

TALKING

# Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

MARCH 2006

"I've got young people ready to go, who want to go back and learn about their culture. We can create something really good."

– Western Yalanji elder Des Brickey

## Karma Waters flow into new future



A group of newly-recognised native title holders from North Queensland have tourism and mining ventures in their sights following Australia's most recent consent determination.

Six years ago, the Western Yalanji people made history as Australia's first Indigenous people to reach a native title agreement over a pastoral property.

Last month, the Federal Court of Australia made a renewed visit to Mt Carbine to recognise the group held native title rights and interests over a further 200sq km on the same property, Karma Waters, 210km north-west of Cairns.

Through negotiations involving the Queensland Government, Cook and Mareeba shire councils, pastoral leaseholders and Queensland Lapidary & Allied Crafts Association the native title holders reached four indigenous land use agreements (ILUAs) that establish how their rights will work alongside other land users.

Western Yalanji spokesman Danny O'Shane said his people now had the opportunity to recapture the quality of life enjoyed by their ancestors, through commercial enterprises. "We've got ideas on how to go ahead with mining and tourism that we want to discuss," he said.

Pastoral leaseholders Alan and Karen Pedersen have been able to upgrade to a perpetual lease over the property. "That's been the big one for us, it gives us certainty and security over the area," Mr Pedersen said.

While native title has been finalised on Karma Waters, the Western Yalanji people have another four native title applications under way.

### In this issue

- *Goldfields land summit has people talking.*
- *Native title finds a home in Victoria.*
- *Opal search based on trust.*



National  
Native Title  
Tribunal





# From the President Graeme Neate

The New Year has brought changes to Australia's Federal Ministry. While native title was not directly affected, there was a key change with the important portfolio of Indigenous Affairs moving to the Department of Families and Community Services.

The new Minister, Mal Brough, made it clear that he intends to improve service delivery to Indigenous Australians.

At this time, it is worthwhile considering how native title fits into the whole-of-government approach to Indigenous affairs.

I met recently with the National Indigenous Council to discuss this matter. Among the points I asked them to consider was how native title is relevant to land ownership and use; protection of cultural heritage; employment and training; and, community governance.

Native title can and should be taken into account when exploring opportunities for economic and other returns to Indigenous communities.

If native title is incorporated into policy development and service delivery, then the progress of native title claims, measures for resolving native title issues and the exercise of native title rights are tied into the broader goals.

At the agreement-making level, the best results are reached when parties to native title proceedings look beyond the legal issues and negotiate just, enduring and agreed outcomes.

Similarly, the organisations involved in negotiating shared responsibility agreements and regional partnership agreements should consider native title when working to reach their outcomes.

Attorney-General Philip Ruddock has stated his intention to see native title claims resolved more efficiently and effectively. With collaboration between the parties and the results of the Government's claims resolution review, we can look forward to significant results.

# Public service a national honour

**The National Native Title Tribunal's Registrar Chris Doepel has been honoured with a Public Service Medal (PSM), announced on Australia Day.**

The award was made for outstanding public service in the development and implementation of legislation and policy relating to native title.

Mr Doepel heads the corporate management of the Tribunal and is responsible for important statutory functions crucial to the registration of native title claims, determinations and indigenous land use agreements (ILUAs).

He started work at the Tribunal in 1998, with the primary task of implementing amendments to the Native Title Act, including the establishment of ILUAs. But Mr Doepel's public service career began in 1980 and included work for the Department of Immigration and Multicultural Affairs and the Department of the Prime Minister and Cabinet.

In accepting the award, he said the medal reflected the work of all members and employees at the Tribunal, particularly the progress made in the areas of mediation and agreement-making to resolve native title issues.

The PSM will be presented at a special ceremony in Perth later this month.



*Australia Day honour: Tribunal Registrar Chris Doepel.*



*Mediation success: Goldfields claimants resolved 29 overlap issues and now hope to settle their claim out-of-court.*

# Goldfields land summit has people talking



A North West Goldfields native title trial has been put on hold following the success of a collaborative land summit

held in the West Australian town of Leonora last year.

