

# TALKING NATIVE TITLE

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL



A new future: Tribunal member Dan O'Dea (right, at table) watches as Derby Shire President Cr Elsie Archer signs the ILUA.

Spanning the generations: Oongkalkada caretaker Neville Poelina (background left) with his daughter Buna-Tuaty Poelina (front left), Peter Clancy (right) and baby Simon Poelina.

## Local government ILUA a first for the Kimberley region



**Elders, families, community leaders and local school students gathered in a shady river bed at Udialla**

**Springs (Oongkalkada) recently to witness the signing of an indigenous land use agreement (ILUA) in the Kimberley region of Western Australia.**

The signing marked the culmination of three years of negotiations between the Shire of Derby-West Kimberley and the Nyikina and Mangala people, assisted by the Kimberley Land Council.

National Native Title Tribunal member Dan O'Dea, who facilitated the negotiations for the ILUA, said the process had seen strong relationships develop between the groups.

'In going through this process, the parties have developed a better understanding of each others rights and interests,' he said. 'An ILUA has proven to be a flexible and practical way to get people talking in a constructive and positive way.'

Oongkalkada caretakers Neville Poelina, a Nyikina native title applicant, and his wife Jo Camilleri were proud to host the ILUA signing event on the property, 120 kilometres south-east of Derby.

The proceedings began with a welcome to country by Nyikina elder Lucy Marshall. Talking in language with English translation, Lucy welcomed all visitors and shared her knowledge of the country and her personal associations with it.

The gathering also heard from Frank Belou who spoke of his experience being born on Udialla station and growing up in the West Kimberley.

Following the speeches, representatives from the shire, the land council and the Tribunal made the agreement official by signing the ILUA, covering an area of 27, 252 square kilometres where the Nyikina and Mangala people are seeking recognition of their native title rights and interests.

After the official signing, everyone shared a bush feast, complete with a giant billy boiling on the fire.

Kimberley Land Council Chairman Tom Birch welcomed the signing of the agreement. 'This ILUA is the first between Indigenous people and a local government authority in the Kimberley, and it marks a significant step towards much better relationships,' he said.

Issues relating to land usage, including town and district planning schemes, capital works and infrastructure and management of reserves were included in the ILUA.

Shire President Cr Elsie Archer said the goodwill between the Shire and the native title claimants was the key to the success of the negotiations. 'The agreement with the traditional owners of this region demonstrates the Shire's commitment to a positive and just relationship with all Indigenous people living in the Shire.' ■

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Photos in this issue courtesy of: Kimberley Land Council, Northern Land Council, Oongkalkada Inc, Koori Mail, Cape York Land Council and Tribunal staff.



# From the President

## December 2005

**As 2005 draws to a close, we find ourselves on the brink of possible reforms that will help us all meet the challenges of native title.**

While some change is necessary, it is clear that the native title system has delivered and continues to deliver results.

In the past few months alone, since *Talking Native Title's* September issue, there have been more determinations that native title exists, with others expected in coming weeks. Indigenous land use agreements (ILUAs) are being negotiated around the country, with over 220 on the register at mid-November.

But, as claim groups and other parties to native title proceedings know, there can be many frustrations, costs and delays along the way.

To help solve these problems, the Australian Government wants to put measures in place that will ensure native title processes work more effectively and efficiently.

In September this year, the Australian Government announced what Attorney-General Philip Ruddock described as 'a plan for practical reform to improve the performance of the native title system.' He said that the Government was committed to 'achieving better outcomes for all parties involved in native title.'

On 16 September the national, state and territory ministers responsible for native title gathered together for the first time. They agreed that all jurisdictions would promote the resolution of native title issues by agreement, where appropriate.

More recently, the Australian Government commissioned a review of the processes for resolving native title claims. It will consider how the Tribunal and the Federal Court can work more

*"Whatever changes are made to the native title system, we look forward to working with all parties to reach just and agreed outcomes."*

— Graeme Neate

effectively in managing and resolving native title claims, preferably by agreement.

