

TALKING

Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

DECEMBER 2008

Witjira determination rewards Elder's on-country evidence

Brownie Doolan (standing, eighth from left) returned to his country for the determination by Justice Lander, pictured above (fourth from left) with fellow claimants after the hearing at Witjira National Park.



Lower Southern Arrernte man Brownie Doolan has been rewarded for the three days he spent in 50 degree heat in South Australia's

Witjira National Park, showing Federal Court Judge Justice Ronald Mansfield places of cultural significance.

On 11 September Mr Doolan's evidence proved to be a crucial factor in a Federal Court native title hearing held in the park at Dalhousie Springs, on the western edge of the Simpson Desert in South Australia's far north.

Justice Bruce Lander handed down a consent determination over the land, saying he was "privileged to sit here today to register this native title claim" after Brownie Doolan's contribution years earlier.

The claimants agreed in 2000 to work together through the Irrwanyere Aboriginal Corporation. The Tribunal provided mediation support to the parties, which also include the State of SA and the South Australian Native Title Service.

The parties not only came to an agreement about native title but also developed a partnership for co-management of the Witjira National Park and an indigenous land use agreement, which was registered with the Tribunal in March this year.

They developed a draft management plan, designed to respect contemporary and traditional culture, knowledge and skills, which is open for public comment until 18 December 2008. Visit www.environment.sa.gov.au and go to Parks> Management> Management Plans to see the plan.

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**National
Native Title
Tribunal**



From the President Graeme Neate



It has been a year of progress and change for participants in the native title process. For some people 2008 may have brought frustration and disappointments, but for others it will be

remembered for the agreements made and rights recognised.

The Ngaanyatjarra, Birriliburu, and Thalanyji peoples of Western Australia and the Wangkangurru/Yarluyandi peoples of South Australia had their respective native title rights recognised in consent determinations over large areas of land. This brings the number of consent determinations Australia-wide to 70.

More consent determinations are anticipated in the coming months, including one scheduled for 9 December on Mornington Island in north Queensland's Gulf of Carpentaria.

There are now more than 350 registered indigenous land use agreements (ILUAs), many of them linked to determinations that native title exists.

In relation to mining and exploration, this year the Tribunal has made more than 60 consent determinations that the acts can proceed.

These results are encouraging as we look to the year ahead.

More change is in the wind for 2009. In October, Federal Attorney-General Robert McClelland announced proposed amendments to the Native Title Act to improve the operation of the native title system.

Under the proposed changes, the Federal Court will have additional powers in relation to the mediation of native title applications. The Court will decide whether and when to refer matters to mediation, and whether the Tribunal or the Court will conduct mediation.

The Australian Government has made clear its aim to encourage more negotiated settlements of native title.

Currently parties have a broad range of options for settling native title claims, including ILUAs and alternate agreement-making processes. It is important that this flexible approach remains under the proposed changes.

The Tribunal looks forward to working with all participants in the native title process in 2009, and beyond, to resolve native title issues over land and waters in many parts of Australia.

Act changes prompt unregistered claim dismissals

The Federal Court has exercised new powers achieved in the 2007 amendments to the *Native Title Act (1993)* and has dismissed 14 unregistered claims across Western Australia

The Court can now dismiss an unregistered application if it finds the application is unlikely to be amended in a way that would mean it could be registered by the Tribunal, or where there is no other reason not to dismiss the application.

When the Government introduced the new section to the Act, the aim of the amendments was to put more focus on the responsibility of applicants to take steps to improve the quality of their claims, recognising that poor quality claims can be a burden on the native title system.

WA's first decisions were made in the Federal Court in Perth by Justice John Gilmour on 13 October. Five claims from WA's Goldfields and six from the South West were dismissed. Then on 12 November, one unregistered claim from the Pilbara and two from the Geraldton region were dismissed by Justice McKerracher.

Dismissals have also occurred in NSW and Queensland. The Tribunal's WA State Manager Lillian Maher said the dismissals did not affect people's rights to lodge new claims.