The three-day event, in October, saw 29 overlap issues resolved at the culmination of many months of work on the part of the Goldfields Land & Sea Council (GLSC) and National Native Title Tribunal.

With a trial due to start in March this year, GLSC staff and claimants were confident competing claim issues could be addressed. The trial would have dealt with 11 applications, two native title representative bodies and overlaps affecting 95 per cent of the claim area – with as many as five applications in a single location.

Intensive work was done prior to the summit to ensure claimants were fully informed about the native title environment. The claimants also spent the three months leading up to the summit looking at ways they might resolve overlaps.

Up to 120 claimants attended the summit each day with meetings facilitated by Tribunal members John Catlin and Ruth Wade, GLSC chief executive Brian Wyatt, lawyer Michael Meegan and counsel Ian Viner. The claimants were able to resolve 29 discrete overlap issues and 56 per cent of the former trial area is now free from competing applications.

“What made the land summit a success was exhaustive advance planning and the claimants’ dedication to sorting out their overlaps by following an orderly but very demanding process,” Mr Catlin said. “Both processes were conducted in a very positive spirit.”

Mr Wyatt said Goldfields claimants had a clear preference for negotiating native title settlements outside of court. “The way is now clear and we look forward to participating in the mediation proceedings with the State in a meaningful way,” he said.

At a recent directions hearing, Federal Court Justice Ronald Sackville vacated the trial dates and accepted a mediation program, which was supported by other parties to the claim.

# Tribunal member closes mediations on a high note

The historic Wimmera determinations were a fitting end to Melbourne-based member Professor Doug Williamson's nine years at the National Native Title Tribunal.

The package of agreements came about through intensive mediation work, which was facilitated over six years by Professor Williamson. The celebration event happened just three days short of his retirement.

Reflecting on the agreements, Professor Williamson said the claimant groups – which included the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples – were rewarded for their dedication and persistence with formal recognition of their traditional connection to country. "I personally was delighted in my last days as a Tribunal member to have the satisfaction of seeing the joy that was on people's faces, having achieved this formal recognition," he said.

His time at the Tribunal left him with the realisation that native title, while a good thing, is not a solution in itself but one aspect of a broader challenge for Indigenous Australia.

"One function that native title has performed – which perhaps was not intended or anticipated at the outset – is that it has resulted in people coming together and talking to each other when otherwise, but for the Native Title Act, this would not have happened," he said

His work over almost a decade took him to parts of Western Australia, Queensland, New South Wales and the ACT – exposing him to a broad range of experiences and diversity among native title groups.

Before joining the Tribunal, Professor Williamson worked as a barrister at law and was appointed Queen's Counsel in 1975. He is an accredited mediator for the Supreme Court of Victoria and has filled senior corporate management and non-executive director roles for a range of companies.

Upon finishing, Professor Williamson committed to finding more time to play golf but his academic skills will be retained by the University of Melbourne's Law School, where he is a professorial fellow.



"I personally was delighted in my last days as a Tribunal member to have the satisfaction of seeing the joy that was on people's faces, having achieved this formal recognition."

– Professor Doug Williamson

*Listening to the stories: Professor Williamson during negotiations for the Wotjobaluk people.*

# Native title finds a home in Victoria



Three history-making determinations in the state of Victoria have boosted the native title aspirations of traditional owners in Australia's southern states.

Five Indigenous groups – the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples – earned non-exclusive native title rights to hunt, fish, gather and camp in crown reserves along the Wimmera River banks in the first determinations that native title exists in Victoria.

Federal Court Justice Ronald Merkel referred to an earlier judgment for the Yorta Yorta people, also from Victoria, which said the 'tide of history had washed away' any chance of native title being established. He said the five groups from the far-west, had shown their acknowledgement of traditional laws and customs continued to the present day.

The Wimmera determinations were reached with the consent of all parties – also a first for the state – and celebrated at an on-country hearing held at Little Desert National Park near Dimboola in December.

