

Native Title Publications

AIATSIS Publications:

- T Bauman (ed), *Dilemmas in applied native title anthropology in Australia*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2010.
- L Strelein (ed), *Dialogue about land justice: papers from the National Native Title Conference*, Aboriginal Studies Press, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2010.

Papers:

- G Neate and D O'Dea, *The functions of the National Native Title Tribunal*, Paper delivered to the *Legalwise Native Title Seminar* on 28 May 2010 by Graeme Neate and 4 June 2010 by Daniel O'Dea.
- G Neate, *Assessing native title and economic development*, Paper delivered to Aligning Indigenous Land Management with Economic Development Conference, Darwin, 24 March 2010.

Speeches:

- Hon J Macklin MP, *Harnessing opportunities for future generations of Indigenous Australians*, National Native Title Conference 2010, Canberra, 2010.

Journal Articles:

- A Awad, 'Native ambitions', *Lawyers Weekly*, No. 479, 2 April 2010, pp. 16-17.
- S Labowitch, 'Integration and reconciliation of social, legal and environmental interests under Indigenous land rights sea claims', *Environmental and Planning Law Journal*, Vol. 27, No. 3, 2010, pp. 189-201.
- AC Neal SC., 'The native title concept of 'society': reflections post *Sampit*', *Native Title News*, Vol. 9, Issues 7&8, 2010, p.117-120.
- J Southalan, 'Authorisation of native title claims: problems with a 'claim group representative body'', *Australian Resources and Energy Law Journal*, Vol. 29, No. 1, 2010, pp. 49-59.

- M Gregory and A Maharaj-MacLean, 'Recent proposed amendments to the *Native Title Act*', *Australian Resources and Energy Law Journal*, Vol. 29, No. 1, 2010, pp. 7-9.
- L Terrill, 'Indigenous land reform: an economic or bureaucratic reform?', *Indigenous Law Bulletin*, Vol. 7, Issue 17, 2010, pp. 3-7.
- R Ye, 'Torrens and customary land tenure: a case study of the *Land Titles Registration Act 2008* of Samoa', *Victoria University of Wellington Law Review*, Vol. 40, No. 4, 2010, pp. 827-861.
- S Young, 'Tides of history and jurisprudential gulfs: native title proof and the Noongar Western Australia claim', *The Indigenous Law Journal at the University of Toronto Faculty of Law*, Vol. 8, Issue 1, 2010, pp. 95-120.
- K McNeil, 'Reconciliation and third-party interests: *Tsilhqot'in Nation v British Columbia*', *The Indigenous Law Journal at the University of Toronto Faculty of Law*, Vol. 8, Issue 1, 2010, pp. 7-25.

Native title in the News

National

19/05/2010

Tax relief plan for native title

Indigenous people who receive native title payments may no longer pay tax under radical proposals being floated by the Rudd government. The federal government has floated three different approaches to allow Aboriginal communities who receive native title funds to keep more money and use it to benefit their communities. One plan involves a tax exemption for all native title payments. The second involves the creation of a new tax-exempt entity, an Indigenous community fund, to deal with the taxation of benefits when they are used for a range of defined purposes that benefit Indigenous Australians, such as education. The third option allows the government to withhold an amount of tax before the payment goes to the native title holders. The rest of the payment would then be income tax exempt. *Australian* (National AU, 19 May 2010), 7.

5/06/2010**Native title reforms**

Indigenous Affairs Minister, Jenny Macklin, is considering appointing a new Commonwealth Officer to check that native title agreements are sustainable and will benefit all Indigenous communities, including future generations. Aboriginal leaders have labelled the idea as 'paternalistic' and 'racist'; because it seeks to tell Indigenous groups how to spend money collected from their own lands. A discussion paper is available for download from the FaHCSIA website. *Weekend Australia* (Australia 5th June 2010), 8. *Australian* (Australia, 4th June 2010), 8. *Australian* (Australia, 3rd June 2010), 7.

