

TALKING

Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

DECEMBER 2006

Desert knowledge the key for future generations

Northern Territory Minister for Regional Development, Kon Vatskalis signing the ILUA with Lhere Artepe Aboriginal Corporation Chairman, Brian Stirling and other Lhere Artepe members, Central Land Council Chairman, Lindsay Bookie, and Desert Knowledge Australia Deputy Chairman, Mr Harold Furber.



An indigenous land use agreement (ILUA) signed in September aims to give members of the Alice Springs

Indigenous community a chance to be a part of world-wide research.

The ILUA was signed over a 73 hectare site known as the Desert Knowledge Precinct, which functions as a centre to improve the understanding of how Australia's desert can grow wealth and achieve sustainability.

This includes engaging Indigenous communities, and their representatives such as Lhere Artepe, to assist scientific research with their traditional knowledge of the land.

The precinct is managed by Desert Knowledge Australia (DKA), a statutory corporation established under Northern Territory legislation to facilitate knowledge of desert environments.

Although the precinct is still being developed, DKA CEO John Huigen, said the recent ILUA

was a step towards achieving the precinct's aims because it gave local Indigenous communities a greater say in how the precinct would be managed.

Lhere Artepe coordinator, Esther Pearce also said Indigenous people will be employed to maintain the grounds of the precinct and will participate in management decisions.

"We will have the primary offer to tender for jobs such as construction, horticulture, maintenance and research," she said.

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National
Native Title
Tribunal



From the President Graeme Neate



This year has seen proposed changes to the native title system, an increase nationally in agreements about native title, and renewed debate about native title as a result of the Single Noongar decision in Perth.

As reported in the September issue of *Talking Native Title*, the Australian Government is going to implement recommendations of a claims resolution review with the aim of seeing native title claims resolved more effectively and efficiently (details of how these reforms are progressing are provided on page 7).

The focus of those changes, and the Tribunal, will continue to be on agreement-making.

This year there has been a steady increase in the number of indigenous land use agreements (ILUAs) nationally. There are currently about 260 ILUAs on the Register.

The Tribunal's latest annual report noted that, for the eighth year running, the number of registered ILUAs was larger than in the preceding year. The annual report contains lots of information about agreements made and other aspects of native title practice and is available through our website.

Although some cases are working their way through the courts, agreement-making has become the usual method of resolving various types of native title issues whilst aspects of native title law are being clarified.

The public debate about native title was revived recently following the decision by Justice Wilcox, recognising the Noongar people as the native title holders over areas within Perth, and subsequent moves to appeal against that decision.

For detailed information on the Single Noongar decision and what it means see *Talking Western Australia—Special Edition October 2006* at www.nntt.gov.au/publications/talkingwa3.html.

Whatever the outcomes of the appeals in that case, and appeals against other judgments of the Federal Court, it will be important for parties to native title proceedings to try to find ways to reach agreements. Courts can only decide on some issues. It is for people most affected by those decisions to sort out the rest.

In the coming year we will be working with parties to implement the new practices and arrangements flowing from the claims resolution review and we look forward to continued success in mediating just and enduring agreements.

2005-2006 Annual Report available

The National Native Title Tribunal's annual report was recently tabled in parliament.

The 2005-06 report is the first one in which the Tribunal is reporting under its new output framework. The framework includes a new outcome statement: *'Resolution of native title issues over land and waters'*.

Detailed in the report are new measures to assess the quality of the Tribunal's work, particularly in the area of agreement-making. Also highlighted is the steady increase in the number of indigenous land use agreements reached nationally.

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Desert knowledge the key for future generations

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Scientists within the precinct will also be required to consult with Lhere Artepe members to ensure their research activities are culturally appropriate.

Lhere Artepe Chairman, Brian Stirling, said it allowed his people to help the wider community to better understand the complexities of the desert ecosystem. "It is an important opportunity for Aboriginal people in Central Australia to use our traditional knowledge about the land. It will also be a way for our knowledge to be recognised by western science as it should be," he said.

Claims over Australian capital cities

The recent Federal Court decision by Justice Murray Wilcox about the native title claim made over parts of Perth by the Noongar people has led to speculation regarding native title claims in other metropolitan areas around the country.

National Native Title Tribunal President, Graeme Neate, said claims over land in major cities had occurred since 1996. There is no indication that Justice Wilcox’s decision acted as a catalyst for groups making claims over other metropolitan areas.

“Indigenous groups have to go to great lengths to prove native title over an area of land or water by presenting evidence unique to their claim. They have been successful in Alice Springs and Broome, but recognition of native title over one town or city does not necessarily mean that it will be recognised over another,” he said.

When Justice Wilcox made his decision on 19 September 2006, native title claims existed over areas in every capital city of Australia except Hobart.

