

CHAPTER 10: CUSTOMARY LAND TENURE ISSUES IN AUSTRALIA

*Michael Dodson and Diana McCarthy*²⁷

1. Introduction

The debate concerning wealth creation on communally owned indigenous land is gaining momentum in Australia. This Australian debate has implications for Papua New Guinea, given the level of influence that Australia has on Papua New Guinea through its aid program and the long-standing colonial relationship between the two countries. Given the possibility that Australian commentaries on Australian indigenous land dealings will have some bearing on Papua New Guinea land issues, this chapter aims to describe for Papua New Guineans the context in which the Australian debate occurs, the legal framework defining indigenous lands, and the ways in which indigenous land is being developed.

The rest of the chapter is organised as follows. Section 2 discusses the debate in Australia on indigenous land tenure reform. Section 3 focuses on the definition of communal title. Section 4 explores the meaning communal title has for those who own it. Section 5 discusses the legislative structures for dealing with communal land. Section 6 provides an analysis of communal land tenure reform in Australia. Section 7 brings the chapter to a close.

2. The debate in Australia on indigenous land tenure reform

There is a debate taking place in Australia today that has gathered considerable momentum. This debate concerns wealth creation on communally owned indigenous land. The suggestion is that traditionally grounded, communal forms of title are a barrier to economic development and should give way to individualised and alienable rights in land. Australian commentators have also proposed that Australian aid to Papua New Guinea be made contingent upon the privatisation of communal lands (see for example Gosarevski, Hughes, and Windybank 2004).

This debate has been taking place amidst considerable change in Australia's political landscape. Indigenous affairs have been undergoing a major restructure. This has included the abolition by the federal government of the Aboriginal and Torres Strait Islander Commission, the elected body that was responsible for policy advice and the administration of some of the federal government's indigenous programs. Since the abolition of the Commission, the National Indigenous Council (NIC) has become the principal source of advice to the Australian government on Indigenous matters. The NIC is a self-nominated, government-appointed advisory body set up to provide "expert advice to government on improving the socio-economic status of indigenous Australians" and is the only indigenous advisory body now recognised by the Australian government. The NIC has called for the government to legislate that land held by indigenous people under communal titles be opened up to individuals and businesses, and compulsorily acquired, if necessary.

Why this debate is taking place at all is a little puzzling to the authors. There is simply no evidence that communal title is an impediment to wealth creation on indigenous land. In contrast, there is much evidence-based research from Australia (see for example Altman *et al.*

²⁷ An extended version of this chapter was originally published in 2006 as a Research Discussion Paper by the Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies.

2005 and Bradfield 2005b) and elsewhere (see Fingleton 2005 and Anderson 2005) to suggest that privatisation would worsen rather than improve the economic position of indigenous people living in remote areas. This being the case, there are no compelling arguments for the passage of racially discriminatory legislation that would compel indigenous landowners, and indigenous landowners alone, through a process of mandatory leasing, without collective consent, to relinquish their title to those who wish to pursue their private interests. The suggestion that indigenous people need to abandon their traditions in order to engage with the modern world is nothing more than support for assimilation.

3. What is communal title?

Australian parliaments have recognised communal title in a number of ways through legislative means. One set of legislative interventions has generally been described as “land rights”: for example, the *Northern Territory Land Rights Act* passed by the Federal Parliament in 1975 and the *New South Wales Land Rights Act* passed by the New South Wales Parliament in 1983.

The other category of recognition arose via the courts and the common law; namely, “native title.” This has since been codified through the enactment by the Federal Parliament of the *Native Title Act* 1993.

There are certain similarities between land rights and native title. Perhaps the most obvious is that both forms of title are collectively owned and inalienable and, in most cases, are held in trust for the community by a corporation. Under both regimes, the only land to which applicants can hope to gain a title comparable to freehold is in relation to Crown land that is either vacant or already reserved for indigenous people, or land on which indigenous people already hold the other rights and interests. The effect is that the land that may be claimed is generally that land which is least economically valuable — that is; essentially, the land not wanted by non-indigenous people.

Despite these similarities, there are some fundamental historical and operational differences between the two categories of communal title. Land rights have their basis in legislation and were designed as compensatory measures for the dispossession of Australia’s first peoples. The various state and federal land rights acts seek to provide this compensation in a way that is more or less congruent with traditional law. But they do not recognise this law as part of the law of the particular state or of Australia.

Native title, on the other hand, has been recognised under the common law and is now regulated by statute. The source of the legal rights that native title recognises is different from the source of law for common-law rights. Native title

is not simply the incorporation of Aboriginal law into the colonial legal system, it is a common law title. The courts have limited and re-defined native title in ways that make it more familiar to the colonial legal system and take it further away from Aboriginal law . . . It is a common law title that recognises the inherent, pre-existing and continuing rights of Indigenous people and it recognises the legitimacy and authority of these societies to determine their relationship with their land, and with each other in relation to that land (Strelein 2001:123).

There are also some crucial differences within these two categories: between the forms of land rights' derived titles and between the content of various native title determinations.

Land rights

Indigenous peoples have fought to protect and preserve their lands since the first European settlements emerged on the New South Wales coast in the late 1780s. The modern land rights movement is generally considered to have begun in 1963 when the Yolgnu people of North-East Arnhem Land (Northern Territory) presented a bark petition to the Australian Parliament, protesting an excision from their reserve lands at Yirrkala and seeking recognition of their land rights. In 1971, the Yolgnu people sought an injunction against mining activity on their lands, claiming that they enjoyed sovereign rights over this land (*Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, also known as the Gove Land Rights Case). Although this case was dismissed, the findings and recommendations of the subsequent Woodward inquiry formed the basis of the legislative regime of land rights introduced in the Northern Territory through the *Aboriginal Land Rights (Northern Territory) Act* 1976 (Cth). This was the first legislation in Australia to establish a land claim process by which traditional owners could claim various areas of land that were listed as available for claim.

Although all Australian states and territories recognise some form of indigenous rights in land (see section 5), the *Aboriginal Land Rights (Northern Territory) Act* (ALRA[NT]) has seen 400,000 square kilometres of the Territory's land returned to its traditional owners, with a further twelve national parks in the process of being scheduled as aboriginal land under a leaseback arrangement with the Northern Territory government. All in all, almost 50 percent of the Northern Territory's landmass is aboriginal land (Central Land Council 2005:4–5), and the ALRA(NT) remains the most extensive land rights legislation in Australia (Altman *et al.* 2005:3). “The *NT Land Rights Act* facilitates the conversion of crown land or land owned by Aborigines in the Northern Territory to ‘inalienable freehold’ where there are traditional Aboriginal owners of that land” (Taylor 2004:1).

This act defines “traditional owners” in terms of local descent groups whose members have primary responsibility for sacred sites on a particular area of land and who possess a traditional right to hunt or gather on the land.

