

Overall, *Contested Governance* will be appreciated for its comprehensive investigation into the organisation of Indigenous governance specifically, though is also a beneficial resource concerning the theory of governance more generally. Most importantly, *Contested Governance* provides a well rounded account of Indigenous governance across the nation through the use of widespread examples. The governance structures are effectively assessed from a community through to a national level. The coherent style adopted by the contributors ensures that the information is user friendly and will appeal to those in a professional capacity as well for general interest. The flowing, narrative style of the text promises accessibility to a range of audiences.

Contested Governance Culture, power and institutions in Indigenous Australia is published by ANU E Press and is available in print or free online at [ANU E Press](http://ANUEPress).

Government Discussion Paper Released: Optimising Native Title Agreement Benefits

By Ingrid Hammer, Research Officer, AIATSIS

The Australian Government has handed down its discussion paper on Indigenous Economic Development Strategy, incorporating recommendations of the Native Title Payments Working Group, which was commissioned by the Department of Families, Housing Community Services and Indigenous Affairs, together with the Attorney-General's Department.

The primary concern identified in the report is the relationship between the activities of the resources industry, namely the mining sector, and the economic benefit that flows to Indigenous peoples. The negotiation stage of agreements between Indigenous peoples and

industry is recognised as vital to future economic and social well being of traditional owners. Although the *Native Title Act 1993* (Cth) provides for the right to negotiate on such matters as mining, and has been successfully engaged in giving rise to agreements such as Indigenous Land Use Agreements (ILUAs), the report notes that not all arrangements result in beneficial outcomes for Indigenous communities.

The Working Group has indicated that some of the major barriers to successful agreements include a lack of current agreements that may be utilised as model agreements, the overly restrictive confidentiality provisions that govern agreements and limit access to important data, and a lack of support for traditional owners during the native title process. The working group also reports that due to the recent growth in the mining industry and subsequent entrance by new players, there is an underlying lack of cultural sensitivity and understanding of Indigenous peoples' rights.

The flow of payments directly to traditional owners is a further concern in the report. The position of the government is consistent with that of the Working Group: that improvements in economic status are rarely maximised by direct payments to communities. The Working Group focussed its investigations on the barriers to effective implementation of agreements, the requirements of sustainable agreements, and the settings conducive to sustainable agreements.

The Working Group reported on international experiences in agreement making, drawing on examples such as the publicly available agreements of New Zealand, and special legislation in South Africa dealing with social responsibility of industry. One suggestion made in the report for increasing transparency is for the establishment of a public register that could disclose relevant information and model agreements.

Another concern the report identified is a shortfall in the effective implementation of negotiated agreements. For traditional owners to take advantage of the benefits of an agreement the terms of the agreement must be realistic and sustainable. In addition, the promotion of good practice, greater assistance for Indigenous people to enter the mining industry, an improvement in capacity of traditional owners to engage in negotiations with the

resources industry, and the allocation of greater resources to Native Title Representative Bodies and Prescribed Bodies Corporate are key factors identified as important to improving Indigenous economic and social benefits for Indigenous people.

The complexities and burdens linked to the present tax regime was an additional matter explored in the discussion paper. The limited scope for economic development arising from charitable trusts is a key concern. Given that most native title groups opt for this mechanism to manage their benefits, the report recognises significant restraints such as deductibility restrictions for Indigenous communities and organisations as well as restrictions on Indigenous community development stemming from the current exemption provisions of the *Income Tax Assessment Act 1997* (Cth).

The discussion paper suggests that base level benefits to traditional owners involved in negotiations might successfully be enforced through legislation, prescribing minimum and maximum payments and therefore encouraging greater emphasis on negotiations of the non-economic benefits of agreements.

Submissions are invited in response to the discussion paper, due by 13 February 2009. For the full paper and Working Group report see the [Attorney-General's Department webpage](#).

Proposed native title amendments

The Attorney General has announced that the Government will introduce amendments to the *Native Title Act 1993* (Cth) to provide for a more central role for the Federal Court in managing native title claims.

The Attorney-General notes that 'The Court has significant alternative dispute resolution experience and has achieved strong negotiated results in past native title matters by taking an active role in the mediation process. This change will give the Court control over all native

title claims brought before it from start to end. Having one body control the direction of each case means that the opportunities for resolution can be more readily identified. This reform has the potential to significantly improve the operation of the native title system.'

The Discussion Paper, released in December 2008, outlines the minor legislative amendments. These include:

- Enabling the Court to rely on a statement of facts agreed between parties;
- Enabling the Court to make determinations that cover matters beyond native title;
- Giving effect to the provisions of the *Evidence Amendment Act 2008* (Cth), particularly focussing on the early evidence rules and exceptions to the transitional provisions;
- Amendments to the recognition and re-recognition provisions for native title representative bodies and;
- Other changes to improve the conduct of native title litigation including a power for judges of the Federal Court to refer questions arising in proceedings to a referee for inquiry and report.

The Attorney-General has opened the discussion paper for consultation, and changes are anticipated to commence in July 2009. Submissions are to be made by February 16. For the full paper see the [Attorney-General's Webpage](#).

NTRU Project Reports

Job Vacancy – NTRU Research Officer – non-ongoing

AIATSIS is currently recruiting an NTRU Research Officer. The NTRU is the pre-eminent research program in Australia examining issues surrounding the recognition and protection of native title and contributing to the development of resources and information in the native title sector.