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Past, present and future — a progress report for mediators

John L. Hancock

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Native title and the mining industry in WA

Past, present and future — a progress report for mediators

John L Hancock¹

General Editor



Laurence Boule

Professor of Law,
Bond University, Queensland

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Introduction

Mediation in the context of native title disputes has grown rapidly in the last decade for many reasons, primarily because it is effective in assisting parties to reach a mutually satisfactory outcome. Numerous practical considerations exist for mediation involving the mining industry and Indigenous parties under the *Native Title Act*. Some of these will be examined from the past, present and future perspectives of two of the many parties to native title issues: Indigenous Australians and the mining industry.

Australia's crucial industry – mining

The significance of the mining industry to the Australian economy should be recognised if the collective standard of living of Australians is to be sustained. Statistics prove its vital importance to Australia: the sector contributes some 45 per cent of merchandise exports and accounts for 8.4 per cent of GDP. Australia's mineral export income reached \$56.4 billion in 2000-01.² Mining is often taken for granted, yet not an hour would go by without one making use of its end-products – be it a computer, car or can.

Yet in the last five years Australian mineral exploration has dropped 49 per cent.³ As Western Australian Labor Government Treasurer Eric Ripper has said,

We would rather see exploration up because today's exploration is tomorrow's mining.⁴

Tomorrow's mining must be both socially and economically sustainable for all Australians. Mining in the past has been criticised as contributing to Indigenous dispossession in areas such as Pine Creek, NT and Cape York, Qld.⁵ It has also been argued that until relatively recently, Indigenous Australians had little direct benefit from mining developments on what they considered to be their ancestral lands. In addition, Indigenous spiritual and cultural beliefs have been deeply offended by past actions of the Australian mining industry. Among various high profile examples is the Jabiluka Uranium mine.⁶

In late 2002, the Western Australian Ministerial Inquiry into Greenfields Exploration was warned that it:

should not focus solely on exploration investment if the resultant approach and recommendations are inconsistent with Australia's human rights obligations ... if the Inquiry advocates an approach inconsistent with human rights, it is unlikely to result in a sustainable relationship between exploration ventures and Indigenous communities.⁷

In such a charged atmosphere and with so much at stake for the country, a system of dispute resolution has most to offer if it is effective, timely and responsive to the interests of the parties. Mediators of native title disputes must be prepared to accept a most challenging role.



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The past – a brief history

Until the late 1960s the mining industry had virtually automatic access to areas of interest for exploration and mining operations. Four main developments have occurred since then to recognise indigenous rights to land:

1. Commonwealth *Aboriginal Land Rights (NT) Act 1976*
2. The High Court *Mabo* decision of 1992.
3. Commonwealth *Native Title Act 1993*.
4. The High Court *Wik* decision of 1996.⁸

The defining moment for relationships between Indigenous Australians and the mining industry was the High Court of Australia overturning the doctrine of *terra nullius* via the *Mabo* decision of 1992. *Terra nullius* stated that upon European explorers ‘discovering’ a new land, if there was not already organised society,⁹ the land could be annexed by the discoverer. Australia had previously been considered such a country.

New Zealand

In contrast, the British signed the Treaty of Waitangi on 6 February 1840, recognising the pre-existing society of the Maori people in New Zealand. However, the recognised traditional owners of New Zealand grew increasingly disgruntled over the observation of the Treaty, resulting in the establishment of the Waitangi Tribunal via Act of Parliament, the *Treaty of Waitangi Act 1975*.

Over a decade after the establishment of the Waitangi Tribunal, events in Australia were leading that country down a similar, yet different,¹⁰ path. The results of many years of legal argument and Aboriginal protest culminated in the High Court decision in *Mabo* of 1992. It recognised that a society did exist prior to European occupation, and as such native title existed. In effect, the High Court decided that Australia should have its own version of the Treaty of Waitangi, 150 years later. In response, the Federal Government enacted the *Native Title Act* in 1993, which set out a statutory framework for recognising Aboriginal land rights.

Native Title Act 1993 and mediation

The preamble of the *Native Title Act* explains that

a special procedure needs to be available for the just and proper ascertainment of native title rights and interests which will ensure that, if possible, this is done by conciliation and, if not, in a manner which has regard to their unique character.¹¹

While the above preamble extract points to the use of mediation, in the references to interests, need for flexibility and participatory requirements, there was very limited reference to ‘mediation’ in the Act. One brief reference in Pt 3, s 72, called for the President of the Native Title Tribunal to call a conference of the parties to assist in resolving the application. However, the Act at that point left it ambiguous as to how this was to occur in terms of purpose and process. Although this gave parties little guidance, it may have left the Native Title Tribunal with a core benefit of mediation – it is a highly flexible dispute resolution process.