Communal inalienable title under the ALRA is a form of title that attempts to accommodate customary rights of ownership and use of land within a western legal framework. [Successful applicants] have significant rights in relation to “inalienable freehold” which do not apply in relation to ordinary freehold. For example, there is a veto over mineral exploration (subject to its being overridden by the Governor General in the national interest). (Altman *et al.* 2005:5)

Traditional owners are able to negotiate economic benefits for their communities, including revenue streams that flow from royalty equivalents. In this way also, land rights are very different from native title rights.

Native title

The recognition of native title in Australia is a relatively recent phenomenon. In 1992 a test case was brought before the Australian High Court by a group of Meriam Island people who sought recognition of their rights in land: *Mabo and Others v Queensland* (No. 2). The Mabo decision altered the foundation of land law in Australia by overturning the doctrine of terra nullius (land belonging to no-one) on which British claims to possession of Australia were based. This recognition inserted the legal doctrine of native title into Australian law when the High Court recognised the traditional rights of the Meriam people to their islands in the eastern Torres Strait.

The Court also held that native title existed for all indigenous people in Australia prior to the establishment of the British colony of New South Wales in 1788. In recognising that indigenous people in Australia had a prior title to land taken by the Crown since Cook's declaration of possession in 1770, the Court held that this title exists today in any portion of land where it has not legally been extinguished.

Native title was described by the Court as *sui generis*, literally meaning of its own gender/genus or unique in its characteristics: "Native title is neither an institution of the common law nor a form of common law tenure but it is recognised by the common law. There is, therefore, an intersection of traditional laws and customs with the common law" (*Fejo v Northern Territory* (1998) 195 CLR 96 at 128).

It is inalienable, but it is subject to extinguishment by the valid exercise of legislative and executive power in circumstances in which other titles to land are not. It is a communal title that has an internal dimension that allows for the allocation of rights and interests within the group according to aboriginal law and custom.

The decision of the High Court was swiftly followed by the *Native Title Act* 1993 (Cth), which attempted to codify the implications of the decision, protect existing interests in land, and set out a legislative regime under which Australia's indigenous people could seek recognition of native title rights. It also established the structures and processes for the administration of native title land and future use and development of that land. In 2002, the full bench of the High Court confirmed that with the introduction of native title legislation, it is now the *Native Title Act* rather than the common law that sets the benchmark against which native title applications are to be judged (*Members of the Yorta Yorta Aboriginal Community v the State of Victoria*, 2002).

As a legislative concept, native title is predicated on the notion that the common law can recognise the rights and interests held by indigenous Australians in land where these rights and interests are "possessed under traditional laws acknowledged, and the traditional customs observed" (*Native Title Act* 1993, s.223.1(a)).

Under the *Native Title Act*, it is the "traditional laws and customs" of indigenous Australians that constitute the basis upon which native title can be recognised, and which provide the content of the native title "rights and interests" that are determined.

The outcomes for native title claimants from the native title process can be a hit-and-miss affair. In real terms, the recognition of native title in a final determination may mean anything from a nonexclusive right to visit or traverse the area to the recognition of a form of title that

resembles freehold in its exclusivity but is consistent with the traditional laws and customs that gave rise to it.

Indigenous peoples must demonstrate that they are an identifiable society bound by a normative system of law and custom and that this society is the same normative society that existed at the time of colonisation. That is, the rights and interests in the land now claimed must find their source in, or be rooted in, the pre-colonial societal norms. That law must provide the connection to land. For some, this can be a very difficult evidentiary burden. For the Yorta Yorta people, the result of this approach was the High Court's determination that "the tide of history" had "washed away" their native title (Glaskin 2003:2).

The Yorta Yorta judgement also had implications for the rights that might be recognised in any native title determination. Rather than the holistic title implied by the Mabo and Wik decisions, the High Court found that native title consists of a bundle of rights. Conceptualising native title as a "collection of distinct and severable rights . . . denies that there may be a unifying factor that is fundamental to the exercise of those rights and makes native title susceptible to being frozen in time" (Strelein 2001:102). Hence, the original fundamental interest in land may be extinguished, right by right, until only fragments of the original title remain. To quote from one of the most significant native title determinations to date:

The difficulty of expressing a relationship between a community or group of Aboriginal people and the land in terms of rights and interests is evident. Yet that is required by the NTA. The spiritual or religious is translated into the legal. This requires the fragmentation of an integrated view of the ordering of affairs into rights and interests which are considered apart from the duties and obligations which go with them.

. . .

The connection which Aboriginal peoples have with "country" is essentially spiritual . . . It is a relationship which sometimes is spoken of as having to care for, and being able to "speak for," country. "Speaking for" country is bound up with the idea that, at least in some circumstances, others should ask for permission to enter upon country or use it or enjoy its resources, but to focus only on the requirement that others seek permission for some activities would oversimplify the nature of the connection that the phrase seeks to capture. (*Western Australia v Ward; Attorney-General (NT) v Ward; Ningarmara v Northern Territory* [2002] HCA 28 (8 August 2002)).

4. What does communal title mean to those who own it?

Joseph "Nipper" Roe, a senior law man of the Yawuru, described the relationship between country, people, and law as follows:

The Yawuru people together own those places, as we together own all of Yawuru country. The way I look at it, the relationship between Yawuru people and country is really like a triangle made up of the people, the land, and the law. There is no such thing as a one-sided triangle or a two-sided triangle and there is no top or bottom or beginning or end of a triangle. In the same way,

the people, the land, and the law are three aspects of the same thing. We have a duty to look after them all, and looking after one of them means looking after the other two as well. (*Reasons for Judgement: Rubibi Community & Anor v The State of Western Australia & Ors* [2001] FCA 607).

Another senior Kimberley law man, Paddy Neowarra, described the relationship between people, land, law, and the spirit beings, Wanjina, to the Federal Court as follows: “Everybody under Wanjina. Myself, I’m under Wanjina. Animals, everybody. Everybody what in the earth. Yes, trees, everything, they all have to have names and they our families in the land. Even the river, everybody’s tribe, somebody’s name. My name is Neowarra. I got with my family with that black rock” (*Neowarra v State of Western Australia* [2003] FCA 1402).

Indigenous Australian systems of knowing, owning, inheriting, and caring for land are profoundly different from those that have their roots in European forms of landholding, from feudalism to full commodification. To give a sense of the complexity and particularity of these systems we can look briefly at the way in which Paddy Neowarra’s Ngarinyin community map out their relationships to their traditional lands.

The land comprising the estate of a patrilineal clan is known as a *dambun*. Individuals think of particular *dambun* as particular relatives, so that a tract of land may be known as *abi* (brother), *ngadji* (mother), *gaja* (mother’s mother), *waya* (wife), and so on. Each block of land becomes an embodiment of relationships with a range of people in different kin categories from surrounding *dambun*. This is not simply a metaphor for land. It serves to unify emotional stances within and between each group. All the people from one *dambun* will call another *dambun*, and all the people patrilineal with it by the same kin term (even though in certain closer contexts finer differentiations might be made between generations) (Redmond 2001). Hence Neowarra might say of a tract of country, a sacred place within it, or a man unrelated by blood: “that’s my mother” or “that’s my son.”

