LAND MANAGEMENT
WHERE TO NOW?

JESSICA K WEIR WESTERN SYDNEY UNIVERSITY

IT HAS BEEN 25 YEARS SINCE THE Mabo decision, yet many of us are still in the dark about what the recognition of native title means in relation to the land management responsibilities required of 'land holders' by land management legislation. For example, protecting vegetation along water ways, taking care of soil health, managing invasive species, and maintaining fire breaks and reducing bushfire fuel loads. Do native title holders have these land management responsibilities under land management legislation? That is, can they be considered within the terms 'owners' and/or 'occupiers', as used by this legislation? Native title holders have their own understandings of what they are responsible for, but there is very little law or policy direction from Australian governments about their legislative responsibilities, despite native title being critical for national, regional and local land management, biosecurity and risk mitigation.

Through 2011–2012 the Native Title Research Unit conducted research to investigate the attribution of land management responsibilities, examining both the legislation and what people were actually doing (Duff and Weir 2017; 2013). Without a legal precedent, and relying on statutory interpretation, the project explored the test-case of invasive plant species. Their analysis found that native title holders are substantial landholders who appear, at least in some circumstances in most jurisdictions, to owe the same legal obligations as other landholders.[1]

The similar use of the terms owner and occupier in other land management legislation, and the legal and policy preference for integrated approaches to natural resource management, means that these findings are of much broader relevance. They arguably apply across the legislated land management responsibilities of landholders. However, much ambiguity remains, especially regarding non-exclusive possession native title. To supplement the legal analysis, AIATSIS co-convened a collaborative workshop in the Kimberley to find out what was happening with the management of invasive plants on native title lands (Duff 2011). In essence, both the government and native title workshop participants reported on the rolling back of State government responsibility for vast areas formerly considered Crown land and now recognised as exclusive possession native title land, and an uptake of weeds responsibilities by native title holders.

The Karajarri rangers were part of this workshop; their country is 200 kilometres south of Broome. In recent years the Karajarri Traditional Lands Association registered native title body corporate (KTLA) secured Federal environmental management monies to fund their weeds work including the development of Healthy Country Plans. Previously undertaken in a volunteer and welfare-to-work capacity, the Karajarri rangers are now funded through the Working on Country program and an Indigenous Protected Area agreement. The rangers receive oversight from KTLA, which is governed by an executive board and a council of Elders. Decisions about which areas and weeds are the priority, and who can do this work, are informed by the laws and customs that form their native title rights and interests. The Karajarri rangers have been targeting the thorny bush Parkinsonia and the Neem tree – both capable of crowding out the water holes in desert country. To be effective with invasive weeds, the rangers must manage the re-growth from stumps, cuttings and the seed bank in the soil. This requires years of consecutive work, using a combination of harsh chemicals, hard labour and satellite tracking technology. The rangers work on their exclusive native title lands, and have positive relationships with pastoral lease holders and the local caravan park to also work on their non-exclusive native title lands. Recently they successfully eradicated Parkinsonia from Anna Plains Station.

At the Kimberley workshop, it was clear that, with the recognition of exclusive native title, the State government weed managers were relieved to have less land area to manage – there is never enough money for weeds management over such large areas. It was also evident that Indigenous ranger groups are very well placed to undertake this work – they are onsite, motivated and supported by their communities. However, the rolling back of state responsibility for weeds has not resulted in any extra funding for

Photo: Areas of Minyirr Park are affected by weeds.
Credit: Tran Tran, AIATSIS.

native title holders. A recurring issue raised by workshop participants was that, with a few exceptions,[2] and in stark comparison with statutory land rights arrangements, RNTBCs are largely unfunded beyond what is necessary to meet their corporate compliance obligations. There is an impasse amongst the jurisdictions as to who is responsible for funding native title: the Commonwealth enacted the *Native Title Act,* but it is the States who, in the constitutional division of labour, bear responsibility for land management. This situation affects weeds and other land management capacity in multiple ways, including: consultation; planning and implementation; obtaining and managing grants; and, identifying and discharging legal obligations.

In the article summarising the findings of the project, lead researchers Weir and Duff do not express a policy preference for assigning legal responsibility either to native title holders or to governments; instead, they highlight the importance of a coordinated legislative and policy response to the realities of Aboriginal peoples' landholdings and the implications of those realities for the traditional assumptions of weeds management.