Cities where native title claims have most recently occurred include Melbourne and Brisbane.

The Bunurong people made a claim over parts of Melbourne on 15 June 2006.

Parts of Brisbane had claims lodged over them by the Turrbal people in May 1998 and the Jagera people in November 2003. The Gold Coast Native Title Group’s claim was made on 5 September 2006.

In 2000, the Kurna people’s native title claim was made over an area that included parts of Adelaide.

Certain parcels of land in greater metropolitan Sydney had claims lodged over them in May 1997 by the Darug Tribal Aboriginal Corporation.

In 1996, the Larrakia people made a claim over parts of Darwin. After hearing the Larrakia people’s case, Justice Mansfield decided they could not prove native title existed. That judgment is on appeal to the Full Federal Court.

“Whether a claim is made over a city or land outside a metropolitan area, claimants must prove they have maintained connection to that area through laws and customs maintained over generations since before British occupation,” Mr Neate said.



South West Aboriginal Land & Sea Council chair Ted Hart being interviewed outside the Commonwealth Law Courts after the Single Noongar decision.

Dates of claims lodged over Australian capital cities

Adelaide	Kurna people	25 October 2000
Brisbane	Turrbal people	13 May 1998
	Jagera people	12 November 2003
	Gold Coast Native Title Group	5 September 2006
Canberra	Ngunawal People	24 May 2002
Darwin	Larrakia	6 December 1996
Melbourne	Bunurong people	15 June 2006
Perth	Noongar people	10 September 2003
Sydney	Darug Tribal Aboriginal Corporation	12 May 1997

Wik decision changes life on the land



Almost 10 years ago, a High Court judgment on a Queensland native title claim triggered changes Australia-wide to life on the land.

The ruling on the Wik and Wik Way peoples' 1994 claim led to Indigenous people and pastoralists getting together for the first time to negotiate the co-existence of their rights.

Their claim over 17,700 square kilometres on the west coast of Cape York Peninsula in far north Queensland raised the question of whether native title could legally exist on pastoral leases.

On 23 December 1996 the High Court made the historic finding that native title could co-exist on some types of pastoral leases.

The joy the decision brought to Wik and Wik Way person, Gladys Tybingoompa, was evident as she danced outside the court in Canberra that day.

But for many pastoralists the High Court's decision came as a shock and native title was seen as a threat. There was confusion over what it actually meant, and fear that pastoralists' rights would be affected.

Much has changed in the past decade. Since the High Court's decision, 139 agreements that deal with pastoral issues have been made in various parts of Australia.

Tribunal President Graeme Neate said the Tribunal had mediated many agreements between pastoralists and native title claimants in the past 10 years.

"These agreements have the potential to endure because they're built on a firm basis of cooperation and understanding that has developed during negotiations," he said. "Arrangements are made so that Indigenous groups can access the land to carry out their traditional activities while pastoralists go about their daily business."

"Over time many pastoralists involved in native title claims have come to realise that agreement-making is the best way forward."

The High Court decision gave the Wik and Wik Way people the right to have a seat at the negotiating table with pastoralists.

They went on to have their native title rights recognised through three consent determinations. The first was in 2000 over 6,136 square kilometres of the claimed area, in the Aurukun Shire, and two more were made in 2004 over a further 12,530 square kilometres.

John Frazer of Strathburn Station said the negotiations leading to the 2004 Wik determinations built friendships between the pastoralists and native title claimants and the ruling had brought certainty to the parties.



Wik and Wik Way person Gladys Tybingoompa danced outside the High Court in Canberra on 23 December 1996 when the High Court made the historic finding

In 1998 the Western Yalanji people of far north Queensland became Australia's first Indigenous people to have native title recognised by agreement over a pastoral property.

Their rights were recognised through a consent determination over part of a pastoral property, 210 kilometres north-west of Cairns. In February this year their native title rights were recognised over a further two parcels of land on the same property through another consent determination.

Pastoral leaseholder Alan Pedersen said after the court hearing that it was a big load off his shoulders to have the native title resolved.

"Our relationship [with the native title holders] has developed positively during the negotiations," he said. "If there are any problems we can talk about them."

According to Western Yalanji spokesman, Danny O'Shane, the native title recognition opened up commercial opportunities through

which they could re-capture the quality of life their ancestors had enjoyed.

Australia's most recent pastoral agreement took place in August in South Australia, the state's first consent determination. The Yankunytjatjara and Antakarinja peoples and seven pastoralists agreed to share access and rights over 118,665 square kilometres of land south of the Northern Territory border.



Pastoral leaseholders Alan and Karen Pedersen, with Des Brickey of the Western Yalanji group at the Western Yalanji determination north of Cairns earlier this year.