Options for changes to native title representative bodies and a draft of proposed guidelines for Commonwealth funding of respondent parties were released in November. Submissions on the guidelines are sought by 10 February 2006.

The Government has also published a range of suggested technical amendments to the Native Title Act. Comments on these documents have been sought by 31 January 2006.

Judging from the progress made in the past year, 2006 will bring numerous opportunities to meet the many challenges of native title.

Whatever changes are made to the native title system, we look forward to working with all parties to reach just and agreed outcomes in the coming year.

For further information see the Office of Indigenous Policy Coordination website at [www.oipc.gov.au](http://www.oipc.gov.au) or the Federal Attorney General's Department website at [www.ag.gov.au/nativetitlesystemreform](http://www.ag.gov.au/nativetitlesystemreform)

## Client satisfaction on the rise

**The National Native Title Tribunal has welcomed the results of an independent review into client satisfaction which has identified areas for improvement and shown an overall increase in satisfaction since the previous study.**

The research is required under corporate governance and performance management measures carried out by all Australian Government agencies. It took the form of a telephone survey with 150 clients, randomly selected by independent researchers.

Participants included native title claimants, native title representative bodies, peak organisations, government agencies, legal practitioners, industry and business groups.

Suggested improvements included speed of service in relation to claims, notification, staff response and advice; interaction, in relation to engagement and having a say; practical help including resources and responsiveness to client needs; simplifying processes, with an emphasis on understanding the processes; and, innovation in relation to the resolution of claims.

Overall satisfaction was higher than in 2003, when the survey was last completed. Only six per cent of people interviewed were dissatisfied with the Tribunal's services, compared with 16 per cent in the earlier research.

Areas of endorsement included the supply of information, interest, knowledge and professional nature of staff.

The Tribunal is now looking at ways it can maintain its high level of satisfaction and improve in key areas.

For more information on the results of the survey see the Tribunal's website at [www.nntt.gov.au](http://www.nntt.gov.au)



Native title recognised: Justice Mansfield with Djambuwa Marawili, a member of the NLC's East Arnhem Regional Council.

## Native title recognised over Blue Mud Bay



**A Federal Court decision recognising native title in East Arnhem Land will be reviewed after two**

**appeals were made against aspects of the final determination heard on-country in October.**

The Yolngu people were recognised as holding native title rights to the Blue Mud Bay region, 50km north-west of Groote Eylandt, including non-exclusive rights over the sea, which co-exist alongside the rights of commercial and recreational fishers in one of the Northern Territory's most abundant fishing grounds.

Federal Court Justice Ronald Mansfield travelled to the remote community of Yilpara to make the final orders, eight months after Justice Bradley Selway first recognised the Yolngu as the native title holders for the region.

Justice Selway died before final orders could be made and the parties consented to Justice Mansfield completing the hearings.

The claim, covering 510 square kilometres of sea including the inter-tidal zone, was recognised by the court in the form of non-exclusive rights to the area, in a similar manner to the landmark Croker Island case.

These included the rights to hunt, fish, gather and use resources within the area for personal, domestic or non-commercial exchange or communal consumption for the purposes allowed by and under Yolngu traditional laws and customs.

The determination also recognised exclusive native title rights over most areas of Aboriginal Lands Trust land inside the claim area.

The Yolngu, represented by the Northern Land Council, first lodged their claim in November 2002. The application went straight to trial after it was registered and notified by the Native Title Registrar, as it raised new questions over the nature of native title rights and interests over particular areas of water.

The two appeals, lodged with the Federal Court, were made by the Blue Mud Bay native title claimants and the Aboriginal Lands Trust. Their arguments will be heard by the full Federal Court. ■

At the hearing: Gawirrin Gumana, senior lawman from Yilpara in eastern Arnhem Land.



Working through the issues: mediations were held on-country and involved up to 400 parties before a consent determination was reached.

