

TALKING

Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

MARCH 2007

Commitment builds a positive future

One step closer to achieving NSW's second consent determination Githabul elder Auntie Charlotte Page receives an ILUA document from NSW Minister for the Environment Bob Debus, NSW Minister for Aboriginal Affairs Reba Meagher and NSW Minister for Lands Tony Kelly.



Proving connection to country is not easy but the Githabul People of north-eastern NSW have met the challenge, reaching the State's largest indigenous land use agreement (ILUA) and fast approaching native title recognition.

The agreement settles the NSW portion of the Githabul claim, involving 112,000 ha of national parks and State forests and delivering employment opportunities, parcels of freehold land and co-management rights to the Githabul People.

The claimants provided strong evidence of their connection to their traditional lands during negotiations with the NSW Government about their native title claim over the Kyogle, Woodenbong and Tenterfield areas.

As a result the Githabul People and the State Government have signed an ILUA and agreed that once it is registered they will ask the Federal Court to make a consent determination

recognising the Githabul People's native title rights and interests.

Addressing the 400-strong crowd gathered in Woodenbong to celebrate the ILUA on 28 February, Githabul elder Doug Williams said the ILUA demonstrated that by working together through trust and commitment they had put past grievances behind to build a positive future.

"Today I declare and re-proclaim, by way of historic use and occupancy, this is our land," he said.

The State Government has gained assurance that the benefits in the agreement are the full and final compensation to the Githabul People in the area.

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**National
Native Title
Tribunal**

From the President Graeme Neate



The recent Federal Court dismissal of the Wongatha native title application and overlapping claims highlights the risks for Aboriginal claimants, state governments and

other parties when mediation fails and native title claims are litigated.

Justice Kevin Lindgren, when delivering his judgment on 5 February this year, stated that the hearing of the case and resolving it had exposed him to what he considered being “an unsatisfactory state of affairs in the native title area.”

He went on to suggest a solely litigious approach to native title is inappropriate because the legal issue that the Court is asked to resolve “is only part of a more fundamental political question.”

Other judges have said that Aboriginal people and other parties need to consider what sort of compromises they might be willing to make to avoid a litigated, and therefore imposed, outcome.

We can be encouraged by the fact that most of the determinations that Aboriginal people have native title have been made by agreement.

We hear about the occasional notable court case, but around the country agreements are being negotiated. Relationships are created and communities are strengthened as ordinary Australians sit down and, in good faith and goodwill, negotiate agreed outcomes.

The current native title scheme needs improvement, and all participants need to address the way in which they operate. The focus should be on how the parties can work together to secure just and enduring outcomes in a timely way.

As the Wongatha judgment shows, the decision of a court may not result in a determination of native title, and may leave the fundamental native title questions unanswered. To proceed on a strict legal rights basis is to take too narrow a view of what can be negotiated under the native title scheme.

I addressed these and other issues at the Negotiating Native Title Reform conference on 26 February 2007. If you are interested in finding out more a copy of my paper is available at <http://www.nntt.gov.au/metacard/speeches.html>.

Wongatha native title claim dismissed

On 5 February 2007, Justice Lindgren dismissed the Wongatha native title claim and seven other claims north of Kalgoorlie.

The dismissal followed a 100-day sitting which produced 16,926 pages of transcript.

During the lengthy trial which began in February 2002 and continued to June 2004, the Federal Court was given 2817 pages of experts’ reports and 8087 pages of submissions.

About 20 native title applications were combined to make the Wongatha application, which was also overlapped by the seven other claims.

Although he did not make a determination whether native title existed in the Wongatha claim area, Justice Lindgren said it was conceivable that an

individual or small group of people may have native title in a smaller area.

In his summary, the judge also expressed his disappointment that the parties involved had taken a litigated path.

“I will only say that it is to my mind sad that the matter has had to be resolved by an imposed solution.”