The original Act was intended to set out a framework to deal with native title applications and disputes. However, the introduction of the *Native Title Act* has been seen by many in the mining industry as the main reason for the backlog of over 11,000 mining and exploration titles either already in the native title process or about to go into the process.¹² Indeed, the original legislation was extensively criticised, with Western Australia’s Senator Eggleston stating at the second reading of the Native Title Amendment Bill 1997:

The Native Title Act 1993 is not working. The act that was supposed to create an atmosphere of certainty for indigenous Australians, for leaseholders, pastoralists and miners has failed because the Keating Government failed to devise a satisfactory process of determination, which has resulted in uncertainty, animosity, cynicism and excessive legal costs for the parties involved and has stalled development in rural and regional Australia.¹³

Native Title Act amendments 1998, ILUAs and mediation

The Howard Government's 10-point plan for reform of the *Native Title Act* was largely enacted in 1998 and contained more references to mediation, no doubt a sign of the increasing importance of ADR and mediation in practical experience. Representing the tenth point of the plan was provision for Indigenous Land Use Agreements¹⁴ (ILUAs). An ILUA is a contractually binding agreement between parties for specific land use, when appropriately registered, whether native title has been determined or not.¹⁵

These provisions were developed in the spirit of mediation through consultation with the National Indigenous Working Group and industry participants.¹⁶ The ILUA process itself is designed along mediation principles – addressing the needs and interests of the parties – with native title parties able to agree to the use of lands on their terms, including compensation, while providing security for the mining industry to proceed along outlined plans.

The process presents a short cut method for all parties to achieve a workable native title solution, using the strengths of mediation such as the principle of 'party determination'. It also runs parallel with Boule's¹⁷ value claims for mediation – a future focus and party participation.

ILUAs therefore have the potential to cut through the backlog of requests for access for exploration or development of claimed native title areas. They allow agreeable parties to circumvent the more onerous and time-consuming alternative of determination prior to negotiations – determination itself being an unknown from any party's perspective.

Parties insistent on following the formal determination path put the process back to square one after the determination, with negotiations for the future of the land beginning after the lengthy determination process.

Under different circumstances ILUAs can be viewed from a number of perspectives. While in some circumstances Indigenous parties may believe their negotiating position is considerably stronger after formal determination, in others more trust and

communication between parties would see the ILUA further accepted as a step toward genuine, proactive collaboration.

Mediation principles are enshrined in the amended *Native Title Act*. Federal Court judges often comment on the importance of mediation to the native title process, for example:

One important object and purpose to be found in the Act is the resolution of issues and disputes concerning native title by mediation and agreement, rather than by Court determination. Detailed procedures are set out in the Act to achieve those objects.¹⁸

The increasing use of mediation can be seen as a driving force in the improvement of native title dispute resolution. However the pace of improvement is frustrating for many, with the mining industry primarily holding native title legislation responsible for the prevention of over \$460 million of planned exploration expenditure in WA alone.¹⁹ Future improvement will not come from a further overhaul of the legislation;²⁰ rather, it will come through better communication of parties' needs and interests, using the principles of mediation.

Native title: mediation vs litigation

Much has been said of the benefits of mediation over litigation. Indeed, as Greame Neate, current President of the National Native Title Tribunal (the Tribunal) summarised with regard to native title disputes:

[I]t is arguable that a mediated outcome is the only way that the range of complex and interrelated issues facing a disparate set of parties can be addressed and settled.²¹

The judiciary often expresses reservations on the use of litigation when there are alternatives such as mediation or other forms of ADR, and further questions the effectiveness of adversarial litigation for native title matters.²² In the native title context Federal Court judges have especially drawn attention to the pitfalls of litigation.

