

TALKING

Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

SEPTEMBER 2008

Court recognises Birriliburu's connection

Ten years after their application was lodged, the Birriliburu People were recognised as the exclusive native title holders of a large tract of land in Western Australia's central desert. Ken Farmer, Fred Chaney, Slim Williams, Billy Atkins, Darren Farmer and son Tate Farmer, state MLA Tom Stephens and Gary Hamley attended the determination.



An elderly Aboriginal couple, Warri and Yatingka, who first met non-Indigenous people in 1977, have helped the Birriliburu People achieve native title for their land in Western Australia's Little Sandy Desert.

The nomadic hunter-gatherer couple lived in the desert until a severe drought in 1977. Concerned for their welfare, a childhood friend Mudjon and an anthropologist Dr Bill Peasley found them and brought the malnourished couple into non-Indigenous society.

Evidence of Warri and Yatingka's strong connection to country contributed to the Birriliburu People being recognised as the exclusive native title holders of 66,760sq km of land in the Little Sandy Desert, 900km north-east of Perth.

The claim, Birriliburu Part A, was recognised in a Federal Court consent determination at

Resolution of native title issues over land and waters.

an outdoor hearing at Good Camp Rockhole, near Wiluna, on 20 June this year.

The Court recognised the people's right to possess, occupy, use and enjoy the land in the determination area.

The area, within the shires of Wiluna and Ngaanyatjaraku, is mainly unallocated Crown land and includes part of the Canning Stock Route, reserves, a general purpose lease and some mining interests.

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**National
Native Title
Tribunal**



From the President Graeme Neate



Many people have expressed concern about how long it takes to resolve native title claims. Claims that are sorted out by agreement take, on average, more than

five years to be finalised, and those that go to a court hearing usually take longer.

The challenge is to find ways to speed up the process while ensuring that outcomes are fair for all parties.

Claim groups need to consider carefully what they want to achieve and whether native title is the best way to reach those goals.

Governments have a critical role in resolving claims.

They need to consider what they could offer native title claim groups to encourage faster settlement, and what they would want in return.

For example, are governments willing to lower the standard of evidence they require from claimants in order to negotiate some outcomes?

Their commitment was demonstrated recently in Perth, when Commonwealth, state and territory native title ministers met for the first time since the last federal election. They discussed native title matters under the theme 'making native title work better'.

All ministers agreed that a flexible and less technical approach to native title was needed throughout Australia, and it is the responsibility of all parties to adjust their attitudes and expectations.

Whatever is being negotiated, there will usually be a time when each party needs to compromise.

The Tribunal encourages parties in mediation to adopt an interest-based approach to achieving far and enduring outcomes that are tailored to their local circumstances.

New Registrar appointed to the Tribunal

Attorney-General Robert McClelland has announced the appointment of Stephanie Fryer-Smith as the new Native Title Registrar.

Associate Professor Fryer-Smith is currently the Dean International at Curtin University's Business School. Her past positions include Deputy District Registrar and Native Title Coordinator with the Federal Court of Australia and Deputy Convener of the Law Society of Western Australia's Aboriginal Peoples and the Law committee.

She has lectured in native title law and has published articles on a range of issues relating to Indigenous land rights.

Associate Professor Fryer-Smith will join the Tribunal on 20 October 2008. Her primary responsibility as Registrar will be her role as the Tribunal's chief executive officer. Other key responsibilities will be assessing claimant application registrations and maintaining the Tribunal's registers.



Stephanie Fryer-Smith has been appointed for five years and will start on 20 October.

SA petroleum ILUA breaks new ground



South Australia's first 'conjunctive' petroleum indigenous land use agreement (ILUA) was signed in February 2007.

The Yandruwandha/Yawarrawarrka People, the SA Government, the South Australian Chamber of Mines and Energy (SACOME) and the native title representative body the Aboriginal Legal Rights Movement (now SA Native Title Services), signed the ILUA in Adelaide last year to agree on how petroleum operations would be undertaken in the Cooper Basin, in north-east South Australia.

It was the first time in South Australia that a 'conjunctive' ILUA had been developed – that is, an agreement to cover both the exploration and production phases of petroleum mining – and the first ILUA in Australia in a proven petroleum-producing region, according to SA Mineral Resources Minister Paul Holloway.