Justice Lindgren at a Federal Court sitting in Kalgoorlie on 5 February dismissed the Wongatha native title claim.



Representing the Bundjalung People of Byron Bay John Hausia and Nigel Stewart proudly wear their NSW National Parks and Wildlife uniforms.

Bundjalung people of Byron Bay benefit from agreements



Glancing proudly at the NSW National Parks and Wildlife logo emblazoned on his sleeve, member of the Bundjalung People of Byron

Bay and ranger Nigel Stewart said “it doesn’t get much better than this.”

“To have a job representing your people and looking after your country – who could ask for anything more?”

Nigel was one of 200 people gathered at Cape Byron lighthouse on 8 February to celebrate two indigenous land use agreements (ILUAs) between the Bundjalung People of Byron Bay and the New South Wales Government. He’s a strong advocate of the agreements that build on an earlier ILUA and deliver employment, training and economic development opportunities for his people.

Nigel started a ranger cadetship program in 2001 after the ILUA was finalised creating the Arakwal National Park. Today he works as a fully qualified ranger, preserving and protecting his people’s traditional lands. He is one of a number of young people who have been employed as a result of this agreement.

Under the latest ILUAs approximately 124 ha of Crown land will be transferred to the National Parks and Wildlife Service to be protected and co-managed by the Department of Conservation and the Bundjalung People of Byron Bay.

Jobs will be created for the group in the new national park areas and funding has been set aside for an ongoing Aboriginal training program. Parcels of Crown land will be transferred in freehold to the group including the Broken Head caravan park, which will provide opportunities for employment and economic development.

In return the NSW State Government has gained certainty about the area’s future, including assurances about future compensation and resolution of one of the native title claims.

Tribunal Member Gaye Sculthorpe, who assisted the parties through mediation, said the Bundjalung People of Byron Bay’s cultural knowledge and expertise would be reflected in co-management arrangements over parcels of national park land.

“Under these agreements the Bundjalung People of Byron Bay have been recognised as the original inhabitants of the area and their places of cultural significance will be protected.”

Yvonne Stewart of the Bundjalung People of Byron Bay said one of the most important aspects of the agreement was the protection and preservation of Ti Tree Lakes and the inclusion of other Bundjalung women in the management of the area.

“This agreement gives us an opportunity to move forward. There’s a future here now for our younger generation.”



The agreements are sealed with handprints - elder Linda Vidler, Premier Morris Iemma and elder Dulcie Nicholls.

Native Title has been the greatest single agent of positive change

After 12 years at the Tribunal Fred Chaney reflects on how far native title has come and considers the future. Fred will be retiring from his position as Deputy President of the National Native Title Tribunal in April. He will continue with his work as a Director of the Reconciliation Australia board and chair of Desert Knowledge Australia.



Fred Chaney welcomed the finalisation of the Wanjina-Wungurr Wilinggin native title determination in the northern Kimberley region recognising the people's history and deep connection to the country - August 2004.

It is likely that the native title determination over Noonkanbah will be finalised soon after I leave the Tribunal in April.

That event will be a reminder of the profound significance of native title and the extent to which it has changed the framework within which Aboriginal land aspirations can be realised.

It is a reminder of how far we have come and how far we have yet to go.

Substantial areas of Western Australia have been determined as having exclusive possession native title and other substantial areas with partial native title. However the job is not yet half done.

Many of the areas remaining are more contentious and difficult to resolve, with the added obstacle of having to meet strict and often confusing requirements of increasingly technical native title laws.

The best outcomes have occurred when the State or a corporation provide a process which clearly identifies the relevant interests, ensures adequate resourcing for negotiation, works towards an outcome which ensures that there is support for the actual carrying out of the agreement as well as settling land tenure and usage issues.

The WA State's efforts in Stage 2 of the Ord River irrigation project and those of Argyle Diamond Mine in its agreement are an example of what can be achieved, which is in contrast to legal determinations which leave so many practical issues unsettled.

