

TALKING

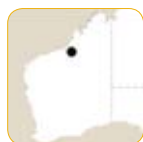
Native Title

NEWS FROM THE NATIONAL NATIVE TITLE TRIBUNAL

SEPTEMBER 2009

Nyangumarta People gain from positive mediation

Tribunal case manager Gerry Putland (right) with Yamatji Marlpa Aboriginal Corporation's Yamatji chairperson Roy Bellotti (left), chief executive Simon Hawkins and Pilbara chairperson Mrs Doris Eaton at Nyiyamarri Pukurl for the Nyangumarta determination.



The willingness of parties to engage in mediation has paved the way for the recognition of native title rights and interests for WA's Nyangumarta People.

National Native Title Tribunal Member John Catlin said mediation on two Nyangumarta applications had been exemplary for the willingness of the parties to consider each other's interests.

This had resulted in a determination over 33,843sq km of Pilbara land bordering 110km of coastline by Justice Tony North on 11 June.

"This was a conflict-free mediation to the extent that it was conducted with the greatest harmony between the parties at all times. No single issue turned into a tug-of-war," Mr Catlin said.

The result of that process was two consent determinations made at a Federal Court hearing on-country near Eighty Mile Beach at Nyiyamarri Pukurl, on Wallal Downs Station.

Three body corporate indigenous land use agreements between the applicants and Wallal, Mandora and Anna Plains pastoral leaseholders, which had been negotiated as part of the native title mediation, were signed at the determination.

Mr Catlin said he and Tribunal staff had managed 18 mediation conferences, with about a third of those held in or near the claim area and the remainder in Perth.

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- *Focus on future act*
- *Qld, NT, WA claims determined*



National
Native Title
Tribunal



From the President Graeme Neate



This issue of *Talking Native Title* includes reports about recent determinations of native title from around Australia. These outcomes are gratifying for all concerned, and the National Native Title Tribunal was pleased to have been involved in helping parties resolve those applications.

The mediation of native title claims is conducted alongside our other significant work in the mediation and determination of some future act applications.

Future acts, under the Native Title Act (NTA), are proposed activities or developments that may affect native title.

Most future act matters that come to the Tribunal relate to mining and exploration in remote areas of WA and Queensland and the volume of applications is vast. For example, in 2008-09, 4,406 mineral tenement applications were advertised nationally.

The future act process encourages native title parties and project proponents to negotiate about their interests. If they cannot agree, they can ask the Tribunal to mediate or make a decision about whether the act occurs.

Negotiations can result in positive outcomes for the parties, and the trend to agreed outcomes has been strong in recent years. Of the Tribunal's 27 future act determinations in 2008-09, 26 were by consent that the act could be done.

A range of factors contributes to the outcome of a future act determination application, and the importance of the parties negotiating in 'good faith' should not be underestimated.

Projects do not always go ahead. In May, a determination was made that a mining lease to mine potash at Lake Disappointment in WA must not be granted. That case is explained by Tribunal deputy president Sosso on page 6 of this edition of *Talking Native Title*.

Future act laws must also be considered in processes that lead to housing and infrastructure developments that affect native title in some remote communities.

Concern has been expressed that these processes are too complex and slow down provision of important facilities to these communities.

These concerns led Attorney-General Robert McClelland and Indigenous Affairs Minister Jenny Macklin to release a discussion paper about how the NTA's future act provisions could be amended to improve this process. For more visit www.ag.gov.au.

No fixed meaning for 'traditional owners'

Who are 'traditional owners' and what does this term mean? National Native Title Tribunal senior research officer David Edelman discussed this question at the 2009 Australian Institute of Aboriginal and Torres Strait Islander Studies native title conference, in Melbourne in June.

Mr Edelman said defining 'traditional ownership' could be difficult because there was no universal or fixed definition.

He demonstrated this by describing indigenous parties to the Argyle Diamonds indigenous land use agreement (ILUA), in Western Australia, which comprise people who assert 'traditional ownership' over land in the agreement area.

"The Argyle agreement recognises several groups as having differential rights and interests in the area but all are collectively defined as 'traditional owners'," Mr Edelman said.

"One group has primary traditional rights over the area's entirety, another group has primary rights over a specific portion and secondary rights over another portion, while additional groups have no primary rights but hold secondary rights.

"In the Argyle ILUA, the term 'traditional owner' is rather broad because holders of quite different rights are singularly described as traditional owners.

