

TALKING

Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

SEPTEMBER 2006

Spirit of negotiation - see page 5

Sadie Singer, Johnny Cullinan and Lallie Lennon (left to right), representing the Yankunytjatjara/Antakarinja peoples, reached the state's first consent determination with the South Australian Government and a group of seven pastoralists, including Douglas Lillecrapp and Alan Fennel. See page 5 for the full report.

More agreements, better system

Australia's 550 native title claims are set to be resolved more quickly and efficiently under proposed reforms announced by Federal Attorney-General Philip Ruddock.

The National Native Title Tribunal's President Graeme Neate welcomed the proposal as an opportunity to improve communication and coordination with the Federal Court and make the native title system work better.

"The changes to the claims resolution process have the potential for positive outcomes to be reached by agreement more quickly and at less cost," Mr Neate said.

"The Government wants to reduce the number of claims in the system which have little prospect of success, so claims that cannot be resolved are identified earlier for resolution by the court."

Mr Ruddock appointed independent consultants, Graham Hiley QC and Dr Ken Levy, to conduct a review into the claims resolution process as part of a package of measures to reform the native title system, announced in September last year.

In releasing the Government's response to the review, Mr Ruddock said the majority of the consultants' recommendations had been accepted. "The focus is on creating a more effective process for everyone in the native title system," he said.

Other parts of the Government's reform package include technical amendments to the *Native Title Act*, measures to improve the effectiveness of native title representative bodies, measures to improve the functioning of prescribed body corporates and changes to the financial assistance available to respondent parties.

In this issue

- *Golf course ILUA tees off.*
- *Native title hope and prosperity.*
- *Youth gain skills caring for country.*



National
Native Title
Tribunal





Long-awaited recognition: Tribunal President Graeme Neate made a special presentation to South Australia's first recognised native title holders, the Yankunytjatjara people, at a ceremony held in the far north-west of the state recently. Lead applicant Peter De Rose was happy to receive a copy of the Tribunal's Register Extract. See page 4 for full report.

From the President Graeme Neate

The Australian Government's response to the claims resolution review presents a welcome opportunity for the National Native Title Tribunal to join with parties and their representatives to deliver better outcomes more effectively and efficiently.

The Government has accepted most of the 24 recommendations and will give further consideration to the remainder.

While not as extensive or dramatic as the 1998 amendments to the *Native Title Act*, the reforms will herald significant changes. They will affect registration testing, notification and mediation of claimant applications, the relationship between the Federal Court and the Tribunal, as well as our relationships with parties and their representatives.

Legislation will have to be prepared to give effect to key aspects of the policy.

Five options for institutional reform were presented to the Government. It accepted the option that would provide the Tribunal with an exclusive mediation role - avoiding simultaneous mediation of native title claims by the Tribunal and the Federal Court. The Government proposes the court does not mediate any aspect of a claim that is being mediated by the Tribunal.

Other changes include giving the Tribunal additional powers during mediation, such as:

- directing a party to attend or participate in mediation
- directing a party to produce documents for mediation within a nominated period or by a nominated date

- conducting a review of material provided by the applicant (or any other party) to establish whether the native title claim group has, by its traditional laws and customs, connection to the land or waters claimed
- assessing whether the material would support a determination of native title
- providing that assessment to a party or parties to the proceeding.

The Government also proposes giving the Tribunal a new inquiry function, which would enable the Tribunal to collect evidence and make non-binding recommendations about issues such as overlapping claims and other inter-indigenous and intra-indigenous issues.

The Tribunal's role reporting to the Federal Court would also undergo some changes. Parties involved in mediation would be expected to negotiate in good faith.

In all, the reforms confirm the scheme of the *Native Title Act* and the Tribunal's long-held view that all parties involved in native title matters need to negotiate - so that everyone's rights and interests are protected in just and enduring agreements.

The months ahead will be busy as parties, their representatives, the Tribunal and the Federal Court grow used to a changing environment. I hope that we will start to see the benefits in the near future.

For more information about the claims resolution review and other reforms to the native title system see www.nntt.gov.au or www.ag.gov.au/nativetitlesystemreform.



Joined by ceremony: Dja Dja Wurrung man Jida Murray-Gulpilil presents Jim Walsh, Managing Director of the Forest Resort, with an emu-feather bracelet to commemorate the agreement.

Golf course agreement tees off



A cooperative approach to native title, golf and tourism has paid off for traditional owners and resort operators in Victoria who are now looking forward to business, employment and training opportunities.

Talks between the Dja Dja Wurrung people and owners of Forest Resort, sparked by the traditional owners' native title claim, resulted in an indigenous land use agreement (ILUA) that helps shape plans for a \$50 million hotel and golf course development in Creswick, 100km north-west of Melbourne.

