

### **The Native Title Conference 2002: Outcomes and Possibilities – Report**

The *Native Title Conference 2002* gathered a huge crowd of over 400 people from around the country to Geraldton, 450 kilometres north of Perth, Western Australia. The Native Title Representative Bodies sent on average between five to ten staff, with the local rep body Yamatji Land and Sea Council represented by over thirty people, and almost twenty people in attendance from the Pilbara Native Title Service. Participants included native title claimants and holders, the National Native Title Tribunal, the Attorney General's Department, private legal firms, government departments, academic institutions, industry, and media.

The sessions were dominated by people expressing frustration with the native title system: the complete absence of funding for Prescribed Bodies Corporate, which are required by law to manage native title lands but do not have any institutional support; the complicated technical detail of the Native Title Act and common law decisions, and the role of professionals; and, the general experience of native title determinations delivering more difficulties than rights. Ways of working around the frustrating system were also explored: Yorta Yorta spokesperson Monica Morgan made a particularly important contribution to this discussion. The conference was also an opportunity to discuss and analyse the recent *Miriuwung Gajerrong* High Court decision.

The huge crowd in attendance stretched the capacity of all the venues, social events, and the staff capacity of the conference organisers. This was especially a result of conference registrations increasing by 150 people in the three days prior. The strength of this attendance ensured strong and powerful debate. Problems that were raised from the floor or by speakers on Day 1, were addressed by the speakers that followed, as the

body of people used the forum to move the native title debate forward.

The conference was the result of the successful collaboration between AIATSIS and the Yamatji Land and Sea Council. AIATSIS wishes to take this opportunity to thank again the staff and volunteers coordinated by Yamatji Land and Sea Council for all their hard work.

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### **New Issues Paper**

The Unit has published Issues Paper number 17 titled "*Western Australia v Ward on Behalf of Miriuwung Gajerrong*, High Court of Australia, 8 August 2002: Summary of Judgment" by Dr Lisa Strelein.

The *Miriuwung Gajerrong* decision was anticipated as one that would resolve important questions regarding the nature and content of native title. This paper provides a summary of the findings in the decision.

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### **Native Title Resource Pages**

The NTRU has developed a number of resource pages on their website which provide relevant and up to date information regarding specific native title cases and concerns.

To access the weblink, go to the AIATSIS web page <[www.aiatsis.gov.au](http://www.aiatsis.gov.au)> click on the native title research unit link and click on 'Resources'. The pages include articles and discussion papers and also links to other resources. They are updated regularly and others are currently under construction for future use.

The current resource pages are:

- The concept of native title - *Miriuwung-Gajerrong* Determination High Court 8 August 2002
- Compensation and native title
- Sea Rights - The *Croker Island* Decision and Native Title Offshore
- General native title resources

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## **Review of the Treaty Conference**

The National Treaty Conference held in Canberra from 27-29 August 2002, provided a space for re-igniting the debate and sign-posting possible directions that the debate may go in the future. Unfortunately, however, for some commentators, the conference was configured as providing a panacea.

Despite these restrictions in regards to the outcomes, the conference achieved one of its primary aims, namely to get the notion of a treaty or agreement between Indigenous and non-Indigenous Australians back on the agenda. And while a "treaty" is not on the government's agenda, "agreement making" certainly is.

The conference also had some strong speakers and papers, particularly David Irvine from Northern Ireland and Professor Larissa Behrendt, both of whom stressed the importance of maintaining a human dimension within the debate.

The conference also provided a forum that stressed the need for negotiation with all Australians. This point was particularly emphasised by Greg Phillips representing Indigenous youth. Overall the conference confirmed that a treaty will always be on the agenda.

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## **Opening of Mabo Room**

On Tuesday 9th July during NAIDOC week, AIATSIS formally named the public seminar room, the Eddie Mabo Room. This was out of respect for the pioneering work of Eddie Mabo in fighting to overturn the great legal myth of *terra nullius*. With Mrs Bonita Mabo and other members of the Mabo family as special guests, the room was formally opened by AIATSIS Chairperson, Mick Dodson. The celebration also included a dance performance from members of the Gerib Sik Torres Strait Islander Dance Group.

The following extract is taken from the speech given by Mick Dodson honouring Eddie Mabo.

"I would like to acknowledge and pay my respects to the Ngunnawal people, on whose ancestral land we stand.

I would also like to welcome Mrs Bonita Mabo and her family. We thank you for joining us on this special occasion and we are honoured by your presence. I would like to thank all of you for coming along today to join with us in NAIDOC week to celebrate the naming of our public function room as the Eddie Mabo Room.

Eddie Mabo was a Meriam man of the Piadram clan. His name is well known throughout Australia for his initiative, together with four other Murray Islanders, in instituting proceedings against the State of Queensland in the High Court. As all of us here will know, it was an action which resulted in the High Court's historic judgment, the *Mabo* decision, which changed the law to recognise the native title rights of Indigenous peoples to their land.

Eddie Mabo left his mark in other areas too. He fought throughout his life for social justice through his involvement at both the national and local levels, in organisations such as the National Aboriginal Education Committee, the Aboriginal and Islander Advancement League, FCAATSI, the Aboriginal Legal Service and Magani Malu Kes, an organisation stressing Torres Strait Islander identity and autonomy. Importantly, in 1973 together with his wife, Bonita, Eddie also set up the Black Community School in Townsville, which continued to operate until the mid-1980s.

I am proud to say that Eddie Mabo also had a long association with the Institute. He had been a Member of the Institute since 1978 and, for a time in the late 1970s, he was a member of our Education Advisory Committee.