"The fluid nature of the term might need to be kept in mind during the development of broader native title settlements."

Mr Edelman said the term was also applied in some non native title contexts, such as during the formal acknowledgement of a group as traditional owners at public events or in signage on country.

- Visit www.nntt.gov.au to read papers presented at the conference by Mr Edelman, Tribunal President Graeme Neate and Member Dan O'Dea.

MoUs: first step to native title



Pitta Pitta

Native title settlement is a step closer for Queensland's Pitta Pitta and Kalkadoon peoples after signing Memorandums of Understanding (MoUs) with local governments in central and north-west Queensland.



Kalkadoon

The MoUs commit the native title claimants and councils to negotiating indigenous land use agreements (ILUAs) to establish how their rights to land in the shires can coexist.

The Pitta Pitta People and the Boulia, Cloncurry and Diamantina councils signed an MoU on 24 June and the Kalkadoon People and Boulia, Burke, Cloncurry and McKinlay shire and Mt Isa city councils signed another MoU on 26 June.

The claimant groups are pursuing recognition of their native title rights in areas where the councils are required to provide infrastructure and services to their communities and use the land for public purposes.

National Native Title Tribunal President Graeme Neate, who is helping negotiate both ILUAs, said that by taking a cooperative approach and committing to negotiations the parties had made an excellent start to achieving successful outcomes.

"By getting together to work out how their rights and interests can coexist and how they can create better futures for their communities, they're giving themselves the best chance to achieve their aspirations," he said.

Kalkadoon representative Warren King said their MoU paved the way for constructive negotiations to develop an ILUA.

"It will allow for coexistence between our native title rights and the interests of the local governments and the rights and interests of the communities those governments represent," he said.

"It goes a long way to achieving recognition of native title out of court through mediation."

Mt Isa Mayor John Molony said the agreement with the Kalkadoon People would make it easier for the councils to free up land for housing and industrial development.



Tribunal President Graeme Neate with native title and council signatories to the Pitta Pitta MoU: Joyce Crombie (front left), Jenie Jacks, Neville Aplin and Alf Nathan, and at rear Scott Mason (left), Peter O'May, Graeme Neate, Florence Melville, Oliver Gilkerson, Barbara Dunn and Ted Besley.

"The MoU is beneficial to the councils and shires because it gives us a working relationship with the authentic native title holders and we know where we legally stand," he said.

"We have no problems with native title – that's for the courts to determine. The best process for us in the interim, before the claim is determined, is to have an ILUA."

Boulia Mayor Rick Britton said the councils believed that an agreement could be reached through the Pitta Pitta ILUA to enable the peaceful coexistence of native title rights, local government interests and the rights and interests of the general public.

"One of the goals is to establish clear processes to ensure the council does not negatively impact on any native title rights of the Pitta Pitta people in establishing required community infrastructure, such as the release of additional residential land in Boulia which will benefit the whole community, Indigenous and non-Indigenous," he said.

"The ILUA will be mutually beneficial on a number of levels, from the recognition of the traditional owners to a formal process for dealing with native title issues across the shires involved."

Cr Britton said the process of talking and listening to one another had been invaluable in forming a positive relationship between the councils and the Pitta Pitta People.

- For more visit www.nntt.gov.au .

Kuuku Ya'u People achieve first consent determination over Queensland seas



The Kuuku Ya'u People of Queensland's Far North hunt and fish in the Coral Sea as they have done for thousands of years – but now they do so as recognised native title holders under Australian law.

Negotiations with parties to their claim over 1,970sq km on the east coast of Cape York Peninsula led to a successful outcome for the Kuuku Ya'u People on 25 June when their native title rights in the area were recognised.

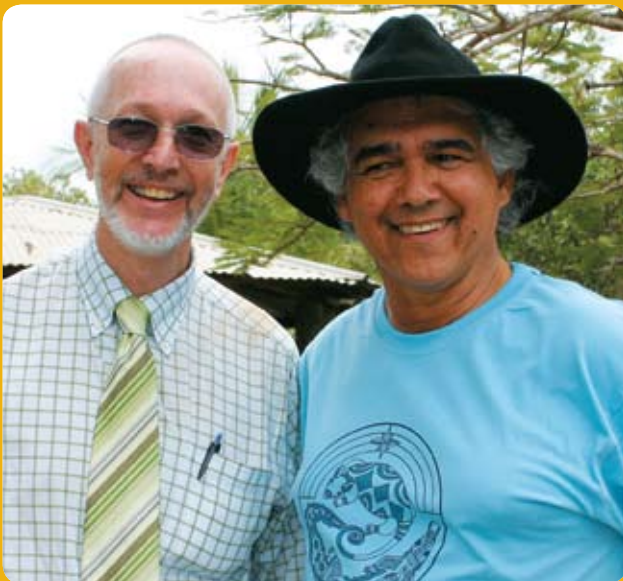
The consent determination recognised exclusive native title rights over 10sq km of land and their non-exclusive rights over about 1,960sq km of the sea.