New South Wales**04/05/2010****Jetty community garden**

A site has been found for Coffs Harbour's community garden after 17 months of searching. The area is subject to a native title claim. Because of the claim the gardeners will initially only be offered a 12-month lease by both the council and the state government. The site covers both Crown and council owned land and therefore the gardeners will also need to get two separate licences to operate the gardens. *Advocate* (Coffs Harbour NSW, 4 May 2010), 5.

5/06/2010

Native title holders accused of squandering compensation money Native title holders who won the first native title claim on the Australian mainland have been accused of wasting the \$740,000 in compensation money they received from the NSW Government. Reports reveal the Dughutti Elders Council (Aboriginal Corporation) is in severe financial hardship after losing more than \$545,000 last financial year, including almost \$400,000 in undocumented expenses, and more than \$115,000 the year before. *Sydney Morning Herald* (Sydney NSW, 5th June 2010) 14.

Northern Territory**13/05/2010****Gregory National Park returns to its traditional owners**

The Northern Territory Government has handed back ownership of the Gregory National Park to Traditional Owners, who have agreed to make the land available to the public as a park through a 99-year lease to the government. Traditional Owners will jointly manage the park with the Territory's

Parks and Wildlife Department under an agreement that has taken years to negotiate. This will benefit about 300 Indigenous people from seven Aboriginal language groups. Federal Minister for Indigenous Affairs Jenny Macklin said the joint management would help 'strengthen the relationship between Indigenous and other Australians'.

It ensures the protection of vast areas of semiarid and tropical land that includes sacred Aboriginal sites that have remained untouched for tens of thousands of years. Ngarinyman Traditional Owner Larry Johns said that the park would be renamed Jutpurra National Park. *Age* (Melbourne VIC, 13 May 2010), 6. *Australian* (National AU, 14 May 2010), 2. *Fraser Coast Chronicle* (Hervey Bay QLD, 15 May 2010), 20. *Canberra Times* (Canberra ACT, 15 May 2010), 5. *Advocate*, Coffs Harbour NSW, 15 May 2010), 22. *Katherine Times* (Katherine NT, 26 May 2010), 7.

29/05/2010**Uranium site to be made part of Kakadu**

Thousands of hectares of wilderness land, including the large Koongarra uranium deposit estimated to hold about 14,000 tonnes of uranium, are set to be handed over to become part of Kakadu National Park. The land has been offered on behalf of Traditional Owner Jeffrey Lee. Federal Environment Minister Peter Garrett has said, 'whilst there are important questions of Indigenous rights and natural justice that need to be worked through, this is a once in a generation opportunity that I would naturally encourage'. French miner Areva has been stopped from mining the area by Mr. Lee, who has said he is not interested in money. According to Aboriginal beliefs, the land includes places where the rainbow serpent entered the ground and rock art from hundreds, perhaps tens of thousands of years ago. *Sydney Morning Herald* (Sydney NSW, 29 May 2010), 14. *Age* (Melbourne VIC, 29 May 2010), 5. *Northern Territory News* (Darwin NT, 31 May 2010), 4.

Queensland**11/05/2010****McCracken admits clearing bushland**

Developer and former rugby league star Jarrod McCracken faces fines of up to \$250,000 after pleading guilty to clearing protected bushland to make way for his new home, driveway and a horse paddock. Excavation and clearing of vegetation at the property finally stopped after the Whitsundays Shire Council applied to the Planning and Environment Court in late 2007.

The charges are said to include clearing 265sq m of protected forest from Dryandra National Park, which adjoins the McCracken property, as well as the destruction of shell middens and sites with heritage value to the Gia Aboriginal people, who have a native title claim on the land. *Townsville Bulletin* (Townsville QLD, May 2010), 4.