Native title on pastoral leases

Pastoralists and farmers in Australia have rights to land under various lease arrangements governed by different state and territory laws.

To find out what sort of impact a pastoral lease will have on native title, the terms and conditions of the lease and the legislation under which it was granted have to be examined.

If it is found that a lease is 'non-exclusive', native title may survive on the area it covers but native title holders will not have the right to exclusive possession over that area.

If the lease is 'exclusive', native title is usually completely extinguished and native title cannot be claimed over the area it covers.

Areas where native title is successfully claimed will be shared by the native title holders and the person holding the non-exclusive pastoral lease. This sharing is sometimes called coexistence.

Pastoralists and farmers with non-exclusive leases do not stand to lose their property if native title is recognised and the rights they have under their leases always take priority over any coexisting native title rights and interests.

Indigenous Australians may also have access rights to lease areas under the state or territory laws under which the lease was granted.

Pastoralists and native title holders often negotiate agreements about access to, and use of, the leased area. That way all parties' rights and interests in the land can be accommodated.

Native title on appeal in the Northern Territory



Within the last year, three Northern Territory native title cases have been appealed, giving some indication of how difficult it is for Indigenous groups to prove native title.

National Native Title Tribunal President, Graeme Neate, said the Australian Federal Court set very high standards when it came to demonstrating traditional laws and customs since British sovereignty.

“Claimants have to jump a pretty high hurdle to prove that not only they, but also their ancestors, maintained a continuous traditional connection to their country,” he said.

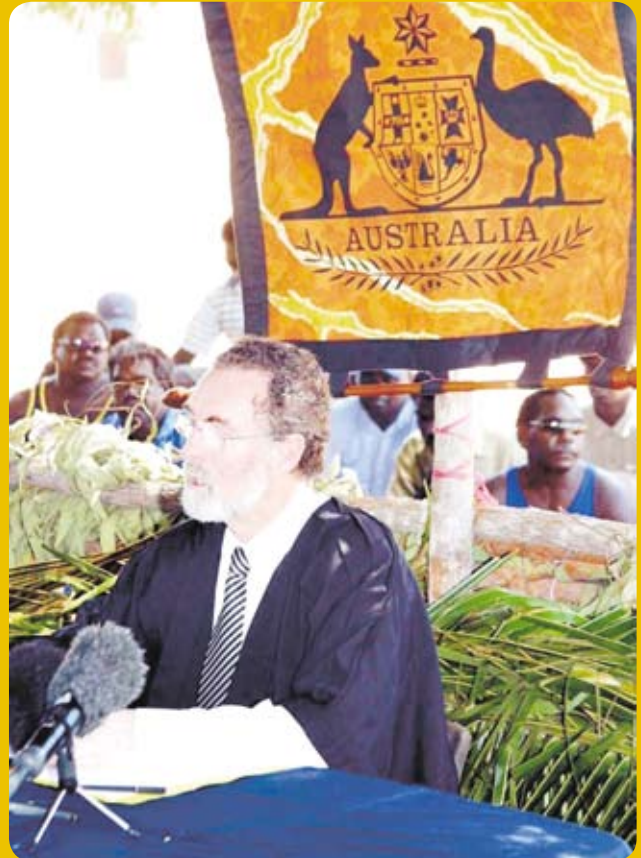
By the end of November 2006, three appeals in Northern Territory native title cases will have been heard by the Full Court of the Federal Court sitting in Darwin.

The first appeal was against Justice Mansfield’s decision that non-exclusive native title existed over areas of Blue Mud Bay. The native title claimants disagreed with the judge because they felt the evidence they put forward demonstrated that their native title rights should be exclusive.

The second appeal was against Justice Sackville’s decision that native title claimants were not eligible for compensation of native title lost over the town of Yulara. Claimants for this case filed an appeal in April on the grounds that the judge’s decision, that the laws and customs of the group were not traditional, was incorrect.

The most recent appeals to go before the Full Federal Court were against Justice Mansfield’s decision that native title did not exist over parts of Darwin and the Darwin Peninsula.

“There was considerable ambiguity and some inconsistency about the current laws and customs of the Larrakia people and significant changes in



Judge Mansfield at the hearing of the Blue Mud Bay native title claim.

those laws and customs from those which existed at sovereignty,” the judge said.

Following this decision two appeals were filed. One was by the Northern Land Council on behalf of the Larrakia people. The other was by Mr Tibby Quall on behalf of the Danggalaba Clan.

In each appeal case the Full Federal Court has reserved its decision, giving no indication of when a decision may be handed down.

Mr Neate said such cases highlighted the lengthy process of reaching an agreement through litigation.

