

List of abbreviations

Note: Where an item also appears in other newspapers, etc, an asterisk (*) will be used. People are invited to contact the Native Title Research Unit at AIATSIS if they want the additional references. The NTRU will try to provide people with copies of recent newspaper articles upon request.

Ad = Advertiser (SA)	LRO = Land Rights Queensland
Age = The Age	Mer = Hobart Mercury
Aus = Australian	NNTT = National Native Title Tribunal
CM = Courier Mail (QLD)	NTA = <i>Native Title Act 1993</i>
CP = Cairns Post	NTRB = Native Title Representative Body
CT = Canberra Times	NTN = Native Title News (State editions)
DT = Daily Telegraph	SC = Sunshine Coast Daily
FinR = Financial Review	SMH = Sydney Morning Herald
HS = Herald Sun (VIC)	TelM = Telegraph Mirror (NSW)
KM = Kalgoorlie Miner	WA = West Australian
ILUA = Indigenous Land Use Agreement	WAus = Weekend Australian
IM = Illawarra Mercury	
LE = Launceston Examiner	
LR News = Land Rights News	

NEWS FROM THE NATIVE TITLE RESEARCH UNIT

Upcoming Conference

Regular readers will be aware that the Unit is organising and jointly sponsoring this year's *Native Title Representative Bodies Legal Conference: The Past and Future of Land Rights and Native Title*, 28-30 August 2001, Townsville, Southbank Hotel and Convention Centre. This conference commemorates the 20th anniversary of a national conference, *Land Rights and the Future of Australian Race Relations*, organised by the James Cook University Students Union and the Townsville Treaty Committee in Townsville on 28-30 August 1981, out of which the *Mabo* case evolved. The first day of the conference program will commemorate the work of Eddie Mabo, Ron Castan, Nugget Coombs and Judith Wright in achieving recognition of Indigenous rights and native title and will address significant issues in the current native title debate. The second day examines developments in native title, including framework agreements, compensation and issues arising out of recent High Court and Federal Court cases. Sir Anthony Mason will be the after dinner speaker. The third day is a joint session with the National Environmental Law Association on Indigenous heritage and the environment, heritage and planning, sea rights and land management. Once the final arrangements have been made, the program will appear on our web-site and will be included in the next Newsletter. A registration form and preliminary program follow at the end of the Newsletter.

A reminder that the *Native Title Conference: Expert Evidence in Native Title Court Cases: Issues of Truth, Objectivity and Expertise* will be held at Adelaide University 6-7 July 2001. The program follows at the end of the Newsletter.

Seminar Series

Lisa Strelein, Visiting Research Fellow in the Unit, has convened the Research Section's Seminar Series *The Limits and Possibilities of a Treaty Process in Australia*. More than a dozen academics and policy makers have agreed to take part, including Mick Dodson, Marcia Langton and Geoff Clark. The relationship of native title to the proposals for a treaty making process in Australia is a central aspect of the debate. Seminar presentations will be published on-line beginning next month. For the seminar program, updates and papers visit <http://www.aiatsis.gov.au/rsrch/>.

An Important Library Acquisition

With the assistance of the Unit, the Library at AIATSIS has purchased a significant document in Australia's history - the transcript of the proceedings of the *Mabo* case in the Supreme Court of Queensland in which the evidence supporting the native title claim of the Meriam people was presented. The case had begun in the High Court in 1982 and was remitted to the Supreme Court of Queensland in 1986 for hearing of the issues of fact. The transcript covers the period 13 October 1986 to 6 September 1989 during which Justice Moynihan heard the evidence. The case returned to the High Court, and resulted in the history-making judgment of 3 June 1992 that native title exists in the Torres Strait.

Book Launch Hosted by Mirimbiak

Melissa Castan recently launched *Native Title in the New Millennium* in Melbourne. The book is dedicated to the memory of Ronald Castan AM QC and is the proceedings of the inaugural Native Title Representative Bodies Legal Network conference held in Melbourne in April 2000. The Mirimbiak Nations Aboriginal Corp, the native title representative body for Victoria, hosted the launch in conjunction with the NTRU. Bryan Keon-Cohen QC, principle legal officer for Mirimbiak, was the book's editor. A description of the book and order form follow at the end of the Newsletter.

Workshop on Compensation

In April the NTRU hosted a small workshop focussed on new directions for the calculation of monetary compensation for the loss of native title rights. The workshop was well attended by native title practitioners and scholars from New South Wales, Victoria, Western Australia and the Australian Capital Territory. The workshop was lead by Paul Burke. The NTRU engaged Paul Burke to develop a paper on compensation, and the workshop was designed to provide critical

feedback on discussion points in his paper. The paper is currently a work-in-progress and will be available once it is completed. Paul Burke provides the following background to the project:

As we continue to await the Delphic utterances of the courts the task of developing a distinctive body of jurisprudence about native title compensation languishes. This is probably because of the complexity of the intercultural event we are all awaiting: the first contested compensation determination. Money can never equal native title. Yet despite this inherent incommensurability and complexity, pragmatic criteria, such as consistency with the legal theory of native title, consistency with our knowledge about actual traditional connection and the availability of evidence, can be developed to assess potentially useful principles. Using an idealised example of a compulsory acquisition of full native title rights for a government purpose, this paper makes an initial exploration of some possible principles.

The huge variation in the market value of land in Australia has major implications for what is 'just terms' in native title because it is likely that those areas with the strongest native title will coincide with those areas of least economic value. It is argued that the minimal implication of 'just terms' is that in compensating for loss of native title rights the economic value of analogous tenures should be included but it should not in any way constrain the calculation of non-economic loss. Because of the sui generis nature of native title new principles need to be developed for a sui generis compensation regime.

The first overriding principle should be:

The scale of compensation in native title should be of a magnitude that reflects the importance of rights to land for indigenous people and that it is a group right.

In practice this could be implemented in relation to non-economic loss by making an upward adjustment from a base figure arrived at from a consideration of the evidence of the key witnesses.

Non-economic loss should be assessed under conceptually distinct sub-headings that are relevant to native title such as:

Compensation for the insult associated with the loss of important rights without consent;

Compensation for the physical inconvenience caused by the loss; and

Compensation for mental distress associated with the loss of homelands.

The sui generis nature of native title also justifies the proposition that compensation for loss of native title rights should include an amount for future generations.

These proposed principles are then applied to several hypothetical examples assuming varying degrees of disturbance and loss of traditional country. The examples attempt realistic scenarios and informed descriptions of likely evidence.