

TALKING

Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

JUNE 2006

"Now we have an open, transparent process, so people like (our grandchildren) have a process for engaging in land matters and achieving the future aspirations of our mob."

– Mandingalbay Yidinji man Vince Mundraby

Recognition and relationships rewarded in the tropics

New opportunities: Native title holder Luanne Bulmer and Roy Bulmer Jr at the determination celebrations held at Yarrabah.



Native title recognition has marked a turning point for traditional owners in north Queensland who are ready to grasp long-awaited opportunities to manage and protect their land.

The Mandingalbay Yidinji people's native title rights were recognised for the first time in April when the Federal Court made a consent determination over 3,140ha of national park, forest and reserve areas 23km south-east of Cairns. The group lodged the claim in 1999.

Vince Mundraby, a Mandingalbay Yidinji man, said his people could look ahead to employment and training opportunities. "Our aspiration is being involved in managing our country and making sure we achieve better quality of life for our people," he said.

Mr Mundraby said it had taken years to reach the determination but the group had built

many bridges with people and organisations during the process.

The Mandingalbay Yidinji People negotiated with the Queensland Government, Wet Tropics Management Authority, Cairns City Council, Ergon Energy and Telstra Corporation to develop indigenous land use agreements about how they will exercise their rights.

Tribunal member, Gaye Sculthorpe, who mediated between the parties, said the groups had developed relationships that established firm ground for future cooperation.

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National
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Resolution of native title issues over land and waters.



From the President Graeme Neate

It's likely that you have heard me or other National Native Title Tribunal representatives emphasise the advantages of settling native title issues by agreement.

Events in the past three months have reinforced this message. Since our March edition of *Talking Native Title*, six Federal Court decisions have been made on long-standing native title claims.

Half of these were made by agreement between the parties and the others followed lengthy court hearings.

In each case, many people invested much time and effort into the process to achieve legal recognition of their rights.

Among the successful claimants were the Mandingalbay Yidinji People of north Queensland. Their native title rights were recognised by a consent determination which also protected the other parties' rights.

A few days later, the Yawuru people were recognised as native title holders over parts of Broome in Western Australia. When making the Rubibi judgment Justice Merkel said that where native title claims are resolved in adversarial proceedings, expectations and aspirations may not be met.

He urged parties to "increase their endeavours to reach compromises". If parties could achieve a mediated outcome, "a broad spectrum of mutual benefits can follow [and] reconciliation between Australia's past and present will be greatly advanced."

Our records show that groups are increasingly choosing to reach agreement. About 80 per cent of the 58 determinations that native title exists have been made by agreement.

In many cases parties have found the investment of time and effort worthwhile because they decided the outcome and also developed relationships that set a firm foundation for future co-existence.

Former member sadly missed

Members and employees of the National Native Title Tribunal were saddened by the loss of former Tribunal member Rick Farley, who died at the age of 53 last month.

Mr Farley had been in rehabilitation after suffering a brain aneurism on Boxing Day last year.

During his three years as a part-time member of the Tribunal (1995-1998), Mr Farley was involved in the mediation of claimant applications and in negotiations surrounding the Century Mine project in Queensland.

He also facilitated the negotiation between the Cattlemen's Union of Australia Inc, Cape York Land Council, Peninsula Regional Council of ATSIC, Wilderness Society and Australian Conservation Foundation that led to the Cape York Heads of Agreement signed in 1996.

In paying tribute to his former colleague, Tribunal President Graeme Neate said Mr Farley had made a significant contribution to native title practice in the early years of the Native Title Act 1993 when there was much apprehension and suspicion about native title.

"Rick was active in the days when many saw native title as a threat, rather than an opportunity,"

– Graeme Neate.

"Rick was active in the days when many in the broader community saw native title as a threat, rather than an opportunity to improve relationships and work together to share the country," he said.

Mr Neate said that Mr Farley was dedicated to the cause of reconciliation, and recorded his insights into the values of agreement making about land use in various conference papers and speeches.



“We are happy to share this place in the modern world.”

– Yawuru elder Frank Sebastian.

Sitting on country: Justice Merkel and lead applicant Frank Sebastian discuss the Yawuru people’s future as they look out over Roebuck Bay.

Broome looks to better future



The Yawuru people are looking forward to a brighter future as recognised native title holders over one of Australia’s iconic

tourism towns—Western Australia’s Broome.

Justice Ronald Merkel travelled to the Kimberley in April to deliver his sixth and final judgment for the Rubibi Community from a makeshift court-room set up on Broome’s Town Beach.