The agreement gives the resort owners access to 50 acres of land from inside the claim boundaries to develop their golf course, and enables the construction of the hotel where the Dja Dja Wurrung will undertake employment and training.

Forest Resort owner Jim Walsh said the Dja Dja Wurrung people's culture would have a very strong influence on the project, through interpretive signs on the course and the exhibition of their artwork.

"We really want to embrace the story of the traditional owners and amalgamate that with the hotel we're developing," he said.

Chair of the Dja Dja Wurrung people and Native Title Services Victoria Graham Atkinson said the ILUA was an example of native title claimant groups engaging in positive partnerships with a local developer to ensure a project's success.

"I think agreement making, in the long run, is far more constructive than relying on litigation," he said.

Landmark struggle for recognition ends

Native title holders for one of South Australia's earliest claims have met to celebrate and reward those who helped them have their native title recognised after several years of litigation.

A determination recognising native title in the De Rose Hill claim was delivered by the Full Federal Court in June last year.

An unsuccessful attempt to appeal to the High Court brought the matter to a close in February this year. The claim covered about 1865sq km of land adjacent to the Anangu Pitjantjatjara Aboriginal freehold lands and was first lodged in 1994.

Lead applicant Peter De Rose, Yankunytjatjara elders and their families gathered recently at Ilintjitjara, north of Marla, to mark their success at becoming South Australia's first recognised native title holders.

National Native Title Tribunal President Graeme Neate presented a framed copy of the Tribunal's Register Extract as a mark of their achievement.

In a speech, which was translated into language by interpreter Ebony Benson De Rose, Mr Neate said the certificate showed how everyone's rights and interests were recognised by Australian law.

"The Tribunal is not giving you native title. The Federal Court did not give you native title," he said. "We are all recognising the traditional rights to country that your ancestors had and you still have."

Mr De Rose made a series of presentations to anthropologists, historians, lawyers, interpreters and Aboriginal Legal Rights Movement staff who helped the group through the 69 day trial and subsequent appeals.



De Rose celebration: South Australia's first native title holders made a series of presentations to the many experts who helped them through their trial. Tribunal member Bardy McFarlane and President Graeme Neate congratulated the Yankunytjatjara people after the ceremony.

Blueprint for co-management



Traditional owners will co-manage South Australia's Vulkathunha-Gammon Ranges National Park under the terms of an indigenous land use agreement (ILUA) — the first in the state to deal with national parks.

National Native Title Tribunal Member Bardy McFarlane said the agreement was expected to form a blueprint for similar arrangements under South Australia's Statewide ILUA strategy.

"I hope other groups will look to the Vulkathunha-Gammon Ranges experience for guidance in their own negotiations," he said.

Under the ILUA and an associated co-management agreement with the South Australian Government, the Adnyamathanha native title claimants will excise the park from their native title claim. In exchange, the agreement recognises the Adnyamathanha's traditional rights and interests and the extent to which those rights can be exercised within the park.

Public access to the park, which covers 128,000ha including the Northern Flinders Ranges, is not affected by the ILUA.



Old friendships: Pastoralist Douglas Lillecrapp described the determination as a formalisation of the strong relationships he and his family have enjoyed with the native title holders for more than four decades.

Hope and prosperity for the future



A negotiating spirit and shared love of country was celebrated in South Australia recently as the state recorded its first native title determination by consent.

The Yankunytjatjara / Antakirinja determination was made by the Federal Court at an on-country hearing in the township of Marla, 1000km north of Adelaide, and represented an historic agreement between traditional owners and the pastoral industry.

In a series of speeches delivered after Justice John Mansfield's orders were made, native title holders, pastoralists, the Aboriginal Legal Rights Movement and the South Australian Government made it clear the determination formalised a spirit of cooperation which had existed for generations and would continue into the future.

Evelyn Downs pastoralist Tim Lockyer, one of seven to be involved in the determination, said most of the claimants and pastoralists had lived and worked on stations inside the claim area, sharing great respect for one another.

New native title holder Lenny Willis said the strength of the partnerships was forged long ago.

"We have always had a good relationship with most pastoralists and today will even make the relationships stronger," he said.

The determination recognised the Yankunytjatjara / Antakirinja peoples' non-exclusive rights to 18,665sq km of land and waters. These include the right to access, maintain and protect places of importance under traditional laws and customs. Negotiations are continuing in relation to the Marla township and a further settlement is expected soon.