Underlying the Act is an acknowledgement by Parliament that unless mediation or consultative processes are provided by the Act for the purpose of encouraging

parties to use direct and less costly means of resolving their differences, the prosecution of 'inter partes' litigation on a 'parcel by parcel' basis will incur great cost and tend to prolong uncertainty about the existence and effect of native title.²³

For both indigenous Australians and the mining industry the option of a 'parcel by parcel', litigated native title determination, is an impossibility. The *Mabo* decision took Eddie Mabo 10 years (indeed delivered after his death), and millions of dollars, and was thus not, in fairness, an avenue for the many other potential claimants to pursue. As Justice French, who in 1996 was President of the Tribunal, has said:

All the money in Australia would be insufficient to pay the bill if all native title claims were litigating in the courts.²⁴

While this prospect may make lawyers' hearts beat faster, it is something most Australians would want to avoid!

For the Aboriginal community, litigation is also something undesirable, for as well as the money, there are factors of time and geography. Most native title disputes occur in areas well outside the vicinity of Supreme Courts and counsels' chambers. And no one wants to wait 10 years for an outcome. As litigation becomes more unattractive, alternatives such as mediation become more appropriate.

In summary, the High Court in the *Waanyi* case spelt out the primary benefits of mediation:

If it be practicable to resolve an application for determination of native title by negotiation and agreement rather than judicial determination of complex issues, the court and the likely parties to the litigation are saved a great deal in time and resources. Perhaps more importantly, if the persons interested in determination of those issues negotiate and reach an agreement, they are enabled thereby to establish an amicable relationship between future neighbouring occupiers.²⁵

National Native Title Tribunal mediation

The Tribunal has used mediation since its inception. At the 10-year anniversary in 2002 of the *Mabo* (No 2) decision there were 589 active native title claimant applications with 48.5 per

cent of them in mediation.²⁶ Mediation provides a platform for all parties to be heard and the chance for others to appreciate all interests in the land. As Kado Muir, native title claimant of the Tjupan Ngalia application, explained:

It's about talking and listening and being prepared to deal. The agreement shows recognition and respect for each other's interests.²⁷

Much of the mediation work of the Tribunal is in organising the parties, assisting them to identify their interests, and negotiating a framework for future discussion. Side agreements between parties can also be negotiated, and sometimes parties withdraw if, through the discussions within mediation, they find their own interests will not be affected by the claimant's proposals. In this way mediation can expedite the process and remove superfluous issues.

Mediation also ensures confidentiality of process. Boule²⁸ recognises confidentiality as another value claim of mediation. Parties are not exposed to the public glare of the courtroom and the Tribunal treats all discussions as confidential. Under the *Native Title Act* parties are on a 'without prejudice' basis, enabling more open discussion of issues.

The amendments to the Act go further and give parties the alternative of the

ability to agree to disclose their conferences. This means observers can view a mediation in action, potentially removing fear of the process among those unaccustomed to its procedures. This has the potential to improve communication and trust between parties, enabling a mediation framework to establish itself among others with potentially similar issues.

Flexibility

In many cases outside assistance, for example from surveyors to map existing grants or anthropologists to provide cultural studies, is called upon. In this way the flexible nature of mediation is helpful to all concerned, especially since sessions can relatively easily be stopped and started at a later date in order to gather more information. Boule²⁹ regards procedural flexibility as another value claim of mediation. With such diversity among parties, it is helpful that the mediator can adapt the process to assist the parties.

An interest-based process

Fundamental to the preceding discussion is the interest-based nature of mediation. According to Justice French the Tribunal attempts to mediate native title claims by applying interest-based

negotiation. It requires both parties to:

- identify their own and others' real interests and objectives
- consider a variety of options to accommodate those interests
- develop criteria of legitimacy to test the fairness of agreements that might emerge from the process
- consider the best likely alternatives to a negotiated outcome.³⁰

This process fits well with the 'classic' model of mediation (see Figure 1 below).

By identifying interests and objectives, the Tribunal seeks to bring structure and clarity to the problem, and thus divides the dispute into parts, which then serve as an agenda. As a result, all parties have the opportunity to have their interests noted and addressed.

