

and accommodation for all delegates to be covered.

The workshop arose from the second working session of NTRB representatives at the Darwin conference, which focused on two demonstrations of databases – one from Native Title Services NSW and the other from the National Native Title Tribunal. Because time was limited for discussion, they requested that a workshop be held at AIATSIS in Canberra before the end of the financial year in order to construct a best practice document addressing database structure and content, and ethics and

## **WHAT'S NEW**

### **Legislation**

#### **Recent Cases: Australia**

[Sampi v State of Western Australia \(No 3\) \(2005\) 224 ALR 358; \[2005\] FCA 1716](#)

Litigated determination. Outcome: Native title exists in parts of the determination area

Available at:

[http://www.nntt.gov.au/ntdetermination//1134098706\\_1640.html](http://www.nntt.gov.au/ntdetermination//1134098706_1640.html)

[Mundraby v State of Queensland \[2006\] FCA 436 \(24 April 2006\)](#)

Consent determination. Native title exists in relation to the land and waters.

Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2006/436.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/436.html)

[Sampi v State of Western Australia \(No 4\) \[2006\] FCA 760 \(19 June 2006\)](#)

Determination: Native title exists in relation to parts of the determination area. The orders include recognition of exclusive native title rights over parts of the land claimed and non-exclusive native title rights over areas below the mean high water mark. A determination that native title does not exist has been made over Brue Reef.

Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2006/760.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/760.html)

[James Dimer on behalf of the Esperance Nyungar People/Paul Winston Askins, James Ian Stewart/Western Australia, \[2006\] NNTTA 70 \(8 June 2006\)](#)

Native title - future act. Application for determination for the grant of exploration licences. The registered native title claimants are deceased. The application was dismissed.

protocols for access and use of connection materials. This document would result in savings for NTRBs who need to update or establish databases by seeing what is already available within NTRBs and learning from their experiences rather than investing in database design all on their own. A report from the workshop will be available shortly on the NTRU website under 'The Future of Connection Material Project'.

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Available at:

<http://www.austlii.edu.au/au/cases/cth/NNTTA/2006/70.html>

[BROWNLEY & ORS -v- MINARA RESOURCES LTD \[2006\] WASC 93 \(25 May 2006\)](#)

Supreme Court of Western Australia

Defendant application to stay the plaintiffs' action and further to strike out certain paragraphs of the statement of claim. In 1997 the defendant entered into negotiations with the Bibila Lungutjarra Native Title Claimant Group (the 'Bibila people') and the Goolburthunoo Native Title Claimant Group (the 'Goolburthunoo people') as part of the process of developing a laterite nickel and cobalt project at Murrin Murrin.

Available at:

<http://www.austlii.edu.au/au/cases/wa/WASC/2006/93.html>

[Bradley Foster & Ors \(Waanyi Peoples\)/Copper Strike Ltd/Queensland; \[2006\] NNTTA 61 \(19 May 2006\)](#)


Future Act Determination. - By consent, the determination of the Tribunal is that the acts, namely the grant of Exploration Permits (EPM) 15071 and 15073 to Copper Strike Ltd, may be done subject to compliance with the terms of the 'Native Title and Heritage Protection Agreement' as filed with the National Native Title Tribunal.

Available at:

<http://www.austlii.edu.au/au/cases/cth/NNTTA/2006/61.html>

[Hamersley Iron Pty Ltd - v - Puutu Kurnti Kurrama Pinikura Native Title](#)

Western Australia. Open Court. Tenements applied for to facilitate infrastructure required for the development of an iron ore mine (Brockman Number 4). The objectors maintain that the applicant did not pursuant to the relevant provisions of the *Mining Act* obtain an entry permit authorising it to enter and mark out the



land the subject of a registered native title claim.

Available at:

[http://www.doir.wa.gov.au/documents/mineralsandpetroleum/wardens\\_decisions/2006WAMW7v2.pdf](http://www.doir.wa.gov.au/documents/mineralsandpetroleum/wardens_decisions/2006WAMW7v2.pdf)

[Nyangatjatjata Aboriginal Corporation & Ors v Registrar of Aboriginal Corporations \[2006\] FCA 606 \(23 May 2006\)](#)

Federal Court of Australia. The Nyangatjatjata Aboriginal Corporation ('the Corporation') and members of its governing committee brought an application for an order for review against a decision made by the Registrar of Aboriginal Corporations appointing an administrator to the Corporation.

Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/606.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/606.html)

[Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Group \[2006\] HCATrans 251 \(19 May 2006\)](#)

High Court of Australia. Application for special leave to appeal. Available at:

<http://www.austlii.edu.au/au/other/HCATrans/2006/251.html>

[ASHWIN & ORS -v- MINARA RESOURCES LTD \[2006\] WASC 75 \(10 May 2006\)](#)

Supreme Court of Western Australia. This is the return of two applications, both of which raise short but important questions in relation to native title. Both applications were brought by the defendant. By one application, the defendant seeks to have the proceedings (litigation by Goldfields native title claimants over a ten year old agreement) stayed until such time as all proper plaintiffs are identified and joined in the proceedings. By the other application, the defendant seeks to strike out all or alternatively certain parts of the plaintiffs' statement of claim. Available at: <http://www.austlii.edu.au/au/cases/wa/WASC/2006/75.html>

[Kemp v Registrar, Native Title Tribunal \[2006\] FCA 568 \(5 May 2006\)](#)

Federal Court of Australia. The motion sought an order prohibiting building or other works in an area in northern New South Wales. The area is in the jurisdiction of the Greater Taree City Council and is on a headland in the South Pacific Ocean bordered by Khappinghat Creek. The area is known as Khappinghat Nature Reserve and Saltwater National Park.

Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/568.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/568.html)

[Rubibi Community v State of Western Australia \(No 7\)\(with Corrigendum dated 10 May 2006\) \[2006\] FCA 459 \(28 April 2006\)](#)

Federal Court of Australia. Determination of native title. Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/459.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/459.html)

[Jango v Northern Territory of Australia \(No 6\) \[2006\] FCA 465 \(3 May 2006\)](#)

Federal Court of Australia. Application for a determination of compensation, and whether the Court is required to make a determination of native title. Applicants failed to establish that they were native title holders for the area. If they had reached that threshold, compensation would have been payable on the value at the time of the acquisition, not at the time the NTA came into operation. Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/465.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/465.html)

[Manas v State of Queensland \[2006\] FCA 413 \(13 April 2006\)](#)

Federal Court of Australia. Consent determination.

Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/413.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/413.html)

[Nona and Manas v State of Queensland \[2006\] FCA 412 \(13 April 2006\)](#)

Federal Court of Australia. Consent determination. Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/412.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/412.html)

[Determination of native title—Larrakia](#)

*Risk v Northern Territory* [2006] FCA 404 (13 April 2006) Determination that native title does not exist. Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/404.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/404.html)

### **Reported Cases**

(Sourced from NNTT Judgements and Information email alert service and the Federal Court's Native Title Bulletin)

*Anderson & Anor v The Director-General of the Department of Environment and Conservation & Ors* (2006) 144 LGERA 43; [2006] NSWLEC 12

*Moore and Ors v Mungeranie and Ors* (2005) 193 FLR 62; [2005] NNTTA 53

*Sampi v State of Western Australia* (No 2) (2005) 224 ALR 358; [2005] FCA 1567.



## Recent Cases - Other

### DALAM MAHKAMAH RAYUAN MALAYSIA

These are appeals against the decision of the learned Judicial Commissioner of the High Court in Miri, Sarawak made on 21.3.2001 after a retrial of seven consolidated suits between the parties therein concerning the plaintiffs' claims to native customary rights over certain plots of land situated at what was then known as Kampong Dagang, Miri which were taken possession of by the State and the houses thereon demolished to make way for commercial development of the area.

Available at:

<http://www.kehakiman.gov.my/jugdment/coa/lat/est/rayuan%20sivil%20No.Q-01-18-01%20&%20Q-01-22-01.htm>

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## Case Notes

### **Issue:**

The case in *Jango v Northern Territory of Australia* [2006] FCA 318 involved a claim for compensation over the tourist town of Yulara near Uluru under s 61(1) of the *Native Title Act 1993 (Cth)* (NTA). In order to demonstrate their entitlement to compensation, the claimant group needed to establish that they had native title rights and interests over the area at the time the 'compensation acts occurred'. These acts included the granting of freehold leases and the construction of public works which are to said to have extinguished native title between 1979 and 1992.

### **Background:**

The applicants asserted that they and their predecessors held native title rights and interests over the claim area under the traditional laws and customs of the Western Desert bloc until they were extinguished by the compensation acts. These acts include the development of the town of Yulara, Connellan airport and other public works. The claim group did not rely on the fact that they were a 'cohesive or discrete' community but claimed that the current people of the Western Desert were descended from the Western Desert at sovereignty and that the claimants had similar laws and customs as those acknowledged by the Western Desert people. The claimants relied on the fact that indigenous societies were not static. However the respondents argued that the claimants did not establish the members of the claim group acknowledged and observed traditional laws and customs that they

asserted and that the traditional laws and customs were those of traditional laws and customs of the Western Desert bloc.