The signatories have worked together to develop a joint position in the hope of encouraging state parliamentary debate on changes to the South Australian Mining Act concerning the Indigenous parties' right to negotiate.

Peter Hall, principal negotiator for the South Australia Attorney-General Department's Native Title Claim Resolution Unit, said a settlement package had been negotiated between the parties that sought the withdrawal of the Yandruwandha/Yawarrawarrka People's native title claim but, for the first time, also sought to retain their right to negotiate with other parties over use of the land.

Lawyer for the Yandruwandha/Yawarrawarrka People Michael Steele said the ILUA agreement provided the traditional owners with a range of benefits: from petroleum production payments to employment and training, as well as the opportunity to go back on country with mining survey teams to ensure protocols are observed and sacred sites protected.



The Yandruwandha/Yawarrawarrka People are also signatories to a number of pastoral ILUAs, including an agreement with pastoralists Ken and Raylene Ogilvy, from Lindon Station, in South Australia. The Ogilvys were among six pastoral leaseholders who signed the ILUA on 2 May 2007 at an event at Callyamurra Waterhole, near Innamincka.

"The Yandruwandha/Yawarrawarrka People are pleased with the protocols around petroleum exploration and production, although the production payments may be a little low and the employment opportunities limited," Mr Steele said.

SACOME's director of indigenous relations Stephanie Walker agreed that employment options were not always plentiful at the exploration stage but there was room for greater consideration for training and education programs to give Indigenous people more employment options.

"We have to find alternative strategies because of limited employment in some of these regions, particularly with the petroleum sector," Ms Walker said.

Miriuwung-Gajerrong rangers bring land plan to life

A planning framework to shape the future of 159,000 hectares of land in the East Kimberley is set to be launched by Western Australia's Environment Minister next month.

The Miriuwung-Gajerrong Cultural Planning Framework, developed after two years of consultation, is the first step towards developing joint management plans for six conservation areas.

Work on the plan began after the Ord Final Agreement indigenous land use agreement – which developed the six new conservation areas – was reached between the State of Western Australian, the Miriuwung-Gajerrong People and some private sector interests in October 2005.

The Cultural Planning Framework explains the Miriuwung-Gajerrong People's approach to looking after their country in the new conservation parks.

Scott Goodson, Miriuwung-Gajerrong joint management coordinator from the State Department of Environment and Conservation (DEC), said the plan had taken in the traditional owners laws and customs and combined them with the DEC guidelines to produce a good framework for land management.

Already eight people have begun work for DEC as trainee rangers and a ninth has been employed as a business administration trainee. Crocodile patrols,

creation of walk trails, fencing and cane toad eradication are among the first tasks being tackled by the trainee rangers, who began work in June.

Des Hill, the Miriuwung-Gajerrong Corporation's Ord Agreement Projects and Future Acts Officer, said the trainees were bringing to life the aspirations of the plan and that a priority was learning about and developing respect for country.

"The new Cultural Planning Framework was an important way for the Miriuwung-Gajerrong People to ensure the best outcomes for the land while also developing positive relationships with external groups," said Mr Hill.



Trainee rangers are learning conservation skills while also ensuring the country is cared for according to the Miriuwung-Gajerrong People's laws and customs.

Guide to understanding the registration test

A newly revised publication explaining the requirements of the registration test is now available from the Tribunal.

Native title claimant applications: a guide to understanding the requirements of the registration test is a booklet designed to help prepare new claimant applications or amend existing applications.

The registration test is a set of conditions outlined in the Native Title Act that must be applied to all new native title claimant applications and most amended claimant applications. The guide has been extensively revised because recent case law

and the 2007 amendments to the Native Title Act affected the way the registration test is applied. An updated online version is currently being prepared to incorporate clarifications on the case law from the recent Full Federal Court decision in *Gudjala #2 v Native Title Registrar*.

Copies of the guide can be ordered from the Tribunal website at www.nntt.gov.au or by email publicaffairs@nntt.gov.au.

If you need further information about the registration test, please contact Louise Bygrave on (02) 9235 6330 or freecall 1800 640 501.