Over the 50 years that I have taken an interest in the circumstances of Aboriginal Australians, native title has been the greatest single agent of positive change. However imperfectly, it has shifted the balance in the relationship and has brought Aboriginal people to the table as never before.

The best agreements to which I have referred are in the spirit of the too often overlooked preamble to the Act. To fully realise the promise of native title "Governments should...facilitate negotiation on a regional basis...in relation to aspirations in relation to land by Aboriginal peoples and Torres Strait Islanders; and...proposals for the use of such land for economic purposes."

Native title can fulfil its potential if parties avoid sterile descent into legalism. We need to listen to the messages from successive Judges that these matters cry out for political solutions.

Noonkanbah: native title application was lodged in 1998 covering the Noonkanbah pastoral lease, an area of 1811 sq km west of Fitzroy Crossing in WA.

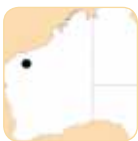
Stage 2 of the Ord River irrigation project: a comprehensive agreement finalised in 2006 that addresses the role of native title holders in the future economic development of the Ord region in WA.

Argyle Diamond Mine: In 2005 Argyle Diamonds and traditional owners from the East Kimberley region of WA signed an agreement which provides jobs and other economic opportunities for local Indigenous people.

Native title recognised in central Pilbara



The Eastern Guruma native title holders display their determination on shirts to commemorate the day, pictured Darren Hicks, Katrina Evans and Trent Stevens.



The Eastern Guruma people have achieved the first native title claim settled by agreement in the mineral-rich central Pilbara region.

On 1 March Justice Bennett convened a Federal Court sitting near Tom Price to recognise the native title rights of the Eastern Guruma people over about 6000 sq km of land.

In undertaking the process to have their rights recognised the traditional owners looked to agreements instead of litigation.

The consent determination, which is predominately over pastoral land, resolves who holds native title rights over almost all of the claim area except for an area of land around the town of Tom Price. That part of the claim will be considered at a later date.

As native title holders the Eastern Guruma people now have non-exclusive native title rights, including the rights to enter and remain on the land, camp, hunt, fish, gather and use resources of the land and waters (excluding minerals), engage in ritual and ceremonies and protect areas of cultural significance.

Sue Boyd, Eastern Guruma person and daughter of native title applicant Nelson Hughes, said that the elders had been able to protect many of the heritage

places over the years and now with native title being recognised they had strengthened legal protection over the sites and objects.

“This will allow for not only the spirits on our land to rest more easily but for us to maintain and strengthen our ceremonies and our culture.”

The Eastern Guruma people have a guarantee that they must be consulted about development on the land and they have a right to negotiate over mineral exploration and the development of new mines.

“While we realise that mining and other activities will take place on our country we will now be able to actively participate in those activities and benefit along with others who are involved,” said Ms Boyd.

“Through our efforts to obtain our native title rights many of our community members have been able to gain meaningful employment, including a shiploader operator in Dampier, trainee locomotive driver and work with various contractors, as well as the opportunity for our group to participate in business ventures.”

Ms Boyd said she was happy to have finally reached the stage of getting a native title determination but very sad as one of the applicants passed away before he saw the results of his hard work.

Settling native title step by step



Groups aiming to settle native title claims can save themselves time and resources by developing partnerships and reaching memoranda of understanding that pave the way towards agreements.

In one of Queensland's fastest growing areas, traditional owners and a city council have taken a significant step towards settling native title by signing a memorandum of understanding that charts their way forward.

The Jagera people and the Ipswich City Council negotiated for 18 months to develop the MoU which sets out the framework for an indigenous land use agreement (ILUA) relating to the Ipswich City Council area.

Under the proposed ILUA the native title claimants and the council will decide how to deal with future infrastructure development, cultural heritage issues and community relations in the area.

Tribunal Member, Neville MacPherson, who assisted the parties in reaching the MoU, said the parties' constructive working relationship had set a firm basis for their ILUA negotiations.