While westerners have no trouble thinking in terms of “motherlands” and “fatherlands,” these terms often become depleted of the emotional content of actual family relationships and come to serve as shorthand for an objectified nation-state. For northern Kimberley people and many other Australian indigenous people, the full range of human relationships is embodied in relationships to country. This includes thinking and talking of country as a child who needs love, protection, and care, or as a mother or father who provides that nurturing.

The characterisation of land as kin is not unique to the Kimberley. Both exchange and person/land relationships in the Western Desert, for example, are not characterised as relationships of reciprocity or production but rather as relationships of reproduction (see Myers 1993:36 and Ingold *et al.* 1990:11). The indigenous tropes that are used to describe both exchange and senior men’s relationships to country draw upon images of the mother-child relationship and talk of holding, feeding, growing up, and giving. Relationships between equals, such as brothers-in-law, are encompassed by this fundamental nurturing experience, which is expanded to include a reproduction of the whole of the social and natural world (Myers 1993:51). Specific rights, responsibilities, and obligations to people and places flow from these reproductive relationships.

It is the utterly un-European way of understanding the relationship between people and land that led the authors of the ALRA(NT) to define “traditional owners” as those patrilineal members who have the “primary spiritual responsibility for land” (Peterson 1976; Peterson,

Keen and Sansom 1977). The fit between traditional knowledge systems and Australian law is neither close nor comfortable. Australian law and legislation demand that claimants form themselves into groups that privilege one or another traditional grouping (be it language group, family, or clan) and that membership of these groups be codified, predictive, and immutable. The land that may be claimed is usually not defined by traditional boundaries but is determined by the contingencies of colonial history and law. The indigenous process by which historical events become part of an everlasting and immutable creation are ritual and religious and do not sit comfortably with simplistic demands to show, for example, biological descent from the original inhabitants of a claim area.

However, despite the lack of fit between very different ways of structuring the knowledge about, and relationships to land, it is the grossest of oversimplifications to characterise indigenous knowledge systems or the legislation to which they gave rise as “a socialist experiment” (Hughes and Warin 2005:1). Rather, it is the complexity, the wide variety of indigenous knowledge systems, and their incommensurability with western understandings of land that led anthropologist Stanner to remark: “no English words are good enough to give a sense of the links between an Aboriginal group and its homeland. Our word ‘home,’ warm and suggestive though it may be, does not match the Aboriginal word that may mean ‘camp,’ ‘hearth,’ ‘country,’ ‘everlasting home,’ ‘totem place,’ ‘life source,’ ‘spirit centre’ and much else. Our term ‘land’ is too spare and meagre. We can scarcely use it except without economic overtones unless we happen to be poets” (Stanner 1991:44).

Stanner was spot on. We are not talking about the ordinary English use of the word “country.” Country might mean to some a sovereign nation-state that has a right to be a member of the United Nations. Or it might refer to quieter, less populated areas outside the cities where people go for a drive on a Sunday afternoon. When indigenous people talk about country, they mean something different. They might mean homeland or tribal or clan area, and in saying so they may mean something more than just a spot on the map. They are not necessarily referring to a place in a geographical sense. They are talking about the whole of the landscape, not just the places in it.

The word “country” is an abbreviation of all the values, places, resources, stories, and cultural obligations associated with that area and its places. The word best describes the entirety of a people’s ancestral domains. It is place that gives meaning to their creation beliefs — the stories of creation form the basis of their laws and explain the origins of the natural world to them. And there are places that are regarded as particularly significant or even dangerous. People sometimes refer to them as sacred sites, and it is not always easy to explain these places. They are mostly about the spiritual. But they are also about the living and who they are. Because to them, country is also centrally about identity.

5. The structures and processes for dealing with communal land

Once indigenous people have gained title over their country, there are processes, often intricate, for determining how title will be held and how use and access by others should be determined. There is considerable variation in these processes. Table 1 provides a brief description of the regimes in each state or territory.

Table 1: Land rights legislation in Australia

State	Legal process
New South Wales	The <i>Aboriginal Land Rights Act</i> 1983 provides for a claim process over certain categories of Crown land. Determinations of claims are made by the New South Wales government on advice from government departments. Under the <i>Land Rights Act</i>, the New South Wales Aboriginal Land Council (NSWALC) is empowered to do the following: • Administer the NSWALC Account and Mining Royalties Account. • Grant funds for payment of the administrative costs and expenses of regional and local aboriginal land councils. • Acquire land on its own behalf or on behalf of, or to be vested in, local aboriginal land councils (LALCs). • Determine and approve/reject the terms and conditions of agreements proposed by LALCs to allow mining or mineral exploration on aboriginal land. • Make claims on Crown lands, either on its own behalf or at the request of LALCs. • With the agreement of the particular LALC, manage the affairs of that council. • Conciliate disputes between aboriginal land councils, between councils and individuals, or between individual members of those councils, • Make grants, lend money, or invest money on behalf of aborigines. • Hold, dispose of, or otherwise deal with land vested in or acquired by NSWALC. • Ensure that regional and local aboriginal land councils comply with the Act in respect of the establishment and keeping of accounts and the preparation and submission of budgets and financial reports. • Ensure elections for the chairpersons and other officers Aboriginal Land Councils are conducted in accordance with the Act and do the following: • Advise the minister on matters relating to aboriginal land rights. • Exercise such other functions as conferred or imposed on it by or under the <i>Aboriginal Land Rights Act</i> 1983 or any other Act (NSWALC 2004).
Victoria	Under the <i>Aboriginal Land Act</i> 1970, <i>Aboriginal Land (Northcote Land) Act</i> 1989, <i>Aboriginal Lands Act</i> 1991, and <i>Aboriginal Land (Manatunga Land) Act</i> 1992, and the <i>Commonwealth Aboriginal Land (Lake Condah and Framlingham Forest) Act</i> 1987, grants of small parcels of land have been made to aboriginal peoples. But no comprehensive system was introduced to identify or allow claims in other parts of the state.
Queensland	<i>The Aboriginal Land Act</i> 1991 and the <i>Torres Strait Land Act</i> 1991 provide for the granting of inalienable freehold title to existing aboriginal and Torres Strait Islander reserve land and trust areas. Also under the Act, vacant Crown land outside towns and cities can become available for claim if so gazetted by the government. National parks can also be claimed if gazetted as available for claim, but must be immediately leased back to the government. In 1984, Queensland established a system of community level land trusts, to own and administer former reserves. This was under a special form of title called a Deed of Grant in Trust (DOGIT). Each trust area becomes a local government area. Incorporated Islander Councils, which elect representatives every three years, manage the community's affairs. The Councils are able to make by-laws, appoint community police and are responsible for maintaining housing, infrastructure, the Community Development Employment Program (similar to work for the dole), licenses and hunting and camping permits (Agreements Treaties and Negotiated Settlements Project, 2005).