Tribunal member Bardy McFarlane, who facilitated the early negotiations, said he had come to realise there were striking similarities between the pastoralists and native title holders. "They both care for their families and their future and they share a common love of this country," he said.

Todmorden pastoralist Douglas Lillecrapp, who was the first in South Australia to reach an indigenous land use agreement with the claimants in 2004, said he and his family understood and respected that the land held spiritual significance for the native title holders. "We hope and trust native title will continue to bring prosperity, certainty and happiness, now and into the future."

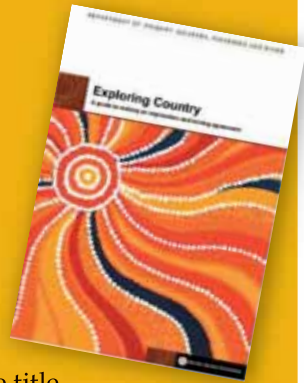
Northern Territory industry guide



Explorers and miners working in the Northern Territory have a new guide for establishing strong relationships with local

Indigenous workforces and custodians of the land.

The *Exploring Country* handbook has been produced by the Northern Territory Government and Aboriginal land councils operating in the top end. It explains the different processes for getting access to land where native title or land rights legislation applies.



The handbook gives a clear overview of the different types of agreements available and includes case studies of mining companies and traditional owners who are making their partnerships work.

Newmont Australia is one of the companies featured for its training program for Indigenous people at Tanami. The proportion of Indigenous people working on the mine now averages about 20 per cent, with strong retention rates.

For copies of the handbook go to www.nt.gov.au/dpifm/Minerals_Energy or contact Titles Info (08) 8999 5322.



Tanami Gold: Brendan Hayes, one of the first prevocational students working in the Gold Room for Newmont Australia.

Native title exists in Timber Creek



Traditional owners in the Northern Territory have proven they hold native title rights to areas within the township of Timber Creek, 360km south of Darwin.

The Federal Court's Justice Mark Weinberg delivered his judgment in July and said the Ngaliwurru and Nungali Peoples had maintained their connection to their traditional lands through the continuation of their laws and customs.

The court concluded that the Ngaliwurru and Nungali peoples held non-exclusive native title rights over areas of vacant crown land and waters, including Timber Creek, as well as the creek beds and banks. This means that other groups with valid rights, such as recreational fishers, can continue to access the area.

But the traditional owners will have to wait longer for a final determination on the three native title claims they lodged over Timber Creek in 1999 and 2000. Justice Weinberg asked the parties to provide further submissions about the form of a proposed determination of native title. Unless the parties reach agreement, further submissions will also be required in relation to five lots of land within the claim area.

The court's decision was not the first time the Ngaliwurru and Nungali peoples have had success in claiming rights to their traditional land. Under the *Aboriginal Land Rights (Northern Territory) Act*, they were granted rights for the Timber Creek Land Claim and the Ngaliwurru/Nungali (Fitzroy Pastoral Lease) Land Claim.

There are currently 19 active native title applications in the Northern Territory that include areas in townships.

Native title and land rights are different

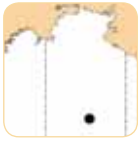
Native title rights:

- are pre-existing rights recognised by the courts
- are recognised under the *Native Title Act 1993*
- are a set, or bundle, of rights and interests in relation to land or waters
- the extent of rights and interests depends on the following:
 - the traditional laws and customs currently observed by the claimants
 - the extent to which the claimants can show they have maintained a 'connection' with the area through the ongoing maintenance of those laws and customs.

Land rights schemes:

- are established under state legislation and, in the case of the Northern Territory, Commonwealth law
- are in place in the Northern Territory, Queensland, New South Wales, South Australia and Victoria
- involve a grant of title from the government to an Indigenous group
- a successful land rights claim usually results in a special grant of freehold title or perpetual lease which is held by a community or organisation.

Youth gain skills caring for country



Young native title holders in the Northern Territory are caring for their land around the Todd and Charles Rivers through a Greening Australia program which could lead to permanent employment.

Here Artepe Aboriginal Group is the prescribed body corporate (PBC) representing the Irlpme, Mparntwe and Antulye people who were granted native title rights over Alice Springs in 2001.

The PBC made the decision to get involved in the program to learn how to deal with issues such as the management of culturally important vegetation, as well as offering opportunities for young native title holders to gain qualifications and jobs.

A team of six native title holders, aged between 17 and 20, are currently enrolled in Greening Australia's Green Corps program, which allows them to graduate with a certificate two in conservation and land management.

Greening Australia representative and team leader Brad Ermel said the program combined the chance of employment with the opportunity to care for land.

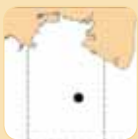
The group have been involved in activities such as controlling weeds, collecting native seeds and planting trees.