"MoUs can be significant stepping stones towards reaching ILUAs, and we've seen similar approaches taken in other parts of Australia, such as in north Queensland, South Australia's Eyre Peninsula and the Kimberley region in Western Australia."

"It can take time to make ILUAs as once finalised they are legally binding to all parties. However by establishing an understanding and setting out a framework for an ILUA parties can save themselves time and resources."

Representative of the Jagera people, Caroline Bonner, said the partnership recognised her group as the traditional people of the area.

"It's giving us the recognition to sit at the negotiating table," she said. "This would never have happened to our forefathers."

Ipswich Mayor, Cr Paul Pisasale, said the MoU was a partnership between the groups and showed that the council was committed to ensuring it understood what was important to the Indigenous people in their community.

"We're going to have our discussions and our debates but we're not going to have them in the courts of law," he said. "We want to show the rest of Australia that where issues arise we're going to resolve them ourselves and reach successful conclusions."



Satisfaction with the MoU was evident amongst the parties as they sealed the first step towards the development of an ILUA. From left: Cr Paul Tully, Ipswich Mayor Cr Paul Pisasale, Eddie Ruska and elder Irene Egert.

Commitment builds a positive future from page 1

NSW Minister for Environment Bob Debus told the gathering that the strength of the Githabul People's connection to their land was one of the significant elements of the agreement.

"Here in Githabul country on this day I'm proud to say that your rights as traditional custodians of this land will be protected forever," he said.



Once the formal ceremony had concluded the dancing began to celebrate a new era for the Githabul people.

Wagiman eco guardians

Since 2003 the Wagiman-Guwardagun Rangers in the Northern Territory's Upper Daly region have been tending to their land's cultural and environmental needs.

The ranger group began as a means for local people to look after their country in a structured and proactive way, according to Wagiman-Guwardagun Ranger's land management facilitator Des Granier.

"We have input into all activities from the planning to the ground work," Mr Granier said. "This is what empowers us as a group."

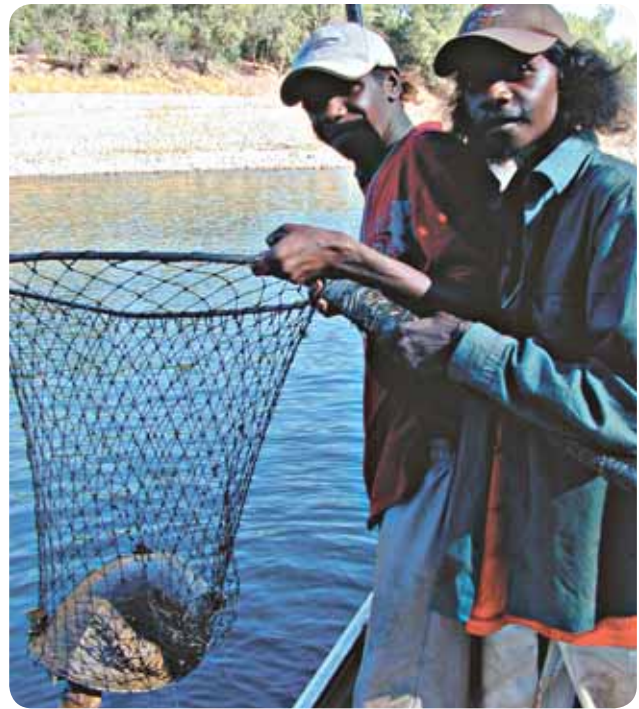
In 2002 the Wagiman people were handed back title deeds to more than 1000 sq km in the Upper Daly region, south of Pine Creek. Under the negotiated settlement, the Northern Territory government acquired native title rights over Stray Creek and Douglas Station, with the Wagiman group withdrawing its claim over the area.