The present: native title – some issues for mediators

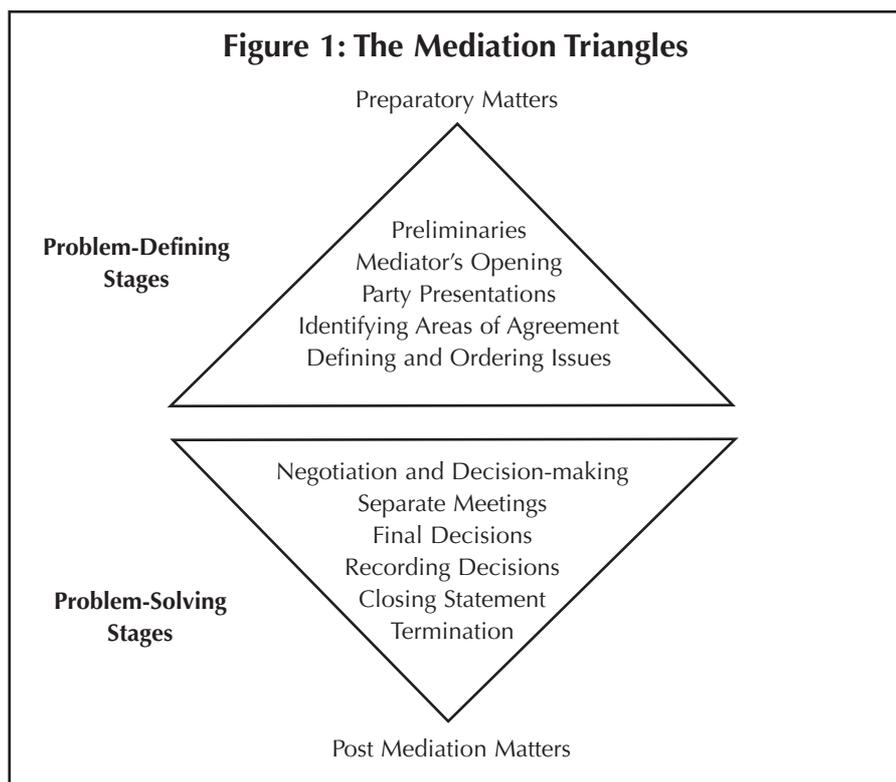
In a field as complex and politically charged as native title, many additional challenges confront mediators. First, the role of the Tribunal under the *Native Title Act* requires it to assist applicants in drafting their applications and to take account of cultural and customary concerns of Aboriginal and Torres Strait Islanders.³¹ This has the potential to give non-indigenous parties the impression that the Tribunal and chosen mediator are biased in support of the claimants. Indigenous parties may alternatively view the Tribunal as just another form of Western government. Boule advises mediators generally in this situation:

While the early development of trust is imperative, mediators might have to recover from a partial loss of trust and confidence where they have appeared to be biased towards one party or where the process has become impacted. This can be achieved through further explanation of the mediator's roles and functions, and reassurances as to the mediator's impartiality.³²

Cultural difference and mediation

The Tribunal has access to consultants with particular skills and knowledge of Aboriginal and Torres Strait Islander societies to assist in mediations. This can help breach the cultural gap that may exist between parties.

However, it is these cultural differences that contribute the most problems for



mediators of native title disputes. Many would challenge the appropriateness of mediation where there is little understanding of underlying cultural issues, with participants usually coming from similar backgrounds and with interests that can be communicated and understood. The cultural difference between a white farmer needing access to a waterhole for his sheep and the aboriginal, who believes it is the home of an ancient spirit who does not wish disturbance, is enormous.

Lawyers who become involved in native title applications and mediations will usually have the tendency to rely on their courtroom experience or legal training. This can be culturally very different to indigenous Australians. Mick Dodson, Aboriginal and Torres Strait Social Justice Commissioner, explains in regard to native title mediations:

The cultural difference that exists between these groups is real and important. In my experience, Aboriginal people do not ordinarily use verbal confrontations, insults, objections, etc. as a rhetorical device in argument. Lawyers do. Non-Aboriginal people are generally familiar with this and understand it as theatrics.³³

Communicating cross-culturally among people with varied backgrounds can therefore be an impediment to even experienced mediators, and increases the intricacy and complexity of the process.

Logistical challenges

Another difficulty for mediators is the sheer number of parties involved, often over an extensive area. For example, in the Yorta Yorta claim in Victoria, there were over 470 parties. In the Kuyani mediation in South Australia there were over 800! This can be a logistical nightmare for mediators.

It can also mean grouping large numbers of sometimes hostile parties together for long periods. Emotions can run high on both sides as land is an important aspect of any society. Often it means parties must travel and stay in towns that may be hostile to a particular party's interest. This can be a stressful situation and could impact upon the capacity for negotiations to take place in a neutral environment. Boulle³⁴ states mediation is best suited when emotional levels are manageable

and in a 'neutral' environment – in native title mediations this may be impossible.