Team member Nerida Riley, 19, said she enrolled in the program because she thought it would be interesting. "You learn to identify things like weeds and plants and you learn what can grow in the area. We have also done a bushfire course and we work with other rangers during the program so we can go on to be rangers in the area too," she said.



Protecting trees: native title holders Felicia Dodd, Shauna Stirling and Nerida Riley work on the Green Corps team.

Waterhole celebration closes ten-year journey



Native title holders for the Davenport-Murchison claim in the Northern Territory have marked the success of their decade-long quest for native title recognition with a presentation on their determination ground.

National Native Title Tribunal Northern Territory manager Tony Shelley and case manager Barb McInness travelled to Old Policeman's Waterhole, 270km south east of Tennant Creek, to present a copy of the National Native Title Register extract — on special request from the Central Land Council (CLC).

Since they lodged their claim in 1995, the native title holders — the Arrawatyen, Antarrangeny, Keranty, Lyentyawel, Tyaw, Warwepenty and Kelatnyerrang peoples — were represented by the CLC.

The presentation was an emotional day for the native title holders, particularly as many senior men and women had passed away since giving evidence at the trial held six-years-ago.

"There were days when we were taken to sites of significance by helicopters, troopies, really rough country, with judges, lawyers, anthropologists and all the people with ties to country," native title holder Michael Liddle said. "People were asked question after question about the connection that they had to that particular place. It took a lot out of those people."

CLC Director David Ross said the claimants spoke strongly during the hearing about their lives, use of the country and its spiritual meaning to them.

A determination was made in April 2004, which recognised the group's native title rights and interests over 1120sq km of land outside Tennant Creek. The determination was appealed and then upheld by the Full Federal Court in July last year. A Northern Territory Government application for leave to appeal to the High Court was refused in May this year.

Explorers use regional agreements to fast track licences

Explorers are taking up the opportunity to fast track their tenement approvals in Victoria with the help of two regional indigenous land use agreements (ILUAs).

The ILUAs have been developed between the Minerals Council of Australia (MCA) Victoria and the Dja Dja Wurrung and Wamba Wamba Barapa Barapa and Wadi Wadi peoples.

Both set out standard terms and conditions, which explorers can choose to adopt, rather than enter into negotiations with traditional owners every time they seek a new exploration licence.

Executive director of the MCA's Victorian branch Chris Fraser said the agreements had inspired confidence among explorers, with several signing up to the terms and conditions already.

"Native title is no longer a restraint to getting access to start exploration," he said.

Mr Fraser said the models could be applied elsewhere in Australia, as they were consistent with the MCA's work with Indigenous communities nationally, under its Memorandum of Understanding with the Commonwealth Government.

Chair of the Dja Dja Wurrung people and of Native Title Services Victoria (NTSV), Graham Atkinson, said the native title claimants' culture would be protected under the agreements and they



Culture protected: Dja Dja Wurrung men Jida Murray-Gulpilil and Clayton Mitchell-Murray conduct a ceremony with mining industry representatives including executive director of the MCA's Victorian division Chris Fraser (2nd from left).

would also benefit from employment and training opportunities.

"That can only have positive flow-on effects in terms of income and support for our Indigenous workers and their families," he said.

Mr Atkinson said the Prospectors and Miners Association in Victoria had expressed interest in developing a similar agreement for prospectors.

The registration of the agreements was celebrated by the parties at a special ceremony, held in Bendigo.

National native title statistics

Registered determinations of native title

Total number of registered determinations of native title in Australia	88
Determinations that native title exists in the entire or part of the determination area	61
Determinations that native title does not exist	27
Consent determinations	53
Litigated determinations	19
Unopposed determinations	16

Indigenous land use agreements (ILUAs)

Total number of registered ILUAs in Australia	251
---	-----

Native title applications not fully resolved

Claimant applications	550
Compensation applications	12
Non-claimant applications	38
Total applications	600

For more statistics see the Tribunal's website www.nntt.gov.au
As at 31 August 2006.

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

Talking Native Title is produced quarterly by the Public Affairs team of the National Native Title Tribunal. Letters to the editor can be sent to: Public Affairs, National Native Title Tribunal, GPO Box 9973, Perth WA 6848 or by email: publicaffairs@nntt.gov.au. If your contact details have changed, please let us know. Photographs in this issue courtesy of: Drew Lenman (Orange Lane Studios), Northern Territory Department of Primary Industry, Fisheries and Mines, Greening Australia and Tribunal staff. ISSN 4116-2508

Resolution of native title issues over land and waters.



National
Native Title
Tribunal