Gawler Ranges ILUA inspires partnerships



Partnerships between pastoralists and Indigenous people in South Australia's Eyre Peninsula region have been formalised by 24 new

indigenous land use agreements (ILUAs), developed to inspire stronger understanding between the parties.

The pastoralists and native title claimants signed the 24 ILUAs at Nonning Station in May this year.

The Barngarla and Kokotha Peoples and pastoralists from 19 pastoral entities (comprising 30 pastoral leases) had worked together for two years to reach the agreement, which covers about 50,000sq km of the Gawler Ranges.

The ILUAs provide arrangements for access to pastoral leases, protection of Aboriginal culture, protection and use of pastoral infrastructure, a mutual understanding of rights and interests and a consultation process to deal with any future issues.

The South Australian Attorney-General Michael Atkinson said this was a great achievement and a big step towards the state government's goal of resolving 75 per cent of all native title claims by 2014.



South Australian Attorney-General Michael Atkinson (left), with pastoralists Arthur Whyte, Mary Whyte and Pamela McTaggart (far right) and Gawler Ranges claim group member Roma Taylor (second from right).

Some of the agreements are yet to be finalised. Once completed, the ILUAs can be lodged for registration.

Lawyer for the pastoralists Ashley Watson said the negotiations began cautiously, with the claimant group and the pastoralists realising there was a lot to learn about each other's needs and aspirations.

"But also there was a great degree of commonality in their long-term connection to and respect for this land. On many issues, they really spoke a common language but that needed to be patiently explored," Mr Watson said.

"I think the hallmarks of the process were the level of respect and openness shown by the parties to each other, including among the advisers where the debate was characterised by commonsense and pragmatism."

First report card reveals claims progress

The progress of native title claimant applications is now being recorded in the National Native Title Tribunal's new national report card.

The Tribunal's President Graeme Neate launched the *National Report: Native Title* on 21 July and said it was the first in an ongoing series of status reports by the Tribunal on the native title system.

"This report can be used to regularly update our external stakeholders about the results being delivered under the native title system," he said.

"The report makes observations about critical aspects of the native title system to stimulate discussion and action.

"The Tribunal isn't solely responsible for the effectiveness of the system and we welcome ideas on how to make improvements at the system-wide, regional and individual claim levels," he said.

The report is available on the Tribunal's website www.nntt.gov.au under the heading Native title in Australia.

Court recognises Birriliburu's connection from page 1

The determination also recognised the Birriliburu People's non-exclusive native title rights over water in the area, which they can take for personal, domestic and non-commercial communal purposes.

The determination was the result of negotiations between the Birriliburu People and groups with interests in the claimed area, including the state government, and began in 1998 when the Birriliburu People lodged a native title claim in the Federal Court.

Tribunal Member John Catlin said the parties settled native title through discussion and agreement, rather than resorting to argument in the courts.

"Through cooperation, the parties have reached an outcome which gives them clarity and certainty about their future rights to this land," he said.

"More and more groups around Australia are recognising that agreement-making is the best approach to native title."

A small area of Birriliburu Part B, is yet to be determined.



Justice Robert French congratulates native title holders.

FMG appeal pending



A decision by the National Native Title Tribunal that Fortescue Metals Group Ltd (FMG) failed to negotiate in good faith over a proposed mining tenement application near Tom Price in Western Australia's Pilbara is being appealed by FMG.

The Tribunal's Deputy President John Sosso found on 11 July that FMG's negotiations with two indigenous groups, the Puutu Kuntj Kurrama and Pinikura (PKKP) native title group and the Wintawara Gurama Aboriginal Corporation, had

not met the standard required by section 31 (1)(b) of the *Native Title Act 1993*.

FMG's executive director operations, Graeme Rowley, said the company's relationship with the claimant groups remained good and it would continue to discuss the issue with them.

PKKP representative Donna Meyer said it was a very complex case but her community was pleased with the Tribunal's decision in July and what it meant for all Aboriginal people.

Update on representative body restructures

In Issue 27–June 2008 new arrangements for Queensland native title representative bodies (NTRBs) and service providers were outlined.