The consent determination was the 41st to be made in Queensland but it was also a first.

National Native Title Tribunal Member Graham Fletcher, who mediated the application, said the Kuuku Ya'u People were the first group in Queensland to achieve recognition of their sea rights by agreement.

"In doing so they have charted the way for the 26 native title claims over areas of sea in Queensland that are yet to be settled," he said.

After the determination Kuuku Ya'u native title holder, Lucy Hobson, said the people would



Tribunal Member Graham Fletcher (left) with Kuuku Ya'u native title holder Lloyd Hollingsworth at the determination.

pass on their land and sea rights to the following generations.

"This has been our Kuuku Ya'u People's life dream come true. We thought it would never happen but it did and it makes the Kuuku Ya'u People very proud," she said.

The determination area includes land near Portland Roads town, Rocky Island, Sandy Islet, Pigeon Island, Quoin Island National Park, Piper Islands National Park, part of Forbes Islands National Park and surrounding seas.

The Kuuku Ya'u People, Commonwealth and Queensland governments, Cook Shire Council, Australian Maritime Safety Authority, Lockhart River Aboriginal Shire Council and commercial fishing licence holders negotiated how their rights and interests would coexist and developed three indigenous land use agreements (ILUAs).

"The parties had to deal with complex matters and consider a wide range of rights and interests," Mr Fletcher said.

"They also had to address sustainability and conservation issues in the Great Barrier Reef Marine Park area, access to national parks and questions about township infrastructure."

An ILUA between the Kuuku Ya'u People, Queensland Government and the Great Barrier Reef Marine Park Authority over the marine park aims to ensure ongoing good management of the area.

Queensland's Natural Resources Minister Stephen Robertson said the ILUA established how many dugongs and turtles that could be caught while conserving resources.

He presented certificates to nine Kuuku Ya'u People who, under the agreement, had been recognised as marine park inspectors, after completing a course.

"The ILUAs, particularly the reef agreement, are a landmark achievement recognising the Kuuku Ya'u People's centuries old custom under traditional law to hunt dugong and green turtles," he said.

"Long may the spirit that negotiations are entered into by agreement continue."

- For more visit www.nntt.gov.au .



Justice John Reeves (far right) at the Town of Elliott determination with lawyers and the next generation of traditional owners.

Native title moves forward in the NT

Agreements between parties to native title applications have led to the resolution of two native title applications in the Northern Territory this year.

Consent determinations were made by Justice John Reeves at hearings in the town of Elliott on 31 July and Pine Hill Station on 7 August, nearly two years after the NT's first consent determination, for the Patta Warumungu People at Tennant Creek in September 2007.

The Elliott consent determination recognised non-exclusive and exclusive rights and interests for the Gurungu/Kulumintini claimant group over 143.86ha at the town, about 750km south of Darwin. The application, lodged in September 2001, was represented by the Northern Land Council.



National Native Title Tribunal case manager Lorna Gregory (left), Central Land Council solicitor Kristen Ellerker and Stephen Herne, solicitor for the Northern Territory government, at the Pine Hill Station determination.

The Pine Hill Station consent determination recognised non-exclusive rights and interests for the Ilkewartn Ywel Anmatyerr People over 1,144sq km of station country, about 150km north of Alice Springs. The application, lodged in July 1999, was represented by the Central Land Council.

National Native Title Tribunal NT manager Tony Shelley said these consent determinations affirmed that when parties worked together progress would continue to be made for NT native title claimants.

“A consent determination outcome is only possible when all stakeholders have shown a willingness to work together for a common purpose,” he said.

“That was the case with these applications and the result enables all the parties to move forward with certainty about their place and their future on these areas of land.”

The Tribunal mediated the Pine Hill application in the early years, with the parties then progressing this to a positive conclusion in a relatively short time frame.