Power imbalance

Power imbalance is an important aspect of concern to mediators. There is a long history of power difference between the white and non-white population of Australia, a difference that the *Native Title Act* seeks to redress. It is a relatively new phenomenon as Mick Dodson points out:

Aboriginal people haven't had much of a chance to get used to having a say in decisions affecting our land.³⁵

This could pose difficulties for mediators because in some cases the Aboriginal parties may be unsure of exactly what they want in their claims. Further Mick Dodson explains:

The history of denial of Aboriginal rights creates consequences for the mediator. The Tribunal's motivation is to produce agreements. This might seem to be a neutral agenda but because of the context of power imbalance it creates a problem for claimants. The claimants are likely to be the group, in any mediation, whose interests are the hardest to define and describe.

In light of this it may be difficult for some parties to explain their interests in a clear list at mediations. Other parties such as the mining industry usually have a clear list of wants and needs and communicating these are something they are accustomed to doing. The mining industry has become more cognisant of its social responsibility, recently developing strategies which aid their long term goals through better relationships with all stakeholders.³⁶

For a future-focussed process like mediation, any gross power imbalance caused by an inadequate agenda due to unclear interests of parties could have long-term consequences on any mediated settlement. The Tribunal's motivation is to produce agreements and although it is supposed to be neutral, this motivation may mean that because of the power imbalance the agreements may not be long lasting. Without additional support, many claimants may find it difficult to respond to agenda points set by the other parties.

The process itself undermines many Aboriginal beliefs about their connection to the land. For example,

a Yorta Yorta elder said about the process:

These photographs on the wall, and all this history, that's just a sample of our culture here. So why do we have to prove ourselves to some drunk down the road? Why aren't the other people made to prove by what authority they are on our land? It is an insult to our people.³⁷

Money and emotional issues

Money is also a feature in the power imbalance. Tribunal staff, government and many of the industry representatives are paid to attend, and the mining industry usually has access to better resources than claimants who are often from poor backgrounds. When mediations are extended – for example the Broome native title mediation had 198 meetings over 212 working days – this can wear out some parties without large resources.

Power imbalance can also be claimed from the mining industry perspective. The industry is having difficulty with the native title process and the associated drain on staff and financial resources. It must now comply with much additional legislation and bureaucracy at a State and Federal level. With so many approvals required in order to proceed with development, it can be a highly frustrating experience. Portman Mining managing director Barry Eldridge recently expressed frustration commenting,

if approval is not obtained in the near future, the continuing delays facing the Koolyanobbing expansion project will have very serious consequences for the operational and financial future of Portman as an Australian iron ore company.³⁸

For mediators this frustration, power imbalance and other emotional factors can mean a highly charged atmosphere between parties. It requires them to recognise the emotion, diagnose it and select an appropriate intervention for dealing with it. Boulle warns:

If this phenomenon is not recognised and dealt with in an appropriate way, it may block any chances of reaching substantive agreement.

Boulle advises that mediators need to recognise and diagnose emotional issues, but do not need to solve them. Acknowledgement of all parties' strong feelings about native title issues and associated frustrations may serve to

lessen their intensity by getting them into the open. By doing so it allows parties to begin to see each other's issues more clearly from all perspectives. Mediators should be wary, however, that differences in resources, high emotional states or other power imbalances could impair the mediation to such an extent that its use may be counter-productive to finding a long-term resolution to the conflict.

Mediation – a panacea for native title?

Mediation does not automatically mean an improvement in the native title process. Few determinations of native title have been made since the legislation was enacted – as at 3 September 2003, there were 56 determinations of native title involving 35 claimant applications. Of these, 31 were determinations that native title exists and 26 were decided by consent. This means that out of hundreds of applications, only 26 were decided by consensual mediation.³⁹

Progress and the future

One might decide that the only real measure of how mediation may help in these conflicts is the success rate, which, with only 26 consensual determinations of native title, appears poor.

However, this is a premature conclusion. Although there are only 26 such determinations, by 2002 there were 541 agreements of various kinds made through the use of mediation at the Tribunal.⁴⁰ These agreements range from authorisation of future mining development to resolution of intra-Indigenous disputes. This would appear to be a better measure of mediation at the Tribunal with the result being mutually acceptable outcomes for the interests of all parties.

