May 1996. The application was not lodged with the Federal Court until 20 May 1998 because it had been opposed. After a number of further stops and starts, the application was amended

and finally accepted for registration with the Federal Court on 17 January 2000. For ease of reference in this article, the claim shall be referred to as the Davenport Murchison Claim.

The claim area comprises two separate areas of land lying to the east of the Stuart Highway and south-east of Tennant Creek. The principal claim area consists of the land in Northern Territory Portions 4386 (1,120 sq. kilometres) and 4387 (5 hectares 7800 sq. metres). The latter Portion includes the proposed town site of Hatches Creek which was once an active wolfram mining centre from 1919 up until the end of World War II. A large part of the claim is included in the proposed Davenport Ranges National Park for camping and tourism purposes.

Several interesting aspects to the Davenport Murchison Claim make the determination worth reading in its entirety. First, of the seven land holding groups, six had been recognised as traditional owners of nearby areas of land in four claims under the *Aboriginal Land Rights (Northern Territory) Act 1976* ('NT Land Rights Act').¹ Some of the claimants were also involved in additional successful claims under that Act to estates to the west of this area. In the Davenport Murchison Claim, Mansfield J recognised the strength of the 'site specific' nature of the spiritual beliefs and practises as held by the claimants, citing a number of their compelling testimonies.

Next, the composition of the native title holding group comprises not only members having the usual descent criteria from grandparents on both sides and/or by adoption or birthplace affiliation, but also their spouses. This finding takes into account the strongly-knit community of claimants whose spouses are often knowledgeable leaders from

¹ See reports for *Alyawarr and Kaititja Land Claim Report* (Report No 30 November 1978) of the Aboriginal Land Commissioner, Justice Toohey; *Warumungu Land Claim* (Report No 31, 8 July 1998) of the Aboriginal Land Commissioner, Justice Maurice; *McLaren Creek Land Claim* (Report No 32, 28 February 1990) of the Aboriginal Land Commissioner, Justice Olney, and *Wakaya/Alyawarre Land Claim* (Report No 34, 8 May 1990) of the Aboriginal Land Commissioner, Justice Olney.