"Today is a great day because we have shown that it is possible to prove native title in the state of Victoria," Wotjobaluk elder Hazel

McDonald said. "We hope other native title claimants like us choose this path."

Although native title was only recognised over 269sq km, a fraction of the 9,642sq km claimed, the parties reached a package of agreements including an indigenous land use agreement that provides the native title holders with three free-hold grants of land, rights of consultation regarding certain developments and participation in national park management over some areas.

National Native Title Tribunal member Doug Williamson, who mediated the agreements, said the results showed native title outcomes could be achieved in Victoria. "We hope native title claims in other parts of Victoria will proceed more quickly," he said.

For copies of a brochure about these determinations visit the Tribunal's website at [www.nntt.gov.au](http://www.nntt.gov.au)

**"This is not the end, this is the beginning."**

– Native title holder, Peter Murtikos



*A new celebration: native title holders watch over their children as they perform traditional dances.*

*Welcome to our country: solicitor David Robens, who represented land users, arrives for the determination hearing.*



# New ventures spawning

The impact of illegal fishing and new ventures for Indigenous involvement in commercial fishing were key themes at a recent national meeting held in Fremantle, Western Australia.

The event was attended by 35 people from government, indigenous groups and the commercial fishing sector who gave a series of presentations about the progress made towards recognition of indigenous customary fishing and emerging opportunities for economic development through aquaculture.

Among the case studies were projects from Maningrida in the Northern Territory where mud crabs are being farmed, a barramundi fishing venture in the Tiwi Islands and plans in WA and the Northern Territory to employ more Indigenous people as marine rangers equipped to tackle illegal fishing.

The meeting drew together developments since the first national Indigenous Fishing Rights conference, held in 2003. The National Indigenous Fishing Technical Working Group (NIFTWG) was established as a result of the conference and has led to the establishment of national indigenous fishing principles, endorsed by the Australian Government.

National Native Title Tribunal member John Catlin, who chaired the meeting, said there was an open exchange of ideas on engaging Indigenous people in aquaculture industries across Australia.

For papers and presentations go to the Tribunal's website: [www.nntt.gov.au/media/Projects.html](http://www.nntt.gov.au/media/Projects.html)

*New opportunities: conference delegates heard about aquaculture ventures from around Australia.*

# Miners find new resource in Victoria

**Mining companies in Victoria now have a faster, simpler process for reaching native title agreements that clear the way for exploration.**

Two indigenous land use agreements (ILUAs) have been lodged with the National Native Title Tribunal which set out terms and conditions for exploration required by native title claimants. Exploration companies can choose to use the terms of the agreements rather than entering into negotiations.

The Dja Dja Wurrung people reached one of the ILUAs with the Minerals Council of Australia (MCA) over 16,820sq km in central Victoria, north of Ballarat. The other was made between the MCA and the Wamba Wamba, Barapa Barapa and Wadi Wadi peoples over 12,028sq km in the Swan Hill area.

MCA Victorian chief executive Chris Fraser said he anticipated the process would free up a large number of exploration licences and benefit Aboriginal communities.

"Explorers who are comfortable with the terms and conditions that we've agreed on can simply sign a deed of assumption and become a party to the ILUA so that they don't have to negotiate," he said.

Native Title Services Victoria senior solicitor Paul Simmons said that the streamlined process would allow the groups more time to focus on their native title claims.

"It allows them to get a number of agreements negotiated in the time it takes to negotiate one," he said.

He believed exploration companies had every reason to accept the terms and conditions as the native title groups had negotiated them with Victoria's leading industry body, the MCA.

The Tribunal will make a decision on the registration of the ILUAs in May.



## Opal search based on trust



Goodwill between traditional owners and miners led to an agreed approach to opal mining in western Queensland and four years on the process is still working.

The Maiawali and Karuwali people, Queensland Boulder Opal Association and Queensland Government reached an indigenous land use agreement (ILUA) over 49,110sq km south-west of Winton, which was registered with the Tribunal in June 2002.

Under the agreement, opal miners wanting to explore the area must meet the traditional owners' requirements including protection of cultural sites and gaining cultural clearances.

