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Coming to terms on ownership

WHO are 'traditional owners' and what does the term really mean? This description is often used in the native title process, but the *Native Title Act* doesn't use the term.

'Traditional ownership' was the focus of a paper I presented at the 2009 Australian Institute of Aboriginal and Torres Strait Islander Studies National Native Title Conference in Melbourne during June.

The paper – 'Broader native title settlements and the meaning of the term traditional owners' – examined how the term 'traditional ownership' is being used in some native title agreements and highlighted some of the complexities surrounding its interpretation.

The roots of the term 'traditional owner' seem to lie in the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*, which established ways for Aboriginal people to claim land in the NT on the basis that they were the 'traditional Aboriginal owners' of the land.

Since the introduction of this Act, the term has tended to be used in a number of other contexts, including native title, and has taken on a variety of meanings.

For example, it is sometimes used during the negotiation of Indigenous land use agreements (ILUAs), which may name the Indigenous party as comprising people who assert 'traditional ownership' over the area of the agreement.

NATIVE TITLE AND YOU

with National Native Title Tribunal Senior Research Officer DAVID EDELMAN

Recognition in ILUAs or in other broader settlements of a native title group's traditional ownership of country may be an important avenue for meeting some of their aspirations.

Recognition can often be reflected in the terms of a native title agreement itself, such as formally acknowledging the group as traditional owners or providing signage on country to acknowledge a group as traditional owners.

For some of these agreements, 'traditional owner' is taken to mean the 'right people for the right country'.

Yet the term can also be vague or confusing. While the anthropological literature tends to see traditional owners as those with 'primary' or 'core rights' over an area, in native title agreements the phrase might also refer to those with 'secondary rights' over an area.

For example, the Argyle Diamond Mine ILUA in Western Australia recognises the different rights and interests of each of several groups, who are all collectively defined as 'traditional owners'.

One group has primary traditional rights over the area's entirety, another group has primary rights over just a specific portion as well as secondary rights over another portion, and there are other groups that have no primary rights but hold secondary rights.

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

People involved in developing native title settlements should be mindful of the ambiguity of the term and be aware that its use can have an important bearing on the construction and implementation of those settlements.

● *To read David Edelman's paper, visit www.nntt.gov.au, and go to News and communication, speeches and papers, 4 June 2009, Broader native title settlements and the meaning of the term 'traditional owners'.*

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