## History made in Victoria

**Traditional owners from the Wimmera region of Victoria have celebrated their status as the first Indigenous people in the state to have their native title recognised after reaching three determinations by agreement.**

Federal Court Justice Ronald Merkel recognised the native title rights and interests of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples at a special on-country hearing this month.

The non-exclusive rights included the rights to hunt fish, gather and camp on areas of Crown reserve near the Wimmera River. The agreements settled native title issues over 9,642 square kilometres of land.

The full story on this historic event, with photographs from the ceremony, will appear in the next edition of *Talking Native Title*.

In the meantime, the Tribunal has prepared a special information brochure on the event which outlines the areas of land and water covered by the determinations, what the native title rights and interests mean and how they will be managed in the future.

For your copy of the brochure, call the Tribunal's freecall number 1800 640 501. ■

# Community agreement leads to healthier living



**A clean water supply and efficient treatment of waste water is set to improve the health and living conditions of the residents of a remote north Queensland community, following the registration of one of Australia's first community-based indigenous land use agreements (ILUA).**

While the agreements are often used to provide access to land for mining companies or allow for the construction of infrastructure, the Pormpuraaw Aboriginal Community on the west coast of Cape York Peninsula will enjoy direct benefits from the use of an ILUA to say good-bye to their outdated septic tanks and install a modern clean-living sewerage system.

The Minh Boro people live 660 kilometres north-west of Cairns. They were represented in the negotiations by the Cape York Land Council and the Pormpuraaw Aboriginal Land Council.

The ILUA, over a 555 hectare area, is now fully registered by the National Native Title Tribunal, allowing the Queensland government to begin construction of the sewerage works, including roadworks and drainage.

Benefits for the Minh Boro people include employment opportunities and protection of their cultural heritage sites, including those discovered during construction. They will also see the end of potential contamination of their environment from continued reliance on the old tank systems.

Gilbert Jack, spokesman for the Minh Boro people, said he was proud of the role the traditional owners had played in improving the community's health.

'Health and jobs are very important to everyone,' he said. 'We want to make our community strong and give a future to our young people.'

Pormpuraaw Aboriginal Community chief executive officer, John Thurlow, said he expected the new system would have a positive effect on the community's health and would take away the fear of ground water contamination.

Tribunal Regional Manager Gary Lui said groups around Australia were increasingly choosing to resolve native title issues through agreements. 'These groups have shown that the agreement-making approach delivers results,' he said. ■

**Gathering the information: anthropologist Dr John Taylor with Minh Boro representative Gilbert Jack.**



**Survey of cultural sites: Leslie Norman (with survey pegs) and Gilbert Jack near the fig tree at Mungkatn.**

# Parties called to participate

**Native title representative bodies, state governments and other stakeholders have an opportunity to put forward their views on a range of reforms being proposed by the Australian Government.**

Attorney-General Philip Ruddock has released a discussion paper on possible technical amendments to the Native Title Act and he has joined together with Amanda Vanstone, Minister for Indigenous Affairs, to propose practical reforms for NTRBs and the allocation of funds for respondent parties.

In a media statement, the ministers said the changes would lead to more efficient claim processing and less litigation.

'The reforms aim to improve all elements of the native title system and to promote the role of agreement making as the most effective means to resolve native title issues,' the statement said.

The changes for NTRBs include:

- broadening the range of organisations that can undertake activities on behalf of claimants
- streamlining the process for withdrawing recognition from poorly performing NTRBs
- putting a time limit on the recognised status of NTRBs to ensure a focus on outcomes
- providing NTRBs with multi-year funding to assist their strategic planning.

A consultation draft of proposed guidelines for the Native Title Respondents' Financial Assistance Scheme was also released.

The scheme funds miners, pastoralists, fishers and other respondent parties needing to participate in native title negotiations and litigation.

Mr Ruddock said money from the scheme should be allocated in a way which put the focus on agreement-making over litigation.

