

Issues Papers

Paul Sheiner has written an issues paper on 'The beginning of certainty: Consent determinations of native title', number 12 in the current series. The paper discusses the use of Federal Court consent determinations to resolve native title determination applications. Among the initial comments to the paper, the following observations seem particularly noteworthy:

Regarding the relationship of the NNTT and the Court in initiating mediation procedures, prior to the amendment of the NTA the NNTT could refer claims to the Court. Under the NTA currently, the Court initiates the process, referring claims to the NNTT for mediation (s.86B(1)) and report (s.86C(5)). The NNTT can submit voluntary reports (s.136G) and refer questions of law or fact to the Court. In fact, the power of the Court depends upon such referred questions.

The method whereby claimants define themselves for the purposes of the registration test has generally through apical ancestry simply because they find this to be appropriate and expedient. While other methods have been used, they have tended to give rise to problems of internal inconsistencies and connection to other interested Indigenous parties, particularly members of subsequent generations. The *Ward* decision, in fact, relieves the claimant community of the requirement of biological descent.

In Queensland the NNTT has played a role in the majority of the state's consent determinations which, arguably, may be a factor in the relatively greater frequency of this method of determining native title in Queensland (15 of the 21 consent determinations). Of course, the NNTT has been engaged in the early stages of mediating claims in Western Australia, some of which have subsequently proceeded to determination either by litigation or consent.

Conferences in the Offing

Mining Minerals and Sustainable Development: International Workshop on Indigenous People and Relationships with the Mining Sector will be held in Perth on 4 - 6 February 2002. The Workshop will seek to promote positive change in indigenous peoples' associations with the mining sector. It will address key indigenous concerns and perspectives; review current industry practice; and identify practical steps to ensure resource development respects the rights of host communities and enables an equitable distribution of impacts and benefits. The Workshop will bring together an international group of 50-60 stakeholders from indigenous communities, industry, government and non-governmental organizations, to discuss the role of the mining industry in promoting sustainable development among indigenous communities. For further information contact Bren Sheehy The Australian Minerals & Energy Environment Foundation Tel: +61 3 9214 6697 Email: bren@ameef.com.au

Murdoch University will host a three day conference entitled Treaty - Advancing Reconciliation - A National Conference in a Global Context Concerning Racism, Land and Reconciliation on 26 -28 June 2002. Day one will be devoted to Treaty relations between British colonials and Indigenous Peoples in North America and New Zealand, day two to Historical Roots to the 'Treaty Question' and day three to Should Australia seek to negotiate a treaty / agreement ? and if so what should it seek to accomplish ? The due date for proposed papers is 28 February. Further information is at www.treaty.murdoch.edu.au

ATSIC will convene an inaugural policy conference on 25 -27 March 2002. It will focus on developing an improved understanding of the principles of self-determination and rights and how they can be put into practice. Particularly, the conference will explore how policy affects self-

determination and rights. The conference will run for three days. The first day will be a workshop concentrating on the practical and more technical aspects of the policy process. The following two days will focus on self-determination and rights with keynote speakers engaging and challenging participants to look anew at current policy approaches. The intended outcomes are: adoption of new approaches to the policy process and decision making in Aboriginal and Torres Strait Islander affairs, improved understanding of self-determination and Indigenous rights, and improved Indigenous policy directions. National Convention Centre 31 Constitution Avenue, Canberra ACT 2600 Tel:02 6257 4905 Fax:02 6257 6405.

ATSIC is also involved in a three day conference on the treaty process from 27 through 29 August. The details are being worked out by ATSIC and ANTaR currently, but the topics to be considered are reconciliation, sovereignty, treaty making, the economics of the process, social impacts

FEATURES

Exercising Your Culture: Indigenous Cultural Heritage and the Environment

Paper presented at The Past and Future of Land Rights and Native Title Conference Townsville, 28-30 August 2001 by Commissioner Rodney Dillon

Introduction

My name is Rodney Dillon. I am a Palawa Aboriginal man from Tasmania and the Commissioner elected for the Tasmania Zone of the Aboriginal and Torres Strait Islander Commission (ATSIC).

I want to talk about native title and how it relates to sea rights for Aboriginal and Torres Strait Islander peoples. I also want to talk about the concerns our people have about marine resource management and the adverse impact that various non-indigenous groups have on our ability to continue practicing and enjoying our traditional customs as they relate to the sea and its resources.

and the treaty framework. They are also planning a televised debate for later in the year. More information will be available in March on the TreatyNow website www.treatynow.org.au

The NTRU plans to jointly host a conference for Representative Bodies with Yatamtji and ATSIC Queensland. While the details are yet to be decided, it will be held in September or October and will be devoted to legal issues, research and practice and capacity building.

New AIATSIS Research Fellow Appointed

Patrick Sullivan has begun duties as the Visiting Research Fellow in Regional Organisation and Governance in the Institute's Research Section. While not a member of the Unit, Patrick's interests in native title and governance will likely see his involvement in projects organised by the NTRU.

The Native Title Act 1993 and sea rights

Native title is based on the laws and customs of Aboriginal people and Torres Strait Islanders. Whilst the High Court of Australia and Australian governments have given some recognition to these rights, especially by the passing of native title legislation, they fail to adequately recognise exclusive native title rights in relation to the seas. The right to maintain an exclusive native fishery or rights to control access to waters where native title exists is not recognised under current laws. This concerns me because it denies our people the right to manage and control natural resources which have been part of our cultural traditions for countless generations.

Section 24HA of the *Native Title Act 1993* (the Act) is the major provision relating to the management of water and living aquatic resources. Under the Act all Aboriginal