

title has been established. The Court leaves it to the community to determine those issues.¹⁶

This is consistent with the full Federal Court decision in *De Rose* and a number of determinations, such as *Alyawarr* that specifically include in the rights and interest identified, the right to determine the rights and interests among the group.¹⁷ The judge was in no doubt that the applicants must demonstrate a connection with the area that is subject of the separate question. But, it is not necessary for the applicants to prove a connection that is 'specific' to the Perth area, distinct from their connection to whole claim area.

Without purporting to specify the final terms of a formal Determination of Native Title, the judge observed what the rights and interests under native title would be (absent of any extinguishing acts). These were said to be non-exclusive communal rights to occupy, use and enjoy the area, including living on the area, conserving and using natural resources, protecting sites, carrying on economic activities education about laws and customs.

Despite the finding that the Noongar have proved that native title has continued in the southwest, the impact of extinguishment would mean that very little remains to be enjoyed. In the area around Perth that is the subject of this decision there are very few parcels of claimable land, and indeed throughout the whole of the Single Noongar Claim area there is little that would not be wholly or substantially impacted. To this end, the judge encouraged the parties to return to the negotiating table to resolve the matter. The State, joined by the Commonwealth, quickly moved to appeal the decision although they have also indicated that they wish to negotiate.

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Australian Anthropological Society Annual Conference and Native Title Colloquium

26-29 September 2006, James Cook University, Cairns

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This year's AAS Conference took place at the Cairns campus of James Cook University. Considering the distance from the major cities (but perhaps unsurprisingly given the tropical location) the conference was extremely well attended. Certainly the Conference itself made the trip to Cairns

¹⁶ Wilcox J [82].

¹⁷ Wilcox J *ibid*, *Alyawarr*: see [81], [110]-[112] and paras 2 and 6 of the formal determination, which is set out at 504-505. See also *Western Australia v Ward* (2000) 99 FCR 316 (*Ward (FC1)*) at [202].


worthwhile. Rosita Henry and the rest of the JCU team put together a stimulating and enjoyable meeting which will take some beating by next year's less exciting location – the 2007 meetings will take place in Canberra!

The Conference began with a Native Title Colloquium and a Post-Graduate Colloquium, which took place in parallel on the day preceding the Conference proper. The Native Title Colloquium, convened by David Martin and David Trigger (who stepped in relatively late to replace Craig Jones), included academics, staff from Native Title Representative Bodies and State Government Native Title Offices, as well as several independent consultants. Most – but not all – of those attending were anthropologists, with a smattering of lawyers also participating.

The Colloquium was split into two sessions, the first dealing with issues pertaining to connection reports and the second addressing 'Anthropology in the future of native title'. Both had good audiences, and useful questions and discussions followed the presentations. The morning session on issues of connection began with my own paper, which dealt with the involvement of 'diaspora' or 'stolen generations' families' in native title claims in northern Queensland. Other presenters included David Thompson, who presented case material outlining the (apparently successful) arguments for a composite argument for connection in a claim that includes members of three distinct 'tribal' groups in north-eastern Cape York Peninsula.

Jodi Neal outlined some of the problems with the concept of 'society' in the native title context, presenting a useful critique of the impractical and conceptually unsustainable definition of 'society' as being identical to the claimant group. Neal's discussion of society echoed David Martin's later discussion of the 'normative system' in accounts of connection, which combined his usual analytic clarity with a number of useful pointers for anthropological practitioners. Peter Blackwood (presenting material from joint work with Paul Memmott) also presented a useful analysis of traditional decision making processes, including case material from the Quandamooka claim. The circulated version of Blackwood and Memmott's work – like Martin's discussion of 'norms' – is likely to inform the writing of connection reports by many of the anthropologists who attended the session.

The second panel on connection included Wendy Ashe's overview of the changes in the ways that anthropologists working for the Northern Land Council have researched and presented anthropological material. Ashe noted the early continuities from Aboriginal Land Rights Act 'claim books' and the increasing sophistication of



engagement with the legislative context (notably through the citation of detailed evidence for anthropological findings in native title reports) as the 'native title era' has developed.