"Applicants whose claims have been dismissed can now work on preparing new claims that may be able to be registered by the Tribunal and progressed through the native title system," she said.

Chinese subtitles spread the word on native title



Chinese investors in Australia's mining sector can now learn about native title by viewing a Tribunal DVD that has subtitles in Chinese.

The Tribunal has re-released its *15 years of native title* DVD with Chinese subtitles in response to the increased involvement of Chinese investors in the mining industry.

The DVD explains native title in a documentary that chronicles native title history, law and changes since the historic Mabo decision of 1992.

Viewers take a visual journey through the Mabo case and the Yorta Yorta, Wik and Wik Way and Noonkanbah claims, each providing a different perspective on native title and the process of negotiating outcomes.

Tribunal President Graeme Neate said increased investment in Australia meant a broader range of people required information about native title and Indigenous peoples' interests in land and waters.

"Knowledge about native title, some of the history, the outcomes and the expectations will help Chinese investors understand Indigenous peoples' native title rights and the process for negotiating agreements with them," he said.

Torres Strait Islanders present evidence in sea claim hearings



The Federal Court has held a round of hearings on the Torres Strait Sea Claim, considering evidence from native title claimants to prove their ongoing connection to 44,000sq km of sea in the region.

Hearings were held in Brisbane in September, the Torres Strait in October, and Cairns from 27 October to 7 November and 24 November to 12 December. The Court has established a detailed program through until the end of July 2009 for the parties to present and examine relevant evidence.

On behalf of all Torres Strait Islanders, the Torres Strait Regional Sea Claim group lodged their claim with the Federal Court on 23 November 2001.

Having finalised native title over most of their traditional lands, Torres Strait Islanders are now seeking legal recognition of their native title rights to their traditional seas.

Indigenous groups have lodged two claims that overlap parts of the Torres Strait Regional Sea Claim in the south. The Court said it will deal with the areas of overlapping interests at a later date, in separate processes.

Previous native title determinations over sea areas have recognised non-exclusive native title rights, to coexist with other people's rights such as the rights to fish and travel across the sea.

This claim faces some complex legal questions because of the international Torres Strait Treaty which provides continuing traditional access, international shipping routes and cross-border considerations between Australia and Papua New Guinea, as well as the regional extent of the claim.



Torres Strait Islanders seek recognition for their ties to the sea.

Elder's effort aids Witjira determination from page 1

Protocols for visiting Witjira National Park remain unchanged after the determination – a Desert Parks Pass is required and there are guidelines for outback travel and camping, such as this summer's ban on tourist travel in the area.

Brownie Doolan was among the group of more than 100 claimant group representatives and other parties who travelled to the park for the determination.

This determination, made after more than 10 years of negotiations, was the first over a SA national park and only the third native title determination for the State.

Justice Lander made the consent determination over claims from the Eringa and the Wangkangurru/Yarluyandi claim groups, recognising their non-exclusive native title and interests in the 7,770sq km park, which includes a commercial lease at Mt Dare.

It finalised four claims over the Witjira National Park: the Irrwanyere Mt Dare claim (lodged in 2005), and park overlap areas of two Eringa claims (1996 and 1999) and a Wangkangurru/Yarluyandi claim (1997).

Some overlapping claims for areas near the park are still being finalised. Tribunal Deputy President Chris Sumner is facilitating mediation.

Registrar sets pace for Tribunal's future



The National Native Title Tribunal's new Registrar Stephanie Fryer-Smith has not wasted a moment since she joined the Tribunal on 20 October.

Her first day in the job set the pace – Ms Fryer-Smith (pictured) was in Canberra to attend Senate Estimates Committee meetings.

Since then her schedule has taken her to some

State and Territory registries to meet staff, clients and stakeholders.

These meetings have equipped her for one of her key initial objectives: to complete the Tribunal's Strategic Plan for 2009-2011.

"The Plan will establish our priorities, strategic initiatives and targets for the next three years, and will focus on the achievement of excellence in service-delivery and agreement-making," Ms Fryer-Smith said.

