

Indigenous Rights Discussion Paper for the Living Murray Initiative

Discussion Paper prepared by
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The Murray Darling Basin Ministerial Council requested that the Murray Darling Basin Commission give further consideration to the issues raised by the Indigenous Nations of the Murray Darling Basin, including the issue of Indigenous interests in water. The Council indicated that it intends to review the implications of these issues at their meeting scheduled for November 2003.

In August this year AIATSIS agreed to assist the Commission and the Murray Darling Rivers Indigenous Nations (MDRIN) to develop a discussion paper to support the final report from the Indigenous consultations. A small forum was held at AIATSIS, drawing on expertise from around Australia to establish a framework for the paper. The discussion paper draws on the outcomes of the Indigenous peoples' consultations with the Murray Darling Basin Commission. The paper seeks to place the views and aspirations expressed in those documents within a broader Indigenous rights context.

More than consultation, Indigenous peoples have called for substantive involvement in policy and decision-making, as well as direct involvement in environmental management. In international law, a measure of whether Indigenous peoples enjoy equal rights in respect of effective participation in public life is to ensure that 'no decisions directly relating to their rights and interests are taken without their informed consent'. Informed consent requires more than mere consultation.

Apart from the procedural mechanisms to ensure meaningful involvement of Indigenous

Nations in decision-making and management, specific measures may be introduced to recognise substantive rights or specific interests that arise from Indigenous ownership and custodial responsibilities, including:

- Access to land and waterways
- Use and enjoyment of the natural resources
- Hunting, fishing and foraging

Specific outcomes discussed in the paper include rights to cultural flows, water allocation rights, and co-management possibilities. Only where it is impossible to protect or return lands and waters should compensation be considered, and then it should be considered in the form of land and waters before monetary compensation.

The Indigenous Nations of the Murray Darling Rivers share the vision of the Murray Darling Basin Commission for a healthy, living river system with natural flows and cycles, sustaining communities and preserving unique values. In the current context, the difficult task of determining how best to manage the scarce water resources of the Murray River cannot side-step the inherent rights of Indigenous Australians to these water resources and the surrounding ecosystem.

Recognition of Indigenous peoples rights in relation to the natural and cultural heritage and economies of the River will enable the Murray Darling Basin Commission, the Ministerial Council and the governments involved to support the Indigenous Nations and communities' desire to foster a partnership model for cultural and natural resource management that can provide a leading example for the whole of Australia.

The Native Title Research Unit hopes to develop the paper for publication and perhaps hold a follow up workshop later this year.

Indigenous Researchers Forum

The Australian Institute of Aboriginal & Torres Strait Islander Studies (AIATSIS) has been

invited by the Indigenous Researchers' Forum Organising Committee to host the IRF 2003. AIATSIS will do this in partnership with the Australian National University (ANU) and the University of Canberra (UC).

Background to the IRF

The IRF is an initiative of the six Indigenous Centres of Excellence located at various Australian universities. The inaugural IRF was hosted by the University of Newcastle in 1999. The forum was hosted by the University of South Australia in 2000, the University of Melbourne in 2001, and in 2002 it was hosted by a consortium of Indigenous units from Curtin University of Technology, Edith Cowan University and the University of Western Australia. The IRF has national significance and explores and advocates Indigenous agendas and issues in research, in addition to providing opportunities and encouragement to emerging Indigenous researchers.

When & Where

The IRF 2003 will be held from 1-3 October at University House at the ANU. The dates fall within the semester break and the venue provides opportunities for sessions and events to be held indoors but also outdoors close to the main buildings.

For more information and registration forms go to the AIATSIS website at <http://www.aiatsis.gov.au/rsrch/conferences/irf2003/index.htm>

For more specific details contact Wayne Deans, Forum facilitator, on 02 6261 4207, or at wayne.deans@aiatsis.gov.au

'Talkin' it out and Talkin' it through, it's all in the process': The Indigenous Facilitation and Mediation Project

Naming the Project

The Indigenous Facilitation and Mediation project is looking for a user friendly name.

A key concept to be reflected in the name is the management of Indigenous decision mak-

ing processes rather than an over emphasis on disputation and conflict management. Just and sustainable land related outcomes for Indigenous communities depend, in the first instance, upon the skilled facilitation of inclusive and representative decision-making processes which are transparent and fair and upon which Indigenous people can confidently rely. Such processes are an inherent component of best practice Indigenous dispute management systems.

