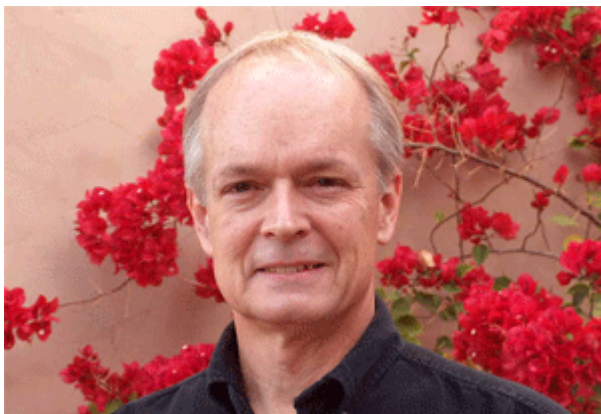


necessarily in western ways, but in ways of their own choosing. This means lifting the yoke of colonial control, ending the insistence that Indigenous governance look like U.S. or Canadian governance, and accepting the fact that the solutions those nations develop will be diverse. Some will have traditional roots; some will not. But once that freedom is achieved, once those nations have put in place the governance solutions they want and have tested those solutions against the realities of their current situations, once they have the freedom to make mistakes and learn from them and make the adjustments they decide they need to make, then we believe they will be in a stronger position to develop the kinds of economies and communities they envision.

This is what self-determination really means.



Professor Stephen Cornell, Native Nations Institute (University of Arizona) and Co-Director of the Harvard Project on American Indian Economic Development.

For further information, visit the Harvard Project on American Indian Economic Development website:
<http://hpaied.org/>

Case note: Mullet on behalf of the Gunai/Kurnai People v State of Victoria [2010] FCA 1144

By Zoe Scanlon, Research Officer, NTRU, AIATSIS

22 October 2010

Federal Court of Australia, Knobs Reserve, Stratford
 North J

The applicants sought a native title determination over approximately 8,000 specific parcels of land within the general area of Gippsland in Victoria. The outer boundary of the application area extends to approximately a short distance east of Warragul on the western side, to the waters off the southern coast of Victoria on the southern side, to the Snowy River on the eastern side and to the Great Diving Range on the northern side. This covers 45,000 hectares of Crown land, amounting to 20% of the Crown land in Victoria.

Native title is held by the Gunai/Kurnai people being those who identify as Gunai, Kurnai or Gunai/Kurnai and are descended from one or more of twenty-five Gunai/Kurnai apical ancestors.

The native title rights and interests in relation to the native title area consist of the non-exclusive right to; have access to or enter and remain on the land and waters, to use and enjoy the land and waters, to take resources of the land and waters for the purpose of satisfying their personal, domestic or communal needs but not for any commercial purposes; to protect and maintain places and areas on the land and waters which are of importance according to Gunai/Kurnai traditional laws and customs.

Without limiting the generality of the rights and interests referred to above, they include the right to undertake the following activities on the land and waters; camping, and for that purpose, erecting shelters and other temporary structures landward of

the high water mark of the sea, engaging in cultural activities, engaging in rituals and ceremonies, holding meetings and gatherings, teaching and learning about the physical, spiritual and cultural attributes of places and areas of importance. The native title rights and interests are subject to and exercisable in accordance with the traditional laws and customs of the native title holders and the laws of Victoria and the Commonwealth. Where there is an inconsistency between native title rights and interests and any other right or interest, the native title rights and interests continue to exist in their entirety but have no effect in relation to the other interests to the extent of the inconsistency during the currency of the other interests. There is no native title in minerals, petroleum or groundwater.

In determining whether the agreement was arrived at voluntarily and on a fully informed basis, the Court had heard and determined the Kurnai application and also heard evidence from expert anthropologists and historians as well as evidence from Indigenous witnesses. Justice North considered that the depth and richness of all the evidence confirmed the conclusion that it was appropriate for the Court to make orders which reflected the agreement of the parties. Being satisfied that the terms of the proposed determination were reflected in an agreement between the parties and that the meaning of the clauses was clear, North J made the native title determination.

The Gunai/Kurnai Land and Waters Aboriginal Corporation (GLaWAC) has been established as a prescribed body corporate and has been nominated to hold the native title on trust.

Although the majority of the negotiations in the present application were complete before the recent introduction of the *Traditional Owner Settlement Act 2010* (Vic), North J commented that there is hope that the introduction of this Settlement Framework will make it easier for Indigenous people to achieve land justice in Victoria in the future.

Summary of AIATSIS response to AGD/FaHCSIA Discussion Paper, 'Leading practice agreements: Maximising outcomes from native title benefits'

By Joe Fardin, Research Fellow, AIATSIS

On 30 November AIATSIS released a submission (the Submission) in response to the discussion paper, *Leading practice agreements: Maximising outcomes from native title benefits* (the Discussion Paper) produced by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Attorney-General's Department (AGD).

The Discussion Paper—and consequently AIATSIS' submission in response—focussed on the following three areas:

1. Governance Measures

Several governance measures were proposed in the Discussion Paper:

- incorporation of entities that receive native title payments;
- independent directors on the Board of entities that receive native title payments;
- adopting enhanced 'democratic controls' to improve transparency and accountability to native title beneficiaries; and
- linking such measures to beneficial tax treatment.

AIATSIS submitted that there is no rationale for making additional measures compulsory for Indigenous entities in a racially discriminatory manner. Rather, the government should invest in existing organisations and mechanisms to allow them to improve their own practice.

In addition, AIATSIS put forward the view that culturally appropriate decision making and