In the first of the day's presentations by an employee of a State native title office, Liz Dalgleish (from Victoria's Department of Justice) discussed the role of inference in demonstrating connection in native title. Both Dalgleish's presentation and the later presentation by Debbie Fletcher from Western Australia's Office of Native Title (on flexibility and transparency) spurred a number of questions about the assessment of connection materials from members of the audience. Whilst their inclusion in the Colloquium usefully added insights on State Governments' role in assessing arguments about connection, it was also obvious that some members of the audience were unconvinced by the presentation of the State Governments' good faith in the native title process.

The current state of native title anthropology was perhaps best summed up by Lee Sackett and Phil Vincent's presentations, which were the last two papers of the Colloquium. Sackett's paper was a passionate argument for the benefits of native title for anthropologists, which he suggested provides both opportunities for fieldwork in a range of Indigenous contexts and intellectual challenges for anthropologists. Taking a somewhat different view, Vincent argued that the usefulness of native title was increasingly questionable – not least to many potential or actual claimants – and that we should not be surprised that Indigenous Australians are increasingly seeking to have their interests confirmed outside of the framework of the Native Title Act. Certainly, the problems are now evident to all of those involved in native title, whether as claimants, other parties or professionals. However, the intellectual challenges of native title work are also evident – even if, as many argued, native title is

now predominantly a 'lawyer's game' – and anthropologists continue to engage usefully with native title practice, both as practitioners and in thinking more broadly about native title's social effects.

Beyond the Native Title Colloquium, the main Conference also had much to offer participants working in 'Indigenous Australia'. Perhaps in spite of a relatively loose theme ('Beyond Art and Science'), the keynote speech by Bruce Kapferrer (on the substance underlying the 'anthropological attitude'), the plenaries and the various parallel sessions maintained the interest and enthusiasm of audiences. A number of papers dealt with research undertaken with Indigenous Australians, including papers on the Palm Island 'riots', the bureaucratization of Aboriginal knowledge, personhood, the use of kava in Arnhem Land, the relationship between aesthetics and affect in Aboriginal art, and the relationship between ghosts and photographs in Arnhem Land and in Cape York Peninsula, and 'joking' in Aboriginal Australia and the Torres Strait Islands. Papers by a number of younger scholars, notably Tony Redmond, Katie Glaskin and Yasmine Musharbash, made it clear that Australian Aboriginal Studies is entering an exciting new phase.

Outside of the formal conference sessions the location of most of the participants at Trinity Beach allowed the conference to continue informally across the week. I am certain I was not the only participant who enjoyed a number of meals and late night discussions while listening to the sound of waves breaking on the beach nearby! James Cook University are to be congratulated for hosting such a successful event, and many of those who attended will be looking forward to another Cairns-based Conference in the future.

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WHAT'S NEW

Recent Cases (Australia)

***Bennell v State of Western Australia* [2006] FCA 1243**

Overlapping claimant applications in respect of land and waters in and around Perth - Applications in respect of five areas made on behalf of Bodney Family Group claim based on descent from Ballarruk and Didjarruk 'clans' - Whether these were land-holding groups at sovereignty or moiety groups - Lack of evidence of connection between members of

claimant group and any Ballarruk or Didjarruk person alive at sovereignty - Lack of evidence of continued acknowledgement and observance of traditional laws and customs - These claims dismissed - Consideration of separate question arising out of application by the Noongar community in respect of an extensive area of south-west Western Australia - Separate questions related only to land and waters in and around Perth, however the claim was that this was part of a greater area in respect of which the Noongar community held native title rights and interests - Whether at sovereignty the normative system governing the whole of south-west Western Australia was that of a single Noongar community or whether there were a series of separate normative systems of smaller communities - Whether the single Noongar community has continued to acknowledge