More must be done in finding ways parties can, in the ethos of mediation, determine their own agreements without excessive or unhelpful bureaucratic interference. After all, even though there has been growth in native title determinations after the introduction of the 1998 amendments to the Act, there were still only 38 determinations as at 2002.⁴¹

The growth and potential of ILUAs

ILUAs have existed for less than half the time of the formal determinations process (having been introduced in 1998) but have enjoyed more success in terms of numbers, with 44 registered with the Tribunal by 2002. The ILUA, as previously explained, represents a simplified method for native title parties to come together and work out long-term solutions to the issues.

The further development of ILUAs lies in increased communication of the interests among stakeholders. In working towards this goal the Queensland Government and the Queensland Indigenous Working Group (QIWG) negotiated a Model ILUA to assist in the effective processing of the mining exploration backlog in Queensland.⁴² Queensland now has more than half of the registered ILUAs in Australia, suggesting the effectiveness of increased communication of interests between parties and the enhanced trust that results.

Conclusion

The principles, process and practice of mediation will play an important role in negotiating the future challenges presented by native title for all participants. Mediated outcomes recognise participants' rights and interests, and agreements based on this strong foundation will help parties strengthen ongoing relationships – essential when dealing with land issues into the future.

A workable native title framework must be efficient and fair – the best being one decided directly by those affected on the ground. Mediation presents itself as the methodology most appropriate, chiefly due to its flexible ability to handle the diversity of situations found during the native title process.

The ILUA framework is the best opportunity for reducing the volume of issues that come before the courts, thereby assisting in the goals of many stakeholders by reducing time, cost and uncertainty. More support of the ILUA framework and communication between stakeholders, as seen in the Queensland example, would see this as a progressive solution to many of the challenges

now faced by current native title participants. Through such mediation an empowerment of stakeholders takes place due to the transfer of the knowledge that they can take control of their individual native title situations, resulting in less reliance on the federal court system and formal determination.

The future of native title is not in finding determinations of its existence. The way forward is not in litigation or layers of legislation and bureaucracy. The future is in getting parties with an interest in the land to work together to identify interests and find agreement, with the knowledge that the alternative of determination is a long, unnecessary road if an amicable solution can be found. Good communication and mediation are the key to a successful native title future. ●

John L. Hancock has worked in the mining industry in Australia and South Africa. The family company, Hancock Prospecting Pty Ltd, is involved with iron ore projects in the Pilbara region of WA. He is the grandson of company founder, Lang Hancock. He can be contacted at <mail@hancockprospecting.com.au>.

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ILUAs registered with Tribunal ⁴³	NSW	NT	QLD	SA	VIC	WA	Total
	4	6	26	1	6	1	44

Endnotes

1. This article, a revised version of a paper submitted toward completion of a Masters degree, seeks to give mediators further background to the topical subject of native title and the mining industry. For a thorough discourse on the challenges of native title mediation in general, see Graeme Neate's paper, 'Reconciliation on the Ground: Meeting the challenges of native title mediation', *ADR* (5) 6,7.

The author would like to recognise the insight gained from Laurence Boulle's *Mediation: Principles, Process, Practice*, and the writings of Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner with the Human Rights and Equal Opportunity Commission, both referred to throughout this paper. Special thanks for the guidance and editing assistance provided by Margaret Halsmith.

2. Research Note, Dept of the Parliamentary Library, Number 23, 2001-02.

3. Australian Bureau of Agriculture and Resource Economics, Canberra, 2002.

4. Eric Ripper as quoted in *The West Australian*, 18 Dec 2002.

5. Kit J A 'The impact of mining on Aboriginal and Torres Strait Islander populations', paper presented to the Third National Immigration and Population Outlook Conference, Adelaide, 1995.

6. As reported in the *Herald Sun* newspaper 13 May 1999 p 21, a gravely ill Aborigine, Jimmy Namandjalawogwog, told the Federal Court the Jabiluka uranium mine would cause deadly lightning by disturbing sacred sites, and said it was causing his illness.

7. Letter from Dr William Jonas AM, Aboriginal and Torres Strait Islander Social Justice Commissioner, to Mr John Bowler MLA, head of the Ministerial Inquiry into Greenfields Exploration (Western Australia) 25 September 2002.