The Registrar said it was vital the Tribunal had strong and positive relationships with its clients and stakeholders. She was keen to further strengthen those relationships, and to respond to the needs and concerns of all participants in Australia's often complex native title system.

"As we approach 2009, important challenges lie ahead, including foreshadowed changes to the Native Title Act. In a dynamic environment, the Tribunal will continue to work constructively with all of its stakeholders, with the goal of obtaining enduring agreed outcomes to native title and related issues," she said.

With a background in management, administration and law, including native title, Ms Fryer-Smith is well-equipped for the position of Registrar.

Her previous role was Dean International at the Curtin Business School, at WA's Curtin University of Technology, where she was responsible for the strategic business development of the Business School's international program portfolio.

Ms Fryer-Smith has a long-standing interest in Indigenous people and the law and has written on a wide variety of indigenous legal issues for more than 10 years. Ms Fryer-Smith wrote the *Aboriginal Benchbook for Western Australian Courts* (second edition, published by the Australian Institute for Judicial Administration, August 2008).

Between 1999 and 2003 Ms Fryer-Smith held appointments in the WA District Registry of the Federal Court of Australia, including as Deputy District Registrar and Native Title Coordinator.

Ms Fryer-Smith has also worked as a legal academic, specialising in property, native title and criminal law, and has been a mediator and a solicitor in general practice.

Determination recognises Thalanyji People



Production of a book about local indigenous culture, help from mining companies and use of their own lawyer instead of a land council have helped WA's Thalanyji People achieve recognition for their connection to country.

Their efforts paid off when the Thalanyji People's non-exclusive native title rights to mainly pastoral land in the West Pilbara were recognised by the Federal Court's Justice Anthony North in a hearing at Onslow on 18 September.

The people worked through their Prescribed Body Corporate, the Buurabalayji Thalanyji Aboriginal Corporation (BTAC), which was established to protect and manage their native title rights according to their wishes.

BTAC committee member Trudy Hayes, who represented the Thalanyji People at the hearing, said the Thalanyji People were still on a high months after the consent determination.

"We achieved something for the elders – they feel a strong sense of pride that there has been recognition for their connection with their country," Ms Hayes said.

"Others have been asking how we did it," she said, explaining it was a combination of their unity, working with their own lawyer instead of a land council, mining companies' support and funds raised from their book.

The Thalanyji claim, which was filed in 1999 and combined two existing applications, involved more than a dozen parties from government and the mining, pastoral, pearling, fishing and telecommunications industries.

In 2004, the National Native Title Tribunal held mediation conferences to resolve the issue of overlapping claims. Shortly afterwards negotiations began that led to the consent determination and the development of five body corporate pastoral indigenous land use agreements, which deal with the practical coexistence issues between native title holders and pastoralists.

Tribunal Member Dan O'Dea said the sheer number of parties in the Thalanyji claim made the determination a particularly proud achievement.

"The parties represented a wide range of divergent interests but through everyone's commitment to

achieving a positive outcome, mediation was able to lead to the determination result," he said.

Since the determination, the BTAC has begun work on a program of cultural awareness training for local businesses and organisations, and an oral history of local Indigenous and non-Indigenous people is being developed.

"We want to increase understanding between Indigenous and non-Indigenous people – two-way learning for Australians," Ms Hayes said.

Shire of Ashburton executive manager, western operations and finance, Amanda O'Halloran, said the determination signalled the beginning of a range of new indigenous projects for the shire.

Tourism opportunities, dual language signs for sites, signage at special Thalanyji sites and indigenous awareness and understanding projects were all to be developed.

"We are keen to work together, to support the Thalanyji people's aspirations, hopes and dreams," Ms O'Halloran said.

The determination covers about 11,120sq km of land in the Shire of Ashburton, which includes some land in and around the Onslow townsite and port area. Another 7,310sq km of the original application was dismissed.