19/05/2010

Native title check on \$1 m project

A Cairns law firm has been engaged to check on native title issues on land which Cook Shire Council is building six aged care units. This is a part of a \$1 million project through the Federal Economic Stimulus Plan Social Housing Initiative. With no identified extinguishing tenure on the May St reserve, adjacent to the 12 existing Coral Sea Units, native title rights could exist and need be addressed, said a report to last month's council meeting. *Cooktown Local News* (Cooktown QLD, 19 May 2010), 7.

19/05/2010

Fritz Creek camp lost in native title deal; timber lot confuses

Reserves for camping and timber between the Black Mountain and Cedar Bay national parks have been revoked as part of the ongoing implementation of a native title agreement finalised 2½ years ago.

The Department of Environment and Resource Management recently advised the Cook Shire Council that the camping reserve on Fritz Creek, south of Auravale, as well as parts of Monkhouse timber reserve, which borders Black Mountain and Cedar Bay national parks, had become protected area estate under the Eastern Kuku Yalanji Indigenous Land Use Agreements.

The Fritz Creek land, outside the World Heritage Area, was not in the original 1994 native title claim area – but the council consented in the ILUAs to the camping reserve becoming a national park 'green zone'. *Cooktown Local News* (Cooktown QLD, 19 May 2010), 7.

3/06/2010

Native title deal finalised

The Girramay people have completed the registration of four Indigenous land use agreements (ILUAs) in Far North Queensland. The registration of the ILUAs brought into effect the native title determination made by the Federal Court of Australia on December 10, 2009. The determination recognised the Girramay people's non-exclusive rights over 16 parcels of unallocated state land,

from Cardwell to Bilyana and Murray Upper area. The four ILUAs accompanied the determination and were developed to establish how respective rights will be carried out on the ground. *Tully Times* (Tully QLD, 3rd June 2010), 5.

12/06/2010

Cape Alumina in legal review

Cape Alumina has abandoned its \$400 million Pisolite Hills project. The move comes after the QLD Government last week announced the Wenlock River Basin would be declared under Wild Rivers legislation, giving it special environmental protection. The protection means mining will be outlawed in a 500 metre radius around the streams that flow into the Wenlock River.

Cape Alumina chairman, George Lloyd, said the Government's decision to declare the Wennlock River a wild river had made the project unviable. 'The decision has been taken on purely political grounds and with no consideration for the future economic wealth of Queensland, the welfare of the Aboriginal people of Mapoon and Traditional Owners' he said. *Business News* (QLD 12th June 2010), 117. *North West Star* (Mount Isa QLD, 14th June 2010), 12. *Townsville Bulletin* (Townsville QLD, 12th June 2010), 81. *Border Mail*(Albury-Wodonga 12th June 2010), 42. *Weekend Post* (Cairns QLD, 12th June 2010), 3. *Weekend Gold Coast Bulletin* (QLD 12th June 2010), 117. *Canberra Times* (Canberra ACT, 12th June 2010), 7. *Australian* (Australia 9th June 2010), 3. *Sunshine Coast Daily* (Maroochydore QLD, 9th June 2010), 7. *Western Cape Bulletin* (Weipa QLD, 9th June 2010), 3.

21/06/2010

Sands of time tick down to save North Straddie

Queensland Premier, Anna Bligh, announced that most of North Stradbroke Island will be turned into national park and mining will be phased out by 2027. Two percent of the island is currently national park, with mining leases controlling at least half. The only areas outside the proposed national park will be the existing townships, some areas of land set aside specifically for the Quandamooka people and a recreation precinct. There is an agreement with the Quandamooka people to negotiate an Indigenous land use agreement over the next 12 months. *Northern Star*, (Lismore NSW, 21 June 2010), 14. *Australian*, (Australia, 21 June 2010), 7. *Gold Coast Bulletin*, (Gold Coast QLD, 21 June 2010), 25. *Courier Mail*, (Brisbane QLD, 19 June 2010), 81. *Bayside Bulletin*, (Brisbane QLD, 22 June 2010), 1.