The judgment recognised the Yawuru people as the rightful native title holders to more than 5000sq km of land and waters in and around the townsite, as well as two pastoral stations.

He detailed areas where native title was either partially or wholly extinguished, including the inter-tidal zones and public beaches. Exclusive possession native title was recognised for the Roebuck Plains pastoral lease (owned by the Indigenous Land Corporation on behalf of the Yawuru) and unallocated crown land outside the town of Broome.

Lead applicant and Yawuru elder Frank Sebastian said the Rubibi claim, named after a soak at the foot of Kennedy Hill, had been

a long struggle. “We had to prove who we are to the rest of the world,” he said.

“We’ve had to prove that our culture remains alive and strong.”

“We are happy to share this place in the modern world. We look forward to a real role for Rubibi people in the future of Broome.”

Kimberley Land Council executive director Wayne Bergmann, who represented the Yawuru, said the determination was an outstanding result for the whole Broome community.

The determination marked retiring Justice Merkel’s final judgment as a member of the Federal Court. He heard evidence for 48 days at sites in and around Broome between May 2003 and October 2004. A further four days of argument relating to extinguishment was heard in Melbourne this April.

National Native Title Tribunal Deputy President Fred Chaney said he hoped the judgment would provide guidance to allow for the resolution of other Kimberley claims by agreement.

Koolan Island deal delivers jobs and capital

At least 60 jobs will be created for local Indigenous people as a result of a mining agreement on Koolan Island, off the northern coast of Western Australia.

The island is one of about 800 making up the Buccaneer Archipelago and is closest to the mainland Kimberley town of Derby.

The deal was struck between the Dambimangari (Dabima-Ngardj) people and Aztec Resources Limited, as a result of the iron ore mine reopening.

Named the Koolan Island Co-Existence Deed, the agreement was reached after two years of negotiations between Dambimangari people, Aztec Resources and the Kimberley Land Council.

Among the benefits, Aztec Resources plan to employ a workforce made up of 30 per cent Indigenous people by the project's eighth year in operation.

Two full-time Indigenous rangers will also be employed to monitor, protect and enhance the island's unique flora and fauna while traditional owners will be involved in environmental and land management issues, with the aim of protecting significant sites.

In addition, a traditional owner capital base will be established, to enable Dambimangari people to manage and develop their own futures.



Traditional dance: Koolan Island traditional owners celebrate the agreement which is set to increase employment rates for local Indigenous people.

The deed has received high praise from Kimberley Land Council executive director Wayne Bergmann who said it was another example of native title providing positive outcomes for local people and the region.

Aztec Resources Limited Chairman Ian Burston said the company was looking forward to building relationships with the traditional owners. "Creating employment for Indigenous people is a key goal of our agreement," Mr Burston said.

"In a tight labour market, it's important for industry, the Indigenous community and government to cooperate to improve the skills of local people rather than simply looking offshore to fill these positions."

Dambimangari elder and spokesperson Janet Oobagooma said the agreement would provide resources to allow traditional owners to return to their country. "Dambimangari country has always been our true land of belonging," she said.

The Dambimangari people are registered native title claimants for an application covering almost 28,000sq km of land and waters, including Koolan Island.



Welcome to country: Dambimangari elder Janet Oobagooma gives a ceremonial welcome to Aztec Resources chairman Ian Burston.

Land access agreement saves ancient ochre



For centuries, the Wajarri people from Western Australia's Mid-West region have traded the ochre still found today in the Weld Ranges. The ancient

mine, known as Wilgie Mia, is now recognised as part of an exploration access agreement reached between a local iron ore explorer and the Wajarri Yamatji native title claimants.

The Weld Ranges, 60km long and three kilometres wide, are situated south-west of Meekatharra and north-west of Cue. The area holds major cultural significance for the Wajarri people—as custodians of Wilgie Mia—and other groups who have traded the ceremonial substance from the rich ochre ground for generations.

In an agreement which also provides education and training strategies and a share issue for the traditional owners; the explorer, Midwest Corporation Limited, has approval for exploration over a significant portion of the Weld Ranges which is believed to hold at least 130 million tonnes of iron ore.



Mutual agreement: Midwest Corporation's director Steven Lee Chang Chong hands a copy of the agreement to Wajarri elder Ike Simpson. Chief financial officer Harry Thompson (far left) is seated next to Mr Simpson.

The agreement was negotiated by the Wajarri Yamatji Native Title Claim Group, with the assistance of the Yamatji Land and Sea Council, and officially announced in April.

Wajarri man Colin Hamlett said the exclusion zones contained in the agreement, protecting Indigenous heritage, were particularly important to the negotiating group.