A slight change was enacted prior to these arrangements coming in on 1 July and there are now five organisations that will perform the functions assigned to NTRBs and other native title service providers under the Native Title Act.

These are: the Cape York Land Council Aboriginal Corporation, Carpentaria Land Council Aboriginal Corporation, North Queensland Land Council Native Title Representative Body Aboriginal Corporation, Queensland South Native Title Services Ltd and Torres Strait Regional Authority.

Native title and a new life for Lake Condah



One year after their native title rights were recognised in Victoria's far south-west, Lake Condah Reserve was returned to the Gunditjmara People.

In March 2007 Justice Tony North of the Australian Federal Court recognised native title rights and interests over 140,000 hectares of Crown land, national parks, reserves, rivers, creeks and sea north-west of Warrnambool.

As part of the determination, the State of Victoria agreed to hand-back Lake Condah, which will now be managed by the Gunditj Mirring Traditional Owners Aboriginal Corporation.

Corporation chairman Damien Bell said the hand-back of land is always important because it recognised the role that traditional owners play in the Victorian community.

"Particularly Lake Condah, because it's the central point of the traditional aquaculture system that was engineered by the Gunditjmara People over the past couple of thousand years," he said.

Gunditjmara elder Ken Saunders said Lake Condah held important memories for his people and its return was an important mark of respect and reconciliation.



Minister for Environment and Climate Change Gavin Jennings, Gunditj Mirring Chairman Damien Bell, Parliamentary Secretary for Justice Brian Tee and DSE Regional Director Ian Voight with the signed transfer documents.

"Many elders and other people of my age remember Lake Condah before it was drained. It was full of eels, fish and birdlife," he said.

The transfer supports the Gunditjmara People's Lake Condah Sustainable Development Project, which is working to develop Lake Condah and the Budj Bim National Heritage Landscape as a major environmental and cultural heritage park. The project aims to fully restore Lake Condah with permanent water by the end of this year.

Environment Minister Gavin Jennings said the group have a strong connection to the area, proven by archaeological evidence such as stone fish traps in the bed of Lake Condah.

"It's been a long struggle for the Gunditjmara, who have been seeking formal recognition of their ongoing relationship to country," he said.



Gunditjmara elders gathered at a ceremony where their continued stewardship of Lake Condah was recognised and the lake was handed back to them.

Ngaanyatjarra claim now complete



The remaining part of a two-part claim for native title in the central desert area of Western Australia was completed in June, giving the Ngaanyatjarra People recognition as native title holders for the entire area of their traditional lands.

The Ngaanyatjarra People are now native title holders of 169,184sq km of land and waters, the largest area in Australia where native title has been found to exist.

Part B of their Ngaanyatjarra Lands claim was determined by consent on 3 June 2008, recognising their native title rights over 1429sq km of reserves and unallocated land.

This follows a consent determination in 2005 for Part A, which recognised the Ngaanyatjarra People's native title rights over most of their traditional lands, and concludes their native title claim which was lodged in 2004.

The 3 June 2008 determination recognises the Ngaanyatjarra People's exclusive native title rights over most of the area claimed.

Their non-exclusive rights have been recognised over the Warburton Range Stock Route, which passes through the determination area.

The Ngaanyatjarra People reached this outcome through negotiations with the state government and Laverton Shire, which resulted in an agreement about their respective rights and interests. This agreement was ratified under law through the consent determination.



Native title holders Daisy Ward, Preston Thomas, Beverley Thomas, Albert Fox, Harvey Watson and Janet Jennings at the Federal Court determination in Perth, in June this year.

National native title statistics 15 August 2008

Determinations of native title

Total number of registered determinations of native title in Australia	112
Determinations that native title exists in the entire or part of the determination area	77
Determinations that native title does not exist	35
Consent determinations	67
Litigated determinations	21
Unopposed determinations	24

Indigenous land use agreements (ILUAs)

Total number of registered ILUAs in Australia	341
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Native title applications not fully resolved

Claimant applications	504
Compensation applications	10
Non-claimant applications	30
Total applications	544

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

Was this information useful?

Email Public Affairs with your comments and suggestions to enquiries@nntt.gov.au or telephone (08) 9268 7495.

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Resolution of native title issues over land and waters.