### **Held:**

The laws and customs governing 'the acquisition and holding of rights and interests in country' were 'central to the controversy between the parties' in the case.<sup>1</sup> The court said that the main issue was whether there was a continuity of the society until the compensation acts were carried out. Justice Sackville found that the evidence of the Aboriginal witnesses in relation to rights and interests in land did not 'correspond to the case pleaded by the applicants'<sup>2</sup> and that the evidence did not present a 'consistent pattern of observance of traditional laws and customs'.<sup>3</sup> As a result, the 'evidence falls short of establishing the existence of a body of laws and customs relating to rights and interests in land that was acknowledged and recognised by members of the Western Desert bloc'.<sup>4</sup> Having found that the claimants had failed to establish their native title rights prior to the compensation acts, the compensation act had not effect on any rights and there the compensation could not be claimed.

### *Other matters:*

Sackville J went further to discuss matters of extinguishment if native title had been proven by the claimants. He found that:

Even though pastoral leases had been granted over the claim area in 1882 and 1896, some native title rights and interests would have survived the claim area since the both leases contained a broad reservation in favour of Aboriginal people.

Therefore, if native title existed, claimants would have a right to compensation as a result of the 'compensation acts' starting at 1979. An entitlement would have arisen at the time of the construction of the public works.

### **Implications:**

The *Jango* decision was a much anticipated case on compensation under the NTA and it

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<sup>1</sup> *Jango v Northern Territory of Australia* [2006] FCA 318 per Sackville J, [208].

<sup>2</sup> *Jango v Northern Territory of Australia* [2006] FCA 318 per Sackville J, [405-06].

<sup>3</sup> *Jango v Northern Territory of Australia* [2006] FCA 318 per Sackville J, [446].

<sup>4</sup> *Jango v Northern Territory of Australia* [2006] FCA 318 per Sackville J, [446].





was hoped that it would resolve the question of compensation over the extinguishment of native title. However since the claim failed many issues remain unresolved such as the quantum of compensation that can be received by claimants. The case highlights the hurdles faced by claimants when making a successful claim. Claimants need to prove:

they held native title rights and interests prior to the acts of compensation occurring;  
that those rights and interests have not been extinguished by non-compensable acts before the compensation acts were done;  
that the compensation acts had extinguished the native title rights and interests; and  
the amount of compensation that they are entitled to as a result of the compensation act

A failure to establish any of these elements will defeat a claim. This reflects how native title is conceptualised and calculated.

#### Online resources:

For full judgment see:

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2006/318.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/318.html)

See further for NNTT case details:

<http://www.nntt.gov.au/newsletter/hotspots/issues/19.html>

#### **Risk v Northern Territory of Australia (Unreported, FCA, 17 May 2006, Mansfield J)**

##### Issue:

The Larrakia claim involved a number of claimant applications for the recognition of native title over land and waters in and around Darwin. The main issues that the court had to consider were:

Whether the Larrakia people had established that they held native title rights and interests in the claim area under s 223(1) of the *Native Title Act (Cth)* (NTA)

Where established, the nature and extent of those rights and interests;

Whether native title had been extinguished under the common law or the NTA.

##### Background:

The Larrakia claim covers an area of 30 sq. km. consisting of parts of metropolitan Darwin and its surrounds on the Darwin Peninsular which

was mainly Crown land or land held by the Darwin and Palmerston City Council. The proceedings involved a consolidation of 19 applications filed by three different claim groups (the Larrakia, Quall and Roman applicants). The Larrakia argued that their claim group encompassed the Quall and Roman applications which the Quall applicants, on behalf of the Danggalaba Clan and the Kulumbiringin Clan, argued that the Larrakia were a language group and that they should be recognised as native title holders. The Roman applicants withdrew their claim.

##### Held:


In order to succeed in the claim the Larrakia people needed to satisfy the requirements of s 223 (1) of the NTA. In particular they needed to establish that they are a society united in and by their acknowledgement and observance of a body of accepted laws and customs; that the present day body of accepted laws and customs in essence is the same body of laws and customs acknowledged and observed by the ancestors of members of the Larrakia people adapted to modern circumstances; and that the acknowledgement and observance of those laws and customs has continued substantially uninterrupted since sovereignty in 1825, when the area of the then colony of New South Wales was extended westwards to a longitudinal line west of the Darwin area, and that the society has continued to exist throughout that period as a body united in and by its acknowledgement and observance of those laws and customs.