Since then, 265 exploration permits, 205 mining leases, 322 mining claims and 265 prospecting permits have been granted in the area.

According to traditional owner and chairperson of the Kirrendirri Aboriginal Corporation, Jocelyn Eatts, the agreement was going well, "100 per cent."

"It's been an eye-opener and has paved the way for other groups," she said. "We have a good, strong relationship with the miners – it's what you'd call friendly and trustworthy."



Head of the Queensland Boulder Opal Association's native title unit, James Evert, said there were 150 miners in the area and 75 mining operations.

"There's tremendous goodwill in this agreement, from both sides, which is why it is working," he said. "Agreements like this just show that this system can work."

Special note: In the December edition of this newsletter, we revisited an agreement from Coonabarabran in New South Wales. The agreement was a memorandum of understanding, not an ILUA as reported.

*Mining for opal: the Winton agreement has allowed for exploration, mining and prospecting while Indigenous culture is protected.*

## ILUAs flow from desert determination



The first two of three indigenous land use agreements (ILUAs) linked to Australia's biggest native title determination have been registered by the National Native Title Tribunal.

The agreements, one with Airservices Australia and one with WMC Resources Ltd, have established protocols and procedures with the Ngaanyatjarra people which ensure the organisations can continue their work while Indigenous culture is protected.

The Ngaanyatjarra Lands determination was reached with the consent of all parties in June last year. It recognised the native title holders held exclusive rights over most of their 188,000sq km claim in the remote central desert of Western Australia.

ILUAs were chosen as one of the ways to establish set procedures between parties to the determination. The agreements bring the total number of ILUAs in WA to five, while there are now more than 230 registered ILUAs across Australia.

# National Practitioner's Workshop 2006

Case managers and other Tribunal staff have learned about the best agreement-making practices from around Australia at the second National Practitioner's Workshop, held in Brisbane last month.

National Native Title Tribunal senior project manager Tom Weaver said the event, held over four days, encouraged an open exchange of ideas and expertise in native title agreement-making.

Guest speakers included Rio Tinto's Bruce Harvey, chief adviser Aboriginal and community relations, as well as Tribunal Members Laurence Boulle, Gaye Sculthorpe, John Catlin and Graham Fletcher who worked alongside case managers to present on a range of topics.

"The workshop will enable the Tribunal to deliver better services to its clients," Mr Weaver said.

## Tribunal's new face

We hope you enjoyed this edition of *Talking Native Title*, presented in the National Native Title Tribunal's fresh new look. The newsletter continues to provide the only regular national update on the latest native title developments, written for native title parties and the general community. The new masthead and format emphasises the importance of people and their relationship to country. Please send your feedback on this and future editions to Public Affairs, GPO Box 9973 Perth WA 6848 or email [publicaffairs@nntt.gov.au](mailto:publicaffairs@nntt.gov.au).



*Tallow Beach: part of the Arakwal ILUA, from New South Wales, which is discussed in the research report on national parks.*

## Researching your rights

A guide to government funding and traditional hunting rights in national parks are the subjects of two new research reports produced by the National Native Title Tribunal.

The *Guide to Australian Government Funding Sources* provides information on funding and assistance from Australian Government departments and their agencies. It includes funding options for indigenous economic and social development, land management, conservation and cultural heritage protection.

*Traditional hunting with firearms in national parks* is a guide for people involved in negotiations in the use of firearms by Indigenous people for traditional hunting in national parks. Examples of existing legislation and park management plans are provided from around Australia.

The reports are available on the Tribunal's web site [www.nntt.gov.au](http://www.nntt.gov.au) or freecall 1800 640 501 for a hard copy.

Commonwealth Law Courts  
Level 4, 1 Victoria Avenue Perth WA 6000 GPO Box 9973 Perth WA 6848  
Telephone (08) 9268 7272 Facsimile (08) 9268 7299

Freecall 1800 640 501 [www.nntt.gov.au](http://www.nntt.gov.au)

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Native Title  
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