# Future secured on the Peninsula



*"The strength of our connection to country has once again been proved."*

— KLC Chairman Tom Birch

The increasing number of native title determinations and agreements demonstrate the system is working, but the current framework is still too costly and time consuming,' the Attorney said.

'It is in the interests of all Australians that native title claims be dealt with efficiently and fairly. The changes will encourage agreement-making as the means to resolution of native title disputes.'

Mr Ruddock said respondents would continue to receive assistance for litigation in some circumstances. He reassured parties the Government would consult extensively before any changes were finalised.

## Important dates

**31 January:** closing date for making submissions on the proposed technical amendments to the Native Title Act.

**10 February:** closing date for making submissions on the proposed guidelines for native title respondents' financial assistance.

**March:** Mr Graham Hiley QC and Dr Ken Levy expected to report on the Claims Resolution Review, which accepted written submissions until 1 December.

For more information see the Attorney-General's Department website at [www.ag.gov.au/nativetitlesystemreform](http://www.ag.gov.au/nativetitlesystemreform) or for information on NTRBs go to the Office of Indigenous Policy Coordination website [www.oipc.gov.au](http://www.oipc.gov.au) ■

*"The changes will encourage agreement-making as the means to resolution of native title disputes."*

— Attorney-General Philip Ruddock

**Traditional owners from one of Australia's most spectacular coastlines, the Dampier Peninsula, have celebrated the recognition of their native title rights while dedicating the achievement to their fellow claimants who have passed away.**

Federal Court Justice Robert French travelled to the remote community of One Arm Point, in Western Australia's Kimberley region, to deliver his final orders for the Bardi and Jawi people at the end of last month.

The determination delivered exclusive rights over a 1037 square-kilometre area of land and non-exclusive rights over waters extending to three nautical miles from the coast.

Justice French recognised the Bardi and Jawi people as one group and acknowledged in his judgment summary that some of the applicants would be disappointed with the result.

'I know that some will be disappointed that the determination did not extend to offshore islands in and around the Buccaneer Archipelago,' he said. 'The proof of native title rights and interests is not an easy matter and the Court is only empowered to make determinations on the evidence before it.'

The Bardi and Jawi, represented by the Kimberley Land Council, first lodged their claim in 1995 and had hoped to establish rights over off-shore islands, particularly where there are stocks of the valuable trochus shell.

The application was the subject of two Federal Court trials— the first in 2001 before Justice Bryan Beaumont and the second in 2003 after native title law was clarified with other Court decisions and the claimants sought to provide additional evidence.

KLC chairman Tom Birch said the determination was still a very significant day in the history of the Bardi and Jawi. 'The strength of our connection to country has once again been proved,' he said.

'The Court recognises that the Bardi and Jawi have maintained their culture and their ties to the land. Bardi and Jawi people have now secured a future for themselves and their children.

'It has taken ten years for this claim to reach today's decision. During that time, a number of the original claimants have passed away. Today's decision is a tribute to them,' Mr Birch said.

The Bardi and Jawi represent about 900 people, including many who live in communities such as One Arm Point and Lombadina. The area, particularly Cape Leveque, attracts a growing number of adventure tourists each year. ■

**Recognition for country: Justice French delivered the final orders for the Bardi and Jawi people by the pristine waters at One Arm Point.**



# Heritage information quicker and easier with new system

**The mining industry and native title representative bodies (NTRBs) in Western Australia have improved access to Aboriginal heritage survey and site information with a new internet-based system developed by the state Department of Indigenous Affairs.**

The Aboriginal Heritage Inquiry System (AHIS) uses a map interface to allow users to search for survey and site details in a range of ways which will save time and speed up the mining tenement application process.

Dr Richard Riordan, manager of DIA's Heritage Advice Unit, said the system offered new information, such as heritage survey boundaries, which had not been available before. It also did away with the need for users to have mapping skills by allowing them to select an area on a map and zoom-in on site and survey information.