Western Australia	In Western Australia, the <i>Aboriginal Affairs Planning Authority Act 1972</i> enables aboriginal land to be vested in Aboriginal Land Trusts. Some former aboriginal reserves have been transferred to the Aboriginal Land Trust, but most aboriginal reserve land in Western Australia remains under direct government ownership and control. Proposals have been mooted to return Aboriginal Land Trust and reservation land to aboriginal ownership, but without specific legislation there is a risk that existing protections against resource exploitation will be lost.
South Australia	Crown land can be granted under the <i>Aboriginal Land Trust Act 1966</i> to the Aboriginal Land Trust, which leases the land to local aboriginal groups. In the north of the state, land has been granted as inalienable freehold to traditional aboriginal owners under provisions of the <i>Pitjantjatjara Land Rights Act 1981</i> and <i>Maralinga Tjarutja Land Rights Act 1984</i> .
Australian Capital Territory	The Wreck Bay aboriginal community has been granted a small area of land under the <i>Aboriginal Land Grant (Jervis Bay Territory) Act 1986</i> .
Tasmania	No land claims legislation has been enacted in Tasmania, although twelve parcels of land were handed back to the indigenous community in 1995 as a result of the passage of the Aboriginal Lands Bill on 2 November 1995 (discovertasmania.com:2001).

Source: All information in this table is taken from Smythe (1994) unless otherwise stated.

Aboriginal Land Rights (Northern Territory) Act 1976

There are two ways in which land in the Northern Territory can be made subject to the ALRA(NT): it may be scheduled and annexed to the Act, or a claim may be brought before the Aboriginal Land Commissioner and won. Land that is subject to the ALRA(NT) is not owned by individuals. It is granted as an inalienable freehold communal title. It can be leased, but it cannot be bought, acquired, or mortgaged.

For the most part, aboriginal landowners with inalienable aboriginal freehold have the exclusive power to control the direction and pace of development on their lands. The public, in the form of government at various levels, has only limited rights to impose external development or conservation direction or constraints (Central Land Council, 2005).

Communal title is formally vested in Aboriginal Land Trusts that are comprised of aboriginal people who hold the title for the benefit of the traditional owners and other people with a traditional interest in the land (*ibid.*). These trusts are statutory corporations, and their role is essentially passive. The trust holds the title but has no authority to undertake any dealings in relation to the land except as directed by a land council, which in turn is authorised by the traditional owners, precisely because land is owned communally and it is unlikely that any individual has the absolute right to approve an activity carried out on aboriginal land, particularly if that activity will involve substantial interference and disturbance to “country.” The land council’s role is to ensure that aboriginal culture, traditions, and law are respected and followed on aboriginal land; that the relevant aboriginal people make informed decisions; and that commercial and resource exploitation agreements are fair. The land council must be satisfied that the relevant traditional owners understand the nature and purpose of any land use agreement that is entered into on their behalf and that they have agreed to it as a group (*ibid.*).

Attention has been brought to bear on the communal nature of the titles as a brake on economic development hence the changes to the ALRA(NT) that will be implemented in the following manner:

- The Australian government will change its own law (*Aboriginal Land Rights [Northern Territory] Act 1976*) to allow the Northern Territory government to establish an entity to talk with the traditional owners and the land council of a particular town area about the head-lease.
- The Northern Territory government will pass its own law so that it can get this entity to talk to the traditional owners and land councils to agree on a head-lease for the whole town area in the community.
- The traditional owners and land councils will set all the conditions of the ninety-nine-year head-lease, including the rent up to the maximum set in the *Land Rights Act*.
- Once there is agreement for a head-lease, the people who live in the town area can then ask the entity for a lease on part of the town land, which they can use for their own home or business.
- If the people who lease the part of the town land want some help with money for their own home or business, they can contact the Australian government.

The Office of Indigenous Policy Coordination's literature on the reforms raises as many questions as it answers. In particular, there is a risk that the Aboriginal Benefits Account (ABA) will be beggared by the set-up costs (including the retention of legal counsel and other consultation expenses), surveying of both head-lease and sub-lease areas, rental payments, and other administrative costs of this scheme. It is also unclear what will happen with the housing and infrastructure currently owned by land trusts. If they are to remain with the land trusts, how will their upkeep be funded if the ABA is to be used to fund the scheme? Does the government hope to replace royalties with rent?

It should also be noted that the purpose of the ABA is to provide a mechanism for providing funds for the benefit of aboriginal people in the Northern Territory. Such funds are compensatory in nature and are not intended to substitute for normal government expenditure for aboriginal development.

Pitjantjatjara Land Rights Act 1981 (South Australia)

The administrative and procedural structures on the Pitjantjatjara lands of South Australia are similar to those in the Northern Territory, with one crucial difference. Anangu Pitjantjatjara Yankunytjatjara Land Management is the body corporate established under the *Pitjantjatjara Land Rights Act 1981*. It is the landholding body and is responsible for the administration of the Act. While the Board is responsible for obtaining the consent of traditional owners in relation to proposed activities on the Pitjantjatjara lands, the Council also has local government responsibilities. The effect is that the body responsible for conducting consultations that protect the interests of traditional owners against proponents may be a proponent itself, giving rise to a potential conflict of interests.

Native Title (New South Wales) Act 1994

The land rights regime in New South Wales is fundamentally different from that in the Northern Territory and South Australia. There is no requirement that claimants demonstrate a traditional connection to the land claimed (except if that land is a traveling stock reserve). Claimable lands consist of land held or available for sale or lease under the *Crown Lands Act*. This land must not be lawfully used or occupied; must not be needed or likely to be needed for residential or essential public purposes; and must not be affected by a registered native title claim.

The New South Wales Aboriginal Land Council (NSWALC) was established under the *Land Rights Act* 1983 (NSW). It is a statutory authority responsible for protecting and promoting the rights and interests of the indigenous people of New South Wales. From 1982 to 1998, after the passage of the Act, the State of New South Wales paid 7.5 percent of land tax raised from nonresidential property to NSWALC as compensation for the land lost by the indigenous people of New South Wales. This money was invested, and NSWALC is now funded by the interest that accrues to these investments. The State's Land Council network operates as a three-tiered system consisting of the peak body, NSWALC, thirteen Regional Aboriginal Land Councils (RALCs), and 120 Local Aboriginal Land Councils (LALCs). Land that has been successfully claimed is held as freehold or leasehold by the relevant LALC. This land can be used for any community purpose, and the LALC has the authority to decide how it will be used. It can be leased, mortgaged, or sold (NSWALC 2005).