While recognising that the Larrakia community is a 'vibrant, dynamic society which embraces its history and traditions'<sup>1</sup> which has both strong self and community recognition he found that there was strong evidence of a number of factors that 'affected their continued observance of, and enjoyment of, the traditional laws and customs of the Larrakia people that existed at sovereignty.'<sup>2</sup> Ultimately the court concluded that the present day Larrakia people did not have rights and interests possessed under traditional laws acknowledged, and the traditional customs observed, by the Larrakia people at sovereignty. In reaching his conclusion Mansfield J relied on the majority judgement in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422. He looked at three periods in history and noted that:

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<sup>1</sup> *Risk v Northern Territory of Australia* (unreported, FCA, 17 May 2006, Mansfield J) [839] see also Summary at [11].

<sup>2</sup> *Risk v Northern Territory of Australia* (unreported, FCA, 17 May 2006, Mansfield J), Summary [12].



The settlement of Darwin from 1869, the influx of other Aboriginal groups into the claim area, the attempted assimilation of Aboriginal people into the European community and the consequences of the implementation of those attempts and other government policies (however one might judge their correctness), led to the reduction of the Larrakia population, the dispersal of many Larrakia people from the claim area, and to a significant breakdown in Larrakia people's observance and acknowledgement of traditional laws and customs.<sup>3</sup>

In Mansfield J's view, there was a considerable degree of ambiguity and inconsistency in relation to the traditional laws and customs which was caused by a combination of events that interrupted the practice and observance of those traditional laws and customs.<sup>4</sup> He found that a lot of evidence was only given in general terms and that the passing of knowledge was not consistent with the way in which knowledge was acquired from the Larrakia people pre-sovereignty. Mansfield J found that the evolution of those laws and customs as a result of changes 'reflect a sincere and intense desire to re-establish those traditional laws and customs adapted to the modern context' but did not support a determination of native title.<sup>5</sup>

#### Implications:

In reaching his final judgment, Mansfield J considered a number of important issues including: the definition of native title under s 223 (1); what is meant to be determined when making a determination of native title under s 225; and the case law interpreting s 223(1) and s 225 especially *Western Australia v Ward* (2002) 213 CLR 1; [2002] HCA 28 and *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58.

In particular, Mansfield J looked at the majority judgement in *Yorta Yorta* which held that the relevant rights and interests that need to be established under s 223 (1) were those which are derived from traditional laws and customs

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<sup>3</sup> *Risk v Northern Territory of Australia* (unreported, FCA, 17 May 2006, Mansfield J), Summary [12], [812].

<sup>4</sup> *Risk v Northern Territory of Australia* (unreported, FCA, 17 May 2006, Mansfield J), [835].

<sup>5</sup> *Risk v Northern Territory of Australia* (unreported, FCA, 17 May 2006, Mansfield J), [836].

evidencing a normative society that existed before sovereignty. He said that this affects the meaning of what is meant to be 'traditional' and that the observance of traditional laws and customs must have been "substantially uninterrupted" since sovereignty.<sup>6</sup>

#### Online resources:

See for NNTT summary:

[http://www.nntt.gov.au/newsletter/hotspots/1147248819\\_2000.htm](http://www.nntt.gov.au/newsletter/hotspots/1147248819_2000.htm)

For complete judgement see:

[http://www.austlii.edu.au/au/cases/cth/federal\\_c/2006/404.html](http://www.austlii.edu.au/au/cases/cth/federal_c/2006/404.html)

#### Publications

##### Aboriginal Studies Press

*Compromised Jurisprudence: Native title cases since Mabo*

Lisa Strelein

**\$39.95, pb, ISBN-10 0-85575-533-4, ISBN-13 978-0-85575-533-1**

*Over the past decade, Strelein has been a leader in the field as one of the most concise, sober and reliable commentators on the jurisprudence of the law of native title. Practitioners, scholars, teachers and students would be well advised to add this volume to their collection.*

David Ritter, Faculty of Law, University of Western Australia

*Compromised Jurisprudence* traces the development of the courts' thinking from the original thinking in *Mabo v Queensland [No. 2]* through to the significant High Court decisions in 2002 and the Federal Court's implementation in such cases as *De Rose*. Each chapter contains a discrete analysis of the most significant cases during this period. A timeline maps the trajectory of the key doctrines of native title while the book's conclusion identifies the underlying themes and contradictions in the law. This is the only critical non-textbook analysis of native title law.


#### Forthcoming publications

##### August

*Aboriginal Darwin: A guide to exploring important sites of the past and present*  
Toni Bauman with Samantha Wells

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<sup>6</sup> *Risk v Northern Territory of Australia* (unreported, FCA, 17 May 2006, Mansfield J) at [52] and [54].