'Before, you had to know about datums, zones and coordinate conversion systems. Now, you can use the map to

see the heritage survey and the heritage sites in an area and get a much better understanding of the heritage values in that area,' he said.

Users can search for the sites and surveys using native title boundaries, mining tenements, street addresses and map coordinates. They can search for individual sites and also do searches for heritage surveys by author or by proponent.

Dr Riordan said DIA held 4000 heritage survey reports for WA and over 22,000 sites had been reported to the Registrar of Aboriginal Sites. The database was continually updated with nearly 400 new surveys submitted to DIA each year and nearly 2000 changes made to the site register in the same period, which included registrations of new sites and changes to information about previously registered sites.

'The number of sites reported in each survey varies. One survey could have 300 sites, another could have two sites. It depends on what the survey is and where it was done,' he said.

National Native Title Tribunal member Bardy McFarlane, who chaired a technical taskforce into the backlog of mineral tenement applications in WA, said a better system for accessing site and survey information was identified as a key area of need.

The taskforce led to the establishment of regional standard heritage agreements for most of WA, but industry and NTRBs still needed quick and easy access to existing information.

'This doesn't replace the need to sit down with the claim group and talk about the work you want to do, it just gives an early indication of the previous surveys in the area and what type of heritage issues might come up,' he said.

Under the DIA native title access policy NTRB researchers had special access to the information held by DIA. Other users had to provide the written consent of site informants to get access to files classified as restricted. ■

## Bright future for Indigenous people in mining



**Opportunities for economic development are expected to flow from the first national conference focussing on Indigenous mining and exploration businesses.**

The inaugural Australian Aboriginal Enterprises in Mining & Exploration Conference, held in Alice Springs, attracted 150 people with approximately two thirds representing the Aboriginal business sector. Delegates included representatives from mining companies, governments, and Indigenous organisations.

One of the key themes to emerge from the conference, which was supported by the Minerals Council of Australia (MCA), was the concept of an

Indigenous mining association. Delegates discussed the need for a single voice representing the interests of Indigenous people and acting as a source of advice, training and assistance. A similar organisation has existed for the First Nations people of Canada for 14 years.

The delegates heard about the emerging trend for agreements to move beyond monetary benefits. Speakers discussed how the mining industry was now fully-versed in providing employment and training opportunities, but the next step needed to be the creation of sustainable businesses operated by local communities.

A national Indigenous mining body could enable successful Indigenous-owned companies the opportunity to become key-players within the mining resource sector.

Hans Mathews, president of the Canadian Aboriginal Minerals Association (CAMA), spoke about CAMA as a model for an Australian body. 'CAMA's view is that establishing relations between the community and resource company is of paramount importance,' Mr Mathews said.

'From this the communication, agreements, benefits and joint decision-making will result.'

Local mining giants Roche and Argyle showed the need to look beyond the short term and towards economic development as a benefit for both industry and the community.

A second conference will be held in Perth next year, coinciding with the MCA's Annual Sustainable Development Conference. Papers are available from [www.aboriginalmining.com](http://www.aboriginalmining.com) ■



Heritage being considered: BHP Billiton archaeologists talk with traditional owners about heritage values.



In the field: exploration geologists from BHP Billiton survey country before work begins.



Talking it over: South Australians Kirt Dudley, of Port Lincoln, and Troy McNamara, of Whyalla, were at the Alice Springs conference.

New opportunities: conference delegates, from left, Parry Agius, Hans Matthews, David Ross, Peter Recollet, Marcia Langton and Paul Wilkinson.



# Down the track

Talking Native Title's feature revisiting past agreements to see how they are working on the ground.



Kamilaroi culture: traditional didgeridoos made by local Kamilaroi man, Ken Dundas.



## Pony Club agreement still clearing jumps

Perhaps it's a fitting coincidence that the town of Coonabarabran is named after an Indigenous Kamilaroi word meaning 'inquisitive person.'