Native Title Act 1993 (Cth)

Under the *Native Title Act*, the role of native title representative bodies is to assist native title claimants in preparing, negotiating, and where necessary litigating their claims. If the claimants achieve recognition of their native title, the native title holders are required by the Act to establish a body that represents them as a group and manages their native title rights and interests. This body is called a prescribed body corporate (PBC). The native title of indigenous Australians varies from region to region across Australia because the traditional laws and customs of indigenous people are diverse. The PBC must reflect the unique nature and wishes of the particular group.

At the time that the court makes a determination that native title exists, it will request that the native title holders choose what kind of PBC they want from one of two alternatives. In the first model, the native title is held in trust by the PBC, which acts as the trustee for the native title holders and operates for the benefit of the common-law holders of native title. In the second model, the native title is held by the common-law holders of native title, and the PBC acts as their agent, operating upon their instructions. The title held by the PBC is communal and inalienable.

Once the corporation is established by the native title holders and approved by the court, it is entered into the National Native Title Register. Once registered, the PBC becomes the legal body that conducts business between the native title holders and other people with an interest in the area, such as pastoralists, government agencies, or developers (sourced from the National Native Title Tribunal 2005).

Any proponent, including government, that wishes to use native title lands for any purpose has to go through the future act procedures specified under the Act: s.11 NTA. The procedural rights of the native title holders can vary from the right to be notified of proposed activities to strong rights to negotiate. There is no scope under these procedures for native title holders to veto developments. Nevertheless, developers and native title holders can enter into a voluntary Indigenous Land Use Agreement to authorise future management of land or waters and set out the terms of the agreement. Indigenous Land Use Agreements are registered under the Act and are legally binding on the people who are party to the agreement and all native title holders for that area, even if they were not involved in the agreement.

While these regimes are designed to provide certainty for proponents, at the same time protecting the intergenerational nature of the titles, it is perhaps not surprising that they are

perceived by some, as too onerous an imposition and a hindrance to economic development. Attention has been brought to bear on the communal nature of the titles as a source of the brake on economic development, and this has ignited debate on indigenous land tenure.

6. The tenure debate

In Australia, the push to privatise indigenous land began in 2004 when Warren Mundine, senior vice president of the Australian Labour Party, NIC member, and chief executive officer of New South Wales Native Title Services, released a statement to the media that called for fundamental legislative changes to the *Native Title and Land Rights Acts*. Mr. Mundine said the aboriginal community had the key to economic advancement locked up in communal landholdings and suggested that they could be selectively sold. In February 2005, he tabled a paper titled, "Privatising Indigenous Land" at a meeting of the National Indigenous Council (Mundine 1995).

In early March 2005, Hughes and Warin (2005) published, "A New Deal for Aborigines and Torres Strait Islanders in Remote Communities." In this article, they claimed that "communal ownership of land, royalties and other resources is the principal cause of the lack of economic development in remote areas." They likened remote communities to museums, designed to preserve a hunter-gatherer culture that is uneconomic in modern Australia. They called for aboriginal people to catch up with post-industrial society and enjoy Australia's "ever increasing capital and advancing technology." Their argument revived the social Darwinist idea that aboriginal society lags behind on a one-way evolutionary superhighway. They argued against bilingual education, "separatism," and the recognition of customary law, and described remote communities as "a nation independent from the rest of Australia." Hughes and Warin, of course, never mentioned the word "assimilation" — they simply pathologised all manifestations of cultural difference.

On 30 May 2005, Prime Minister John Howard addressed the National Reconciliation Workshop and said that his government was "committed to protecting the rights of communal ownership [and] . . . does not seek to wind back or undermine native title or land rights" (Howard 2005). There, one might have hoped, was an end to the matter.

However, in June 2005, the NIC released a document entitled "Indigenous Land Tenure Principles." These principles, while referring to the importance of communal title to indigenous people, included the recommendation that "the consent of the traditional owners should not be unreasonably withheld for requests for individual leasehold interests for contemporary purposes" and that "involuntary measures should not be used except as a last resort and, in the event of any compulsory acquisition, strictly on the existing basis of just terms compensation and, preferably, of subsequent return of the affected land to the original owners." They went on to recommend that "governments should review and, as necessary, redesign their existing Aboriginal land rights policies and legislation to give effect to these principles" (National Indigenous Council 2005).

These recommendations are worrying for the following reasons:

- The concept of mandatory leasing is discriminatory. It would be unimaginable that the Australian government would require, through the use of "involuntary measures," a non-indigenous person who jointly owned property with others to lease his or her land.

- One wonders how “just terms” would be calculated in those cases in which the value of communally held land to its owners is spiritual and cultural and the market value of the land is negligible.
- There is no mention of the term of these leases; but if they were for twenty, fifty, or even ninety-nine years, one would question whether land returned after the expiration of, say, a ninety-nine-year lease would be recognisable, either physically or culturally, to the descendants of the original title holders (not to mention the deprivation of use of their lands by the communal owners over several generations).
- The phrase “unreasonable withholding of consent” is most commonly legally applied to property owners who refuse to continue an existing lease. As Bradfield (2005:8) argued, “The NIC’s Principles apparently leave the Commonwealth to define what is ‘unreasonable’ withholding of consent, what is ‘just compensation’ for compulsory acquisition, and whether ‘subsequent return’ of land is possible.”
- A very troubling aspect of the NIC proposal is that the authors of the document recklessly propose giving totally unqualified and undefined “licence” to the government to make wholesale unspecified policy and legislative changes. Nothing in the proposal indicates that NIC has even considered the adequacy of the existing legislative arrangements for leasing on indigenous-owned land.

Land returned to indigenous communities via land rights legislation can be sold in New South Wales and leased in most other jurisdictions, and some of these leases can be mortgaged. In the Northern Territory, aboriginal land is leased to third parties for a range of purposes including tourism, safari hunting, fishing lodges, and infrastructure (Altman *et al.* 2005:22). AustralAsia Railway Corporation’s partial funding of the Alice-Darwin rail link by mortgages over leased aboriginal land shows that commercial lenders may participate in these arrangements (Clarke 2005:1). Native title holders may negotiate Indigenous Land Use Agreements (ILUAs) that allow economic development to take place on their land. These may include profit sharing and employment opportunities for the community (Edmunds and Smith 2005:74).

In our view, there is a very unhealthy and inappropriate preoccupation with privatising indigenous land by some commentators. Proponents argue that privatising communal land would help alleviate indigenous economic inequality.

There is more than one level at which this question may be addressed. The first is on its own terms: would legislation that enabled the alienation and subdivision of communal land produce improved economic outcomes for indigenous Australians? Another is to ask whether improved material conditions would be enough to justify racially discriminatory legislation that allows for the compulsory acquisition of communally owned indigenous land for a private purpose when no other Australian property owner would be subject to this requirement. Is the choice really this stark? Were land rights and native title legislation ever intended to produce economic outcomes? Why is this issue on the agenda at this time?