“It is widely accepted that the courts cannot decide everything and usually native title issues are better dealt with through a process of negotiation,” he said.

Embracing industry and building community



It took 20 years of campaigning before their traditional rights were recognised but now, four years on, the Martu people have more control over their lands.

In 2002 the Martu people gained native title over a 136,000 square kilometre area of Western Australia's Western Desert region, the largest native title determination to be made in Australia at the time.

Soon after, the Western Desert Lands Aboriginal Corporation (WDLAC) was established to look after their native title rights.

The Corporation works hard to protect the interests of the traditional owners and to generate funds to remain viable. Negotiations with various mining companies are underway to develop indigenous land use agreements that will provide financial benefits.

Chief Officer of WDLAC Clinton Wolf said they were focusing on keeping their culture strong and improving the standing of the community through social improvements. "We have gone down the economic development path to provide needed services to the community. Embracing the mining industry will help us achieve financial viability," he said.

The Corporation is also developing projects such as a land and culture unit and protocols for researchers and other interested parties that will allow their access to the land with due consideration for the traditional owners.

National Native Title Tribunal Deputy President Fred Chaney said the Martu people showed great stamina and determination in pursuing recognition of their native title and would need these same qualities to ensure long term benefits to their community.

"The willingness of WDLAC to negotiate with mining companies is an opportunity to achieve lasting relationships and durable agreements of benefit to all parties," he said.



The Martu people outside the Perth Federal Court building as they lodge their native title claim in 1996.

Native title reform

On 7 September 2005 Federal Attorney-General Philip Ruddock announced a package of coordinated measures to improve the performance of the native title system.

The review has resulted in the following initiatives:

September 2005

Federal Government announces a review to improve the native title system, comprising six coordinated measures:

- Independent review of the native title claims resolution process
- Technical amendments to the *Native Title Act*
- Consultation on measures to encourage effective functioning of Prescribed Bodies Corporate (PBCs)
- Reform of the native title respondents financial assistance program to encourage agreement making rather than litigation
- Measures to improve the effectiveness of Native Title Representative Bodies (NTRBs)
- Increased dialogue and consultation with the State and Territory Governments to promote and encourage more transparent practices in the resolution of native title issues.

November 2005

Specific reforms announced aimed at encouraging agreement making by improving the effectiveness of NTRBs and offering financial incentives to NTRBs and native title respondents willing to settle native title issues without litigation.

August 2006

Proposed amendments to the native title claims resolution process announced.

October 2006

Government announces all recommendations in a report examining PBCs will be implemented.

As at November 2006

A Bill containing amendments to the *Native Title Act* is currently being prepared.

For more information, visit the Attorney-General's website: www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_Nativetitle_NativeTitleReform

Native title holders caring for country in western Victoria



It's only a year since traditional owners in the Wimmera region of western Victoria had their native title recognised but they have several projects under way to improve their country.

In December 2005 the Federal Court made three consent determinations recognising the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples' native title rights along the banks of the Wimmera River.

Over 400 parties negotiated for 10 years to reach this outcome which included an additional agreement package.

The native title holders have been looking after land over which they are to gain freehold title under the agreement package. They are restoring native vegetation in areas such as the Billabong/Ranch area at Dimboola by planting trees, reducing weeds and improving site areas. They are also developing a keeping place/community centre.

Gail Harradine, Wotjobaluk person and Cultural Heritage Manager at the Barengi Gadjin Land Council, said they wanted to build on the work of their ancestors and elders who were focused on looking after the country and culture.



Wotjobaluk traditional owner and Little Desert National Park Ranger, Damien Skurrie, co-ordinates the management of the Billabong/Ranch.

"We're a small community but have a strong cultural base that includes a number of very committed people who have been actively involved from the start of native title discussions," she said. "We're building on this foundation and finding out more about our country and ways to look after it."

The years spent negotiating have encouraged strong relationships with the councils and local groups.

"People are showing their goodwill in dealing with us and we emphasise that we want to work together with everyone – government, community and individuals with interests in the broader claim area," Gail said.

While acknowledging there is still much to be done, traditional owners are looking forward to the next twelve months and beyond, with much optimism.

National native title statistics As at 13 November 2006.

Registered determinations of native title

Total number of registered determinations of native title in Australia	92
Determinations that native title exists in the entire or part of the determination area	62
Determinations that native title does not exist	30
Consent determinations	53
Litigated determinations	20
Unopposed determinations	19

Indigenous land use agreements (ILUAs)

Total number of registered ILUAs in Australia	261
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Native title applications not fully resolved

Claimant applications	543
Compensation applications	12
Non-claimant applications	38
Total applications	593

For more statistics see the Tribunal's website www.nntt.gov.au.

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