23/06/2010**Traditional owners of local land recognised**

Isaac Regional Council has signed a Memorandum of Understanding (MoU) with the Barada Barna people, which covers nearly a third of the council's local government area. The MoU also covers sections of land in the Central Highlands Regional Council and Mackay Regional Council areas. The MoU is the first step towards finalising an Indigenous land use agreement (ILUA). *Miners Midweek*, (Mackay QLD, 23 June 2010), 3.

23/06/2010**Torres Straits Sea Claim decision to be handed down**

The decision regarding the Torres Strait Regional Sea Claim will be handed down in Cairns by Justice Finn of the Federal Court of Australia. The claim was made on the basis that Torres Strait Islanders are one people; one society, whose members between them hold all the native title rights and interests in the seas of the Torres Strait according to traditional laws and customs. The claim is over a large area of sea, covering most of the waters in the Torres Strait. *Torres News* (Thursday Island QLD, 23 June 2010), 1. *National Indigenous Times*, (24 June 2010), 6.

24/06/2010**Native title win**

The Ganalidda and Garawa Peoples have been acknowledged as native title holders of Burketown during a Federal Court hearing. They will now be able to practise their traditional customs in some areas of the 5810 square kilometres of land and waters in Far North Queensland. The Traditional Owners negotiated with parties to develop two agreements which allow native title holders to practise their traditional customs whilst pastoralists continue to work on the same country. Carpentaria Land Council Aboriginal Corporation Chairperson, Thomas Wilson, said yesterday's determination represented an important milestone for the Ganalidda and Garawa Peoples. *North West Star*, (Mount Isa QLD, 24 June 2010), 5. *North West Country*, (Charters Towers QLD, July 2010), 13.

South Australia**19/05/2010****Mabo ruling 'set bar too low'**

Sean Berg, an Adelaide barrister, has challenged the legal profession to abandon its 'innate conservatism' and address the tough land title issues arising from Aboriginal sovereignty. Delivering the Elliott Johnston Memorial Lecture, as part of South Australia's Law Week, Mr. Berg said

Aborigines had never ceded their sovereignty in Australia and no fair legal system could sustain forever the 'fiction of extinguished predecessor title'.

Mr. Berg said the Mabo decision had 'set the bar too low' by failing to recognise any existing or residual forms of Aboriginal sovereignty for fear of fracturing the internal consistency of the law. He said Mabo 'overwhelmed' broader discussions about the flow-on effects of Aboriginal predecessor title. 'This is not justice as I understand or imagine it,' he said. 'If we have a legal system that does not allow society to explore and protect rights, then we should throw it out and start again.' *Australian* (National AU, 19 May 2010), 7.

Victoria**27/06/2010****In a battle that's far from black and white, a town's 'backyard' is to become a national park**

One hundred and fifty thousand hectares of new national park and reserve has been declared along the Murray River in Northern Victoria. The Barmah State Forest is the southern section of Australia's biggest red gum forest. It will become one of four new national parks and will be jointly managed by the traditional owners of the area. For the Yorta Yorta, who lost a long-running native title battle in 2002, the new deal is not just about connections to the land. It is also a social justice package that will bring about a huge shift in the people's social and economic status. *Sunday Age*, (Melbourne VIC, 27 June 2010), 1. *Shepparton News*, (Shepparton VIC, 30 June 2010), 1.

Western Australia**04/05/2010****Bokelund hopes to break down cultural barriers**

The Goldfields Land and Sea Council has appointed a new chief executive following the departure of the long serving Brian Wyatt to the National Native Title Council. Hans Bokelund has more than 15 years' experience in private sector management, including five years in law, and the past three years with the Victorian Bar. Mr. Bokelund hopes to be the first port of call for all people regarding native title issues. 'I will try to break down barriers and misunderstandings along with the fear and prejudice that come from these,' he said. *Kalgoorlie Miner* (Kalgoorlie WA, 4 May 2010), 5.