The traditional assumptions of the weeds management policy and legal frames of the jurisdictions are:

- that weeds management is a 'public good' requiring government intervention;
- that the bulk of non-government land is held by agriculturalists and pastoralists who derive profits from land use, and controlling weeds can be seen as a 'cost of doing business';
- that priority 'declared weeds' are decided on with respect to their effect on primary production, and, more recently, ecological values; and,
- that there are a limited number of categories of land tenure within a given State or Territory (e.g. freehold, pastoral lease, mining lease, etc).

However, the recognition of native title has brought about significant shifts in the nature of land tenure, including:

- who the landholders are;
- their legal status (from companies, individuals and government agencies; to now include communal landholding groups represented by special statutory corporate bodies);
- their land-use activities;
- their priorities, values and world views, including their motivations for being involved in land management;
- their available resources – including funding, skills, knowledge, and organisational capacity (emphasising that these changes are not necessarily diminutions); and
- very significantly, the legal rights and obligations they have in respect of the land.

The recognition of native title does not detract from the validity and importance of the traditional underlying rationale of land management regulation. Failure to control weeds, fire or feral animals on one area of land will harm the economic and ecological values of immediately neighbouring land, and further afield. But native title's continent-wide shift in Australia's landholding profile challenges important assumptions underlying the particular *mode*l of land management regulation that has been developed by the States, Territories and Federal governments. Further, if the collective provision of land management responsibilities is to be regarded as

Above and right: Participants of the Managing Weeds on Native Title Lands workshop tour Minyirr Park near Broome. Credit: Dr Tran Tran.

a public good, then a comprehensive understanding of what kinds of interests and concerns comprise that public good requires specific attention to the priorities of native title holders.

The management of invasive plant species requires early and sustained intervention, as the spread of the fire-weed gamba grass so emblematically illustrates. Similarly, other land management responsibilities – such as salinization, stream erosion, feral animals, and risk mitigation – are best addressed early, which is why there is legislation, funding and penalties to promote this cross-tenure work. Critically, these management challenges are being amplified by accelerating land use change, rapid climate change, the spread of peri-urban settlement, and the increased movement of all things as part of globalization. Our governments need to respond quickly to these priorities, and not rely on the current constitutional stand-off to avoid the politically fraught task of setting up a secure funding scheme for native title, which should have been organised when the administration of the native title system was legislated in 1993. An immediate first step is to ensure that funding for land management responsibilities and RNTBC administration are included in current Indigenous Land Use Agreement negotiations and new Commonwealth PBC funding guidelines and programs.

ACKNOWLEDGEMENTS

Thanks to the KTLA and Sam Bayley (Kimberley Land Council) for providing recent information about their weeds management work, as well as to all the 2012 Kimberley workshop participants. The original research and report was funded by the Rural Industries Research and Development Corporation, and undertaken at AIATSIS, with additional legal expertise provided by Dr Lisa Strelein and Rob Powrie.

REFERENCES

Duff, N 2011, 'Managing weeds on native title lands', workshop report, Broome, WA, 26–27 October 2011, Native Title Research Unit, AIATSIS, Canberra.

Duff, N. and J.K. Weir. 2013. *Weeds and Native Title: Law and assumption*. Canberra: Rural Industries Research and Development Corporation, Publication No. 13/078, ISBN 9781742545714.

Weir, JK & Duff, N 2017, 'Who is looking after country? Interpreting and attributing land management responsibilities on native title lands', *Australian Journal of Public Administration*, DOI: 10.1111/1467-8500.12261.

1 South Australia and Queensland are the only jurisdictions that clearly include native title holders in their scheme of attributing responsibility. Under South Australia's *Natural Resources Management Act 2004*, native title holders are explicitly recognised as having weeds management obligations, but with no clear demarcation of responsibility where native title is shared with other land interests. In the case of non-exclusive native title holders coexisting with other land users, the extent of the native title holders' legal liability is therefore unclear. Queensland's *Land Protection (Pest and Stock Route Management) Act 2002* explicitly *excludes* native title holders from management obligations, but does not make clear how the State would be able to perform weed control work on exclusive possession land.

2 In isolated cases, native title holders have been able to negotiate RNTBC funding as part of their native title determination, for example the Yawuru RNTBC in the town of Broome and the Miriuwung-Gajerrong RNTBC which encompasses the Ord River scheme. In regions rich in mineral or petroleum resources, funding may come in the form of resource agreements rather than from government.