**\$34.95, pb, full colour throughout, ISBN-10 0-85575-446-X ISBN-13 978-0-85575-446-4**

*Aboriginal Darwin* peels back layers to show the rich heritage and complex cultures of Aboriginal people, both before and since colonisation. It includes contemporary and historical sites that range from the harbour to the beaches, monsoon forests, gardens, parks, camping places, exhibitions, cultural displays and buildings in the CBD, supplemented by information about sites not accessible to visitors. Beautifully illustrated, *Aboriginal Darwin's* easy-to-use layout allows users to explore at their own pace. It's a practical guide that offers readers the bonus of an alternative social history of Darwin.

## New and forthcoming releases

### Other

Office of Native Title WA. *Preparing Connection Material: A Practical Guide*.

This new publication is a companion document to the State's Guidelines for the Provision of Information in Support of Applications for a Determination of Native Title, published in October 2004. To obtain a copy of the Guide, please contact Theresa Venz (08) 9222 9605 or email [Theresa.Venz@ont.wa.gov.au](mailto:Theresa.Venz@ont.wa.gov.au).

[\*Ethnohistorical Evidence and First Nations, Metis and Tribal Claims in North America: A Review of Past and Present Experiences with an Eye to the Future\*](#) by Arthur J. Ray, Professor, History Department, University of British Columbia; Woodrow Wilson Center Fellow. It provides useful comparative perspective for anthropologists and historians working in native title in Australia. Available at: <http://www.wilsoncenter.org/events/docs/Aboriginal%20Claims%20Conference%20-%20Skip%20ray%20working%20paper%20%5B%20Revised%5D.pdf>

## Online Publications

### HREOC

Speech, Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner, Human Rights and Equal Opportunity Commission. The Elliott Johnston Tribute Lecture, Flinders University, Tuesday 23 May 2006 [\*From rhetoric to reconciliation - Addressing the challenge of equality for Aboriginal and Torres Strait Islander peoples in\*](#)

[criminal justice processes](http://www.humanrights.gov.au/speeches/social_justice/reconciliation20060523.html) Available at: [http://www.humanrights.gov.au/speeches/social\\_justice/reconciliation20060523.html](http://www.humanrights.gov.au/speeches/social_justice/reconciliation20060523.html)

### Jumbunna Indigenous House of Learning [Journal of Indigenous Policy Issue 5](#)

Available at:

[http://www.jumbunna.uts.edu.au/journals/jip/JIP\\_Issue\\_5.pdf](http://www.jumbunna.uts.edu.au/journals/jip/JIP_Issue_5.pdf)

### National Native Title Tribunal

Please visit the NNTT website at [www.nntt.gov.au](http://www.nntt.gov.au) to download any of these publications.

Determination brochure

[The Mandingalbay Yidinji People's native title determination](#)

Available at:

[http://www.nntt.gov.au/metacard/files/Mandingalbay\\_Yidinji/A2\\_A5\\_Mand%20WEB%20PDF.pdf](http://www.nntt.gov.au/metacard/files/Mandingalbay_Yidinji/A2_A5_Mand%20WEB%20PDF.pdf)

### [Indigenous Fishing Bulletin June 2006](#)

Includes:

- A ranger's claim that a native title ruling over a series of uninhabited Torres Strait islands will stop visitors helping themselves to turtle eggs.

Available at:

<http://www.nntt.gov.au/publications/data/files/Indigenous%20Fishing%20Bulletin%20May%202006.pdf>

### [Library Bulletin May 2006](#)

The latest bulletin of materials recently received in the Tribunal Libraries.

Available at:

<http://www.nntt.gov.au/Library/files/WhatsNewInTheLibraryMay2006.pdf>

### [Library Bulletin April 2006](#)


The latest bulletin of materials recently received in the Tribunal Libraries. Available at

<http://www.nntt.gov.au/Library/files/WhatsNewInTheLibraryApril2006.pdf>

### [Native Title Hot Spots, Issue 19-](#)

recommended for legal practitioners.

Issue 19 includes: Determination of native title in Rubibi; Determination of native title – two more in the Torres Strait; Compensation application over Yulara – Jango case; Determination of native title – Larrakia.



Available at:

<http://www.nntt.gov.au/newsletter/hotspots/issues/19.html>

### **Talking Native Title**

Produced quarterly, *Talking Native Title* presents the latest news from the Tribunal and includes current events, latest agreements, emerging issues for all stakeholders and updates about Tribunal services and staff.

Issue No 19 of Talking Native Title includes:

- Recognition of the Mandingalbay Yidinji people's native title rights
- Sea rights the next step for Torres Strait Islanders
- New jobs created by Koolan Island agreement
- Bush tucker and natural medicine revived on NSW reserve

Available at:

[http://www.nntt.gov.au/metacard/files/TNT19/TNT\\_Issue\\_19%202006\\_Web.pdf](http://www.nntt.gov.au/metacard/files/TNT19/TNT_Issue_19%202006_Web.pdf)

### **Talking South Australia June 2006**

In this issue:

#### *West coast region*

Get a full update on the progress of native title applications for the Far West Coast, Barngarla and other claims in this region.