NT Regional Development Minister Karl Hampton, who spoke at the Pine Hill determination and has links with the Singleton family of that area, said it had been a privilege to be part of the process and that people shouldn't be scared about native title.

“It's 2009,” he said. “The way to settle native title is through consent, not litigation.”

- For more visit www.nntt.gov.au .

Future act decision protects significant area

There are processes to follow if exploration or mining is proposed on land where native title has been claimed or determined.

Many miners and developers recognise that giving native title holders or registered native title claimants the opportunity to negotiate about proposed activity on land is not only fair but makes good business sense.

If parties have negotiated in good faith but there is no agreement, they can ask the Tribunal to decide whether the tenement should be granted and, if so, whether conditions should apply.

On 28 May 2009, Tribunal deputy president Chris Sumner determined that a proposal by Holocene Pty Ltd, a wholly owned subsidiary of Reward Minerals Ltd, to mine potash at Lake Disappointment in Western Australia's eastern Pilbara region would interfere with sites of significance to the native title holders, the Martu People.

The decision was the first by the Tribunal that a mining lease must not be granted.

The Federal Court of Australia recognised the Martu



John Sosso

People's exclusive native title rights over the Lake Disappointment area in September 2002.

The Act sets out what the Tribunal must consider when making future act decisions, including the effect of mining on native title rights and interests, sites of special significance, and the economic significance and public interest in the mine proceeding.

Parties who are unhappy with the decisions can lodge an appeal with the Federal Court. The Act also provides for the relevant Commonwealth Minister to overrule a decision of the Tribunal.

Holocene took the second option but Commonwealth Attorney-General, Robert McClelland, did not overrule the decision.

This outcome demonstrates that there are strong legislated processes in place to ensure all parties can have their voice heard and that in the absence of an agreed outcome, the Tribunal may decide that the proposed mining should not proceed.

– **National Native Title Tribunal deputy president John Sosso.**

Nyangumarta People gain from positive mediation *from page 1*

Mediation took two-and-half years to conclude after parties reached an in-principle agreement on the existence of the Nyangumarta native title rights and interests.

A portion of the original Nyangumarta claim was not determined and remains outstanding. A new application, Yawinya, has been filed over this undetermined Nyangumarta area, which the Tribunal is now mediating.

Attorney-General Robert McClelland attended the hearing with the applicants and representatives from the other parties, including pastoralists, fishing and mining companies, Telstra and the WA and Commonwealth governments.

Mr McClelland congratulated the Nyangumarta People for their persistence to achieve recognition for their rights and said it was important native title

achieved sustainable and long-term outcomes for Indigenous Australians.

"It is a Government priority to speed up the resolution of claims so that other Indigenous people can, like the Nyangumarta, celebrate and benefit from the recognition of their connection to country," Mr McClelland said.

"Above all, it is important for all governments to take a proactive and flexible approach to resolving native title. I recognise the hard work of officials from the WA and Commonwealth Governments for the work done in this matter."

Mr McClelland said that through negotiation, parties built durable and broader outcomes and, more importantly, lasting relationships.

• For more visit www.nntt.gov.au .

Determination rewards Wik claimants, again



A strategic approach to native title has reaped rewards for the Wik and Wik Way People, whose rights were recognised at Aurukun on 29 July to a further 1,150sq km of land on Cape York Peninsula, Far North Queensland.

The consent determination recognised the group's non-exclusive native title rights to camp, hunt, gather, fish, protect sacred sites, erect structures to live in and conduct ceremonies over the mostly leasehold land.

The consent determination was the Wik and Wik Way People's fourth since their High Court victory in 1996, which paved the way for recognition of native title on some types of pastoral leases.

The Wik and Wik Way People then aimed to gain legal recognition of their rights to their traditional area on Cape York – this time through negotiations with parties to their claimed areas.

Taking a five-stage approach, the people focused on consecutive parts of their claim to achieve four consent determinations: for 6,136sq km in October 2000 and two determinations in October 2004 for a further 17,700sq km.

After the fourth determination on 29 July, one final native title claim remains.

National Native Title Tribunal Member Bob Faulkner said the continued success of the Wik and Wik Way People should encourage other native title claimants to persevere with negotiations.

"After their High Court win in 1996 they have chosen to pursue their native title rights through negotiation and cooperation," he said.

"As a result they have not only achieved their goals but developed solid relationships with parties along the way, that stand to benefit the community into the future."

