

Native Title Report 2007

By Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner

The Attorney-General tabled the *Native Title Report 2007* in the House of Representatives on 20 March 2008.

The *Native Title Report 2007* analyses how the native title system operates and the effect of the native title system on the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander people. It covers the period 1 July 2006 to 30 June 2007.

The *Native Title Report 2007*, which is dedicated to the memory of Eddie (Koiki) Mabo, also takes a more reflective look at the development of the whole system on the 15th anniversary of the High Court's decision in *Mabo No 2*.

The report argues that the native title system has become too complex, too legalistic and too bureaucratic and I makes a number of recommendations to the Attorney-General on how it can be improved.

The report considers the significant changes made to the native title system in 2007 which will directly impact on Indigenous stakeholders and their representatives. These changes seem to have been aimed at addressing government imperatives rather than the needs and aspirations of Indigenous people.

The report considers changes to:

- claims resolution;
- representative indigenous bodies
- respondent funding; and
- prescribed bodies corporate

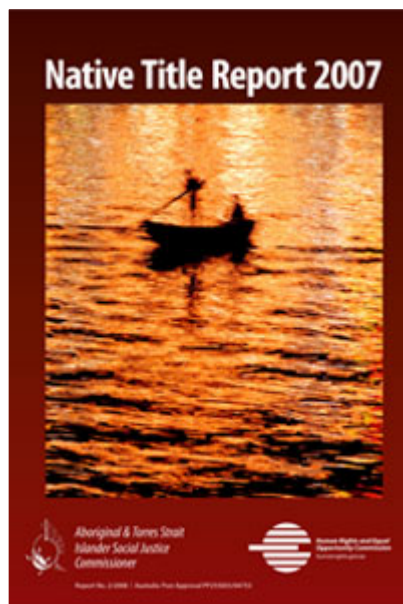
The report also discusses the Corporations (Aboriginal and Torres Strait Islander) Act which came into effect on 1 July 2007 as well as provisions of the Northern Territory Intervention that relate to compulsory acquisition of Aboriginal land.

In light of the recent National Apology and the move toward reconciliation between Indigenous and non-Indigenous Australians, I hope this federal government will consider the report and how to better recognise Indigenous peoples' unique and essential relationship with land.

As these changes are implemented it will be interesting to see whether they improve the system. My initial concerns are that the changes have not focused on ensuring the system provides for greater recognition and protection of native title and I am concerned they will not deliver this.

My report also examines decisions of four significant Federal Court cases and draws implications from them regarding compensation for extinguishment of native title, application of the rules of evidence, interpretation of the section 223 definition of native title, and resurgence of culture.

Despite concerns about how parts of the native title system operate around the country, there are a number of positive initiatives where Indigenous people are using their land to pursue economic, social, cultural and environmental outcomes. *The*



Native Title Report 2007 profiles some of these innovative projects.

Winner of the 2007 Eureka Prize for innovative solutions to climate change, the Western Arnhem Land Fire Abatement (WALFA) project utilises traditional fire burning practices to reduce carbon emissions and generate income for local communities.

The Central Queensland Indigenous Land Use Agreement (ILUA) template was developed after three years of negotiation and involved the Gurang Land Council Aboriginal Corporation working with three native title claim groups from central Queensland, the Local Government Association of Queensland and 16 local governments to develop a 'template' for future ILUA negotiations. The Central Queensland ILUA template could serve as a model for other agreements involving local government, allowing groups to learn and build on the experiences of others.

In light of the recent National Apology and the move toward reconciliation between Indigenous and non-Indigenous Australians, I hope this federal government will consider the report and how to better recognise Indigenous peoples' unique and essential relationship with land. As the preamble to the *Native Title Act 1993* recognises, the dispossession of lands is closely linked to the disadvantage of Indigenous people today.

The full report and a community guide are available at http://www.humanrights.gov.au/social_justice/index.html

Traditional native title holders meet again on Masig

George Mye from the Erubam Le Traditional Land and Sea Owners (TSI) Corporation



Front Row (Left to Right): Dan Mosby, Jenny Mye, George Mye, Jack Billy and Albert Mosby.

Back Row (Left to Right): Terrence Whap, Herbert Warusam, Milton Savage, William Akee, Stanley Marama, Joel Gaidan, Lota Warriia, Horace Baira and Ruth Whap.

Native title holders from the Torres Strait met on Masig (Yorke) Island, 28 – 30 April 2008 to discuss how practical outcomes can be achieved once native title has been recognised. This is the second meeting of the prescribed bodies corporate

(PBCs) of the Torres Strait, providing Traditional Owners with a rare opportunity to meet and develop a culturally appropriate strategic plan to raise the

profile and authority of PBCs and bring economic development to their communities.

Traditional owners expressed their continued frustration with the native title process post determination and felt that the legal recognition of native title rights and interests failed to deliver any meaningful changes to their communities. George Mye from the Erubam Le Traditional Land and Sea Owners (TSI) Corporation said 'we need to give justice to our people'. Terrence Whap from Goemulgaw (TSI) Corporation agreed, 'we want transparency and a sense of order around how business is done'.