#### *Southern region*

The Narungga community are close to finalising South Australia's first fishing and aquaculture ILUA in this region.

#### *Northern region*

Intensive work is underway to try and resolve overlap issues in the north of the state. Find out the latest developments for Adnyamathanha #1, Adnyamathanha # 2, Arabunna and Kokatha among others.

Available at:

<http://www.nntt.gov.au/publications/talkingsa2.html>

### **Talking Victoria - June 2006**

In this issue:

New applications: Two new native title claims have been received by the Federal Court – one for the Gunditjmara people and one for the Bunurong people.

Mining exploration and a golf course ILUA

Three Indigenous land use agreements (ILUAs) were registered and celebrated at Bendigo and

Creswick recently. The agreements saw traditional owners involved in new developments, even though their native title claims are still under way.

Melbourne forums

The work of the Indigenous Land Corporation (ILC) was the focus of a presentation by principal legal officer Paul Hayes at the Victoria/Tasmania Registry's May native title forum. Read a summary of his major points and find out what to expect at the July forum.

Available at:

<http://www.nntt.gov.au/publications/talkingvic1.html>

## **Government Publications**

[Native Title Conference 2006: Tradition and Change, Culture and Commerce. Native Title: The Government's Proposals for Reform](#) by The Attorney-General Philip Ruddock MP 26 May 2006. Available at: [http://www.ag.gov.au/agd/www/MinisterRuddockhome.nsf/Page/Interview\\_Transcripts\\_2006\\_Transcripts\\_26\\_May\\_2006\\_-\\_Transcript\\_-\\_Native\\_Title\\_Conference\\_2006](http://www.ag.gov.au/agd/www/MinisterRuddockhome.nsf/Page/Interview_Transcripts_2006_Transcripts_26_May_2006_-_Transcript_-_Native_Title_Conference_2006)

## **Other**

[Towards a new Indigenous representative body](#) by Bob McMullen, 23 March 2006. 'Writing for the Progressive Essay series, Bob McMullen examines the need for an Indigenous representative body to hold government to account, and suggests a number of ways in which such a representative body could be improved'. Available at: <http://www.bobmcmullen.com/files/McMullen%20Bob%20-%20Towards%20a%20new%20indigenous%20representative%20body.pdf>

*Law Report*, ABC Radio National. Discussion with retiring Federal Court judge, Ron Merkel. Hear his frank views on anti-terror laws, native title and migration law. And find out why he's giving up the bench for the life of an envelope-pushing barrister who'll be taking on 'strategic litigation'. [Leaving high office for a higher purpose](#)





Available at:

<http://www.abc.net.au/rn/lawreport/stories/2006/1644195.htm>

### [Gáldu Čála - Journal of Indigenous Peoples' Rights No 1, 2006](#)

Some legal considerations concerning Saami rights in saltwater: The extent of ownership rights in saltwater areas under Norwegian and international law Elisabeth Einarsbøl

Available at:

[http://www.galdu.org/govat/doc/sjosamisk\\_engli sh.pdf](http://www.galdu.org/govat/doc/sjosamisk_engli sh.pdf)

### [Yanyuwa people win Native Title claim](#)

ABC Radio, The World Today - Thursday, 29 June, 2006, 12:30.

Reporter: Sarah Hawke

Available at:

<http://www.abc.net.au/worldtoday/content/2006/s1674823.htm>

### [Exploring Country: A guide to making an exploration and mining agreement](#)

Department of Primary Industry, Fishery and Mines, Northern Territory

Available at:

[http://kakadu.nt.gov.au/pls/portal30/docs/FOLD ER/DBIRD\\_ME/LAND\\_ACCESS/MINERALS/T ENURE/PDF/EXPLGUIDE.PDF](http://kakadu.nt.gov.au/pls/portal30/docs/FOLD ER/DBIRD_ME/LAND_ACCESS/MINERALS/T ENURE/PDF/EXPLGUIDE.PDF)

*Building Sustainable Communities: Good Practices and Tools for Community Economic Development. Institute for Governance, Canada.*

Commissioned by Indian and Northern Affairs Canada (INAC), this web-based publication was designed by the Institute to systematically capture the knowledge and insights of economic development experts, many of whom were about to retire from the public service. Based on the IOG Memory Stick Program: Capturing Corporate Wisdom for Future Leaders