Thalanyji People's lawyer Ron Bower (rear left) and BTAC chair Shirley Hayes with Thalanyji elders (front, from left) Laura Hicks, Judy Hughes and Valerie Ashburton.

Karlu Karlu land returned to traditional owners



Claims for land at Karlu Karlu (Devil's Marbles) and Davenport Range National Park, in the Northern Territory, were resolved in October when the Australian government gave Indigenous people Aboriginal freehold title to the land.

In a handover ceremony at the site 100km south of Tennant Creek, Federal Indigenous Affairs Minister Jenny Macklin presented the Warumungu, Kaytetye, Warlpiri and Alyawarr people with the deeds of title to 1,775ha of land at Karlu Karlu.

Ms Macklin also presented the Alyawarr, Kaytetye, Warumungu and Wakaya people with title to the 11,000ha Davenport Range National Park, a wilderness area about 60km east of Karlu Karlu.

The Central Land Council (CLC) represented the traditional owners of Karlu Karlu during their 28-year claim. CLC director David Ross said he hoped traditional owners felt a sense of peace and relief after their many years working to regain their land.

"I now look forward to progressing the joint management arrangements for this land," he said.



Lesley Blackhat Foster and Jenny Macklin at the handover.

The hand-back settles long-standing land claims over some national parks under the *Aboriginal Land Rights (Northern Territory) Act 1976* (LRA). After the handover the Land Trusts signed 99-year leases with the NT Government to allow the parks to continue with public access under joint management arrangements.

Indigenous land use agreements (ILUAs) between traditional owners, the CLC and the NT Government contained provisions that the land be handed back under the LRA. These ILUAs are two of 27 national park ILUAs negotiated three years ago and have been registered with the Tribunal.

The Karlu Karlu and Davenport Range parks were claimed under both the LRA and the Native Title Act. The parks will be transferred as Aboriginal

freehold to traditional owners under both the LRA and the terms of the ILUAs.

Some parcels of land near the handover areas are still subject to native title claims under the Native Title Act.

ILUA progresses Blackstone police plan



An indigenous land use agreement (ILUA) has opened the door to the next phase of a plan to create a multifunction police facility at Blackstone, in the Shire of Ngaanyatjarra in the Central Desert of Western Australia.

The ILUA, registered with the Tribunal on 10 October, follows the consent determination of exclusive native title for traditional owners of the Ngaanyatjarra Lands region (Part A) by the Federal Court on 29 June 2005, over about 188,000sq kms of land.

Parties to the ILUA are the WA Minister for Public Works and the Yarnangu Ngaanyatjarraku Parna Aboriginal Corporation, (YNPAC) which holds the native title rights in trust for the native title holders.

Through the ILUA, the Ngaanyatjarra Land Council has leased some of the native title holders' land to the

Minister for the new facility, with an initial lease term of 30 years. The ILUA will not result in native title being extinguished.

YNPAC native title adviser, lawyer Warwick Smith, said the facility would comprise a multifunction police station and three homes for police.

Construction is expected to begin early in 2009 and be completed by the end of the year. Mr Smith said the facility would provide a greater police presence in the region. "Prior to the delivery of the Gordon report there was a very limited police presence on the Ngaanyatjarra Lands," he said.

Exclusive native title was determined by consent for the remainder of the Ngaanyatjarra Lands region (Part B) at a Federal Court hearing on 3 June 2008.

ILUA protects island's green turtle rookery



Indigenous culture and the environment are beneficiaries of an indigenous land use agreement (ILUA) at Queensland's Raine Island,

home to the world's largest known green turtle breeding place, or rookery.

The ILUA was finalised 15 months ago between the Erubam Le, Ugarem Le and Meriam Le peoples of eastern Torres Strait, the Wuthathi People of Shelbourne Bay and the Queensland Government. Under the agreement both the traditional owners' connection to the island, situated off Cape York Peninsula, and the need for ongoing management and conservation of the island and adjacent cays (small islands) are recognised.