One suggestion is 'Talkin' it out and talkin' it through'. All ideas and comments are welcome.

Project Reference Group

The Project Reference Group met for the first time on 27th August 2003 at AIATSIS in Canberra. There was discussion around a draft issues paper prepared by Toni Bauman and Rhian Williams which will shortly be revised and published in the NTRU Issues paper series.

Members of the Project Reference group to date are Mick Dodson, Gaye Sculthorpe, Diane Smith, Mary Edmunds, Marcia Langton, Larissa Behrendt, Margaret O'Donnell, Kerrie Tim, David Wilson, Wayne Denning, Darryl Pearce and Parry Agius. Steve Larkin, Lisa Strelein and Toni Bauman are NTRU AIATSIS staff on the group. Rhian Williams is the AIATSIS Consultant Research Fellow, Mediation specialist.

The group agreed to meet again on 13th November, 2003, to bed down the project and to confirm its aims and membership of the group, following discussions between project staff and the Chief Executive Officers of the Native Title Representative Bodies in Brisbane in October.

Noongar Staff Family Meetings Team Workshop

Rhian Williams and Toni Bauman recently conducted a workshop with staff of the South West Land and Sea Council who are involved in Noongar family meetings and the 'one claim' process. The workshop, intended to

facilitate discussions among staff about how they have been running their family meetings and how they might improve them, also involved some facilitation training.

Wukindi Rom Cross-Cultural Mediation Training Workshop

Toni Bauman is one of the directors of the Wukindi Rom Cross-cultural Mediation Train-

ing Workshop project. The Wukindi Project will involve the participation of 100 young Indigenous and non-Indigenous Australians in the Wukindi ceremony which will be managed by Reverend Djiniyi Gondarra and his people from the Golumala Clan/Nation in parallel with a number of mediation training workshops. The five day event is planned for June 2004 in Gove, Arnhem Land.

FEATURE

Future Directions

By David Ross
Director, Central Land Council

It is very difficult for me to talk about future directions for us when I know that we have been comparatively lucky here in the Territory. We have the Land Rights Act which has stood the test of time, and unlike the Native Title Act, all challenges in the High Court. It has delivered real outcomes in terms of land, culture and an ability to deal with mining and other land use demands. Also very importantly, after 27 years of CLP rule, we now have a government which believes in treating people decently.

It would be pointless of me to continue the litany of the deficiencies of the Native Title Act. There is simply no argument that the Native Title Act - as it has been amended by government and interpreted by the courts - does not deliver what it set out to do. Tragically there is very little we can do about that.

So are we to keep working at a native title system that delivers so little?
From a Territory perspective, there have been considerable benefits. The Arrernte of Alice Springs (Mparntwe) have been recognised as native title holders for example. We have a number of ILUAs we have had a great number of small wins in comparative terms. As I said yesterday - even without the Court's recognition, the Yorta Yorta have earned the recognition of this nation. I want to stress that I am not arguing that we should accept the limitations and convolutions of the Native Title Act. Let's appreciate some of

these small wins that can make such a huge and tangible difference to people's lives, to their sense of themselves. Lets not underestimate the empowering fact of recognition after several hundred years, of nothing, of being seen as nobodies.

I remember being an 18 year-old and standing in a bar in Perth - and no one would serve me, or even look at me. They just acted as if I wasn't there. I can tell you that this lack of recognition leaves you feeling very empty. Most Aboriginal people would know what that feels like. I know it is something the CLC's constituents often say to me when they have a win - the sense of acknowledgment Max Stuart had, as the Chairman of the CLC, when he met the Queen here in Alice Springs. Or the sheer sense of elation Lhere Arthepe members had when they sat down and were finally taken seriously by the Government. There are many examples of this. Conversely, the sheer despair people feel when they aren't recognised. The Stolen Generations will certainly tell you about that. It is something I do not expect non-Aboriginal people to understand but I believe it is a very powerful emotion indeed. Recognition counts for a lot.

In our case and I know in others, the Native Title Act has delivered in some part recognition to some people. Often not in ways circumscribed by the Native Title Act but if you're lucky it may open up avenues you had never even considered. And Lhere Arthepe members would probably agree with me there. Recognition is the first fundamental step to greater things. It opens the box. Lets