[http://www.iog.ca/learning\\_centre.asp?pageID=35](http://www.iog.ca/learning_centre.asp?pageID=35), it covers numerous economic development issues, ranging from business development – to employment - to tourism, and provides useful information and links for economic development officers across governments and in First Nation and Inuit communities. Available at: [http://www.iog.ca/view\\_publication.asp?area=10&publicationItemID=232](http://www.iog.ca/view_publication.asp?area=10&publicationItemID=232)

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## Upcoming Events

### Conferences

#### [Land, Memory, Reconstruction and Justice: Perspectives on Land Restitution in South Africa](#)

13-15 September 2006. Houw Hoek Inn (Cape Town, South Africa)

[AAS Annual Conference 2006. Beyond Science and Art: Anthropology and the Unification of Knowledge](#) James Cook University, Queensland, Australia. 27-30 September, 2006

#### **Indigenous Researchers Forum (IRF)** Adelaide, South Australia

- [Registration Form](#)
- [Preliminary Program Schedule](#)

25 - 27 September, 2006. For further information please contact Leanne Smith Telephone: 08 8302 6784 Facsimile: 08 8302 7034 or Email: [leanne.smith@unisa.edu.au](mailto:leanne.smith@unisa.edu.au)

### Other

#### **Capacity Building in Indigenous Communities Training Seminar**

Explore a wide range of issues relating to Indigenous communities, with ARDS 'Capacity Building in Indigenous Communities Training Seminars' for 2006. Conducted by RICHARD TRUDGEN, author of the influential book 'Why Warriors Lie Down and Die'

##### Capacity Building That Works

This training will cover both the theory and practice of capacity building techniques effectively applied to local governance, law, economics, health and substance abuse issues.

##### Seminar Dates

Alice Springs 01 - 02 August 2006

Canberra 25 - 26 July 2006

Darwin 05 - 06 September 2006

Nhulunbuy 08 – 09 November 2006

Registration Deadline: One week prior to seminar. Group discounts apply to groups of 10 or more. For bookings and enquiries, phone Alice or Zinnia on (08) 8987 3910 or go to our website: [www.ards.com.au/seminars.htm](http://www.ards.com.au/seminars.htm)


### Recent Events

#### **Native Title Conference 2006: Tradition and Change, Culture and Commerce**

Darwin, 24 – 26 May 2006.

The Native Title Conference 2006 was attended by 500 conference delegates, with more than 100 speakers presenting over the three days. All native title representative bodies and native





title services from across Australia attended the conference, and made up more than half of the conference delegates. This year people from ten prescribed bodies corporate (PBCs) attended, and they were able to meet together for the first time. The conference conveners would like to thank the Larrakia people and nation for providing such a warm welcome to the conference delegates, and thanks also to everyone who supported and contributed to the event.

See speech by Attorney-General Philip Ruddock [Native Title Conference 2006: Tradition and Change, Culture and Commerce. Native Title: The Government's Proposals for Reform](#) by The Attorney-General Philip Ruddock MP 26 May 2006. Available at: [http://www.ag.gov.au/agd/www/MinisterRuddockhome.nsf/Page/Interview\\_Transcripts\\_2006\\_Transcripts\\_26\\_May\\_2006\\_-\\_Transcript\\_-\\_Native\\_Title\\_Conference\\_2006](http://www.ag.gov.au/agd/www/MinisterRuddockhome.nsf/Page/Interview_Transcripts_2006_Transcripts_26_May_2006_-_Transcript_-_Native_Title_Conference_2006)

Other papers from the Native Title Conference are being uploaded to the conference website as they become available. Please see <http://ntru.aiatsis.gov.au/conf2006/papers.html>

## Recent Events

### Launch of the 'Intellectual property and Indigenous Knowledge: Access, Ownership and Control of Cultural Materials' Project at AIATSIS

This project, developed by Dr Jane Anderson (AIATSIS) and the Intellectual Property Research Institute of Australia, was designed to address the problem that Indigenous people are generally not the owners of their cultural material. It sought to develop practical solutions to some of these problems as well as to make a number of proposals for future strategies so that the mistakes of the past are not repeated.

The three major outcomes of the project are:

1. a primer on legal issues facing cultural institutions that hold Indigenous cultural material
2. a draft Framework for Community Protocols to enable communities to develop their own guidelines for engaging with people external to the community so that they may protect their traditional knowledge
3. a Research Report which will address five key themes arising from extensive

consultation with Indigenous communities, including: attitudes to the term 'Indigenous cultural property'; information about access and ownership of cultural material; attitudes to the creation and exploitation of Indigenous knowledge; community needs and expectations of intellectual property law; how intellectual property could be used to advance Indigenous interests.