Five female and 11 male rangers, ranging from 20 – 40 years olds make up the group. Last year 12 rangers graduated with qualifications in resource management from Charles Darwin University and this year will complete a conservation and land management course.

Duties vary from weed control and cane toad trapping to feral animal area surveying, fencing and fire management.

Guwardagun (Wagiman for the Daly River) is keenly observed by the rangers, as are its inhabitants, through water monitoring and fish, crocodile, pig-nosed and long neck turtle surveys.

Mr Granier said rangers had the chance to connect with the land and ensure its survival.



Wagiman ranger brothers Graham and Thomas Allangale survey pig-nosed Turtles on the Daly River.

"It gives us the opportunity to visit and care for our country and to keep our land healthy for ourselves and the next generation."

Along with protecting sacred sites the rangers also run cultural camps and cross-cultural training camps.

Business opportunities such as soap making, establishing a cattle enterprise, pet meat contracting and leasing part of their land trust have also spawned.

In January the group launched the book *Wagiman Plants and Animals*, in conjunction with the NT Government and Parks and Wildlife NT.

- Wagiman-Guwardagun Rangers took out the 2006 National Landcare Indigenous Award.

Tribunal member appointments

Attorney-General Philip Ruddock has re-appointed Tribunal President Graeme Neate for five years and appointed member John Sosso to Deputy President.

Mr Neate joined the Tribunal in 1995 and has been President since 1999. In 2003 he was awarded the Centenary Medal for service as President of the Tribunal.

Mr Sosso has been with the Tribunal since 2000 and is a former consultant in public administration, native title and infrastructure and former Deputy-General of the Queensland Premier's Department.

Tribunal members Graham Fletcher and Alistair 'Bardy' McFarlane were also re-appointed for five years.

Good relationships cemented



The last of the Miriuwung Gajerrong native title claims ends in agreement. The traditional owners celebrate with (from left) Federal Court Judge Anthony (Tony) North, Deputy Premier Eric Ripper and Executive Director Kimberley Land Council, Wayne Bergmann.



The last of the historic Miriuwung Gajerrong claims was resolved in November 2006, when native title was recognised over 6758sq km of East Kimberley land.

Dubbed MG #4, it replaced the second Miriuwung Gajerrong claim (MG #2) which was originally lodged in 1995 and covered mainly pastoral land.

The recent consent determination follows the Ord Final Agreement — a comprehensive agreement which addresses the role of native title holders in the future economic development of the Ord region.

It brings to an end a decade of involvement in the native title process for the WA State Government,

pastoralists and the Miriuwung, Gajerrong and Gidja peoples.

Miriuwung Gajerrong Aboriginal Corporation Chairperson, Edna O'Malley said the determination had created "a different ball game" for her peoples' economic situation.

"It gives us the opportunity to get into local businesses and tourism which brings back money to benefit our people," she said.

The determination also allows others such as local pastoralists to continue with business ventures of their own.

One of those pastoralists is Geoff Warriner.

Mr Warriner manages Carlton Hill Station, which is partly covered by the MG #4 determination. Carlton Hill Station employs some Indigenous workers, but Mr Warriner hopes that number will increase.

He said the determination cemented the good relationship he always shared with the local Indigenous community.

"Part of (the determination) encourages native title holders to get involved with training and at the moment we are negotiating with TAFE to set up a training program," he said.

The program will allow students to graduate with a Certificate Two in Agriculture, which will help them build a career in the industry.

National native title statistics 26 February 2007.

Registered determinations of native title

Total number of registered determinations of native title in Australia	95
Determinations that native title exists in the entire or part of the determination area	64
Determinations that native title does not exist	31
Consent determinations	55
Litigated determinations	20
Unopposed determinations	20

Indigenous land use agreements (ILUAs)

Total number of registered ILUAs in Australia	268
Native title applications not fully resolved	
Claimant applications	546
Compensation applications	11
Non-claimant applications	38
Total applications	595

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

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Resolution of native title issues over land and waters.