There are many reasons to think that privatising communally held land would not improve economic or other outcomes for indigenous Australians. Let us consider the economic value of the land that is held under communal titles and the nature of that title. The ALRA(NT) and the *Native Title Act* strictly limit the land that may be available to be claimed by indigenous people. The *Native Title Act* provides that claimable land must have never been subject to freehold title and, where the Crown has granted leases or licences, indigenous rights are extinguished to the extent of the interests granted. In the Northern Territory under the

ALRA(NT), certain reserve Crown lands can be scheduled, and vacant Crown land can be claimed, as well as land where all the rights and interests in that land are held for or on behalf of aboriginal people. Hence, the land that is available for claim under these regimes is precisely the land that in most cases tends to be the least commercially valuable and viable.

It is no easy thing for an indigenous group to mount a successful native title claim. Even when they succeed, indigenous people can expect that their rights in the claimed land will fall well short of freehold. One “major cause of under-development on the indigenous estate is that land has been returned but without property rights or exclusive control of commercially valuable resources” (Altman *et al.* 2005:6). Furthermore, the Productivity Commission noted: “The extent to which Indigenous people can potentially benefit from market based activities on their land depends very much on the location and nature of that land. Remoteness from markets and population centres can add to the costs of delivering products and services from Indigenous communities” (Productivity Commission 2003:310).

There is much evidence to suggest that the average household income in remote Australian indigenous communities is simply not sufficient to service a mortgage. The average household (not individual) income in remote parts of the Northern Territory is approximately \$40,000 a year. If dealing with a mainstream financial institution, this level of income would allow the household to borrow approximately \$160,000 over thirty years to pay for a house at a cost of \$1,110/month in mortgage repayments and total interest payments of \$235,000. Compare this to the \$192 a month that the average remote household pays in rent. Moreover, the cost of building a house in a remote community is between \$225,000 and \$350,000, at least \$100,000 more than a bank would lend a family on an average income; and the rate of depreciation is very high. Finally, the value of land in remote townships of the Northern Territory is between \$4.30 and \$36 per square metre; the value of pastoral lease land is approximately \$13 per hectare (Altman *et al.* 2005:15–16).

Privatisation of communally held Maori lands in New Zealand had the effect of worsening the economic outcomes for Maori people (*ibid.*:25–30), while in Papua New Guinea, agricultural production has expanded steadily under customary tenures and has mostly declined under registered titles (Burke in Fingleton 2005). Empirical economic research commissioned by the International Institute for Environment and Development found that the re-titling of communal lands in sub-Saharan Africa had not worked well as “the costs were high . . . the expected benefits had not materialised and, where family farming prospered, it appeared to do so anyway, on a foundation of customary rights, secured by kinship and social contracts” (Quan in Gilmour 2005:13).

Even if there were good reason to expect great benefits to flow to indigenous Australians from the privatisation of their communal lands, there has been no process of consultation on this issue with those people who would be most affected, the communal title holders. As a World Bank study has noted, “processes of land reform which do not enjoy legitimacy and recognition amongst the peoples they affect have often proven to be highly ineffective” (Deininger 2003:xxiv).

Given that there is little evidence to suggest that privatising indigenous land would improve the economic situation of indigenous Australians, and that there are many reasons to suppose that it would worsen an already desperate situation, there seems to be no justification for proposing racially discriminatory legislation that would see indigenous Australians as the only Australians whose land can be compulsorily acquired for private or nonessential public

purposes. It is deeply worrying that the first piece of publicly known policy advice from the NIC has been to propose a course of action as racist as this.

Even if there were evidence to support the notion that privatising communal lands would benefit indigenous people, it is worth recalling the findings of the Northern Territory government's own enquiry into the ALRA(NT), the 1998 Reeves Review of the *NT Aboriginal Land Rights Act*. This review found that communal title is the form of title most likely to protect the interests of aboriginal people, including future generations, in their traditional lands. It also found that the inalienability of aboriginal freehold title does not significantly restrict the capacity of aboriginal Territorians to raise capital for business ventures. Perhaps most importantly, the review noted that the achievement of aboriginal social and economic advancement through land rights was not an objective of the *Aboriginal Land Rights Act* when it was introduced (Ridgeway 2005:8–9).

The *Native Title Act* and its amendments represent legislative attempts to limit the implications of a High Court decision that overturned the doctrine of terra nullius on which British claims to possession of Australia were based. Far from being designed to achieve economic or social justice outcomes for indigenous Australians, it was designed to protect non-indigenous property interests in Australia. It is illogical to criticise these acts on the basis that they have not achieved something that they were never intended to achieve; that is, produce economic advancement for indigenous Australians.

7. Conclusion

It is pertinent to ask why this issue is on the agenda at all. It has been raised in the context of a fundamental restructuring of indigenous affairs in Australia, which has been described by Minister for Indigenous Affairs Amanda Vanstone as a “quiet revolution” (Vanstone 2005). Grouped under the rubric of “the new arrangements,” these changes have included the abolition of the Aboriginal and Torres Strait Islander Commission, proposed changes to the *Native Title Act* to make it “more workable” for opponents of claims, and a move towards “practical” rather than “symbolic” reconciliation. This restructuring has been administrative rather than legislative — much of it has and will continue to take place behind closed doors.

To conclude, we would like to quote at length from the Australian Human Rights and Equal Opportunities Commission's assessment of the new arrangements in Indigenous Affairs.

With the announcement of the new arrangements, there has been a noticeable shift in emphasis on the role of Shared Responsibility Agreements (or SRAs). The focus is now much more explicitly on the responsibilities of indigenous people in meeting mutual obligation principles. The OIPC [Office of Indigenous Policy Coordination] state that the SRA process is intended to build genuine partnerships with indigenous people at the local level based on the notion of reciprocity or mutual responsibility. An SRA is a two way street where communities identify priorities and longer term objectives for themselves, government listens and they work together to achieve agreed objectives — nothing can progress unless the lead comes from the community.

This presents the acceptance of mutual obligation as voluntary. However, the OIPC have also stated that “Under the new approach, groups will need to offer commitments in return for government funding.” During consultations for this

report, senior bureaucrats have confirmed that the intention is that communities that do not wish to accept mutual obligation will be provided with basic services, but might not receive additional funding or support . . . Consultations for this report have revealed widespread concerns about the potential scope and dominance of mutual obligation requirements. There is concern that SRAs will become less of a community development and capacity building model and more of a punitive funding agreement model which seeks behavioural change. This is particularly so when, as in the Mulan agreement, there is very little connection between the outcome sought by the Government (in this example reducing the incidence of trachoma) and the input provided by the Government (a petrol bowser). There is also widespread concern that the linking of delivery of services to behavioural change through SRAs would be discriminatory. (Calma 2005c 119)

Any attempt to legislate away the recognition of fundamental cultural difference afforded by land rights and native title legislation would be in keeping with the assimilationist thrust of the “new arrangements.” There is no evidence for the proposition that the forced carving up of the indigenous estate would improve the day-to-day lives of Australia’s indigenous people, let alone their descendants. But the issue is more fundamental: the present Australian government must not be permitted to legislate away the traditional, spiritual, and unique connection of indigenous peoples to their lands.