The Tribunal facilitated mediation to help the parties develop the agreement which granted Raine Island National Park (Scientific) status. This ensures that only people with permission to monitor or study the rookery can access the island. The Tribunal registered the ILUA on 13 August 2007.

Erub Councillor and Torres Strait Islander Regional Council Deputy Mayor Kenny Bedford said the ILUA sat nicely with the region's turtle and dugong management plan, to protect sea turtle species.

"We respect this agreement which still holds strong to this day," he said. "It's where most of the turtles in this region originate so it's very important to us for cultural reasons, so the less impact on Raine Island the better for us. The fact it's being protected the way it is gives us confidence that human impact on the island, even with research, is kept to a minimum."

Queensland Parks and Wildlife Manager of Strategic Services Geoff Meadows said anyone granted a permit to access the island would be



Traditional owners are keen to protect sea turtles at Raine Island.

required to take a traditional owner from the Wuthathi and Torres Strait parties with them.

The annual northern patrol, which checks the conservation status of protected areas, would also involve the traditional owners.

"What we've tried to do out of the ILUA is ensure that our interests in protecting Raine Island and the indigenous interests in terms of access can work together," he said.

"The fact that the Tribunal held mediation meetings made it really easy for us. The indigenous and conservation interests are matching up so well, and that's the beauty of this agreement."

However Wuthathi Land Trust chairperson Arnold Wallis said he wanted to see a more structured process for ILUA management to ensure input from the traditional owners.

"If any agencies are making plans about Raine Island they need to understand there is an ILUA there and a process that needs to be followed," he said.

"We need to be honouring this agreement and adhering to the regulations of the Act."

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Partnerships pay in work opportunities at NT mines

Partnerships between mining companies and the Northern Land Council (NLC) are paying dividends for local Indigenous people who are benefiting from new employment opportunities at Northern Territory mines.

Indigenous land use agreements (ILUAs) between traditional owners and companies at the OM Holdings' Bootu Creek manganese mine, near Tennant Creek, had led to indigenous employment increasing to about 20 per cent of the 200 employees.

This success was recognised at the NLC's biennial Employer Excellence Awards in Darwin on 29 October when OM Holdings Ltd was named the top

employer of the year for its employment record over three years at Bootu Creek.

NLC's jobs and careers service manager David Ross said that employment partnerships and provision of jobs was a major part of ILUAs with miners. "Yes, it's good for traditional owners to get royalties and other benefits from mining. But learning skills to enable them to get ongoing work in their community or elsewhere is just as important, if not more so," he said.

The ILUAs at Bootu Creek were the result of land settlements through both the Native Title Act and the NT Aboriginal Land Rights Act.

SA resources sector explores employment sustainability

A resources industry workshop group, launched by the South Australian Chamber of Mines and Energy (SACOME) in September, is exploring ways to develop sustainable opportunities for Indigenous South Australians through 'true' partnerships between key stakeholders.

SACOME's director of indigenous relations, Stephanie Walker, said a challenge for industry and native title claimants, including parties to indigenous land use agreements (ILUAs), when addressing these issues was the need to liaise with at least 29 government departments.

"We need to develop new habits of working together –

and just sitting around a table and talking is not what constitutes a partnership," she said.

Ms Walker said there was room to develop training and education programs for Indigenous people across all suppliers to the resources sector, including banks and the retail sector.

"Key participants from the workshop group are focusing on a major pilot project on the back of an ILUA that is bringing together state and federal government departments and agencies, the resources sector and a particular Aboriginal community," she said.

National native title statistics 19 November 2008

Determinations of native title

Total number of registered determinations of native title in Australia	114
Determinations that native title exists in the entire or part of the determination area	81
Determinations that native title does not exist	33
Consent determinations	69
Litigated determinations	21
Unopposed determinations	24

Indigenous land use agreements (ILUAs)

Total number of registered ILUAs in Australia	352
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Native title applications not fully resolved

Claimant applications	481
Compensation applications	10
Non-claimant applications	29
Total applications	520

For more statistics visit www.nntt.gov.au

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Resolution of native title issues over land and waters.