

News from the Native Title Research Unit

Native Title Issues Paper: Register

The Institute's Native Title Research Unit maintains a Register of people interested in entering into contracts to write issues papers for publication.

Should you be interested in being included on the Native Title Issues Paper Register, send your expression of interest, addressing the selection criteria, with an accompanying c.v. to:

The Deputy Director
Research
AIATSIS
GPO Box 553
Canberra ACT 2601

Selection Criteria

Selection criteria for Native Title Contracts are as follows:

1. Demonstrated experience in native title. This should include field research or other relevant experience.
2. Working experience with Aboriginal or Torres Strait Islander organisations, or with a Native Title Representative Body.
3. Highly developed analytical and policy skills.
4. Demonstrated ability to work within a set time-frame and to develop recommendations, write reports and prepare material for publications.

Further information is available from Lisa Strelein (02) 6246 1155.

New Publication

Regional Agreements: Key Issues in Australia – Volume 2, Case Studies. Edited by Mary Edmunds, 1999. This publication will be available shortly.

Summary:

Regional Agreements: Key Issues in Australia - Volume 2, Case Studies is the culmination of a Regional Agreements project undertaken by the NTRU, AIATSIS with supplementary funding from ATSIC and from CRA (now Rio Tinto). Discussion papers, case studies and an overview paper were produced with the benefit of a series of workshops that involved representatives from a wide range of groups involved in native title processes and regional agreements. While there were differences across regions, important commonalities also emerged. Volume 1 of *Regional Agreements: Key Issues in Australia* presented summaries of an overview paper, case studies and supplementary papers that are published in full in Volume 2.

The case studies were undertaken in the following areas:

- Broome (Patrick Sullivan);
- Cape York (David Martin);

- the Goldfields (Kado Muir);
- the Gulf - Century Zinc (Robert Blowes and David Trigger);
- south-west South Australia (Lillian Maher);
- the Torres Strait (Bill Arthur); and
- Victoria (Julie Finlayson).

Supplementary papers were provided on comparative Canadian material (Michele Ivanitz) and on the question of process in developing a regional agreement (Ciaran O’Faircheallaigh).

The volume also includes the scoping paper prepared for this regional agreements project by Patrick Sullivan and an introduction and overview by Mary Edmunds.

Volume 1 is intended as a working document for Native Title Representative Bodies, industry, government, and other parties to negotiations concerning agreements. Volume 2 is intended as a further and more detailed resource for those engaged in such negotiations.

Current Issues

Research Report by Kado Muir

I have been busy researching and writing papers over the last two months. The first paper is titled, *Songs, Land and Culture*. I will present it at the first AIATSIS Seminar Series for 1999, called ‘State of the Arts: Issues of Indigenous Representation’. The second paper is titled *Native Title as a Right to Resources* and will be presented at the International Symposium on Society and Resource Management (ISSRM99) in Brisbane in July 1999.

Songs are an integral part of Aboriginal and Torres Strait Islander culture and often demonstrate a continuing cultural connection to country. The focus of my research is on a number of songs belonging to my people from the northern Goldfields region of Western Australia. I deliberately focused on the secular traditionally structured songs. These songs are a great repository of knowledge about the whole range of relationships between people, culture and land. The subject matter range from dreamtime songs, hunting and gathering based songs to pastoral work, railway work and relationships or observations about contact with settler society. A striking feature of some of these songs is that they also provide an insight into the transformations occurring within society when the songs were first sung.

In terms of native title research, songs are critical indicators of the relationship between people and land. In making songs people are inspired by their life experiences, their culture and their relationship with country. These songs need not necessarily be traditional songs sung in language. Native title researchers could analyse songs to demonstrate the maintenance of culture (laws acknowledged and customs observed) and look at the subject matter to demonstrate connections with country. I am sure there are a number of music researchers out there who could offer more comment on this, it would be a good subject for an Issues Paper.

The second paper focuses on an issue that is much broader in scope and politically topical. In the paper I wish to explore the concept of native title as a right to resources and how Aboriginal and Torres Strait Islander peoples maintain and enjoy rights to resources based on their laws and customs. I am not sure how this paper will develop but I thought I’d share some of the premise with you now.

The connection of Aboriginal and Torres Strait Islander peoples to their lands and waters is fundamentally a spiritual relationship. This relationship allowed for the ownership, use, management and control of the land and its resources. The dispossession of land was to facilitate the access of pastoralists and later miners to resources. This access came at the price of disrupting traditional economies, with absolutely no compensation. In gaining the recognition of ownership of land Aboriginal and Torres Strait Islander peoples are still struggling against this legacy of dispossession and its ongoing manifestation in the Australian economy.