Eddie Mabo also received two small grants from the Institute. The first was in 1979, which went towards the establishment of the Magani institute and another, in 1985, to

research the traditional land ownership boundaries on Mer and to record significant sites. As a result of both grants and his High Court Challenge, Eddie Mabo frequently visited Canberra and the Institute, and many of us got to know him well as a friend and a colleague and to respect him and the work he was doing.

It therefore gives me great pleasure in this year of the tenth anniversary of the *Mabo* decision to formally name our public function room as the Eddie Mabo Room."

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### **News from the Tribunal**

Background information concerning the recent High Court decision in *Wilson v Anderson*, can be found at the NNTT's website: <http://www.nntt.gov.au/>

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### **Senate Committee Review**

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund has re-advertised the review of the effectiveness of the National Native Title Tribunal. The inquiry is in accordance with s.(d)(i) of the *Native Title Act 1993* and was advertised in *The Australian* on 11 September 2002.

The Committee is calling for comments and submissions to be lodged by the new deadline of mid-October 2002. Responses can be made to:

The Secretary  
Parliamentary Joint Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund  
Parliament House, Canberra, ACT  
ph: 02 6277 3419  
fax: 02 6277 5866 or  
email: [nativetitle.joint@aph.gov.au](mailto:nativetitle.joint@aph.gov.au)

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### **Research Support Request**

#### **ARC Linkage project, 'Agreements, Treaties and Negotiated Settlements with Indigenous Peoples in Settler States: their role and relevance for Indigenous and other Australians'**

The aim of the project is to examine treaty and agreement-making with Indigenous Australians and the nature of the cultural, social and legal rights encompassed by past, present and potential agreements and treaties. It will include an examination of the legal history and foundations of agreements and treaties, an audit of current agreements, their purposes, status and outcomes, and will include international comparative research on treaty and agreement-making. While many of the agreements we examine will be related to land, our research will also examine non-land based agreements such as those agreements made in the areas of health, education and research.

The project began in March 2002 and the research will be conducted over three years. Along with our industry partner, ATSIC, this project involves researchers from both The University of Melbourne (Professor Marcia Langton, Chair of Indigenous Studies, and Ms Maureen Tehan of the Faculty of Law, and Dr Lisa Palmer, Postdoctoral Research Fellow) and The University of Technology Sydney (Professor Larissa Behrendt of the Faculty of Law and Jumbunna Indigenous House of Learning). The project is also supported by AIATSIS.

Outcomes of this project will include an on-line database on treaties and agreements in Australia and overseas and the publication of a collection of papers. It is anticipated that the project will contribute to the efforts of Indigenous organisations to secure political and economic rights through agreements with governments, industry and the broader Australian community.

One of our first tasks is to compile, to the extent possible, a complete database of all current or recently completed agreements (excluding any confidential information contained within these agreements) and to

identify, amongst other things, the range of characteristics, conditions and forms.

We have written to many stakeholders to request their assistance with this project. Such assistance may, in the first instance, involve the provision of actual agreements or information relating to agreements for inclusion in our database. We continue to seek any individuals and organisations who are able to provide information on and/or make available agreements which contain information which could be made available in the public domain. At a later stage we may also seek to arrange interviews and obtain further information in relation to particular agreements.

If you can assist us with our research or if you would like further information about our project please contact Dr Lisa Palmer, Postdoctoral Fellow, on 03 8344 3462 or email: [lrpalmer@unimelb.edu.au](mailto:lrpalmer@unimelb.edu.au)

Replies and/or information pertaining to agreements can be sent to:

Dr Lisa Palmer  
ARC Linkage Treaties and Agreements Project  
SAGES  
The University of Melbourne, Vic 3010

Visit the website at:  
[www.indigenous.unimelb.edu.au/atns](http://www.indigenous.unimelb.edu.au/atns)

## FEATURES

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### **Miriuwung Gajerrong: an invitation to understanding**

by Wayne Bergmann, Executive Director, Kimberley Land Council

On Monday, 19 August 2002, the Miriuwung and Gajerrong peoples held a meeting in Kununurra to discuss the outcome of the High Court's native title determination. Many aspects of this complex decision were explained and options discussed.

The tone of the meeting was sad and tired and the question was asked, "After this decision, is there any more native title?"

In many ways this decision delivers the bucket-loads of extinguishment promised by Tim Fisher, then Deputy Prime Minister, following the 1997 *Wik* native title decision and before the 1998 amendments to the *Native Title Act 1993* (Cth) For example, native title on national parks and conservation reserves in WA is extinguished by this decision.

But, even though this extinguishment of our rights is deemed to have taken place in Australian law, it is not as if that part of Miriuwung Gajerrong peoples' traditional country has gone away. Nor have the people

with responsibilities to care for that country gone away. People do not give up on their law and culture just because Australian law is incapable of recognising it. In this way, the decision changes nothing.

In other respects the decision is not as bad for Aboriginal peoples as it could have been – partial native title survives on pastoral leases and mining leases, providing those partial rights do not get in the way of those of the pastoral or mining lease-holders. If, however, the rights of the pastoral or mining lease-holder get in the way of the native title rights, then too bad. As someone else at the Miriuwung Gajerrong meeting said, "We're always going to be on the losing side." And, "All we get are the left-overs after everybody else has finished with the land – kartiya (non-Indigenous) rights will always come first and blackfellas get what's left."

This lesser status, this subordination, is a terrible position for the first peoples of this nation to be in. Each time we go back to court, we lose a little more. Those native title rights that survive extinguishment by State and Commonwealth legislation must be recognised by the courts in the Australian common law. This common law is based on