For further information regarding notification of any of the applications listed contact the National Native Title Tribunal on 1800 640 501 or <www.nntt.gov.au>.

NEW PUBLICATION

Treaty, Let's Get It Right!

In May 2000, ATSIC restated the importance of a treaty as a central plank of the Indigenous agenda on rights — part of the overall package of unfinished business that remained from the 10-year reconciliation program that concluded that year.

Treaty … let's get it right! is a collection of essays from members of ATSIC's National Treaty Think Tank and authors commissioned by AIATSIS.

In the Foreword, ATSIC Chairman Geoff Clark explains that the 'let's get it right' approach recognises the political, constitutional and institutional 'barriers to equality under the law in Australia' that recur throughout Australia's modern history.

Michael Mansell, Secretary of the Aboriginal Provisional Government, says the two competing outcomes for a treaty are (a) the return of all crown lands to Aboriginal and Torres Strait Islander peoples to provide economic and cultural autonomy and (b) equality for Indigenous people within white economic and social structures while allowing for a degree of Indigenous autonomy. Mansell says the choice is not the real issue, but 'the right to make that choice is'. Two models exist that could be used to guide a treaty making process, offers Larissa Behrendt, Professor of Law and Indigenous Studies at the University of Technology in Sydney. One is the system of Indigenous Land Use Agreements (ILUAs) under the *Native Title Act* that result in binding negotiated contracts between parties without the costs and uncertainty of litigation. The second is the Canadian system for agreements that operate under its *Inherent Right to Self-Government* policy that has an expressed preference for community-level negotiations.

The AIATSIS Chair, Professor Mick Dodson, suggests that a treaty or treaties could be achieved by an agreement under international law, be supported by legislation or be a simple contract under statutory and common law. His focus, however, is on a proposed new Section 105B of the Constitution that would spell out the powers of the commonwealth government to 'make a treaty or treaties with persons or bodies recognised as representatives of Aboriginal and Torres Strait Islander peoples' on matters of specific relevance to their peoples.

Professor Marcia Langton (Melbourne University) and Dr Lisa Palmer (ARC Postdoctoral Fellow) examine the importance of agreement making, including developments in native title and the growing use of ILUA, as well of the diversity of Indigenous customary and cultural interests that need to be accommodated by any regime for such agreements.

The capacity for a treaty to protect Indigenous heritage is considered by intellectual property specialists Robyn Quiggan and Terri Janke. In the absence of an overarching agreement that offers specific protection it will be necessary to pursue *sui generis* legislative protection for heritage rights and the desire of Indigenous peoples to enjoy informed consent on the use of such intellectual property and to share subsequent benefits.

A treaty holds the potential to define a new relationship between the Indigenous and non-Indigenous peoples of Australia that moves 'beyond past and present injustices', according to Lester-Iribinna Rigney, a senior lecturer at South Australia's Flinders University. In particular, Indigenous languages and educational standards and practices stand to benefit from a system that can 'transform the structures that continue to cause disharmony'.

Despite the evident benefits to Indigenous heritage, discussion of a treaty will inevitably throw up challenging questions of identity and Aboriginality, says Indigenous lawyer Louise Taylor. Authenticating Indigenous identity is a complex and troublesome process that can only be achieved through internal community processes that take account of local circumstances. It may be that the final form of a treaty cannot be met by a single uniform document.

These questions interest young Indigenous people. The National Indigenous Youth Movement of Australia identifies the need for healthy and functional families and communities that provide clear pathways to a sustainable Indigenous identity. A 'collective sense of purpose', perhaps supported with a Bill of Rights that guarantees Indigenous rights and responsibilities, might prove more beneficial than an uncertain treaty process.

In a survey of developments since the *Mabo* judgment in 1992, Perth-based lawyer and academic Hannah McGlade (who also edited this volume) finds that the issue of sovereignty has only rarely been tested in the courts and has only once been placed directly before the full bench of the High Court of Australia. While issues such as self-determination and sovereignty continue to develop in the international arena, Indigenous claims within Australia point to the need for legal and perhaps constitutional reform.

Megan Davis, a specialist in international law, argues that the developing international human rights framework can be a valuable reference in discussion of a domestic treaty. The Draft Declaration on the Rights of Indigenous Peoples, currently under consideration by the United Nations, could be influential once adopted if the rights contained in it are elevated 'to the level of a convention in which those states that sign become legally bound by the instrument'.

A treaty could be valuable in strengthening Indigenous governance systems, control over service delivery and the re-empowerment of Indigenous peoples within society, according to Darwin-based academic Daryl Cronin. By providing a system for greater Indigenous autonomy and control and the means for asserting Indigenous authority, communities would be able to take greater responsibility for dealing with their social and economic problems, manage and control natural resources, and develop appropriate legal models and relationships with governments.

Communities in the Torres Strait have perhaps moved further along the road to self-government than communities elsewhere in Australia and without excessive controversy, says Treaty Think Tank member Dr Martin Nakata. Islander negotiation has not been tied to any single ideology or political party, but has taken note of the both the long-term and immediate and practical aspirations of grass-root community members and represented those via incremental advancement based on a concept of 'relative sovereignty'.

Senator Aden Ridgeway sees that obstacles to Indigenous advances include the continuing spirit of denial manifested by the federal government and the 'plethora' of community organisations that constitute a significant drain on 'human and financial capital'. He calls for greater accountability in both areas — government policy that is based an honest acknowledgement of the past and meets the standards set by its own rhetoric as well as a system of national benchmarks to ensure directed and effective management of Indigenous organisations.

In the final contribution to the book, the Olympic gold medallist and ATSIC Treaty Ambassador Nova Peris says Australia's present Constitution is 'an ill-adapted mix of symbolic power and the practice of government'. A treaty would contrast with current government systems by providing inclusion, adaptability and incorporate both Indigenous and non-Indigenous parties into the life of the nation.

***Treaty — let's get it right!* is available for $19.95 plus postage from Aboriginal Studies Press (phone 02 6246 1186 or email sales@aiatsis.gov.au).**