References

- Agreements, Treaties and Negotiated Settlements Project. Anangu Pitjantjatjara Yankunytjatjara Land Management. [www.atns.net.au/agreement.asp? EntityID=750](http://www.atns.net.au/agreement.asp?EntityID=750) (accessed 4 May 2009).
- Agreements, Treaties and Negotiated Settlements. Indigenous Land Use Agreements (Native Title). www.atns.net.au (accessed 19 August 2005).
- Agreements, Treaties and Negotiated Settlements Project. Dead of Grant in Trust (DOGIT) Australia. <http://www.atns.net.au/extglossary.asp?GlossaryID=231> (accessed 2005).
- Alfred, T. and Corntassel, J., 2005. ‘Being Indigenous: Resurgences against Contemporary Colonialism’, *Government and Opposition: An International Journal of Comparative Politics*, **40**(4):597–614.
- Altman, J.C., 2002. **Generating Finance for Indigenous Development: Economic Realities and Innovative Options**, CAEPR Working Paper No. 15/2002. Canberra: The Australian National University. <http://online.anu.edu.au/caepr>.
- Altman, J., Craig, L. and Clarke, J., assisted by Fogarty, B. and Napier, K., 2005. **Land Rights and Development Reform in Remote Australia**. Melbourne: Oxfam Australia.
- Anderson, T., 2005. ‘Privatise Aboriginal Land Rights? The Lessons from Papua New Guinea’, *Green Left Weekly*, 13 April, 2005.

- Australians for Native Title and Reconciliation, n.d. 'A Statement by Native Title Representative Bodies in Reference to Proposed Changes to Communal Land Ownership', Dulwich Hill, NSW: Australians for Native Title and Reconciliation. www.antar.org.au (accessed 5 August 2005).
- _____, 2005. 'Land Rights under Threat', Dulwich Hill, NSW: Australians for Native Title and Reconciliation. www.antar.org.au.
- Bradfield, S., 2005a. 'Communal Ownership of Indigenous Land and Individual Wealth Creation: The Debate So Far, Identifying Key Questions', Native Title Conference 2005, Conference Papers, AIATSIS. www.aiatsis.gov.au (accessed 4 August 2005).
- _____, 2005b. 'A White Picket Fence or a Trojan Horse? The Debate Over Communal Ownership of Indigenous Land and Individual Wealth Creation', Unpublished research paper.
- Calma, T., 2005a. 'Land Rights Debate Has Been Simplistic', Dulwich Hill, NSW: Australians for Native Title and Reconciliation. www.antar.org.au (accessed 4 August 2005).
- _____, 2005b. 'Options for Indigenous Economic Development', *Canberra Times*, www.hreoc.gov.au (accessed 11 May 2005).
- _____, 2005c. 'Human Rights and Equal Opportunity Commission', in **Social Justice Report 2004**. www.hreoc.gov.au.
- Central Land Council, 2005. **What Land Councils Must Do**, Central Land Council. www.clc.org.au/ourland/whatlc (accessed 19 August 2005).
- Clarke, J., 2005. 'Privatising Aboriginal Land Is No Panacea', www.onlineopinion.com.au (accessed 5 August 2005).
- Council for Aboriginal Reconciliation, 1994. **Understanding Country**, Key Issues Paper No. 1. Canberra: Australian Government Publishing Service.
- Culhane, D., 1998. **The Pleasure of the Crown: Anthropology, Law and First Nations**. Burnaby: Talonbooks.
- Deininger, K., 2003. **Land Policies for Growth and Poverty Reduction**. Washington, DC: World Bank/Oxford University Press.
- Dodson, M., 2005. 'My People and Place: Why Does Place Matter?', Keynote address, Community Builders NSW, Create Stronger Communities Conference 2005. www.communitybuilders.nsw.gov.au (accessed 5 August 2005).
- Edmunds, M. and Smith, D., 2005. **Member's Guide to Mediation and Agreement Making under the Native Title Act**, National Native Title Tribunal. www.nntt.gov.au (accessed 22 August 2005).

- Fingleton, J., 2005a. 'Our Pacific Aid Policy Must Be Based on Facts', *Canberra Times*: <http://canberra.yourguide.com.au> (accessed 30 June 2005).
- _____, 2005b. 'Privatising Land in the Pacific: A Defence of Customary Tenures', Discussion Paper Number 80, Canberra: The Australia Institute. www.tai.org.au (accessed 4 August 2005).
- Gilmour, S., 2005. 'Improved Wealth Creation and Economic Sustainability for Individuals, Families and Communities — An Australian Approach to Land Tenure Reform', Unpublished research paper.
- Glaskin, K., 2003. 'Native Title and the Recognition of Indigenous Land Rights in Australia: Representations of "Tradition"', *Anthropology News*, December 2003. American Anthropological Association, www.aaanet.org.
- Gosarevski, S., Hughes, H. and Windybank, S., 2004. 'Is Papua New Guinea Viable with Customary Land Ownership?', *Pacific Economic Bulletin*, **19(3)**:133–6. <http://classshares.student.usp.ac.fj/DG406/additional%20readings/PNG/Is%20PNG%20viable%20with%20customary%20Land%20ownership.pdf> (accessed 4 May 2009).
- Hodson, J., 2005. 'Education before Mortgages for Australia's Poorest', Media release, Central Land Council. 5 April 2005.
- Howard, J., 2005. Transcript of address by the Prime Minister, the Hon. John Howard, at the National Reconciliation Planning Workshop, Canberra. www.pm.gov.au (accessed 5 August 2005).
- Hughes, H. and Warin, J. 2005. **A New Deal for Aborigines & Torres Strait Islanders in Remote Communities**, Issue Analysis No. 54. St. Leonards, NSW: Centre for Independent Studies. www.cis.org.au (accessed 3 August, 2005).
- Ingold, T., Riches, D. and Woodburn, J., 1990. **Hunters and Gatherers**. St. Martin's Press.
- Jones, T., 2005. 'Shared Responsibility Deal Is Nonsense: Dodson', Lateline: TV Program Transcript 31/5/2005. www.abc.net.au/lateline (accessed 5 August 2005).
- Land, C. and Vincent, E. 'New Deal, Old Story', New Matilda, www.newmatilda.com (accessed 5 August, 2005).
- Layton, R., 1985. **Anthropology and the Australian Aboriginal Land Rights Act, Social Anthropology and Development Policy**. London: Tavistock Publications.
- Merlan, F., 1994. 'Entitlement and Need: Concepts Underlying and in Land Rights and Native Title Acts: Claims to Knowledge, Claims to Country', Native Title Research Unit, AIATSIS.
- _____, 1995. 'The Regimentation of Customary Practice: From Northern Territory Land Claims to Mabo', *The Australian Journal of Anthropology*, **6(3)**:64–82.