This year's outcome was achieved through negotiations with the Queensland Government, Cook Shire Council, Aurukun Shire Council, Rio Tinto, Ports Corporation of Queensland and a commercial fishing company.

The Wik and Wik Way People developed two indigenous land use agreements (ILUAs) – one with the Cook Shire Council and another with Rio Tinto – to sort out the practicalities of carrying out their native title rights in the area.

- For more visit www.nntt.gov.au .

Guide links local government and native title

The National Native Title Tribunal and the Australian Local Government Association have published an updated 20-page guide to explain key native title concepts to local government staff.

Working with native title: linking native title and local government processes is now in its third edition, and introduces readers to native title issues they are likely to encounter in local government.

How to identify areas likely to be affected by native title, indigenous land use agreements, future acts and scenarios likely to arise in the course of a local council's activities are among topics covered in the publication.

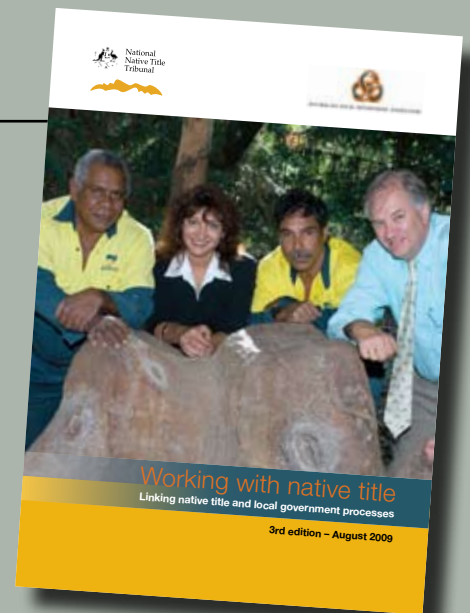
Australian Local Government Association president Geoff Lake said that local government recognised that native title had important implications for local and regional communities.

"It is vital that councils have the information they need to make the right decisions in the interests of all stakeholders in relation to native title," Cr Lake said.

One land use agreement, signed in Ipswich in Queensland in January 2008, is highlighted to demonstrate how councils and indigenous people can address native title issues.

Ipswich deputy mayor Victor Attwood said he recommended local governments resolve native title issues through negotiation.

For a copy of the new guide, visit www.nntt.gov.au .



Legal training improves ILUA understanding

A training program developed by the National Native Title Tribunal with the Aurora Project has helped legal staff at native title representative bodies better understand indigenous land use agreements (ILUAs).

The Aurora Project provides programs to indigenous communities and organisations through professional development and capacity building.

The two-day program, "Understanding indigenous land use agreements – a program for native title representative body (NTRB) legal staff", was held in Perth and Brisbane and attended by 36 lawyers, senior field officers and future acts officers.

Tribunal Legal Services manager Stephen Sparkes, senior legal officer Lisa Wright and Aurora Project officers facilitated the course which aimed to familiarise NTRB legal staff with the Native Title Act and regulations that relate to ILUAs, and the Tribunal's approach to the requirements for registration.

Aurora project deputy director Linda Cassidy said legal staff were interested in programs about ILUAs and agreement-making.



South West Aboriginal Land and Sea Council future acts officer Sean O'Hara (left) at the training with Tribunal Legal Services manager Stephen Sparkes.

"The Tribunal had previously developed a program on the technical aspects of ILUAs that we considered would be suitable," Ms Cassidy said.

"As we had worked together before, we knew we could rely on the Tribunal's Legal Services section to present a thorough and highly practical program that would meet the needs of NTRB staff."

Tribunal Registrar Stephanie Fryer-Smith was pleased with the outcomes achieved by the initiative.

"The Aurora Project collaboration between public and private sector organisations is an important part of indigenous capacity-building in this country," Ms Fryer-Smith said.

"The Tribunal is proud of the contribution made by its legal experts to the professional development of lawyers employed by native title representative bodies."

National native title statistics 4 September 2009

Determinations of native title

Total number of registered determinations of native title in Australia	124
Determinations that native title exists in the entire or part of the determination area	88
Determinations that native title does not exist	36
Consent determinations	77
Litigated determinations	22
Unopposed determinations	25

Indigenous land use agreements (ILUAs)

Total number of registered ILUAs in Australia	389
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Native title applications not fully resolved

Claimant applications	454
Compensation applications	7
Non-claimant applications	25
Total applications	486

For more statistics visit www.nntt.gov.au

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