“The whole of the Weld Range is an important site for us because of the dreaming story that goes through there,” he said. “It is good that this deal shows how important the Weld Ranges are for Aboriginal people—and for the whole country.”

Simon Hawkins, executive director of Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation, said the inclusion of shares ensured the Wajarri people were part of the project.

What we did wrong, what we did well and how we would do it again

In a special guest column, Midwest Corporation Limited's chief financial officer Harry Thompson discusses the process of reaching an agreement with the Wajarri people over the Weld Ranges.

Let me start by describing some of what we did wrong through the process. We really didn't understand what we were getting into. We knew what outcomes we wanted to get but we didn't know how to get there. We didn't do enough research at the start of the negotiations about the group we were dealing with and the area of land we wanted to explore. We expected the agreement to happen quickly.

Some of the things we did well is that we reached an agreement we are both happy with. We showed respect at all times. We were open and honest at all times. We were very particular about not going

to war—we wanted to make sure negotiations continued in good faith. We did get the National Native Title Tribunal involved which added a lot of clarity to where we were trying to get.

I think if we did it again we'd be a lot smarter. I'm not sure we would have been able to reduce the amount of time it took, but we would have been prepared for the delays.

If I was doing it again I would try to organise a weekend with the claimants and the land council, not to talk about the agreement, but just to get to know one another and start trusting one another. We have a very good relationship now—we can sit down and talk about the agreement or sit down and talk about life.



Harry Thompson

Uluru decision to be appealed



A group of Indigenous people claiming compensation for the loss of native title rights and interests near Uluru have

had their application dismissed by the Federal Court.

Justice Ronald Sackville delivered his judgment at the end of March, finding the group, made up mostly of Yankunytjatjara and Pitjantjatjara people, had failed to prove they held native title at the time various land grants were made and public works constructed in the townsite of Yulara about 25 years ago.

An assessment for compensation would have been considered if the court had recognised the group held native title at that time.

Central Land Council director David Ross, who represented the claimants, said the result should not discourage other groups who thought they had a strong claim for compensation.

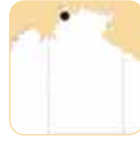
“This was a long, difficult and gruelling case which did not set any legal precedents so it is not an indication of how other compensation cases will fare in the Federal Court,” he said.

The CLC have lodged an appeal against the decision, which will be heard by the Full Federal Court in November.

Compensation is payable under the Native Title Act 1993 when it can be shown, among other things, that the validation of a past act (such as the construction of public works or the grant of freehold estate) caused the loss or impairment of native title rights and interests. The acts generally should have occurred since 1975, when the Racial Discrimination Act commenced.

The Yulara judgment was the second relating to compensation, but a test case is yet to be established where the court could provide some guidance on how compensation might be calculated.

‘Vibrant, dynamic society’ not enough



Darwin native title claimants will appeal a decision by the Federal Court which dismissed their application for recognition of native title over parts of the capital city and surrounding areas.

The Larrakia people heard the result of their ten-year effort—the first to cover substantial parcels of land in an Australian metropolitan area—in a Darwin court room in April.

Justice John Mansfield told the claimants they continued to represent a “vibrant, dynamic society which embraces its history and traditions.” But, he said a series of events in the 20th century had interrupted and disturbed the Larrakia people’s presence in Darwin, making it impossible for him to recognise the continued observance of traditional laws and customs needed to establish native title.

About 150 claimants were gathered in the court room for the decision, many reacting angrily to the court’s findings. Northern Land Council chief executive Norman Fry, who represented the Larrakia people, told the waiting media the decision was inconsistent with earlier recognition for the group, such as the Kenbi land claim, which was settled in 2000 under land rights legislation.

“We do believe that this goes against the face of reality. Everybody in the Northern Territory, particularly in Darwin, we all know who the Larrakia people are,” Mr Fry said. “We will be seeking avenues of appeal to this particular decision. We don’t believe the Larrakia people can be dismissed so quickly.”

The application covered 575sq km of mangrove, beaches and native bush including land that had never been developed but holds historical and cultural importance for the applicants.



Justice Mansfield heard evidence over 68 days at the Supreme Court in Darwin and other places inside the claim area. The Full Federal Court will hear the arguments for appeal in November.

Appealing: NLC chief Norman Fry talks to the waiting media outside the Darwin Supreme Court.

Bush tucker and natural medicine revived on NSW reserve

An agreement struck between traditional owners and a local council in New South Wales four-years-ago has kick-started a project to preserve Aboriginal heritage and develop public access to a reserve.

Native species, including bush tucker and bush medicine, will be regenerated under the project while new signage, walking tracks and guided walks will give visitors to the Terramungamine Reserve a chance to learn about Aboriginal cultural values.

