

Country to which they belong, and do not live a traditional lifestyle anywhere approaching that which existed at the time of sovereignty' did not prevent him from concluding that 'none of the groups lost their identity or existence as a society' [199] and [200] respectively. Justice Cooper further acknowledged that European contact was largely responsible for the physical dislocation and removal from traditional lands.

The second respondents submitted that the Court should substantially discount the weight given to the written affidavits of the Aboriginal witnesses (approximately 59 affidavits were submitted). The second respondents argued that the written statements were prepared by the solicitors with the assistance of the anthropologists, the language was not that of the deponent, the statements were on occasions prepared in the presence of and with the 'assistance' of other members of the applicant group, and, the Indigenous witnesses were present in large numbers in the Court during the hearing and heard the evidence of their constituent groups. Justice Cooper took an intermediate approach, relying on the oral evidence as the primary source of evidence where written statements were challenged or overtaken by oral evidence because a 'substantial body of oral evidence' had developed as a result of extensive cross examination and could overcome the objections to form and admissibility.

The decision in *Lardil* examines the Indigenous concept of ownership, Justice Cooper noting that it is not based on common law concepts of property but rather it is 'born out of the spiritual connection of the peoples to each of the elements through their spirituality' [147]. After examining the witness evidence, Justice Cooper found that the right 'to be asked' is central to the applicants' concept of ownership and emphasises that the right claimed is, in practice, the right to control access and conduct. However these rights of ownership were not recognised in *Lardil* because of the decision in *Yarmirr*.

The decision in *Lardil* also recognises the succession of land from one group to another provided the transfer occurs under the tradi-

tional laws and customs at the time of sovereignty. This was the case with the Gangalidda People who claimed to have succeeded the land of the Mingginda Peoples, who did not survive European contact, under the traditional laws and customs observed by the Gangalidda Peoples at the time of sovereignty. The Court held that the interests of the Gangalidda peoples in respect of those lands and waters will be recognised and protected under the *Native Title Act* [at 131].

Further information on the *Lardil* decision, in particular the deficiencies of the legal recognition of Indigenous sea cultures and the inability of the Court to translate the spiritual into the legal, is available from a paper delivered by Jason Behrendt at the Native Title Conference 2004. This paper will be available through the Conference website shortly (<http://www.aiatsis.gov.au/rsrch/ntru/conf2004/home.html>)

Capacity of Anthropologists in Native Title Practice: Report to the National Native Title Tribunal by David F Martin (Anthropos Consulting Services, April 2004)

Summary by Lara Wiseman

Based on a survey of fifty-five anthropologists who identified themselves as native title practitioners, this report provides an overview of the diverse roles played by anthropologists engaged in native title practice and suggests that anthropological practice will need to adapt to changes in the native title environment.

The report presents age, gender and qualification profiles of anthropologists currently working in native title, distinguishing between those employed by Native Title Representative Bodies (NTRBs), consultants and academic anthropologists. This reveals that native title anthropology is dominated by older (over 40) and well-qualified practitioners, most of whom are consultant or academic anthropologists. Less than a third of respondents were aged under 40, suggesting that there is a need to attract a new generation of anthropologists into native title practice. Martin notes that a substantial number of new

graduates working within NTRBs graduated from universities where native title practice is actively supported.

The survey sought information about the skills and knowledge (both anthropological and general) required by anthropologists involved in native title work and considers to what extent anthropologists are (or should be) prepared for native title work through their university studies. The survey also sought feedback from practitioners on the extent to which they believed that native title work made a positive contribution to the development of their careers.

The report also examines the position of native title anthropology within the discipline more broadly. Martin observes that applied native title practitioners feel that their form of anthropology is marginalised or dismissed by many in the academy. Exploring this theme the report considers recent debates among subscribers to the electronic discussion forum operated by the Australian Anthropological Society (AAS) regarding the role and status of native title anthropology. This discussion also examines the position of anthropology within the academy more broadly citing the keynote address given by Professor Annette Hamilton at the 2002 AAS conference which outlined a

number of the challenges facing Australian anthropology.

The Report concludes with discussion of the challenges facing anthropologists engaged in native title practice. Martin suggests that there is a certain degree of 'entrenched amateurism within anthropology as a form of professional practice...which in turn means that anthropology is ill equipped to engage as an equal with the other professions involved in native title practice'. The survey results indicate that there are ongoing difficulties in the relationship between native title anthropology and native title law. Such difficulties often extend to relations between anthropologists and lawyers through the provision of inappropriate or inadequately scoped instructions, or a lack of understanding of the role of expert witnesses as outlined in the Federal Court's guidelines. The report highlights the need for more effective cross-disciplinary understanding and communication between native title anthropologists and lawyers.

The report also includes an extensive bibliography relating to anthropology and native title compiled by Dr Hugo Green of the National Native Title Tribunal. The report is available at <http://www.anthropos.com.au/>.

NATIVE TITLE IN THE NEWS

National

ATSIS has ordered all tax-payer funded native title representative bodies to cease all cash payments to traditional owners in relation to native title claims. Indigenous Affairs Minister Amanda Vanstone said this has occurred as some of these organisations may not have accounted for taxpayer funds properly. *The Australian*, pg 7. 11 March 2004.

The National Native Title Tribunal has produced a new video/DVD titled 'Native Title Stories - Rights, Recognition, Relationships'. The DVD explains native title through real

stories of people around Australia, focusing on six different communities, and looking at the ways people handle the challenges of the native title process. For a free copy of the video/DVD, contact the NNTT on freecall 1800 640 501 or e-mail publicaffairs@nntt.gov.au. *Koori Mail*, pg 4. 10 March 2004.

New South Wales

Lake Cowal will be the location of a peaceful bid by the Wiradjuri people from central western New South Wales to show their opposition to the Cowal Gold project. The gathering will be led by Wiradjuri elder Neville "Chappie" Williams. Mr Williams