8. For a brief explanation of these and their effect on the mining industry see <www.nswmin.com.au>.

9. In 'Mabo: Where Have We Been and Where Have We Yet to Travel?' [2002] *AMPLA Yearbook*, Bradley Selway QC, Solicitor General for South Australia explains *terra nullius* as a land 'uninhabited, or effectively uninhabited ... by people with a legal system that

Englishmen would recognise'.

10. There are many similarities and differences in how the Waitangi Tribunal and the National Native Title Tribunal (NNTT) operate. Briefly the Waitangi Tribunal is more of an inquisitorial body, a permanent commission of inquiry forming part of the New Zealand justice system and utilises negotiation. The NNTT is a Commonwealth Government agency forming part of the Attorney General's portfolio and increasingly uses the paradigm of mediation.

11. *Native Title Act 1993* Preamble.

12. Ministerial Inquiry into Greenfields Exploration (WA) 2002.

13. Senator Eggleston addressing the Senate on Native Title (Right to Negotiate - Alternative Provisions) (WA Laws About Alternative Provision Areas) Determination 2000.

14. For a detailed discussion of ILUAs see Sheehan A and Mascher S, 'Indigenous Land Use Agreements: A Pathway for Negotiating the Future' (1998) 17 *AMPLJ*.

15. Explanatory Memorandum to the Native Title Amendment Bill 1997 at 77, as cited in Sheehan and Mascher above note 14.

16. ATSIC 'Native Title Amendment Bill 1997: Issues for Indigenous Peoples', October 1997.

17. Boulle L, note 1 above, p 35 ff.

18. *Munn v Queensland* [2001] FCA 1229, per Emmett J at para 20, as cited by Neate G, President, NNTT in his paper 'Reconciliation on the Ground: Meeting the challenges of native title mediation' 2001.

19. Ministerial Inquiry into Greenfields Exploration (WA) 2002.

20. It is unlikely the native title laws will be changed again, with Graeme Neate, president of the NNTT commenting in 2001 'there is no prospect of Commonwealth native title laws being changed within the foreseeable future'. [As quoted in 'Australian Rules (Property rights of indigenous peoples in Australia affect mining industry)' *Mining Journal*, 2001].

21. Neate G, note 1 above, p 91.

22. Justice Olney in *Yorta Yorta* called into question 'the suitability of the process of adversary litigation for the purpose of determining matters relating to native title, especially where the issues are complex and the resources expended

prove to be unproductive'. As cited in Neate G, note 1 above.

23. *North Galanja Aboriginal Corporation v Queensland* (1995) 61 FCR 1 at 17; 132 ALR 565 at 580 per Lee J. As cited in Neate G, note 1 above.

24. As cited by Dodson, M at <www.austlii.edu.au/au/special/rsjproject/rsjlibrary/ilb/vol3/no84/2.html> accessed 8 September 2003.

25. *North Galanja Aboriginal Corporation v Queensland* (1996) 185 CLR 595 at 617 per Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ as cited in Neate, G., note 1 above.

26. See <www.nntt.gov.au> press information kit, 2002.

27. Kado Muir, native title claimant of the Tjupan Ngalia application, on making an agreement with Austquip Pty Ltd, Hawkslade Pty Ltd and Fangio Investments Pty Ltd, NNTT media release, 4 March 1997.

28. Boulle L, note 1 above, p 35 ff.

29. Boulle L, note 1 above, p 35 ff.

30. Maurice M QC at <www.aiatsis.gov.au/rsrch/ntru/ntpapers/ip04web.pdf> accessed on 8 September 2003.

31. *Native Title Act 1993* ss 78 and 109(2).

32. Boulle L, note 1 above, p 125.

33. Dodson M, *Power And Cultural Difference In Native Title Mediation*, Second International Mediation Conference, University of South Australia, 18 January 1996.

34. Boulle L, note 1 above, p 35 ff.

35. Dodson M, note 33 above.

36. See International Council on Mining and Metals website at <www.icmm.com/html/index.php>.

37. As cited in Dodson M, note 33 above.

38. As quoted in *The West Australian*, 30 August 2003.

39. <www.nntt.gov.au/applications/determinations.html>.

40. <www.nntt.gov.au> NNTT press information kit, 2002.

41. See above note 40.

42. Jonas Dr W, Aboriginal and Torres Strait Islander Social Justice Commissioner's Submission to the Ministerial Inquiry to Identify Strategies to Increase Resources Exploration in Western Australia, 2001.

43. <www.nntt.gov.au> NNTT press information kit, 2002.