Sections 211 and 212 of the *Native Title Act 1993* reflect this desire to prevent Aboriginal and Torres Strait Islander people from accessing resources and engaging in commercial activities on the basis of their native title rights. This attitude seems to flow from the widespread view that Aboriginal and Torres Strait Islander peoples can only participate in a frozen pre-contact economy. This view has no relationship with common sense and evidence. The very first interaction between Europeans and Aboriginal and Torres Strait Islanders invariably resulted in the trade of goods, knowledge, skills and human resources. This commercial interaction did not automatically take away any rights of ownership, use, management or control over the resources, nor did it freeze our inherent commercial structures in time. Ownership of resources in the land/water and of the land/water is one of the primary rights of Aboriginal and Torres Strait Islander peoples. This can not be equated to classes of activities like hunting, fishing and gathering, nor limited to pre-contact economic structures. Further the recognition and promotion of Indigenous economic systems would address wrongs of the past and allow greater opportunity for economic self-determination.

I welcome any thoughts or comments from readers on these and other issues. In particular I would like to hear news on your experiences on the native title 'front line'. My email address is kado@aiatsis.gov.au

Kado Muir, Visiting Research Fellow, NTRU, AIATSIS, May 1999

The CERD Committee

'CERD' refers to the International Convention on the Elimination of all forms of Racial Discrimination. The Convention was signed by Australia in October 1966 and ratified in September 1975. Signing the Convention did not bind Australia to the terms of the Convention, but ratification did. Before ratifying a convention, a country must ensure that its domestic laws conform with the Convention. In this case, it was achieved with the introduction of the *Racial Discrimination Act 1975* (Cth), which has played an important role in the recognition and protection of Indigenous peoples' native title rights.

The Convention provided for the establishment of the CERD Committee, which receives periodic reports from countries who are a party to the Convention. The Committee last considered a report from Australia in August 1994, which, of course, included reference to the recognition of native title by the High Court in *Mabo v Queensland [No.2]* (1992) and the introduction of the *Native Title Act 1993* (Cth).

The Australian government had not submitted a periodic report since 1994 and the CERD Committee, concerned at the direction of relations between the governments and Indigenous peoples in Australia, initiated early warning procedures. In August 1998, Australia was asked to provide information to the Committee on three areas of concern, namely: the amendments to the *Native Title Act 1993*, changes in policy as to Aboriginal land rights and changes to the office of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

The Committee considered submissions from the Australian Government, ATSIC and the Acting Aboriginal and Torres Strait Islander Social Justice Commissioner, as well as members of the House of Representatives and the Senate. The CERD Committee's Decision on Australia, delivered on the 18th of March 1999, at its 54th Session, was not satisfied that Australia had met its obligations under the Convention.

The Committee pointed to Australia's history of discrimination against Indigenous peoples, particularly in relation to land. They expressed particular concern over:

- whether the *Native Title Act 1993*, as currently amended, is compatible with Australia's obligations under the Convention to act without discrimination. In particular, the Committee questioned: the 'validation' provisions; the 'confirmation of extinguishment' provisions; the 'primary production upgrade' provisions; and the restrictions concerning the right of Indigenous title holders to negotiate non-Indigenous land uses;
- the lack of participation of Indigenous peoples in the Amendment process, citing, in particular, Australia's obligations under Article 5(c); and
- the abolition of the office of Aboriginal and Torres Strait Islander Social Justice Commissioner, which is to be subsumed within the duties of a general 'deputy President' who would be responsible for all race discrimination issues.

The Committee requested that the Australian government address these issues as 'a matter of utmost urgency', asking that the Amendments be suspended and discussions with Indigenous peoples reopened. The Committee has retained the matter on its agenda for its next meeting.

The Australian government has dismissed the findings of the CERD Committee. While the Decision has no force in Australian law or politics, Indigenous peoples may make a complaint to the Committee, through the individual communication provisions of the Convention, and may also be encouraged to reconsider the constitutional question that formed a large part of the debate over the Bill.

Lisa Strelein, Visiting Research Fellow, NTRU, AIATSIS, May 1999

25th Annual Conference of the Australian Anthropological Society

The Conference will be held at the University of New South Wales from 10 to 13 July 1999. A conference panel called *Conceptualising Native Title* has been proposed by Mr Mick Dodson. There will also be plenary sessions on *New Models for Consultancy Training* with Deane Fergie as speaker and *Anthropology and Native Title in New South Wales: Towards More Positive Outcomes*. The speaker for this plenary session will be Mr Gavin Andrews, Manager, Native Title Unit, NSW Aboriginal Land Council. The *Annual Debates in Australian Anthropology*, first debate, will put the motion that 'Australian Academic Anthropology Cannot Survive without Consulting Anthropology'.