The Dubbo City Council and the Wirrimbah Direct Descendants Aboriginal Corporation, which represents the Tubba-Gah People, will work together to manage the reserve area bordering the Macquarie River north of Dubbo. The initiative is the direct result of an agreement made in 2002, which fell under a native title claim by the Tubba-Gah People.

Under the agreement made between the Dubbo City Council, Tubba-Gah People of the Wiradjuri Nation, the NSW Government and Dubbo Rural Lands Protection Board, three new reserves were created. The agreement was mediated by Tribunal Member Ruth Wade.

One of the three was the Terramungamine Reserve, now the subject of the newest project. Along with conservation and cultural measures, the project will ensure public safety by encouraging people to camp in safe areas.

Will Burns, elected spokesperson for the Tubba-Gah people, said the agreement allowed traditional owners to share their Aboriginal values and traditional land management practices with the wider community.

“Because it will remain a public recreation area, we want to maintain the facilities and also maintain the integrity of Aboriginal values in the landscape,” he said. “The agreement itself set the foundation for everything that we’re now doing.”

Lynton Auld, Dubbo Land Council Manager of Landcare Services, said the groups were going beyond the objectives of the original agreement.



Where it started: Tubba-Gah representatives, Coral Packham and Will Burns, Deputy Director of the Department of Land and Water Conservation Chris Guest, Mayor of Dubbo Greg Matthews and Director of the Dubbo Rural Lands Protection Board Ken Mackinnon at the signing of the original agreement in 2002.

Torres Strait Islanders look to the sea



Sea rights are the next step for Torres Strait Islanders who have succeeded in achieving native title recognition over most of their land.

Only four native title land claims remain now that the Badulgal and Mualgal peoples’ native title rights have been recognised over 80 uninhabited islands, islets and rocks in the far north Queensland region.

The Badulgal and Mualgal peoples made agreements with the Queensland Government, which were finalised on 13 April when the Federal Court made two consent determinations.

This brings the number of consent determinations in the Torres Strait to 27—more than half the total of 50 achieved Australia-wide.

Toshie Kris, chair of the Torres Strait Regional Authority which represented the claimants said the success in achieving recognition over land had inspired Torres Strait people to continue their pursuit for recognition over the waters.

Toshie Kris, chair of the Torres Strait Regional Authority which represented the claimants said Torres Strait people were advancing a regional sea claim to secure native title over waters.

Making future act mediation work

The Tribunal's Northern Territory state manager Tony Shelley recently delivered a presentation on future act mediation at the AIATSIS Native Title Conference 2006: Tradition & Change, Culture & Commerce, held in Darwin. This is an adaptation of his presentation.

An agreement over four Northern Territory uranium exploration licences provides a working example of the principles needed to ensure future act mediation works.

The National Native Title Tribunal was asked to facilitate a mediation between traditional owners the Walpiri people, represented by the Central Land Council (CLC), and uranium explorer Energy Metals Ltd in August last year. The Walpiri people had lodged objections to the company's four applications for exploration licences covering several thousand square kilometres of land adjacent to the Tanami track (between Alice Springs and Halls Creek).

In just over three months and, with a high degree of organisation and good faith on the part of the parties, all four objections were withdrawn. This was in the context of a raging public debate on uranium mining and nuclear waste facilities fuelling widespread fear, confusion and suspicion.

So, why was the mediation so successful? There were some major principles that were agreed and followed without exception. These included the fact that all parties understood and agreed to the set processes. It became clear that on-country mediations would be required to adequately deal with the issues and everyone put in a high standard of preparation, including putting a strong emphasis on visual aides and oral presentations. The best quality expertise and resources were devoted to the task and strong relationships, built on trust and goodwill, were established from the outset and continued through the negotiations.



Senior women's business: The CLC ensured the appropriate elders were at the meetings to hear the information.

The on-country meetings were held at Yuendumu and Tilmouth Wells over two days and two nights in October last year. Traditional owners were presented with the latest information in formats they could interpret and experts were on-hand to answer all their questions and concerns. The CLC ensured the meetings were very well-attended and that interpreters were available.

The company and the Northern Territory Government understood the Walpiri people would need time to digest the information and there was no pressure for a decision on-the-spot. Follow-up phone conferences were held in November and December, when the objections were finally withdrawn.

In summary the mediation worked because there was:

- A thoughtful negotiation/mediation process designed and followed
- Careful and thorough preparation
- Allocation of the right expertise/resources
- Willingness to build relationships
- Desire to work towards an agreed outcome.

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

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