The town attracts tourists from all over the world, exploring the Warrumbungle National Park, learning about Australia's foremost observatory and witnessing, by example, how Indigenous and non-indigenous people find solutions for living together.

In 2003, the Kamilaroi people, the Coonabarabran Pony Club and the Coonabarabran Shire (which has since merged with the Coolah Shire to become Warrumbungle Shire) were three-way signatories to a unique memorandum of understanding.

The agreement saw part of the land next to the Coonabarabran Showground granted to the Coonabarabran Local Aboriginal Land Council under the Aboriginal Land Rights Act. The pony club could continue to use the remainder of the land for cross-country horse riding events.

'Since we signed the agreement two years ago, the pony club are very considerate and they always write to inform me if they would like to hold an

event. It's very good and we all work together,' Kamilaroi elder and traditional owner Margaret Robinson said.

Similarly, Coonabarabran Pony Club President Ian Clifton said it was easy to share the land and the arrangement continued to be amicable.

Local Indigenous people were invited to paint one of the horse jumps, and it has since been named in honour of the Kamilaroi people.

Coonabarabran is situated in north-west New South Wales and remains the only place in Australia where an agreement has been established between Indigenous people and a pony club. ■

Equestrian skills: an impressive display at the Coonabarabran Show.



## Native title story wins UN award

**An ABC radio journalist has won a United Nations Association of Australia Media Peace Award for his stories on the Ngaanyatjarra Lands native title determination.**

David Weber travelled from Perth to the remote community of Jameson in Western Australia, near the tri-state border, for the determination hearing at the end of June.

His interviews with native title holders, government officials and Tribunal Deputy President Fred Chaney were sent back by computer to be broadcast on the national AM and PM news programs, bringing the voices of the central desert to the homes of people living in Australia's major population centres.

The award was for a special category promoting the ideals of reconciliation. David travelled to Melbourne for the prize ceremony and said he was surprised to win against a strong field of finalists.

The Ngaanyatjarra people negotiated a settlement to be recognised as the native title holders over 188,000 square kilometres of land—Australia's biggest ever native title determination.

David said he entered the story in the special reconciliation category because native title was an example of Australian law recognising the traditional laws and customs of Indigenous people as they had always existed.

The award represents his first major journalism prize in a career spanning ten years. Here is an excerpt from David's report, which was broadcast on 29 June, the morning of the determination.

**DAVID WEBER:** *Hundreds of people have come from all over Australia for this special day. They're camping in the red dirt, surrounded by spinifex, a few kilometres from the remote community of Jameson.*

*It's a massive land claim: 188,000 square kilometres running through the Gibson and Great Victoria deserts, and right up to the borders with South Australia and the Northern Territory.*

*Robin Smythe, of the Ngaanyatjarra Land Council, says the determination will give the people full and exclusive rights. He says they'll be able to look after their sacred sites.*

**ROBIN SMYTHE:** *It is important because it'll save for our people to look after the sites, sacred sites, the main ones, not like before, we couldn't look after it (inaudible). Now we can have our say. ■*



The dove of peace: David Weber outside the ABC Perth studios after his success at the UN Media Peace Awards.



## Narungga ILUA on DVD

**Parties involved in the Narungga Local Government indigenous land use agreement (ILUA), have produced a 20-minute DVD which explores the human and social dimensions of reaching a native title agreement.**

People from all sides of the negotiating table talk openly about their experience with the ILUA process and talk about the benefits gained from negotiation instead of litigation.

The video production includes interviews with representatives from the South Australian government, Narungga nation traditional owners, the South Australian representative body Aboriginal Legal Rights Movement, the four Yorke Peninsula councils and the National Native Title Tribunal.

'The Narungga local government ILUA was negotiated virtually from a blank piece of paper and now forms the basis of a template that is being considered for adoption by other councils,' South Australian Attorney-General Michael Atkinson said.

A copy of the DVD is available to borrow from the Tribunal's library on freecall 1800 640 501 or email [info@nntt.gov.au](mailto:info@nntt.gov.au) ■