The primer is available on-line at <http://www.ipria.org/publications/index.html>

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## Opportunities

- Call for papers for the Cultural Heritage and Indigenous Cultural and Intellectual Property Rights conference, which will be held in Burra, South Australia, 3rd-5th December, 2006. Abstracts can be submitted on-line at the following URL:

[http://ehlt.flinders.edu.au/archaeology/conferences/Burra%202006/Burra\\_Indigenous\\_2006.php](http://ehlt.flinders.edu.au/archaeology/conferences/Burra%202006/Burra_Indigenous_2006.php)

- Call for papers - Pacific transnationalism: tracing ties to the homelands


La Trobe University, Melbourne, Australia  
20 Nov 2006 to 22 Nov 2006

[http://www.aas.asn.au/News/news\\_item.php?s=&e\\_num=45](http://www.aas.asn.au/News/news_item.php?s=&e_num=45)

- Those interested in enrolling in the **UWA Graduate Certificate/Diploma in Applied Anthropology (Native Title & Cultural Heritage)** mid-year are advised that applications should be lodged by the 24th July 2006; and later by arrangement. However early applications are strongly encouraged. For further information about the course please see:

[http://www.anthropology.arts.uwa.edu.au/home/applied\\_anthropology](http://www.anthropology.arts.uwa.edu.au/home/applied_anthropology)

- This is a **final call for post-graduate papers for the AAS Conference Post-Graduate Symposium** held on Tues. 26th Sept. preceding the main conference. Papers are welcomed on any subject undertaken as research by post-graduate scholars. This day is



intended to provide post-graduates with the opportunity to present at a major conference in a supportive environment.

material directly on to all who kindly responded to my email earlier this year. Thanks. Robert Graham. [ergm@optusnet.com.au](mailto:ergm@optusnet.com.au)

It is a good opportunity to obtain experience in this important aspect of academia. Send proposals to [Kevin.mayo@jcu.edu.au](mailto:Kevin.mayo@jcu.edu.au) There are 3 scholarships available to attend the conference for those presenting papers. For details of these scholarships see the ANSA site at [www.aas.asn.au](http://www.aas.asn.au)

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## Employment

**Queensland South Native Title Services**, a relatively new Native Title services provider is now setting up its **Consultant Register**. Could anthropologists interested in Native Title consultancies in southern Queensland contact me and I can send on the relevant documentation. I will also try and forward this

## NATIVE TITLE IN THE NEWS

### National

09-May-06 **Funding to help Aboriginal people buy their own home** The budget has been expanded to help Aboriginal people to buy their own homes on communal land. About 460 families will benefit from the \$54 million set aside for cheap loans. The loans would be offered at cheap interests rates of 4.5 per cent and are capped at 1 per cent less than the Commonwealth Bank standard home loan. The scheme is currently running only in the Northern Territory but the government wants to 'lure the states into changing their laws to allow home ownership to flourish across the country'. The Government has promoted the scheme believing that 'private home ownership can break the poverty cycle.' According to the 2001 Census data, only 32 per cent of Indigenous Australians own or a repaying for a loan compared to 74 per cent of the rest of the community. Australian, 9-May-06, pg 2.

10-May-06 **Badu ranger program initiated** Badu Island has initiated its own ranger program to 'participate in resource management and community and visitor education'. The program is one of the outcomes negotiated under an Indigenous Land Use Agreement (ILUA) between the Badu and Mura native title holders over the establishment of a radar facility on Pumpkin Island. The project 'ensuring appropriate local management and protection of land' and 'pioneers an approach to

Torres Strait Islander participation in activities that contribute to border protection'. Koori Mail, 10-May-06, pg 30.

10-May-06 **Retiring judge criticises Australia's native title system** Retiring Judge Ron Merkel has said that the current native title system is in a 'state of gridlock and that the only way out is for parties to mediate'. He said that the present system 'imposed demands on the parties and the court that were unprecedented in adversarial litigation'. He said that the process was generally protracted with 'ongoing mediation, [a] lack of financial resources for claimant communities to pursue their claims, the failure to resolve intra-communal disputes and many logistical difficulties' undermining the possibility of reaching mediated outcomes which is a 'better more efficient, more effective and fairer way of resolving native title disputes'. This approach has been supported by Federal Attorney General Philip Ruddock. Koori Mail, 10-May-06, pg 14.

27-May-06 **New rapport developed between mining and Aboriginal communities** The Argyle Mine is producing a 'strong indigenous workforce' with about 25 per cent being Aboriginal a figure which Rio Tinto hopes to double in the next few years. This is a 'radical change in attitude' away from the 'grim warnings and antagonism' that came when Native Title legislation was first introduced. Executive directors of the Mining Council of Australia, Mitchell Hooke said that 'it's the right thing to do but the primary driver is the business case'. The change comes as a result of the labour shortages created by the mining