19/05/2010**Test case on native title land offences**

Police investigations into offences such as disorderly conduct and indecent exposure on properties covered by native title could be compromised under a landmark test of the laws in the Broome Magistrate's Court. The case revolves around five Lombadina men who were charged with disorderly conduct after they were accused of verbally harassing a group of off-duty police officers at a beach at Djarindjin-Lombadina, 200km north-west of Broome, in September 2008. Mr. McIntyre, senior Counsel for defence, argued for the men's case to be thrown out, saying the beach was on native title land and not in a public place. Therefore, disorderly conduct could not have occurred, he said. Magistrate Greg Smith is due to hand down his decision in September. *West Australian* (Perth WA, 19 May 2010), 18.

27/05/2010**Miner starts on pit tests**

Toro Energy has started work on a uranium resource test pit. The pit is being developed over the next eight weeks at Toro's uranium project in Wiluna. The site, just south of Wiluna, is a component of the project's bankable feasibility study. Native title claimants and the state government have approved the pit. The on-site work will involve the movement of 45,000 tonnes of barren and ore material for sampling, with all material then returned to the pit to allow for full site rehabilitation. *Geraldton Guardian* (Geraldton WA, 28 May 2010), 3. *Kalgoorlie Miner* (Kalgoorlie WA, 27 May 2010), 18.

2/06/2010

Environmental groups attacked by Kimberly Land Council Chief Kimberly Land Council CEO, Wayne Bergmann, has accused environmental groups of racism, accusing them of trying to turn Indigenous people and their land into museum exhibits. At the National Native Title Conference in Canberra, Mr Bergmann said that environmentalists were guilty of a 'new paternalism' by denying them the right to develop their landholdings. *West Australian* (Perth WA, 2nd June 2010), 32. *Australian* (Australia, 2nd June 2010), 5.

10/06/2010**Native title agreement signed**

Pilbara Traditional Owners and Fortescue Metals Group (FMG) have signed a land access

agreement covering the entirety of the Puuti Kunti Kurrama and Pinikura (PKKP) native title claim area after more than 2 years of litigations and ongoing negotiations. PKKP Country covers approximately 6,567 square kilometres of land south of Karratha, WA. *National Indigenous Times* (Malua Bay 10th June 2010), 7. *North West Telegraph*, (South Hedland WA, 16 June 2010), 22. *North West Telegraph*, (South Hedland WA, 23 June 2010), 26. *Pilbara Echo*, (Pilbara WA, 19 June 2010), 16.

15/06/2010**Native title dispute**

A native title dispute in WA has delayed a Woodside-led gas processing centre being developed. Woodside, the WA government, Kimberly Land Council and a group representing Traditional Owners of the Kimberly region have been negotiating for over a year. Negotiations with Traditional Owners and Woodside were stopped last Friday as advised by the KLC due to legal action brought against it by rival native title claimants, the Goolarabooloo Jabirr Jabbir people. A documentary entitled 'Momentum', produced by National Indigenous TV (NITV), premiered on Goolarri TV in June. The film explores the continuous fight over the proposed James Price Point LNG centre.

Northern Territory News (Darwin NT, 15th June 2010), 15. *West Australian* (Perth WA, 12th June 2010), 4. *Broome Advertiser* (Broome WA, 10th June 2010), 3. *Broome Advertiser*, (Broome WA, 17 June 2010), 1. *West Australian*, (Perth WA, 19 June 2010), 17.

18/06/2010**Native title claim progresses**

The Esperance Nyungar native title claim has progressed forward after the Goldfields Land and Sea Council (GLSC) held a meeting with claimants to discuss a settlement offer from the Western Australia Government. If the offer is accepted it will mean that the claim, which was first lodged in 1996, will be negotiated with a view to obtaining a consent determination of native title without the need for litigation. The claim mainly affects Crown Land, also includes the town of Esperance and stretches to some land in the Shire of Ravensthorpe. *Esperance Express*, (Esperance WA, 18 June 2010), 3.