- _____, 2000. 'Representing the Rainbow: Aboriginal Culture in an Interconnected World', *Journal of the Australian Institute of Aboriginal and Torres Strait Islander Studies*, **1 & 2**.
- _____, 2005. **Formulations of Claim and Title Heritage and Native Title: Anthropological and Legal Perspectives**. Native Title Research Unit, AIATSIS.
- Metherell, M., 2004. 'Land System Holds Us Back, Says Mundine', *Sydney Morning Herald*. www.smh.com.au (accessed 7 December 2004).
- Mowaljarlai, D. and Jutta, M., 1993. **Yorro Yorro: Everything Standing Up Alive**. Broome: Magabala Books.
- Mundine, W., 1995. 'Privatising Indigenous Land', Unpublished report to the National Indigenous Council.
- Myers, F., 1993. 'Place, Identity, and Exchange in a Totemic System: Nurturance and the Process of Social Reproduction in Pintupi Society', in J. Fajan (ed.), **Exchanging Products: Producing Exchange**. Sydney: University of Sydney.
- National Indigenous Council, 2005a. **Indigenous Land Tenure Principles**. National Indigenous Council: Office of Indigenous Policy Coordination. www.oipc.gov.au (accessed 4 August 2005).
- _____, 2005b. **Third Meeting of the National Indigenous Council**. National Indigenous Council: Office of Indigenous Policy Coordination. www.oipc.gov.au (accessed 4 August 2005).
- National Indigenous Times, 2005a. 'NIC's Defence Is Not Aiding the Debate over Land: Behrendt', *National Indigenous Times*, **85**. www.nit.com.au (accessed 25 June 2005).
- _____, 2005b. 'Now a Word from the Lawyers', *National Indigenous Times*, **85**. www.nit.com.au (accessed 25 June 2005).
- _____, 2005c. 'The Burning Questions', *National Indigenous Times*, **85**. www.nit.com.au (accessed 25 June 2005).
- _____, 2005d. 'Howard's War on Terra', *National Indigenous Times*, **85**. www.nit.com.au (accessed 25 June 2005).
- _____, 2005e. 'It's Always Been a Matter of Trust', *National Indigenous Times*, **85**. www.nit.com.au (accessed 25 June 2005).
- National Native Title Tribunal, 2005. 'What Is a Prescribed Body Corporate (PBC)?' www.nntt.gov.au (accessed 19 August 2005).
- Native Title Research Unit, 2005. 'Native Title Resource Guide', Canberra: Australian Institute of Aboriginal & Torres Strait Islander Studies. www.aiatsis.gov.au (accessed on 5 August 2005).

- New South Wales Aboriginal Land Council (NSWALC). 'Native Title and Land Rights', Fact Sheet Series. www.alc.org.au (accessed 19 August 2005).
- Nolan, T., 2005. 'Land Rights Overhaul: Mixed Reactions Among Indigenous Leaders', Australian Broadcasting Commission PM program. www.abc.net.au (accessed 5 August 2005).
- Northern Land Council, 2005. **Doing Business on Aboriginal Land**. www.nlc.org.au (accessed 19 August 2005).
- Pearson, N., 2005. 'Reconciliation a Building Block', *The Australian*, 19 April 2005.
- Peterson, N., 1976. 'Tribes and Boundaries in Australia', Social Anthropology, Series No. 10. Canberra: Australian Institute of Aboriginal Studies.
- Peterson, N., Keen, I. and Basil, S., 1977. **Succession to Land: Primary and Secondary Rights to Aboriginal Estates**. Canberra: Northern Land Council.
- Productivity Commission, 2003. **Overcoming Indigenous Disadvantage: Key Indicators 2003 Indigenous Report**. Australian Government Productivity Commission.
- Redmond, A.J., 2001. 'Rulug Wayirri: Moving Kin and Country in the North Kimberley', Unpublished PhD thesis, University of Sydney.
- Ridgeway, A., 2005. 'Addressing the Economic Exclusion of Koories through Native Title', Paper presented at the Australian Institute of Aboriginal and Torres Strait Islander Studies, Native Title Conference 2005. www.aiatsis.gov.au (accessed on 5 August 2005).
- Ritchie, D., 1999. 'Constructions of Aboriginal Tradition for Public Purpose: Applied Anthropology in Australasia', in T. Sandy and J. Taylor (eds.), **Applied Anthropology in Australasia**. Perth: University of Western Australia Press.
- Smythe, D. 1994. **Understanding Country: The Importance of Land and Sea in Aboriginal and Torres Strait Islander Societies**. Reconciliation and Social Justice Library. Sydney: Australasian Legal Information Institute. www.austlii.edu.au (accessed 5 August 2005).
- Snowden, Warren, 2005. 'Aboriginal Land is More than Mere Collateral', www.warrensnowdon.com (accessed on 4 August 2005).
- Stanner, W.E.H., 1991. **After the Dreaming**. Boyer Lectures. Sydney: ABC Books.
- Strelein, L., 2001. 'Conceptualising Native Title', *The Sydney Law Review*, **23**(1).
- Taylor, J. and Stanley, O., 2005. **The Opportunity Costs of the Status Quo in the Tharrmurr Region**, CAEPR Working Paper No 28/2005, Canberra: The Australian National University. <http://online.anu.edu.au/caepr> (accessed 9 August 2005).

- Taylor, S., 2004. 'Administering the Land Fund: NSW Aboriginal Land Council v ATSIC', *Aboriginal Law Bulletin* (1995) 131 ALR 559 (accessed 30 August 1995).
- The Daily Liberal, 2004. 'Land Sale Key for Koories', Daily Liberal, Rural Press Limited.
- Vanstone, A. 2005. 'Address to National Press Club', 23 February 2005. Minister for Multicultural and Indigenous Affairs, Media Centre. www.atsia.gov.au (accessed 5 August 2005).
- Way, F., 2004. **Governance Structures for Indigenous Australians On and Off Native Title Lands**. Reconciliation and Social Justice Library Discussion Paper 4. www.austlii.edu.au (accessed 18 February 2004).
- Weiner, J.F., 1997. 'Bad Aboriginal Anthropology: A Reply to Ron Brunton', *Anthropology Today*, **13**(4).
- Whittaker, E., 1994. 'Public Discourse on Sacredness: The Transfer of Ayers Rock to Aboriginal Ownership', *American Ethnologist*, **21**(2).
- Wyatt, B., 2005. **Compulsory Acquisition of Communal Land Rejected**. Goldfields Land & Sea Council. www.glc.com.au (accessed 4 August 2005).